

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION No.1585 of 2017

N.Venkatesan

... Petitioner

vs.

1. The Commissioner,
Hindu Religious & Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.
2. The Joint Commissioner,
HR & CE, Chennai,
O/o.Joint Commissioner,
Hindu Religious & Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.
3. The Assistant Commissioner,
HR & CE, Chennai,
O/o. Assistant Commissioner,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.
4. The Executive Officer,
A/m. Katchaleeswarar Temple,
17, Armenian Street,
Chennai 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to remove the seal of the subject premises comprised in T.S.No.4975, Tondiarpet Village, bearing Door No.48A, Katchaleeswarar Agragaram Street, Chennai 600 001 and to furnish the copy of the eviction order enabling the petitioner to file the Revision Petition before the competent authority.

For Petitioner : Mr.V.Srikanth
For Respondents : Mr.M.Maharaja,
Special Government Pleader (HR & CE)

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondents to remove the seal of the subject premises comprised in T.S.No.4975, Tondiarpet Village, bearing Door No.48A, Katchaleeswarar Agragaram Street, Chennai 600 001 and furnish a copy of the eviction order to enable him file a Revision Petition before the competent authority.

2. According to the petitioner, the land measuring an extent of 955 sq. ft. comprised in T.S.No.4975, Tondiarpet Village, bearing Door No.48A, Katchaleeswarar Agragaram Street, Chennai - 600 001 belongs to A/m.Katchaleeswarar Temple and the administration of the said Temple is vested with the 4th respondent herein. The said land had been leased out to one Mr.V.N.Ramachandran, wherein, he had put up a superstructure. During the year 2002, the petitioner entered into a partnership with the original lessee V.N.Ramchandran to do business of lathe machinery and wooden box manufacturing in the subject premises. Later on, due to age and ailment, the original lessee V.N.Ramchandran retired from the partnership business vide Consent Deed dated 16.12.2006 and since then, the petitioner is occupying the subject premises and carrying on the said business.

3. It is further stated by the petitioner that originally, the land rent for the above premises was fixed at Rs.290/- per month and after periodical increase, the present rent is fixed at Rs.13,500/- per month. All along, the petitioner had been paying the rent promptly and have been requesting the authorities to effect name transfer in lieu of the consent deed dated 16.12.2016 given by the original lessee. However, it is his grievance of the petitioner that the authorities have not transferred the tenancy in his favour.

4. While so, the petitioner was informed by the Temple authorities that the proceedings in terms of Section 78 of Tamil Nadu Hindu Religious & Charitable Endowment Act, 1959 (TN ACT 22 of 1959) has been initiated against the original lessee V.N.Ramachandran on account of non-payment of rent of a sum of Rs.5,22,000/-. The grievance of the petitioner is that though he undertook to pay the alleged arrears and also paid a sum of Rs.2,00,000/- to the Temple vide cheque no.016554 dated 19.08.2016 drawn on DENA Bank, Broadway Branch, towards the said arrears and that the Temple had also issued a Receipt dated

23.08.2016 for the said payment, the 3rd and 4th respondents came to the subject premises on 28.12.2016 and sealed the premises. On enquiry, the petitioner came to know that the 2nd respondent has passed an order of eviction against the original lessee V.N.Ramachandran and on the basis of the said order, respondents 3 and 4 have sealed the premises. Hence, this petition.

5. After elaborate arguments, learned counsel for the petitioner submitted that the petitioner is a differently abled person and that he is eking out his livelihood from the income derived from the business carried on in the subject premises. It is his contention that the respondents 3 and 4 ought not to have sealed the premises, when the petitioner had undertaken to pay the entire arrears and had in fact, paid a sum of Rs.2 lakhs towards the arrears. However, learned counsel of the petitioner now seeks indulgence of this Court to permit the petitioner to remove the machinery and materials inside the premises, to enable the petitioner carry on his business.

6. In reply, learned Special Government Pleader appearing for respondents 1 to 3/HR & CE Department, submitted that the petitioner was never a tenant of the premises in question, but the premises was subletted to the petitioner by the original lessee and that the petitioner cannot claim any right to continue in the said premises. It is his further submission that the petitioner was not available in the premises, when it was sealed. However, he submitted that the petitioner will be permitted to take away his materials and machinery kept inside the premises.

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

8. Though the petitioner claims that he is a tenant of the premises in question and has been paying rent for the said premises promptly, the premises in question has now been sealed by respondents 3 and 4 in view of the order of eviction passed against the original lessee V.N.Ramachandran, who had defaulted in paying arrears of rent. It is seen from the records that the petitioner had undertaken to pay the alleged arrears and had in fact, paid a sum of Rs.2,00,000/- towards the same, for which a receipt dated 23.08.2016 has also been issued by the Temple. The petitioner seeks indulgence of this Court to permit him to remove all his machineries and materials lying inside the premises, which, according to this Court, is fair, reasonable and correct.

9. In view of the above, this Court directs the respondents herein to open the seal of the subject premises in

the presence of the petitioner and allow him to remove all the goods including machineries and other materials belonging to him as also that of the erstwhile tenant. In this regard, the petitioner is directed to execute an Indemnity Bond with the H.R. & C.E. Department that such materials will not be claimed by the erstwhile tenant, i.e. the original lessee. Thereafter, the premises shall be sealed by the respondents in the presence of the petitioner and possession of the premises shall be taken over by the H.R. & C.E. Department.

10. At this juncture, learned counsel for the petitioner pleaded that the respondents may be directed to consider the petitioner as a tenant, as he undertakes to pay the entire arrears, which are due and payable by the original tenant and also that he is willing to pay the new rent to be fixed by the respondents.

11. Though according to the respondents/HR & CE Department, the petitioner has been duly evicted and he is an unauthorized occupier, taking note of the partial payment made by the petitioner towards arrears of the erstwhile tenant and his undertaking to pay the remaining amount, the petitioner is directed to make an application seeking tenancy to the 2nd respondent within a period of one week from the date of taking away his goods from the premises in question and the 2nd respondent is directed to consider the same on merits and in accordance with law and pass appropriate orders within a period of four weeks, thereafter.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected W.M.P.No.1549 of 2017 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

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+1cc to Mr.V.Srikanth, Advocate, S.R.No.4835

+1cc to the Government Pleader, S.R.No.4893

rsy(CO)
md(13/02/2017)

W.P.No.1585 of 2017

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