



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A. [MD]. No.145 of 2017

and

C.M.P. (MD) No.1545 of 2017

K.Saravanan,
S/o.Kaveri Krishnan,
Proprietor - "Sri Lakshmi Gold Covering",
Door No.63, West Avani Moola Street,
Madurai-625 001. : Appellant/Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai-34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.
3. The Assistant Commissioner/Executive Officer,
Arulmigu Koodal Alagar Thirukkivil,
Madurai. : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of Writ Court dated 19.01.2017 made in W.P.(MD). No.853 of 2017.

Prayer in WP(MD). 853/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records from the 3rd respondent in her proceedigns in Na.Ka.No.788/2011/A4, dated 27.12.2016 and quash the same and consequently direct the 3rd respondent to extend the lease period for another 3 years by fixing 15% higher rent to the petitioner shop situated in Door No.63, West Avani Moola Street, Madurai-625 001 by considering his representations dated 01.02.2016 & 03.02.2016

For Appellant	: Mr.V.Jeya Chandran, For Mr.S.Jothis Muppidathi
For Respondents 1&2	: Mr.V.Muruganantham, Additional Government Pleader
For Respondent No.3	: Mr.S.Manohar

**JUDGMENT**

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.V.Jeya Chandran, learned counsel appearing for the appellant, Mr.V.Muruganantham, learned Additional Government Pleader appearing for the first and second respondents and Mr.S.Manohar, learned counsel appearing for the third respondent.

2. This Writ Appeal is directed against the order passed in W.P.(MD)No.853 of 2017, dated 19.01.2017.

3. The appellant filed the said Writ Petition challenging an order passed by the third respondent dated 27.12.2016 and to direct the third respondent to extend the lease period for another three years by fixing 15% higher rent in respect of the shop, which was leased out to the appellant.

4. The undisputed facts are that the appellant became a tenant under the respondent temple, pursuant to a public auction conducted in December, 2012. The appellant became the successful bidder in respect of the said shop and the auction notification stated that the shop measures 473 square feet. The rent was fixed at Rs.11,000/-, taking into consideration the extent of the shop and the rental advance was fixed at Rs.1,32,000/- being rent for a period of twelve months. The auction notification further directed the appellant to pay a deposit, which was mentioned as Rs.7,20,000/-. However, the appellant has been directed to pay a deposit, which was subsequently termed as a donation to the tune of Rs.14,13,000/-.

5. The issue in the instance case is whether the appellant is entitled to continue in occupation of the premises.

6. By the impugned proceedings, the third respondent had directed that the period of lease had come to an end on 04.01.2017 and thereafter, the appellant has to vacate and hand over possession.

7. The learned counsel for the third respondent submitted that the appellant has handed over possession of the shop.

8. This submission is disputed by the learned counsel for the appellant stating that the temple has locked the appellant's shop and all the movables and valuable items are within the shop.

9. Be that as it may, certain other facts are required to be gone into to consider as to what relief the appellant is entitled to.

<https://hcservices.ecourts.gov.in/hcservices/>

10. Though the lease deed was entered into between the respondent temple and the appellant on 15.02.2013 mentioning the



extent of property as 473 square feet, in reality, that extent was only 340 square feet. The appellant has been raising this objection ever since he became a tenant under the respondent temple. However, nothing appreciable had been done and ultimately, an order came to be passed by the Assistant Commissioner, which was confirmed by the Joint Commissioner, over which, the appellant preferred a revision before the Commissioner in R.P.No.224/2016 D2.

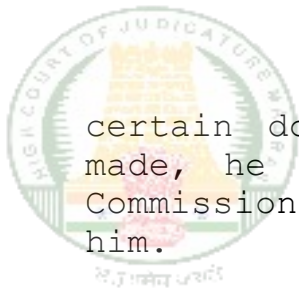
11. We should state that this is one of the very rarest of rare cases, where a tenant of the temple has not been a defaulter, but, has paid rent more than what is required to pay. We do not make this observation without any material, in fact, this is borne out by the order passed by the Commissioner dated 30.09.2016. The Commissioner, while deciding the revision petition in favour of the appellant, has clearly stated that an extent of 133 square feet of leasehold area has been encroached and thus, the appellant was in enjoyment of only 340 square feet and the temple did not take any steps, in spite of the appellant having brought to the knowledge of the temple about the encroachment. Thus, the Commissioner was of the clear view that the appellant has to be compensated. Having held so, the Commissioner moulded the relief to be granted to the appellant and permitted him to continue till the excess amount is adjusted. The impugned proceedings passed by the third respondent is pursuant to the order passed by the Commissioner. We find that the third respondent has interpreted the order passed by the Commissioner, which, in our considered view, is not appropriate.

12. After hearing the learned counsel for the parties elaborately, we find that the following is the excess payment made by the appellant, viz.,

Towards donation	-	Rs.3,97,313/-
Rental Advance	-	Rs. 37,116/-
Rent for 36 months	-	Rs.1,11,348/-

Total	-	Rs.5,45,777/-

13. The learned counsel for the appellant, on instructions, submitted that his client does not seek for adjustment of the donation amount. Thus, for the remaining two sums, the excess amount paid by the appellant is Rs.1,48,464/-. The rent payable for 340 square feet will be Rs.7,907/- per month. Thus, to liquidate the excess amount paid by the appellant, he should be permitted to be in occupation for 18 months from February, 2016, <https://hcservices.ecmcs.gov.in/hcservices/> sometime in mid August, 2017. The above is the correct method of interpreting the order passed by the Commissioner. We may add that if the Assistant Commissioner had



certain doubts about the manner in which adjustment has to be made, he should have filed a clarification petition before the Commissioner and not adopted a calculation that is justifiable to him.

14. In the light of the above, the Writ Appeal is allowed and the impugned order in the Writ Petition is set aside and consequently, the Writ Petition stands disposed of, by permitting the appellant to continue in occupation till 31.07.2017 and vacate and hand over possession on 01.08.2017. Further, the appellant claims that he has been promptly paying the rent without any default and there are no arrears at all and he has made a request to permit him to be in occupation of the shop by agreeing to pay the enhanced rent at the rate of 15% over and above the existing rent. However, we do not express any opinion on this and suffice to direct the third respondent to consider the appellant's request to continue to be in possession of the premises at an enhanced rate, beyond 31.07.2017. The representation on the said aspect may be considered in accordance with law, not later than 30.06.2017.

15. In the light of the above, though the respondent temple claims to have locked the premises, we direct that the premises be unlocked and unsealed, so as to enable the appellant to carry on business in terms of the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai-34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department, Madurai.
3. The Assistant Commissioner/Executive Officer,
Arulmigu Koodal Alagar Thirukkivil, Madurai.

+1 cc to M/S.Jothimuppudathi, Advocate, SR.No.51274

+1 cc to Special Government Pleader, SR.No. 51489

JUDGMENT MADE IN
W.A. [MD] .No.145 of 2017
10.04.2017