

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.10.2017

CORAM

THE HONOURABLE MR. JUSTICE S.VAITHIYANATHAN

W.P.No.12069 of 2013
and
M.P.Nos.1&2 of 2013

N.Sree Ramamurthy

.. Petitioner

Versus

1. The Commissioner,
HR & CE Department,
Chennai
2. The Joint Commissioner,
HR & CE Department,
Vellore
3. The Executive Officer,
Arulmigu Padalathri Narashimma Perumal
Temple, Signaperumal Koil,
Kancheepuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records relating to 3rd respondent's proceedings Na.Ka.No.Nil, dated 01.04.2013, and to quash the same.

For Petitioner : Mr.M.Muthappan

For RR1 & R2 : Mr.M.Maharaja
Special Government Pleader
(HR & CE)

For R3 : M/s.A.S.Kailasam, Associates for R3

O R D E R

This writ petition has been filed to call for the records relating to 3rd respondent's proceedings N.K.No.Nil, dated 01.04.2013, and to quash the same.

2 The case of the petitioner is that he is a successful bidder for getting lease of the vacant land comprised in S.No.58 to the extent of over 4.00 Acres, which belongs to the 3rd respondent/Temple and lease deed was executed on 24.07.1992 for a period of three years on the monthly rent of Rs.775/- with the advance of Rs.3000/-. The petitioner was about to be evicted from the premises, and hence, he approached the Civil Court by filing a suit for permanent injunction and the same was dismissed. Thereafter, the petitioner filed an appeal before the Additional Subordinate Court, Chengalpattu, which was also dismissed.

3 According to the petitioner, there was a revision of rent from Rs.750/- to Rs.1000/- and thereafter Rs.1500/- which was paid on verbal instructions of the respondents. The Joint Commissioner, HR & CE Department, Vellore, vide proceedings dated 24.03.2008, extended the lease by fixing the rent as Rs.20/- per sq.ft. with effect from the year 2001 and the same was enhanced after a period of three years. Accordingly, the 2nd respondent/Joint Commissioner, HR & CE Admn. Department, Vellore issued a demand notice dated 24.03.2008 in Pro.RC.No.2050/08 C1 to the petitioner to pay a sum of Rs.9,61,770/- as arrears of rent, besides a sum of Rs.6,300/- towards advance and donation of Rs.1,57,500/- (i.e. at the rate of Rs.10,500/-P.M. for 15 months) and in total, the demand was Rs.11,82,270/-. Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent/Commissioner HR & CE Department, Chennai, which was dismissed, by an order dated 01.06.2010 and the rent was directed to be paid as per G.O. 456 dated 09.11.2007.

4 Aggrieved by the said order dated 01.06.2010, the petitioner preferred a revision petition to the Government under Section 114 of the Tamil Nadu HR & CE Act, 1969 (herein after referred as "the Act)". As the revision was not maintainable, the petitioner filed C.R.P.No.1647 of 2011 before this Court and this Court directed the petitioner to issue notice to the 3rd respondent's counsel and the same was complied with by him.

5 According to the learned counsel for the petitioner, the Authority cannot fix the rent retrospectively and that the impugned order of the 2nd respondent is completely against the principles of natural justice, as he was not even heard. The petitioner paid 50% of the enhanced rent from 01.04.2008, i.e. after the order of the Joint Commissioner, HR & CE Department, Vellore. The said Civil Revision Petition was allowed by this Court on 25.11.2016, setting aside both the above said orders dated 24.03.2008 and 01.06.2010 and this Court remitted the matter back to the Authority to consider fixation of rent. However, it is stated by the petitioner that he has paid remaining 50% of Rs.1,47,000/- with effect from 01.04.2008 and

the entire amount was paid during the pendency of the proceedings, without prejudice to the contentions raised in the civil revision petition.

6 It is submitted by the learned counsel for the petitioner that as the civil revision petition has been allowed and the matter has been remitted back to the authority, the matter is sub-judice and that no further action could be initiated by the respondents and hence, proceedings initiated by the 3rd respondent, for termination of lease, is liable to be interfered with.

7 The learned counsel for the petitioner submitted that the respondents have no jurisdiction to evict the petitioner, as the petitioner is not an encroacher and he has been paying the rent in terms of the aforesaid Act. The impugned proceedings under section 34 (B) (1) of the Act is passed in total violation of the principles of natural justice and that at no point of time, the petitioner could be considered as a defaulter.

8 Per contra, the learned Special Government Pleader appearing for the 1st and 2nd respondents/HR & CE Department and Mr.A.S.Kailasam, learned counsel for the 3rd respondent/Temple submitted that it is true that the petitioner was a successful bidder who was given on lease the land of the 3rd respondent/Temple for a period of three years, and in the year 2008, it was extended for a period of another three years. When the rent was fixed by the 2nd respondent, vide proceeding dated 24.03.2008, the same was challenged by the petitioner in A.P.No.53 of 2009 and the same was dismissed by the first respondent on 01.06.2010. Earlier, the petitioner, instead of filing revision before this Court in terms of Section 34-A(5) of the Act, preferred revision to the Government and since no revision was maintainable in the eye of law, by communication dated 18.11.2010, the 3rd respondent/Temple informed the petitioner that after adjusting all the amount paid by him, the balance payable would be Rs.13,24,008/-. In the meantime, the petitioner preferred a revision being Civil Revision Petition No.1647 of 2011 before this Court. It is stated that pursuant to the notice dated 18.02.2013, the petitioner has given his explanation on 01.03.2013 and thereafter, notice dated 01.04.2013 was issued by the 3rd respondent/Temple without considering his explanation for termination of the tenancy of the petitioner.

