



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.BASKARAN**

W.P.(MD)No.21343 of 2017 and
W.M.P(MD)No.17600 of 2017

K.Velayudham

: Petitioner

.vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Board,
119,Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 014.
2. The Assistant Commissioner/Executive Officer,
Hindu Religious and Charitable Endowments Board,
Arulmighu subramaniaswami Thirukkoil,
Thirupparankundram, 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 Tahsildar,
Thirupparankundram 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 Fourth Respondent in Na.Ka.No.4950/2014-4/A1, dated 11.11.2017 and to quash the same with respect to the property occupied by the Petitioner along with his brothers in S.No.187 of Thirupparankundram



Village, Madurai measuring 1938 sq.ft.

For Petitioner : M/s.M.Gururaj
For Respondent-2 : Mr.M.Muthugeethaiyan
For Respondents : Mr.T.R.Janarthanan
Additional Govt.Pleader

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O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the Fourth Respondent in Na.Ka.No.4950/2014-4/A1, dated 11.11.2017 and to quash the same with respect to the property occupied by the Petitioner along with his brothers in S.No.187 of Thirupparankundram Village, Madurai measuring 1938 sq.ft.

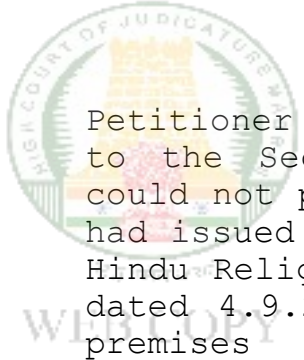
2.Heard both sides. No counter is filed on behalf of the respondents.

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

4.According to the Petitioner, his grand-father Thangavel had put up a thatched house and occupying the same, as a tenant of Thirupparankundram Subramania Swamingal Temple and was paying the rent periodically and had put up a building with concrete roofing out of the meagre income generated by him and his father and having a shelter under it along with his brothers and sister. Since the Subramania Swamigal Temple was brought under the control of the First Respondent/Tamil Nadu Hindu Religious and Charitable Endowment Department, the tax/rent is being collected by the Second Respondent for occupation as a tenant for the lease-hold land enjoyed for ground rent.

5.The grievance of the Petitioner is that though the Petitioner insisted for collection of rent and change of tenancy in the name of legal heirs of Thangavel, the Second Respondent had not made any steps to change the same. The Petitioner's grand-father Thangavel expired during 1970 and the Petitioner's father Kannan died in the year 2009 and the Petitioner is paying the rent in the same name of his grand-father Thangavel, in whose name the tenancy as on date stands. The Petitioner is living in the premise in question for more than ten decades and his children are in fourth generation to continue to live in the house and the house site in S.No.187 measuring an extent of 1938 sq.ft, which is very near to Thirupparankundran Hill.

6.The version of the Petitioner is that there are certain disputes as regards the ownership of the land comprised in S.No.187 and rent is paid to the Second Respondent. Admittedly, the



Petitioner has come out with a plea that they were paying the rent to the Second Respondent. Due to unavoidable circumstance, they could not pay the rent for few months and that the Third Respondent had issued a notice to him and his brother as per Section 78 of the Hindu Religious and Charitable Endowments Act, as per proceedings, dated 4.9.2015 (signed on 18.09.2015) ordering them to vacate the premises by declaring them as encroachers, since they have defaulted in payment of rent to the tune of Rs.40,193/- till the Fasli year 1423.

7. It comes to be known that the Fourth Respondent had issued a Eviction Notice, dated 21.12.2015 requiring them to hand-over the possession within 6.1.2016. Soon after the receipt of notice, the Petitioner had paid a sum of Rs.9,665/- before the Second Respondent on 5.1.2016 and another sum of Rs.1,218/- on 29.8.2016 and they were under the impression that they would not be disturbed in any manner by the Second Respondent.

