

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.12.2017
CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.Nos.39845 of 2002 & 1303 of 2013
and W.M.P.No.1616 of 2003 and 18013 of 2016

K.Kalaivani

.. Petitioner
in both W.Ps.

Versus

- 1.State of Tamil Nadu,
represented by District Collector,
Coimbatore District.
 - 2.Joint Commissioner,
Hindu Religious & Charitable Endowment
Administration Department,
Balasundaram Road,
Coimbatore-18.
 - 3.Deputy Commissioner/Executive Officer,
Sri Bannari Mariamman Temple,
Fit person, Sri Vanabhathrakaliamman Temple,
Thekkampatti, Mettupalayam Taluk,
Coimbatore District.
 - 4.Assistant Commissioner,
Hindu Religious & Charitable Endowment
Administration Department,
Balasundaram Road,
Coimbatore -18.
 - 5.Asst. Commissioner/Executive Officer,
Sri Vanabhathrakaliamman Temple,
Tekkampatti, Mettupalayam Taluk,
Coimbatore District.
 - 6.T.Kumaresan
S/o.R.Thangavelu
- ..5th Respondent in
WP.No.39845/02
and Sole respondent
in W.P.No.1303 of 2003
- .. Respondents 1-6
in W.P.No.39845 of 2002

W.P.No.39845 of 2002: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the 5th respondent dated 21.10.2002 made in his proceedings R.C.2967/2002/A3 and quash the same and further direct the respondents 1-5 to compensate the petitioner for the mental agony, distress and financial loss suffered on account of their conduct.

W.P.No.1303 of 2003: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondent to forbear from preventing the petitioner from running the business of Sale of coconut, plantain and other articles of worship at Sri Vanabathrakaliamman Temple, Thekkampatti.

For Petitioner: Mr.C.Deivasigamani
in both the petitions

For Respondents: Mr.M.Maharaja (For RR1,2 & 4)
in WP Special Government Pleader (HR&CE)
39845/2002 Mr.R.T.Doraisamy (for RR3 &5)
Mr.S.Subbiah (for R6)

For Respondent in
WP.No.1303/2003:Mr.R.T.Doraisamy

O R D E R

W.P.No.39845 of 2002 is for a Writ of Certiorarified Mandamus to call for the records of the 5th respondent dated 21.10.2002 made in his proceedings R.C.2967/2002/A3 and quash the same and further direct the respondents 1-5 to compensate the petitioner for the mental agony, distress and financial loss suffered on account of their conduct.

2.The necessary facts which are required to be noticed for the disposal of this writ petition are as follows:

The petitioner is the wife of the sixth respondent. According to the petitioner, there is a temple called Sri Vanabhathrakaliamman Temple at Thekkampatti Village, Mettupalayam Taluk, Coimbatore District, where, the forefathers of the sixth respondent had established a coconut shop for the selling of coconuts and other pooja items for the devotees who come to the temple. After the death of the father of the sixth respondent, the sixth respondent inherited the shop and had been continuing with the said shop. While so, in the year 1983, the Executive Officer of the temple, i.e., the fifth respondent claimed to have directed the sixth respondent to evict the shop as the land wherein the shop was put up belong to the temple. Against the said action, the sixth respondent filed O.S.No.1063 of 1983 before the District Munsif, Coimbatore challenging the proposed action of the fifth respondent to conduct auction of the shop.

3.It is claimed that a suit in O.S.No.1671 of 1989 was decreed on 30.04.1991 and on appeal in A.S.No.161 of 1991, the degree of the Trial Court was confirmed. As against the order of confirmation of the decree of the first appellate Court made in A.S.No.161 of 1991, the temple authorities filed second appeal in S.A.No.612 of 1992 before this Court. This Court by an order dated 29.08.2002 allowed the second appeal filed by the temple authorities thereby the decree made in

O.S.No.1671 of 1989 as confirmed in A.S.No.161 of 1991, was reversed. As against the said order passed in S.A.No.612 of 1992, the sixth respondent filed Special Leave Petition before the Hon'ble Supreme Court in S.L.P.(Civil) No.20282 of 2002 and the said S.L.P. was also dismissed by an order of the Hon'ble Supreme Court on 24.02.2006.

4.In the meanwhile, the sixth respondent also filed writ petition in W.P.No.1988 of 1998 before this Court seeking for a direction to appoint the sixth respondent as poojari in the fifth respondent temple, where, it is claimed that, a direction was issued by this Court on 31.08.1999 as against which, writ appeal was filed by the Department and the same was confirmed by an order of Division Bench of this Court dated 12.01.2000 in W.A.No.2662 of 1999. Thereafter, the sixth respondent had continued as poojari in fifth respondent temple and the petitioner/wife of sixth respondent had been looking after the shop established by the sixth respondent's forefathers.

5.While so, on 22.10.2002, when the petitioner was in the shop, the fifth respondent along with a team came to the shop and served notice dated 21.10.2002, thereby directing the petitioner and the sixth respondent to evict the shop immediately. Though they served the 21.10.2002 notice to the petitioner, without waiting for any response, immediately the people came alongwith fifth respondent forcibly vacated the shop of the sixth respondent on the same day itself and the structure of the shop razed to ground immediately. Only in that circumstances, challenging the said notice dated 21.10.2002 directing the petitioner and the 6th respondent to evict the shop and the forcible eviction undertaken by the fifth respondent-temple authorities and also seeking for compensation for such forcible eviction, the petitioner has filed this writ petition with aforesaid prayer.

