



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2017

WEB COPY

CORAM:

THE HONOURABLE **MR. HULUVADI G. RAMESH,**
ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE **T. S. SIVAGNANAM**

C.M.P (MD) .No.2240 of 2017

IN

W.A. (MD) (SR) .No.8758 of 2017

R.Kolusu Ammal @ Kolammal,
W/o.M.Iyyappan, North Street,
Veera Narayana Mangalam,
Thazhakudi Post,
Kanyakumari District.

: Petitioner

Vs.

1.The Deputy Commissioner / Executive Officer,
Incorporated and Unincorporated Devasanams,
Suchindrum, Kanyakumar District.

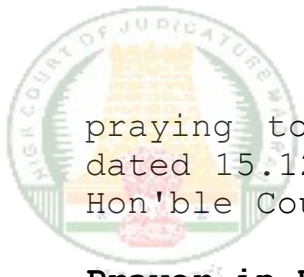
2.The Tahsildar,
Thovalai Taluk,
Kanyakumari District.

3.Chellaperumal Pillai,
S/o.Chandran, North Street,
Veera Narayana Mangalam,
Thazhakudi Post, Kanyakumari District.

4.Moorthy, S/o.Veerapathiran,
North Street, Veera Narayana Mangalam,
Thazhakudi Post,
Kanyakumari District.

: Respondents

PRAYER: Civil Miscellaneous Petition is filed under Section 151 of Civil Procedure Code praying to grant leave to this petitioner to file this Writ appeal.



praying to allow this writ appeal by set this aside the order dated 15.12.2016 made in WP(MD)No. 24000/ 2016 on the file of this Hon'ble Court.

Prayer in WP(MD). 24000/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st respondent to repay the rent amount collected by the 1st respondent for the past 52 years with interest and consequently direct forbearing the 1st respondent from demanding or collecting any further rent in respect of S.No. 477/6 in Eraichikulam Village, Thovalai Taluk, Kanyakumari District.

For Petitioner : Mr.Niranjan.S.Kumar

O R D E R

[Order of the Court was made by
The Hon'ble The Acting Chief Justice]
Heard the learned counsel for the petitioner.

2. The present Civil Miscellaneous Petition has been filed seeking to grant Leave to the petitioner herein to file appeal as against the order dated 15.12.2016, made in W.P(MD).No.24000 of 2016, on the ground that he was not a party to the said Writ Petition and he should have been added as a necessary party.

3. A perusal of Paragraph No.4 of the order passed by the learned Single Judge shows that the petitioner therein was given liberty to approach the Deputy Commissioner/Executive Officer for fixation of fair rent and such fixation has to be done with prospective effect. The above direction was issued as per the Judgment passed by a Division Bench of this Court in W.A.(MD). No.720 of 2007, on 12.12.2007. The Division Bench further observed that the temple is at liberty to proceed against the appellant/petitioner for recovery of the past arrears under the Revenue Recovery Act. The learned Single Judge has rightly pointed out that it is not the case of the appellant/petitioner that he is the owner of the property, but, his case was that he entered into an agreement with the third respondent for payment of rent towards the said property. Therefore, the learned Single Judge held that the appellant/petitioner was not justified in filing the Writ Petition, based on an agreement said to have been entered into between him and the third respondent in respect of the property for which he has been paying rent for the past 52 years to the first respondent temple. Therefore, the learned Single Judge observed that the attempt of the appellant/petitioner is nothing but to stall the collection of rent from him. Further, it was observed that if any dispute with regard to the title of the property really exists, it is for such a person, claiming to have such a right, to approach the Civil Court and establish the same



and no such attempt was ever made by any person, including the third respondent. With the above finding, the learned Single Judge rejected the plea of the appellant/petitioner as being vexatious and lacking in bona fides.

4. In the light of the above direction issued by the Division Bench in W.A.(MD).No.720 of 2007, dated 12.12.2007, which has been taken note of by the learned Single Judge, it is for the appellant/petitioner to approach the Deputy Commissioner/Executive Officer for fixation of fair rent with prospective effect.

5. The Civil Miscellaneous Petition is disposed of, with the above observation. Consequently, W.A.(MD)(SR).No.8758 of 2017 stands rejected. No costs.

sd/
Assistant Registrar(C.S-III)

/True Copy/

Sub Assistant Registrar

To

1.The Deputy Commissioner / Executive Officer,
Incorporated and Unincorporated Devasanams,
Suchindrum,Kanyakumar District.

2.The Tahsildar,
Thovalai Taluk,
Kanyakumari District.

+1CC TO M/S.NIRANJAN S.KUMAR, Advocate,SR.NO.14263

ORDER MADE IN
C.M.P(MD).No.2240 of 2017
IN
W.A.(MD)(SR).No.8758 of 2017
13.03.2017

JM/CM MSA/21.03.2017/3P/4C