

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37359 of 2003
and
W.P.M.P.No.45337 of 2003

Sri Venugopalaswamy Thirukkcoil,
Shop Lessees Association,
Rep., by its Secretary,
Mr.V.Kumar,
No.6, Kothanakara Street,
Sathyamangalam,
Erode District. ... Petitioner

Vs.

The Executive Officer,
Sri Venugopalswamy Thirukkcoil,
Sathyamangalam,
Erode District,
Erode. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the respondent dated 5.12.2003 so far as the members of the Petitioner Association and to quash the same, consequently directing the respondent not to interfere in the peaceful possession and enjoyment of the Petitioner Association except without following the due process of law.

For Petitioner : Mrs.Devaki Thangavel
for Mr.Ma.P.Thangavel

For Respondent : Mr.T.P.Manoharan

ORDER

The petitioner Association has come up with this Writ Petition on behalf of its members, seeking to quash the impugned order dated 05.12.2003 passed by the respondent herein and for a direction to the respondent not to interfere with the peaceful possession and enjoyment of their Association.

2. According to the petitioner, members of their Association are employees of the respondent Temple. The vacant land of the respondent Temple was demarcated as plots and the sites were allotted to the employees of the respondent Temple for lease, on condition that superstructures can be constructed by the concerned lessee and monthly rent was fixed, apart from caution deposit. Subsequently, superstructures were constructed by the lessees, who are the members of the petitioner Association and they were in enjoyment of the premises by running various businesses and also paid their rent without any default.

3. While so, on 05.12.2003, notices were issued to the individual members of the petitioner Association stating that the shops were required to be removed as per the objections raised by the National Highways Department and the arrears of rent have to be paid in 10 days, apart from vacating the premises within 10 days, thereafter.

4. According to the petitioner, the impugned notice which is the subject matter of this Writ Petition is illegal and arbitrary and the respondent Temple cannot assume the powers of the National Highways Department, by ordering their removal from the premises. Even assuming that there is encroachment on the National Highway lands by the members of the petitioner Association, they can be removed only by a competent Authority. The petitioner submitted that the land in question belongs to the respondent Temple and without terminating the lease agreement, the members of their Association cannot be evicted. Therefore, it is the case of the petitioner that the respondent Temple is trying to achieve indirectly, what it could not achieve directly. It is further stated by the petitioner that the members of their Association were not served any notice before issuance of the impugned order, as regards eviction of the premises.

5. The respondent Temple has filed the counter affidavit denying the lease agreement, which is alleged to have been entered between the Temple and the members of the petitioner Association. The respondent Temple submitted that there is no such written lease agreement. However, it is submitted that 78 shops have been permitted to run in the premises and that 47 persons running such shops are before this Court and barring the above said 78 shops, other shops are not within the encroachment area. Further, it is stated in the counter that the building in question is in a dilapidated condition and it will endanger the lives of the occupants/tenants.

6. It is the further case of the respondent Temple that individual notices were issued to all the persons and the members of the Petitioner Association cannot file a single writ petition challenging all such notices. Hence, according to the respondent Temple, the petitioner Association has no locus standi. Denying the averments of the petitioner Association that their members are paying rent without any default, the respondent Temple has stated that the petitioner has challenged only one such impugned notice issued to Mariappa Mudaliyar, even though the list of the members, who are said to have been affected, is annexed in the typed set of papers.

7. In the counter filed by the respondent Temple, it is further stated that nearly 45 persons of the Petitioner Association are not paying any rent and more than a sum of Rs.1 lakh is due from each lessee including huge arrears of rent. It is stated that the monthly rent was fixed 30 years back for 78 shops and the same was revised with effect from 01.07.1997. But, the revised monthly rent has not been paid, despite the fact that it is only one-third of the market rate. According to the respondent Temple, a portion of the land has been acquired by the National Highways and a notice dated 24.12.2002 was issued to the respondent Temple stating that 47 out of 78 shops were constructed encroaching the portion of the land belonging to the Highways Department and the encroachment will be removed at the cost of the respondent Temple and the respondent Temple will be held responsible for all the losses and consequences.