6.I have heard Mr.C.Deivasigamani, learned counsel for the petitioner, Mr.M.Maharaja, learned Special Government Pleader for HR&CE and Mr.R.Doraisamy, learned counsel appearing for the third and fifth respondents-temple.

7.The petitioner is the wife of the sixth respondent and it is claimed by the learned counsel for the petitioner that, during the pendency of this writ petition, the sixth respondent died. It is not known at what capacity the sixth respondent has arrayed as a party in this writ petition filed by his wife. Though, an argument advanced by the learned counsel appearing for the petitioner that, the petitioner got the lease hold right from the sixth respondent while he was alive, who had in turn got the lease hold right from the fifth respondent temple, there is no iota of proof before this Court to establish the said statement.

8. Meanwhile, assuming that the sixth respondent has got any lease hold right from the fifth respondent-Temple, but in turn he cannot give or transfer the lease hold right to any third party including his wife.

9. Meanwhile Mr.R.T.Doraisamy, learned counsel appearing for the third and fifth respondent had argued that, the temple has not executed any lease hold right in favour of the sixth respondent in writing or orally. It is the stand of the fifth respondent that, the sixth respondent as well as the writ petitioner are the encroachers of the temple land, where they have put up a temporary structure for selling coconuts and other pooja items for the devotees, on their own, without any permission from the temple authorities.

10. Mr.M.Maharaja, learned Special Government Pleader appearing for Hindu Religious and Charitable Endowment Department, would submit that, as against the order made in S.A.No.612 of 1992, the 6th respondent filed a Special Leave Petition and the same was dismissed on 24.02.2006 and thereby the issue raised by the petitioner claiming right, which may be against the fifth respondent-temple, has been concluded in favour of the Hindu Religious and Charitable Endowment Department and the fifth respondent-temple, by the dismissal of the Special Leave Petition itself. Once the issue has reached its finality, the petitioner, on her own capacity stepped into the shoes of the sixth respondent, who is the husband of the petitioner, cannot make out the case to make any claim either as a person who is in genuine possession or as a lessee.

11. I have considered the rival submissions made by the learned counsel appearing for the parties as well as the materials placed before this Court.

12. It was claimed by the petitioner during the arguments advanced by the learned counsel appearing for the petitioner, that, the petitioner is a lessee under the sixth respondent, who is none other than her husband. First of all, as rightly contended by the learned counsel appearing for the HR&CE Department and the fifth respondent temple, no lease hold right can be transferred to any third party by a lessee himself. Meanwhile, the fact remains that there is no lease either in written or on oral by the fifth respondent temple to in the favour of either the petitioner or the sixth respondent. While so, the learned counsel for the petitioner advanced his arguments on behalf of the petitioner that with individual capacity as lessee, the petitioner had approached this Court challenging the impugned notice, which cannot have any legs to stand.

13. Morefully, even the prohibitory/injunction decree obtained by the petitioner or the sixth respondent from the civil court has since been subsequently reversed by the orders

of this Court in S.A.No.612 of 1992 dated 29.08.2002 and the said order having been confirmed by the Hon'ble Supreme Court in S.L.P.No.20282 of 2002 by an order dated 24.02.2006, even the minimum right of possession as claimed by the petitioner either by herself or through her husband i.e., the sixth respondent, has gone.

14.When the petitioner does not have any right either as a owner or as a lessee or as a permissible occupant, she cannot seek for any indulgence from this Court, that too invoking the extraordinary jurisdiction under Article 226 of Constitution of India for the prayer sought for herein.

15.Moreover, since the petitioner's right has not been established anywhere in any of the capacity as set out above, the action of the fifth respondent evicting the petitioner from shop allegedly held by the petitioner and her husband, cannot be construed as an illegal action. Therefore, the further relief sought for by the petitioner for compensation cannot be worthy to be considered. If at all the petitioner feels that she has any right against the fifth respondent temple and the HR&CE Department, for any reason with regard to the land, that can be established by the petitioner before an appropriate legal forum which so far the petitioner has not established.

16.In these circumstances, and for the reasons stated above, this Court feels that the relief sought for in these writ petitions cannot be granted and therefore the writ petitions fail. Accordingly, writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

rm

To

1.The District Collector,
State of Tamil Nadu,
Coimbatore District.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment
Administration Department,
Balasundaram Road,
Coimbatore-18.

3.The Deputy Commissioner/Executive Officer,
Sri Bannari Mariamman Temple,
Fit person, Sri Vanabhathrakaliamman Temple,
Thekkampatti, Mettupalayam Taluk,
Coimbatore District.

4.The Assistant Commissioner,
Hindu Religious & Charitable Endowment
Administration Department,
Balasundaram Road,
Coimbatore -18.

5.The Asst. Commissioner/Executive Officer,
Sri Vanabhathrakaliamman Temple,
Tekkampatti, Mettupalayam Taluk,
Coimbatore District.

+1cc to M/s.C.Deivasigamani Advocate Sr.No.88909

+1cc to Mr.R.T.Doraisamy, Advcate SR.no.88625

+1cc to Government Pleader SR.No.88678

MP (CO)
sm:14.2.2018

W.P.Nos.39845 of 2002 & 1303 of 2013

सत्यमेव जयते

WEB COPY