

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.05.2018

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.A.NO.1048 of 2018
and
C.M.P.No.8821 of 2018

A.Thiruvarangan

..... Petitioner

Versus

1.The Commissioner,
The Hindu Religious & Charitable Endowments
Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600034.

2.The Joint Commissioner,
Arulmighu Shree Arunachaleswarar Thirukoil,
Thiruvannamalai Devasthanam,
Thiruvannamalai 606 001.

..... Respondents

Appeal preferred under Clause 15 of the Letters Patent
against the order dated 19.04.2018 made in W.P.No.9590 of 2018.

Writ Petition filed Under Article 226 of the Constitution of
India praying to issue a Writ of Mandamus directing the
respondents to regularize the petitioners occupation in Old
No.18/4 New Door No.30/4 Arunachalapuram, Main Road, Adyar
Chennai-600 020, as tenant of Arulmigu Shree Arunachaleswarar
Thirukovil, Thiruvannamalai Devasthanam within the time
prescribed by this Honourable Court.

For Petitioner :M/S.K.Sakthivel

For Respondents :Mr.M.Maharaja
Special Government Pleader
(HR&CE) For R1 and R2

JUDGEMENT

This Writ Appeal has been filed challenging the order of this Court dated 19.04.2018 whereby a learned single Judge of this Court dismissed the writ petition filed by the appellant for a direction to the 2nd respondent Temple authorities to recognize the occupation of the appellant with his family as tenant in the property situated in Old Door No.18/4, New Door No.30/4, Arunachalapuram Main Road, Adayar, Chennai 600 020 as tenant.

2. The case of the appellant is that the above mentioned property belongs to Arulmighu Shree Arunachaleswarar Thirukoil and since 1940, the family of the appellant has been in possession and enjoyment of the same. According to the appellant, license has also been issued in their favour. While so, one Mrs.Pandari Bai claiming ownership over the property in question filed a suit in O.S.No.13734 of 2010 before the learned VI Assistant Judge, City Civil Court, Chennai, for eviction of the appellant and his family. The learned Assistant Judge dismissed the said suit on 06.08.2013 holding that the 2nd respondent temple is the owner of the property. Subsequent to the above, according to the appellant, despite several representations to recognize his possession, the 2nd respondent has not considered the same.

3. The learned single Judge dismissed the writ petition holding that the appellant has not substantiated his claim by producing document in support of his case much less any rental receipt evidencing payment said to have been made by either the appellant or any of his family members to the temple authorities. The learned single Judge has also imposed cost of Rs.25,000/- holding that the appellant had wasted the time of the court. It is the said order now under challenge in this writ appeal.

4. Mr.K.Sakthivel, the learned counsel for the petitioner would submit that even assuming that there is no tenant and landlord relationship between the appellant and the 2nd respondent temple authorities, there are sufficient materials available to establish that the appellant and his family have been in possession of the property in question belonging to the 2nd respondents for a long period. In the above circumstances, he prays this court to set aside the order of the learned single Judge and direct the 2nd respondent temple authorities to recognize his possession in the suit property as that of a

tenant. The learned counsel further submitted that even assuming that the appellant is an encroacher of the land in question, he cannot be evicted except by due process of law.

5. Per contra, Mr.M.Maharaja, the learned Special Government Pleader for the respondent Pleader while disputing the character of the the possession of the appellant as that of tenant, would contend that the 2nd respondent temple authorities would follow due process of law for eviction of the appellant.

6. I have considered the rival submissions carefully.

7. From the perusal of the records, it could be seen that earlier the appellant herein filed a writ petition in W.P.No.9064 of 2011 seeking for a direction to the 2nd respondent herein to consider his representation dated 02.02.2011 regarding grant of lease. This court by order dated 11.04.2011 disposed of the writ petition and directed the 2nd respondent herein to consider the representation of the petitioner within a period of eight weeks. It is also seen from that records, that despite the direction from this court, the representation of the petitioner has not been considered till date. The possession of the appellant and his family in the property in question is not disputed. The representations from the appellant have not yet seen the light of the day despite a direction from this court as early in the year 2011. Even though the appellant is asserting his possession as that of a tenant, it is a disputed question of fact to be decided on evidence which cannot be decided by the writ court. As rightly pointed out by the learned counsel for the petitioner, even assuming that the appellant is an encroacher, he cannot be evicted without following due process of law and we find some force in the grievance of the appellant. However, on considering the facts and circumstances of the case, this court is of the view, that no positive direction could be issued as prayed for, and at the most this court could direct the 2nd respondent to consider the representation of the petitioner in this regard on merits and in accordance with law.

8. Having regard to the above discussions and in the peculiar circumstances of the case, we are of the considered view that the order of the learned single Judge dismissing the writ petition and imposing cost on the appellant are not sustainable and the same are liable to be aside.

9. In the result, The order in the Writ Petition is set aside and the Writ Appeal is disposed of with a direction to the 2nd respondent to consider the representation already submitted by the appellant and to pass appropriate orders on the same on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected CMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gya/kmk

To

1.The Commissioner,
The Hindu Religious & Charitable Endowments
Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600034.

2.The Joint Commissioner,
Arulmighu Shree Arunachaleswarar Thirukoil,
Thiruvannamalai Devasthanam,
Thiruvannamalai 606 001.

+1cc to the Government Pleader Sr.33154
+1cc to Mr.K.Sakthivel, Advocate Sr.33131

Writ Appeal No.1048 of 2018

sg[col]
srg 07/06/2018

WEB COPY