

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.5907 of 2017
and W.M.P.No.6323 of 2017

Udayalakshmi

... Petitioner

Vs.

1.Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

4.The Executive Officer,
Arulmighu Thiyagarajaswamy Thirukkoil,
Thiruvottiyur, Chennai - 600 019.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of mandamus, forbearing the respondents from demolishing the superstructures and evicting the petitioner from the premises bearing Door No.47/Part, Sannathi Street, Thiruvottiyur, Chennai 600 019 comprised in Survey No.237/1 except under due process of law namely initiating action under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

For Petitioner : Mr.S.Sadasharam

For Respondents: Mr.M.Maharaja,
Special Government Pleader R1 to R3
Mr.A.K.Sriram for
M/s.A.S.Kailasam Associates for R4

O R D E R

By consent, this writ petition is taken up for final disposal.

2. The petitioner would claims that she is in occupation of land comprised in Survey No.237/1, bearing No.47, Sannathi Street, Thiruvottiyur, Chennai 600 019 and also put up superstructure and in occupation for more than 40 years, vending flowers to the worshipers of Arulmigu Thiyagaraja Temple, which was famously known as Arulmighu Vadivudiamman Temple and though the land was leased to Munusamy, he became the lessee and started paying rent through him. The grievance expressed by the petitioner is that without following due process of law, proceedings have been initiated to evict her from the above said premises in question and therefore, constrained to approach this Court by filing this writ petition.

3. The learned counsel appearing for the petitioner would contend that the petitioner as well as her family are eking out their livelihood by vending flowers and rely on the temple worshipers and all of a sudden, they were dispossessed from the said premises without any eviction order and therefore, prays for protection and appropriate orders.

4. Per contra, Mr.M.Maharaja, learned Special Government Pleader, who accepts notice on behalf of respondents 1 to 3 and Mr.A.K.Sriram, for M/s.A.S.Kailasam Associates, learned counsel, who accepts notice on behalf of the fourth respondent, who on instructions, would submit that the proceedings were initiated under Section 78(1) of the Hindu Religious and Charitable Endowments Act, 1959 (HR & CE Act) and vide proceedings of the second respondent dated 22.07.2016 in Na.Ka.No.588/2009/A2, eviction of the petitioner has been ordered and the remedy open to the petitioner if any, is to challenge the said proceedings by filing an appeal under Section 81 of the said Act and as per sub-section 2, the petitioner can also move for stay of further proceedings and in the light of effective alternate remedy available, the petitioner is not entitled to any relief and prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. A perusal of the proceedings of the second respondent dated 22.07.2016 prima facie discloses that the petitioner was put on notice and her husband viz., Mr.Prakash appeared and made representation. Be that as it may, in the light of alternate remedy available, this Court is of the view that for the present, the writ petition is not maintainable.

7. In the light of the above facts and circumstances, the petitioner is at liberty to file an appeal along with petition for stay, challenging the proceedings of the second respondent dated 22.07.2016 to the first respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the first respondent shall entertain the appeal, if papers are otherwise in order, without putting the issue of limitation either to take up the stay petition or appeal and give a disposal as expeditiously as possible and not later than four weeks thereafter. The respondents 1 to 4, till the entertainment of the appeal, shall defer further proceedings, insofar as the eviction/dispossessing the petitioner.

8. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

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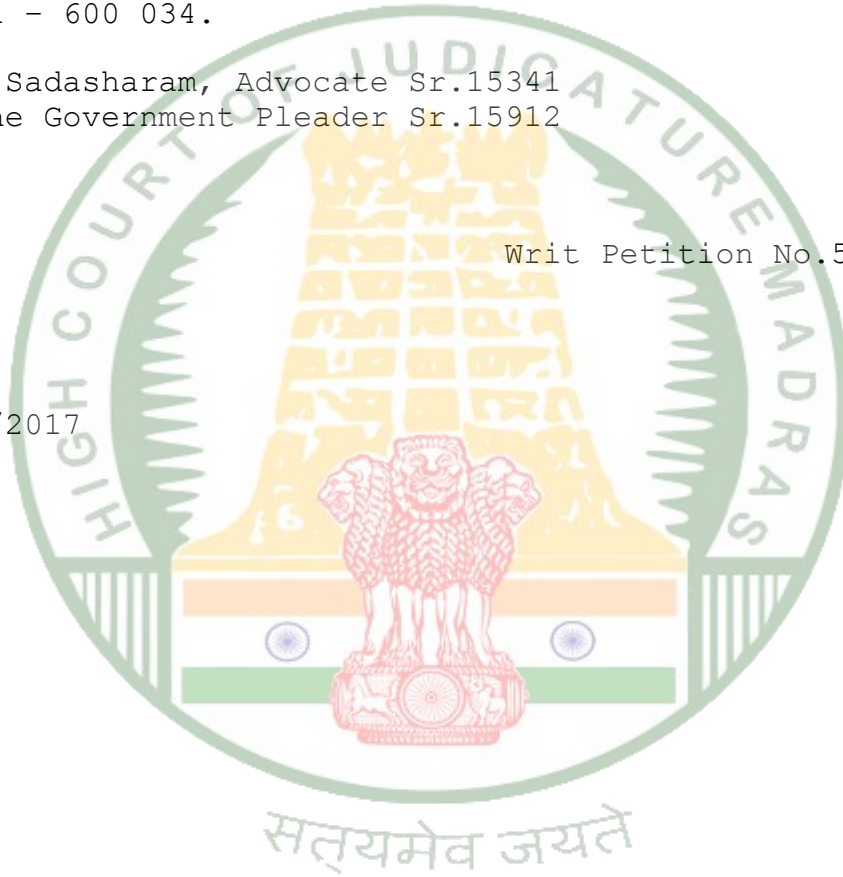
2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

+1cc Mr.S.Sadasharam, Advocate Sr.15341
+1cc to the Government Pleader Sr.15912

Writ Petition No.5907 of 2017

nm[co]
srg 22/03/2017



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