8. In the said circumstances, individual notices dated 5.12.2003 were issued to all the lessees of the 47 shops, requesting them not only to pay the arrears, but also to vacate the premises. Even assuming for the sake of argument that the petitioner Association has locus, the prayer in the Writ Petition cannot be entertained, as the petitioner Association has not filed or enclosed all the 47 impugned notices issued to its members.

9. In reply, the petitioner has stated that the members of their Association are tenants of the respondent Temple and a single writ petition can be filed on behalf of its members. The petitioner submitted that the respondent statutory authority having accepted the jurisdiction of this Court in entertaining the Writ Petition, ought not to have stated that the Writ Petition is not maintainable in view of non-filing of 2(b) application under Article 226 of Constitution of India. Seeking permission of this Court, to file a single Writ Petition, the petitioner submitted that the respondent Temple is only a landlord and members of the petitioner Association are tenants and they can be evicted only as per the procedures contemplated under the H.R. & C.E. Act. According to the

petitioner, the respondent Temple cannot take advantage of the same and proceed with the termination of the agreement, when the encroachment is made by some other lessees and not by all the members of the petitioner Association. It is also stated that the petitioner is not standing in the way of the Highways Department in removing the encroachments, if made, by the members of the petitioner Association. He further submitted that, apart from stating about the revision of rent, it is the subject matter of appeal before the Appellate Authority of the respondent.

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

11. The fact that there was a verbal lease between the shop owners and the respondent Temple is not in dispute. However, there is no iota of evidence on the part of the petitioner Association to show that its members are employees of the respondent Temple. When individual notices have been issued to the members of the Petitioner Association, the petitioner should have enclosed all the other notices challenging the same in this Writ Petition. Though the writ petition is liable to be dismissed on that ground, this Court has decided to take up the matter on merits and render a finding, taking note of the fact that the Writ Petition was admitted in 2003.

12. The petitioner Association has admitted in their reply, that there are some members who have encroached the lands of the National Highways Department and therefore, the National Highways Department can alone initiate action against them and not the respondent Temple. It is also stated that some of the members of the petitioner Association have also constructed in excess of what is permissible, which has encroached upon the road. However, the fact that the land has been acquired by the National Highways Department and that notices have been issued by the respondent Temple for removing the encroachments, failing which, action would be initiated, is not in dispute by the petitioner Association.

13. When there are encroachments, naturally the same have to be removed. Even if the contention of the petitioner that it is a dispute between the landlord and the tenants or the lessor and the lessee is acceptable, the relief sought for by the petitioner has got to be adjudicated before the specific forum or the petitioner ought to have approached the authorities under the H.R. & C.E. Act. It is also not in dispute that even though the petitioner has produced the documents to the effect that

rents have been paid, they are not entitled to withhold the fact that arrears are pending and therefore, they have not paid the revised rent on the ground that an appeal is pending disposal. Whether there are any arrears of rent; whether actual rents are paid by all the petitioners or some of the petitioners; whether the appeal is pending as on date, all these need not be gone into in this writ petition, as the petitioner Association has come up with this Writ Petition only seeking to quash the notice issued by the respondent dated 5.12.2003 with a further direction to the respondent not to interfere with the peaceful possession of the area except by following the due process of law.

14. Yet again, the relief sought for by the petitioner Association is to be adjudicated only before the specific forum. Being the owner of the property, the respondent Temple having received the intimation from the National Highways Department, they have to ensure that the encroachments are removed, failing which, appropriate action will be initiated only against the respondent Temple. In the case of lessees, running business, the petitioner or the members of the Association, be it 47 or 78 or any number of lessees, cannot encroach the Government land belonging to National Highways Department. As stated by the respondent Temple, since the land belongs to the National Highways Department, the respondent Temple ought to have complied with the notice given by the National Highways Department, however, due to the pendency of the Writ Petition, they are unable to comply with the notices issued by the National Highways Department.