9 According to the learned counsel for the third respondent, the petitioner cannot challenge the termination notice and that the petitioner is an encroacher. It is further submitted that the pendency of civil revision petition and the amount paid during the pendency of the civil revision petition,

are not at all relevant for the issue on hand and that the petitioner has no locus-standi to challenge the notice of termination. It is further contended by the third respondent that the petitioner/tenant and the 3rd respondent/Temple will have to necessarily initiate the proceedings under Section 78 of the Act, or approach the Civil Court.

10 Heard both sides and perused the materials available on record.

11 It is not in dispute that the petitioner was a lessee/tenant in the Temple land from the year 1995 and the lease period was extended in 1998. There was a dispute between the parties which resulted in filing the revision petition before this Court, as mentioned supra. The petitioner was asked to pay fair rent and it is not in dispute that the petitioner has initially paid 50% of the enhanced amount of rent.

12 The only issue for consideration is as to whether the petitioner is a subsisting lessee/tenant and whether on payment of monthly rent, he is entitled to continue in the Temple land in question. For the sake of convenience, Section 34 and 34-B of the Act are extracted below:

34. Alienation of immovable trust property.--(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by (the Commissioner) as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by (the Commissioner):

(Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government).

Explanation.-- Any lease of the property above-mentioned though for a term not exceeding five years shall, if it contains a provisions for renewal for a

further term (so as to exceed five years in the aggregate) whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, (the Commissioner) may impose such conditions and give such direction, as (he) may deem necessary regarding the utilisation of the amount raised by the transaction, the investigation thereof and in the case of a mortgage, regarding the discharge of same within a reasonable period.

(3) A copy of the order made by (the Commissioner) under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of copy of the order, and any person having interest may, within three months from the date of publication of the order, (appeal to the Court) to modify the order or set it aside.

(5) Nothing contained in this Section shall apply to the inams referred to in Section 41.

34-B. Termination of lease of immovable property.--(1) The lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution shall be liable to be terminated on the non-payment of the lease rent (or on violation of any of the conditions imposed in the lease agreement) after giving a reasonable opportunity of being heard.

(2) No proceeding to terminate the lease shall be initiated, if--

(i) the time for appeal or revision under sub-section (3) or sub-section (5), as the case may be, of Section 34-A has not expired; or

(ii) the order has been made subject of such appeal or revision till the disposal of the matter.

(3) On the termination of the lease under sub-section (1), the property shall vest with the concerned religious

institution free from all encumbrances and the Executive Officer, the Trustee or the Chairman of the Board of Trustees, as the case may be, of such religious institution shall take possession of the property including the building, superstructure and trees, if any.

13 The fixation of lease/rent as per section 34-A of the Act, which was introduced by the respondents, came into effect only from 10.05.2003, based on which, the petitioner ought to have paid the revision of rent. The petitioner has paid the entire amount only from 01.04.2008. However, the revision of rent from 2001, apart from donation and rent of Rs.10,500/- per month for 15 months and Rs.63,000/- of advance, have not been paid. Whether the payment of revision of rent should be retrospectively and other amounts claimed as mentioned supra, all have to be adjudicated only by the authorities concerned pursuant to the remand order dated 25.11.2016 passed in C.R.P.No.1647 of 2011. But, this will not give any right to the petitioner to continue to be in occupation of the premises as a lessee/tenant, as there is a categorical prohibition under Section 34 of the Act that no religious Institution can permit a person to be in the immovable property for more than five years, unless it is approved by the Commissioner by passing necessary orders.

14 In this case, the petitioner was in occupation of the 3rd respondent/Temple's property for more than five years. Section 34 of the Act says that the Temple authorities shall extend the lease period, provided, the Commissioner permits by an order in writing and when such order does not exist in the case on hand, the petitioner is a trespasser and he has to be evicted. The contention of the petitioner that he has been paying the rent without any default and he cannot be evicted, except in accordance with law, cannot be accepted. As the said HR & CE Act prohibits the petitioner, he cannot be in occupation of the premises by operation of law. The petitioner as on date ceased to be a lessee/tenant in the Temple land.

15 The contention that the petitioner should be continued as tenant for ever, cannot be accepted. I find, no prima facie error in the impugned order, which is the subject matter of the writ petition. The contention that Executive Officer cannot issue a notice and only the Joint Commissioner alone is empowered to issue such notice under Section 78 of the Act, need not to gone into, as admittedly, the impugned notice has been issued under Section 78 of the Act. It is stated that if the amount had not been paid, the respondents will have to initiate action in terms of Section 78 of the Act. As there is no

extension of lease period, the petitioner shall vacate the premises within a period of 45 days from the date of receipt of a copy of this order. If the petitioner fails to vacate, the respondents are entitled to enter the premises with police help. This order will not preclude the respondents from granting fresh lease by fixing fair rent.

16 With the above observations and directions, the writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
HR & CE Department,
Chennai

2. The Joint Commissioner,
HR & CE Department,
Vellore

+ 1 cc to MR. M. Muthappan, Advocate Sr.77033

+ 1 cc to Government Pleader Sr.77494

+ 1 cc to M/s. A.S. Kalasam & Associates, Advocate 77318

W.P.No.12069 of 2013
and

M.P.Nos.1&2 of 2013

GJ(CO)
EU(11/12/2017)

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