

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.943 of 2012
and
M.P.No.1 of 2012

M.Bhaskaran Naidu

... Appellant

Vs

1.The Commissioner,
The Hindu Religious Charitable and
Endowment Department,
Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,
The Hindu Religious Charitable and
Endowment Department,
Vellore - 632 009.

3.The Executive Officer,
Arulmighu Ekambaranathar Temple,
Kancheepuram, Tamilnadu.

... Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.17090 of 2009 dated
30.03.2012.

W.P.No.17090 of 2009 : The Writ Petition preferred under
Article 226 of the Constitution of India, praying for the
issue of a Writ of Certiorari to call for the records of the
1st respondent pertaining to the order dated 30.7.2009 passed
in R.P.No.22 of 2009 and quash the same.

For Appellant : Mr.Ganesh
for M/s.Ganesh and Ganesh

For Respondents : Mr.M.Maharaja
Special Government Pleader
(HR & CE)
for R1 and R2
Mr.V.Arul Phazamnee for R3

J U D G M E N T

K.K. SASIDHARAN, J.

This intra court appeal is directed against the order dated 30 March, 2012 in W.P.No.17090 of 2009, dismissing the writ petition filed by the appellant challenging the order dated 30 July, 2009 in R.P.No.22 of 2009 on the file of Commissioner, Hindu Religious and Charitable Endowment (hereinafter referred to "HR & CE") Department, confirming the order passed by the Joint Commissioner, HR & CE Department, Vellore.

2. The premises, which is the subject matter of this intra court appeal belongs to the third respondent. The property was given on lease to the predecessor-in-interest of the appellant. The appellant became the sub-lessee of the premises bearing No.33, Taylor's Road, Kilpauk, Chennai. The sub-lease was ratified by the department. The appellant continued to be in possession of the premises.

3. The statutory authority refixed the rent. The appellant was not agreeable for payment of the revised lease amount. The Joint Commissioner, therefore, initiated proceedings for eviction against the appellant. The eviction order passed by the Joint Commissioner dated 24 March, 2009 was challenged before the first respondent in R.P.No.22 of 2009. The first respondent upheld the order passed by the second respondent. The said order was unsuccessfully challenged before the writ court in W.P.No.17090 of 2009. The order passed by the writ court is under challenge before us.

4. When this intra court appeal came up for hearing on the last occasion, we made it clear to the appellant that he has no right to continue in possession of the property. The learned counsel for the third respondent at that point of time submitted that the temple would auction the lease and it is open to the appellant to take part in the auction. We therefore directed the appellant to file an affidavit as to whether he is prepared to vacate and surrender vacant possession to the third respondent so as to enable the HR & CE Department to grant the lease by public auction.

5. The appellant filed an undertaking affidavit dated 13 October, 2017, wherein, he has stated that he would surrender vacant possession to the third respondent. The undertaking affidavit would read thus:-

"1. I submit that I am the appellant herein and I am fully aware of the facts and circumstances mentioned in this affidavit.

2. I submit that this Honourable Court on the hearing of the appeal dated 10.10.2017 had asked this appellant to file an affidavit about

surrendering possession of the subject lease premises.

3. I submit that I am running a Flour mill in the subject premises by obtaining high wattage electric connection and also by installing the necessary heavy duty machines for grinding flour and other products.

4. I submit that I am surrendering possession of the subject premises and I further plead that this Honourable Court may permit me to use the premises till the auction process is completed by the respondents. I also plead that this Honourable Court may also permit me to participate in the auction process for the subject property.

5. I also submit and undertake to stop usage of the subject property in the event of me failing the auction which would be conducted by the respondents. I also undertake to pay the usage charges. "

6. The surrender of possession by the appellant is taken on record.

7. It is open to the respondents 2 and 3 to initiate action for auctioning the privilege to conduct the shop by lease. The notification shall be published in a vernacular daily, having wide publicity in the locality so as to enable all the prospective bidders to take part in the auction. The notice of auction by submission of bid shall also be sent to the appellant by registered post so as to enable him to take part in the process. The appellant is permitted to be in possession of the property till the conclusion of the auction proceedings. In case, everything being equal, preference should be given to the appellant as he has been doing business for the last many years. In case, the bid submitted by the appellant is rejected on account of the less rate offered by him, it is open to the Department to grant the lease to the successful bidder and in which case, the appellant shall close the business and hand over the building to the respondents 2 and 3 forthwith.

8. The intra court appeal is disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
The Hindu Religious Charitable and
Endowment Department,
Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,
The Hindu Religious Charitable and
Endowment Department,
Vellore - 632 009.

3.The Executive Officer,
Arulmighu Ekambaranathar Temple,
Kancheepuram, Tamilnadu.

+1cc to M/s.Ganesh, Advocate, S.R.No.74268

+1cc to Mr.P.V.Arul Phazamnee, Advocate, S.R.No.73852

W.A No.943 of 2012

RSK(CO)
CA(23/10/2017)



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