15. Hence, this Court feels it appropriate to dismiss this Writ Petition, as it is devoid of merits. Even though the National Highways Department is not a party to the proceedings, as the respondent Temple is willing to comply with the directions/requests of the National Highways Department, the encroachments shall be removed forthwith, jointly by the respondent Temple along with the National Highways Department.

16. It is submitted by the counsel for the respondent/Temple that the building is in a dilapidated condition and that the respondent/Temple is going to demolish the existing building and reconstruct the same in a permissible area. In such case, the building shall be put up for auction, after the approval of the authorities concerned, and the place shall be given for rent and if the petitioner applies/participates in the auction and becomes successful, their case shall be considered for necessary accommodation.

Hence, this Writ Petition stands dismissed. No costs.
Consequently, connected W.P.M.P.No.45337 of 2003 is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

sts/aeb

To:

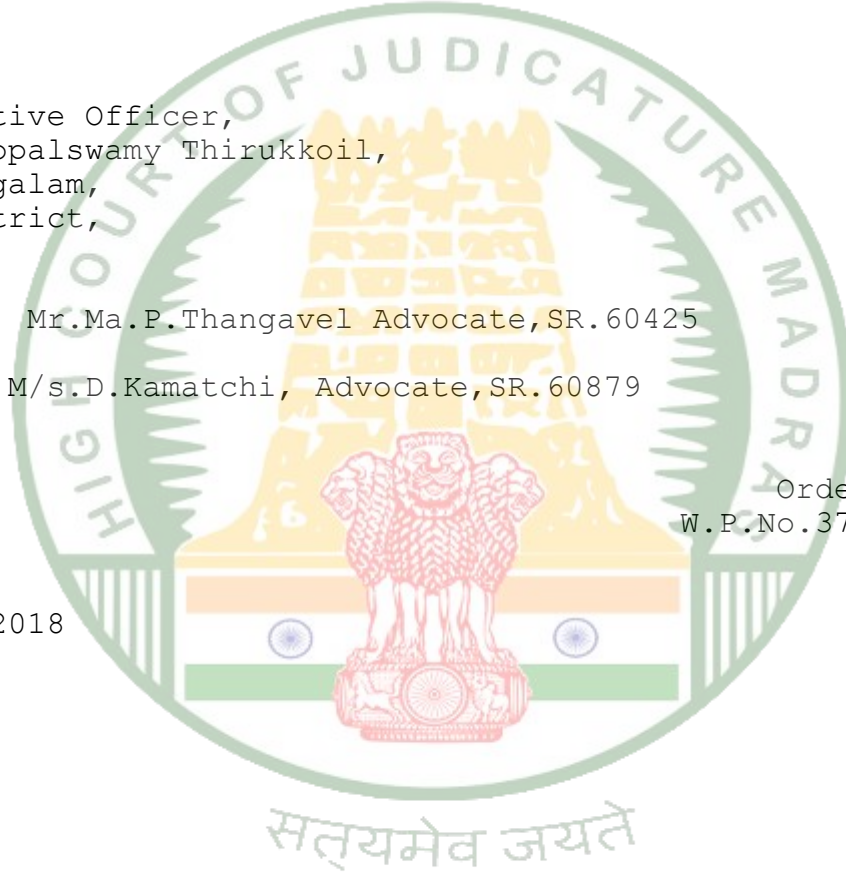
The Executive Officer,
Sri Venugopalswamy Thirukkoil,
Sathyamangalam,
Erode District,
Erode.

+ 1 cc to Mr.Ma.P.Thangavel Advocate,SR.60425

+ 1 cc to M/s.D.Kamatchi, Advocate,SR.60879

Order in
W.P.No.37359 of 2003

br (co)
nr 12/02/2018



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