

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.5002 of 2012
& M.P.No.1 of 2012

L.Soundar Rajan

.. Petitioner

Vs.

1. The Commissioner,
The Hindu Religious and Charitable
Endowments (Admn) Dept.,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn) Dept.,
Villupuram.

3.The Executive Officer,
A/m. Padaleeswarar Temple,
Cuddalore Taluk and District.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari calling for the records relating to the impugned order passed by the Commissioner, HR & CE, Chennai in R.P.No.29/2011 dated 08.02.2012, and thereby confirming the order passed by the Joint Commissioner, HR & CE, Villupuram, in M.P.No.57 of 2007 (Letter No.8496/2006/E2) dated 19.07.2011 and to quash the same as illegal.

For Petitioner : Mr.W.C.Sridhar

For Respondents : Mr.M.Maharaja
Spl. Govt. Pleader for R1 & R2
Mr.K.Chandrasekaran for R3

ORDER

The petitioner has approached this Court seeking the following relief:

''To issue a writ of certiorari calling for the records relating to the impugned order passed by the

Commissioner, HR & CE, Chennai in R.P.No.29/2011 dated 08.02.2012, and thereby confirming the order passed by the Joint Commissioner, HR & CE, Villupuram, in M.P.No.57 of 2007 (Letter No.8496/2006/E2) dated 19.07.2011 and to quash the same as illegal.''

2.The petitioner has approached this Court seeking to challenge the order of the first respondent dated 08.02.2012 wherein the first respondent has directed the petitioner to vacate and to hand over the possession of the demised lease hold property belonging to the third respondent/temple. The order which has been passed by the first respondent dismissing the revision petition filed by the petitioner, is put to challenge in the present writ petition.

3.It is the case of the petitioner is that he was a tenant in respect of a small shop measuring to an extent of 122 sq.ft. belonging to the third respondent/temple. The said shop is situated at T.S.No.1587 to 1592 and 1515/1, Padaleeswarar Bazaar at Lawrence Road, Thirupathiripuliyur, Cuddalore. According to the petitioner, he took the shop on lease in 1994 and regularly paying the rent without any default to the temple authority. According to him, the rent has been enhanced from time to time. While so, according to the petitioner, the second respondent has instituted the proceedings under Section 78(1) of HR & CE Act, treating the petitioner as an encroacher and ordered eviction in M.P.No.57 of 2007 dated 19.07.2011. As against the order, the petitioner filed a revision petition before the first respondent in R.P.No.29 of 2011. The first respondent, without considering the claim of the petitioner, had rejected the revision petition by confirming the order passed by the second respondent, vide proceedings dated 08.02.2012, which proceedings is put to challenge in the present writ petition.

4.The first respondent has passed an order by giving a finding against the petitioner as found in paragraphs 2, 3 and 4, which are reproduced below:

"2. Thiru W.C.Thiruvengadam, Counsel appeared for the petitioner and reiterated the contentions made in the revision petition. I have heard the Counsel and perused the connected records. The leasehold right of the petitioner expired on 31.12.1997. There was no There was no further extension of the lease. In the year 1999 proceedings were initiated to remove the encroachment caused by the petitioner under Section 78 of the Act, treating him as encroacher in terms of the Explanation given under Sub-Section (1) of Section 78 of the Act. The petitioner has contested the

proceedings, contending that he had paid the rent without any arrears and that, therefore, he is a valid tenant. The lease granted in favour of the petitioner ended on 31.12.1997. Thereafter, the proceedings under Section 78 of the Act for removal of encroachment were initiated. Hence, till the proceedings were finalised, the petitioner cannot be treated as a 'tenant' even on presumption. The petitioner did not challenge the termination of his lease. The action of the petitioner in contesting the encroachment proceedings amounts to acceptance of the factual position of the petitioner as an encroacher. The proceedings have been completed and in the final order the petitioner has been treated as encroacher and directed to vacate and hand over vacant possession of the property to the temple. The petitioner has filed this revision petition only against that order. Hence, at this stage he cannot plead that the said proceeding is illegal.

3. Further, the petitioner was in default of payment of rent as contended by the Executive Officer in his counter. The petitioner is stated to have admitted before the Joint Commissioner that he was in default of paying the rent prior to the initiation of the proceedings. The petitioner became a defaulter by his own action, which is the cause of action of the proceedings under section 78 of the Act. Hence, it is attracted by the explanation given under Section 78(1) (b) of the Act. So, whatever amount the petitioner has paid during the interregnum period could be treated as 'mesne profit' (amount paid in consideration of the use and occupation of the property) only and not as a regular rent, only because some one who pays rent to the temple for the illegally occupied premises, he cannot claim to be a tenant.

4. In view of the foregoing reasons the order passed by the Joint Commissioner cannot be interfered with and it is hereby confirmed. The stay granted on 28.7.2011 is hereby vacated. The petitioner has to comply with the order and vacate and hand over possession of the demised lease hold property to the temple forthwith. The second respondent/Executive Officer is directed to take appropriate action for leasing out the property in public auction. The Revision Petition be and is hereby dismissed."

5. When the matter was taken up for hearing, it is represented by the learned counsel appearing for the petitioner that against the revision petition, a further revision has to be

preferred under Section 114 of HR & CE before the Government. Before permitting the petitioner to file a revision before the Government, he is prepared to make all payments due by way of rent and damage, as leviable by the respondents towards unauthorised occupation of the property.

6. In consideration of the request of the petitioner, he is directed to approach the HR & CE Department, Government of Tamil Nadu, by way of further Revision under Section 114 of HR & CE Act. The said revision petition shall be entertained only on condition that the petitioner shall deposit the entire dues to the temple towards payment of rent as applicable including damages to be paid for the said period. On such deposit being made in favour of the third respondent/temple, further revision to be filed by the petitioner shall be entertained. On filing of such revision petition, the Government shall pass appropriate orders on merits and in accordance with law, by giving an opportunity of personal hearing to the petitioner, within a period of eight weeks thereafter.

7. With the above direction, the Writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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3.The Executive Officer,
A/m. Padaleeswarar Temple,
Cuddalore Taluk and District.

+1cc to Mr.W.C.Sridhar, Advocate, S.R.No.91374

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.91807

W.P.No.5002 of 2012
& M.P.No.1 of 2012

KGK (CO)

RRK (13/02/2018)



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