8. The core contention advanced on behalf of the Respondents is that to his shock and surprise, the Fourth Respondent had issued certain proceedings, dated 11.11.2017 informing that rent for the premise was increased from 1.7.2016. In this regard, the plea taken on behalf of the Petitioner is that no opportunity of hearing was given to him and the enhanced rent in question was sought for retrospectively, against which, few persons on the same footing preferred an appeal before the First Respondent and the same is under consideration. It appears that those petitions were returned for certain reasons. Even though a plea is taken on behalf of the Petitioner that the impugned order/notice, dated 11.11.2017 requiring the Petitioner, his brothers etc., to evict the premises on or before 22.11.2017 was received by them on 16.7.2017, according to the Second Respondent/the Deputy Commissioner/Executive Officer, the Petitioner is in arrears of rent of Rs.28,447/- (for the period beginning from 1.7.2016 to 30.11.2017) and unless the Petitioner pays the arrears of rent within the period to be specified by this Court, he is not entitled to squat on the property any more.

9. In this connection, this Court very pertinently points out that the Petitioner in his capacity as a tenant, is enjoying the property in question after the demise of his grand-father, is bound to pay the monthly rent to the Second Respondent/Temple and in this regard, he cannot shirk his obligation in not paying the monthly rent.

10. As a matter of fact, the Petitioner himself had taken a ground that the Second Respondent after receiving the rent for the premises in question, admitted that the Petitioner is a tenant. It is to be pointed out that Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act speaks of 'Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers'. Section 79 of the Act enjoins 'Mode of eviction on failure of removal of

the encroachment as directed by the Joint Commissioner'.

11.As far as the present case is concerned,the Petitioner's grand-father expired in the year 1970 and the Petitioner's father died in the year 2009. The Petitioner and his brothers are sought to be in occupation of the subject-property of the temple and this Court is of the considered view that to meet the ends of justice, they must be directed to pay the arrears of rent of Rs.28,447/- (for the period beginning from 1.7.2016 to 30.11.2017) within a period of ten days from the date of receipt of a copy of this order.

12.It transpires that in respect of S.No.187, from 7-A Register(maintained by the Revenue Department) that S.No.187 is mentioned as one belonging to Arulmighu Subramaniaswamy Thirukkoil, Chetti Oorani Village, Thirupparankundram Circle Madurai District in Patta No.1252, issued by the State Government Revenue Department shows that the total extent is 0.71.50 ares. The said property belongs to the Second Respondent/Temple. Under the Act 22 of 2009, the term 'encroacher' is meant to be any person who unauthorizedly occupies any tank, well, spring or water course or any property and to include:-(a) any person, who is in occupation of the property without the approval of the competent authority (sanctioning lease or mortgage or license) and any person who continues to remain in the property after the expiry or termination or cancellation of lease, mortgage or licence granted to him.

13.Be that as it may, this Court taking note of the fact that the Petitioner is in arrears of Rs.28,447/-(for the period beginning from 1.7.2016 to 30.11.2017), this Court in the interest of justice, fair play, equity, good conscience and even as a matter of prudence, directs the Petitioner to remit the entire arrears of Rs.28,447/-(for the period beginning from 1.7.2016 to 30.11.2017) as on date to the Second Respondent within a period of ten days from the date of receipt of a copy of this order.

14.Also, it is open to the Petitioner and his brothers to submit necessary petition/application before the Second Respondent seeking to change the tenancy in their favour, considering the fact that their grand-father Thangavel had expired in the year 1970 and also another pivotal fact that the Petitioner's father Kannan had expired in the year 2009. In the event of filing any application by the Petitioner that is to be submitted before the Second Respondent within ten days from the date of receipt of a copy of this order, the same shall be considered by the Second Respondent, on merits, of course, in accordance with law and in the manner known to Law within a period of two weeks thereafter. Further more, this Court directs that it is the duty of the Petitioner as tenant to pay the rent regularly to the Second Respondent without any default.

15.Before parting with the case, this Court makes it abundantly clear that if the Petitioner or his brothers, as tenants, have committed default in regard to the payment of rent



for a period of six months continuously, the order of eviction will stand restored.

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

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

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Madurai Region, Madurai.
 7. The Tahsildar,
Thirupparankundram Taluk,
Madurai.
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 88498
+ 1 CC TO Mr.M.MUTHUGEETHAIYAN, ADVOCATE IN SR No. 88120
+ 1 CC TO Mr.M.GURURAJ, ADVOCATE IN SR No. 88725

VSN

TE/KP/SAR-3 : 05/12/2017 : 5P/11C