



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2017

CORAM:

**THE HONOURABLE MR. JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE**

W.P. (MD) No. 19914 of 2017

and

W.M.P (MD) No. 16190 of 2017

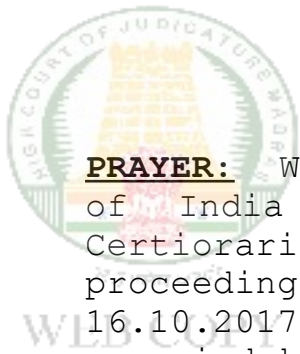
C. Kayambu

: Petitioner

.vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Board,
119, Uthamar Gandhi Saalai,
Nungampakkam,
Chennai - 14.
2. The Assistant Commissioner/Executive Officer,
Hindu Religious and Charitable Endowments Board,
Arulmigu Subramaniaswami Thirukovil,
Thiruparankundram,
Madurai District.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.
4. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.
5. The District Collector,
Madurai District,
Madurai.
6. The Revenue Divisional Officer,
Madurai Region,
Madurai.
7. The Thasildhar,
Thiruparankundram Taluk,
Madurai.

: Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the 4th Respondent in Na.Ka.No.4621/2013-4/A1, dated 16.10.2017 and quash the same with respect to the property occupied by the Petitioner in S.No.196/14 A of Thiruparankundram Village Madurai.

For Petitioner : Mr.M.Gururaj
 For R-1 & R-3 to R-7 : Mr.T.R.Janarthanan,
 Additional Government Pleader
 For R-2 : Mr.M.Muthugeethaiyan

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

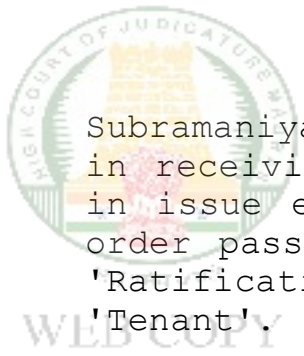
The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the proceedings of the Fourth Respondent in Na.Ka.No.4621/2013-4/A1, dated 16.10.2017 and quash the same with respect to the property occupied by the Petitioner in S.No.196/14 A of Thiruparankundram Village, Madurai.

2.Heard both sides. No counter-affidavit is filed on behalf of the Respondents.

3.By consent, the main Writ Petition itself is taken up for final disposal.

4.According to the Petitioner, the impugned notice dated 16.10.2017 of the Fourth Respondent/Assistant Commissioner, Hindu Religious and Charitable Endowments Board, Madurai, is an illegal one. Further, the impugned proceedings dated 16.10.2017 of the Fourth Respondent, is without any application of mind, because of the reason that on the one hand, the Petitioner is declared as an encroacher occupying the premises without any permission and that apart, the rent has been collected from the Petitioner even after 28.11.2015, wherein entire arrears was paid and without considering the same, the Fourth Respondent/Assistant Commissioner, Hindu Religious and Charitable Endowments Board, Madurai, had passed the order under Section 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959).

5. The Learned Counsel for the Petitioner contends that the act of the Second Respondent/Assistant Commissioner/Executive Officer, Hindu Religious and Charitable Endowments Board, Arulmigu



Subramaniaswami Thirukovil, Thiruparankundram, Madurai District, in receiving rent from the Petitioner in respect of the premises in issue even on 28.11.2015, which is subsequent to the date of order passed by the Fourth Respondent on 04.09.2015, amounts to 'Ratification' and amounts to admitting the Petitioner as a 'Tenant'.

6. It is also contended that the impugned order dated 16.10.2017 passed by the Assistant Commissioner/Hindu Religious and Charitable Endowments Board, Madurai, has been passed based on the proceedings in Na.Ka.No.1127/2010/E5, dated 25.10.2015, which had become an infructuous one, because of the reason that the dues were paid by the Petitioner.

7. Per contra, it is the submission of the Learned Counsel for the Second Respondent that the rent for the premises was increased from 01.07.2016 to Rs.558/- from Rs.132/-, which has not been paid from 01.07.2016 onwards and the same being admitted by the Petitioner and as on date, the Petitioner is in arrears of Rs.8928/- and as such, he is bound to pay the rent and he cannot be permitted to squat on the property any more. In regard to the increased rent, the same was communicated to the Petitioner as per proceedings of the Deputy Commissioner/Administrative Officer, Arulmigu Subramaniaswami Thirukovil, Thiruparankundram, Madurai District, dated 20.03.2017.

