

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.29918 of 2004
& W.M.P.No.370 of 2008

R.Balasundaram

...Petitioner

Versus

1. The Commissioner,
H.R. & C.E. Department,
Nungambakkam, Chennai -34.
 2. The Assistant Commissioner,
H.R. & C.E. Department,
Dr.Balasundaram Road,
Coimbatore.
 3. The Executive Officer,
Arulmigu Lakshmi Narayana
Venugopalaswamy Temple,
Coimbatore.
- .. Respondents

Prayers: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certioraified Mandamus calling for the records comprised in impugned order passed by the third respondent dated 12.07.2004 and quash the same.

For Petitioner : Mrs.Shobana Ramasubramanyan

For RR1 & 2 : Mr.M.Maharaja, Spl. G.P.
(HR & CE)

For R3 : Mr.T.S.Ramarathinam

O R D E R

The present writ petition is filed challenging the order of the 3rd respondent dated 12.07.2004.

2. The case of the petitioner is that he is the bonafide purchaser of the superstructure bearing Door No.34/37, 35/113, 34/44 constructed in T.S.No.3/1105, 1106 and 1107 of Selvapuram Main Road, Coimbatore. The land belongs to the 3rd respondent Temple. The petitioner claims to be the lessee of the 3rd respondent and he has further stated that he was paying rent for the land, to the Temple regularly.

3. The petitioner has further stated that he had sent representations to the respondents requesting them to attorn tenancy in his favour. While so, a suit in O.S.No.793 of 1992 was filed before the District Munsif Court, Coimbatore seeking eviction against the petitioner and his vendors. Though vendors remained ex-parte in the suit, he is now taking steps to challenge that order.

4. The petitioner has further stated that he sent a fresh representation dated 05.01.2001 requesting the respondents to attorn the tenancy and also paid Rs.20,000/- towards arrears of rent. Since the representation was rejected, the present writ petition is filed.

5. The 3rd respondent has filed a detailed counter stating that in the year 1888, great grandsons of Kutti Gounder, viz., Sriman Nathamuni Gounder, Rangasamy Gounder and Kutti Gounder endowed 16 acres of wet land and 5 houses nearby the Temple, with a direction to maintain the Temple from the income and proceeds from the above properties. While so, the petitioner, along with other persons, trespassed into the property. Hence, the Temple filed the suit in O.S.No.793 of 1992 for recovery of possession stating that the petitioner is a rank trespasser. The suit was decreed on 30.09.1999. The judgment and decree was confirmed by the District Judge, Coimbatore in A.S.No.265 of 1999 and the trial Court has also directed the petitioner to pay Rs.500/- per month towards damages from the date of suit, i.e., on 27.03.1992, till the date of possession. Based on the decree, the Temple has filed an Execution Petition in E.P.No.94 of 2002. At this juncture, a representation was given for recognising the petitioner as a tenant. The respondent after considering the representation, in compliance with the order of this Court passed in W.P.No.11243 of 2004, rejected the same. It is further stated that the Executing Court has ordered eviction on 29.04.2005. It is further stated that the petitioner is a trespasser and he is not a tenant and so he cannot claim regularising any tenancy.

6. It is seen that the petitioner has submitted a representation dated 05.04.2004 seeking to regularise his tenancy and also expressed his willingness to purchase the properties referred to supra.

7. A perusal of the impugned order would reveal that the request of the petitioner was rejected on the ground that he was an encroacher and as per the resolution earlier passed, the property of the Temple cannot be sold.

8. In the counter, it is specifically stated that the suit filed by the Temple against the petitioner before the District Munsif Court, Coimbatore for eviction of the petitioner and other trespassers in O.S.No.793 of 1992, was

decreed and the judgment and decree of the trial Court was confirmed by the District Judge, Coimbatore and based on the decree, the 3rd respondent had already filed Execution Petition E.P.No.94 of 2002 and order of eviction was passed on 10.10.2002 itself.

9. It is settled law that the petitioner has no right to seek regularisation of the tenancy as a matter of right. It is also well settled that against the resolution passed by the respondents, this Court cannot issue direction to sell the property of the Temple. Since the petitioner has no legal right to seek direction to sell the property of the 3rd respondent, the request of the petitioner was rightly rejected. In that view, I could not find any merits in this writ petition. Hence, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

pvs / mfa

To

1. The Commissioner,
H.R. & C.E. Department,
Nungambakkam, Chennai -34.

2. The Assistant Commissioner,
H.R. & C.E. Department,
Dr.Balasundaram Road,
Coimbatore.

+1cc to Mr.Shabana Ranasubramanyan, Advocate sr.52615

+1cc to Government Pleader sr.53012

ss(8/9/2017)

W.P.No.29918 of 2004