

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION No.2297 of 2017

The Correspondent,
Singaram Pillai Higher Secondary School,
Villivakkam,
Chennai 600 049.

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment
Department (HR & CE),
Nungamabakkam, Chennai - 34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment
Department (HR & CE),
Nungamabakkam,
Chennai - 34.
3. The Executive Officer,
Agastheeswarar Thirukoil,
Villivakkam,
Chennai 600 049.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent and to quash the order dated 24.10.2016 made in R.P.221/2016 D2 (confirming the order dated 18.01.2016) of the second respondent made in Nada.Na.Ka.No.12368/2008) and consequently direct the first and second respondents to deliver possession of the property comprised in R.S.No.165/1 measuring an extent of about 4 acres and situated in Villivakkam Taluk, forthwith.

For Petitioner : Mr.P.M.Bakthavatsalam

For Respondents 1 & 2 : Mr.M.Maharaja,
Special Government Pleader

For 3rd Respondent : Mr.Sriram

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order dated 24.10.2016 made by the 1st respondent and for a consequential direction to the 1st and 2nd respondents to deliver possession of the property comprised in R.S.No.165/1 measuring an extent of about 4 acres, situated in Villivakkam Taluk, forthwith.

2. According to the petitioner, their School was established in the year 1925 and it is one of the oldest institutions in the locality. Originally, a Society had established the School and was administering it. Subsequently, a Trust has been created for the Management of the School. A vast extent of land was purchased by the Society for the purpose of the School and buildings were constructed therein. The adjacent property comprised in R.S.No.165/1, Villivakkam Village, Saidapet Taluk, measuring about 7 acres belonged to the 3rd respondent Temple and the petitioner approached them for grant of lease of the said land for the purpose of having the same as the petitioner's school ground. On 31.01.1966, the School Management and the 3rd respondent Temple, represented by the then Trustee, had entered into a lease agreement with the Management and thereby, the entire property mentioned therein was given on lease to the petitioner. According to the petitioner, the land was utilized as a school ground only and till October 1995, they had been paying a sum of Rs.840/- as monthly rent for the vacant land and subsequently, by a letter dated 15.11.1995, the rent was revised to Rs.1160/-. In 1992, the 3rd respondent conveyed one acre of the lease land to the petitioner School and accordingly, the petitioner School purchased the said land in S.No.165/1B-3 from the 3rd respondent under a Sale Deed dated 31.03.1992 registered as Doct. No.2097/92.

3. The grievance of the petitioner is that all of a sudden, in 2008, the rent was revised to Rs.45,610/- per month and a notice was issued by the 3rd respondent, by which time, the Temple was taken over by the HR & CE Department, calling upon all the tenants to appear before them in connection with the revision of the rent. In this regard, the petitioner approached the 1st and 2nd respondents and represented that the revision of the rent was without any norms and that they cannot equate the vacant playground on par with other leased building of the leased property of the Temple. In the meantime, in 2008, since the 2nd respondent did not receive the rent, they had issued a notice of termination informing the petitioner that since the revised rent has not been remitted, the petitioner would be treated as an encroacher. Now, aggrieved by the order of termination of lease, dated 24.10.2016 passed by the 1st

respondent, confirming the order dated 18.01.2016 passed by the 2nd respondent, the petitioner is before this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Today, when the matter is taken up for hearing, learned Special Government Pleader submitted that the respondents 1 and 2 have taken possession of the land in question on 09.01.2017. It is his stand that the orders passed by the authorities concerned are perfectly in order.

6. Further, it is clearly brought to the notice of this Court that originally the Temple owned 6.99 acres of land in S.No.165/1B, out of which, one acre was sold to the petitioner and another one acre was acquired by the Highways Department. The petitioner had constructed buildings in the land purchased by him. Even according to the petitioner, the remaining land has been used as a playground. Though the Temple had fixed a fair rent to use the land as a playground, the petitioner has neither challenged the fixation of fair rent order nor has paid the same. In fact, there is a huge arrears payable by the petitioner to the tune of Rs.90 lakhs.