8. Added further, it is brought to the notice of this Court on behalf of the Second Respondent that an appeal preferred in regard to the enhancement of rent vide proceedings dated 20.03.2017, was returned by the office of the Second Respondent and the same has not been re-presented till date.

9. Furthermore, it comes to be known that the Fourth Respondent of the Hindu Religious and Charitable Endowments Board, issued proceedings in Na.Ka.No.4621/2013-4/A1 dated 16.10.2017, in and by which, the Petitioner was required to hand over the property in question as an encroacher and in case of failure to hand over the property, in terms of Section 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the removal of encroachment will be carried out by the temple administration, on 31.10.2017 at 11.00 a.m.

10. There is no two opinion of a primordial fact that the Petitioner along with one another person had addressed a reply to the Fourth Respondent in regard to the notice dated 16.10.2017 and the said Detailed Reply/Objection, inter alia refers to the fact that as per order passed in Na.Ka.No.9503/2015/E1, on 28.11.2015 (till June, 2017), he had paid the rent and therefore, he had



11. It is to be noted that for the Reply/representation of the Petitioner and another dated 25.10.2017 for the notice dated 16.10.2017 of the Fourth Respondent, no final orders have been passed by the Fourth Respondent, till date.

12. It is to be pointed out that the procedure enjoined in Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is of course a special procedure and it is not a summary one. Therefore, an enquiry is to be conducted just like an enquiry is made in a civil suit. That apart, the bar under the Act is for the encroachers not to approach the civil Court. But, the said bar is not applicable to a person, who is under a lawful possession either by way of licence or lease of the property pertaining to the Religious Institutions. As per Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, an Authority is to conduct an enquiry, satisfy himself about the encroachment made in the property and ultimately, he is to pass a reasoned speaking order on merits in regard to the removal of encroachment.

13. It cannot be gainsaid that a duty of a tenant in respect of the property under his occupation, is to pay the monthly rent to his Landlord/Landlady without any default.

14. Considering the fact that the Petitioner and another person's representation dated 25.10.2017, is pending on the file of the Fourth Respondent, this Court without going into the merits of the matter and not traversing upon the contents of the representation of the Petitioner and another dated 25.10.2017, simpliciter, directs the Fourth Respondent to look into the 'Representation/Objections' of the Petitioner and another and to dispose of the same by passing a speaking order on merits both in a qualitative and quantitative fashion, of course, after providing necessary opportunity to the Petitioner and others concerned by adhering to the principles of natural justice.

15. It cannot be gainsaid that the Fourth Respondent shall look into the reply of the Petitioner and another, within a period of ten days from the date of receipt of a copy of this order. Thereafter, he is required to pass the order in question within a period of two weeks. It is open to the Petitioner to raise all factual and legal pleas before the Fourth Respondent. It is needless for this Court to make a significant mention that the Fourth Respondent shall advert not only to the materials facts, but also the legal pleas raised by the Petitioner and to deal with the matter in a complete and comprehensive manner. It is also open to the Fourth Respondent to consider the status of the Petitioner in terms of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and in case, if it is found after due enquiry that the Petitioner is in arrears of rent, then, necessary orders may be passed by the Second Respondent (after



quantifying the arrears) and intimating the same to the Petitioner, of course, in the manner known to Law and in accordance with Law.

16. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Board,
119, Uthamar Gandhi Saalai, Nungampakkam,
Chennai - 14.
2. The Assistant Commissioner/Executive Officer,
Hindu Religious and Charitable Endowments Board,
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Madurai District, Madurai.
6. The Revenue Divisional Officer,
Madurai Region, Madurai.
7. The Thasildhar,
Thiruparankundram Taluk,
Madurai.

+1cc to Mr.M.Muthugeethaiyan, Advocate Sr.No.84177

+1cc to Spl.Government Pleader Sr.No.84201

PM

VB/SV/MMS/SAR1/08/11/2017/5P/10C