7. Moreover, as rightly pointed out by the Commissioner of HR & CE Department, the petitioner has taken two contradictory stands. On the one hand, the petitioner has averred that permanent buildings were constructed in the land purchased by their School and fair rent was fixed only to the land actually purchased by the School. But, in the reply dated 02.12.2008 furnished to the Joint Commissioner by the petitioner's counsel, it is stated that in the land in question, an extent of 18,250 sq. ft. of vacant land is used by the School as a playground for the school boys. It is further represented that the petitioner has also put up a fence in the subject land.

8. Thus, it is crystal clear that the petitioner is not prepared to pay the fair rent fixed by the HR & CE Department. In such view of the matter, this Court does not find any reason to interfere with the reasoned order dated 24.10.2016 passed by the 1st respondent and accordingly, it is confirmed.

This Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.Nos.2286 and 2287 of 2017 are dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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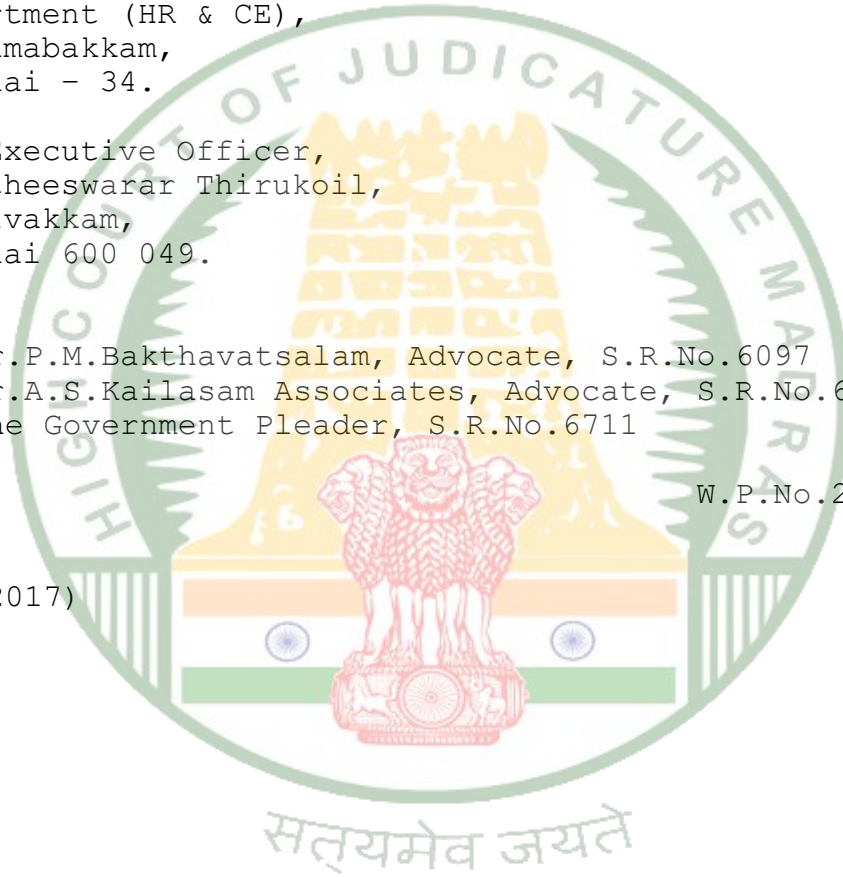
To:

1. The Commissioner,
Hindu Religious and Charitable Endowment
Department (HR & CE),
Nungamabakkam, Chennai - 34.
2. The Joint Commissioner,
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Department (HR & CE),
Nungamabakkam,
Chennai - 34.
3. The Executive Officer,
Agastheeswarar Thirukoil,
Villivakkam,
Chennai 600 049.

+1cc to Mr.P.M.Bakthavatsalam, Advocate, S.R.No.6097
+1cc to Mr.A.S.Kailasam Associates, Advocate, S.R.No.6997
+1cc to the Government Pleader, S.R.No.6711

W.P.No.2297 of 2017

MV(CO)
CA(10/02/2017)



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