

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.3542 of 2018
and
W.M.P.No.4345 of 2018

Kaliappan

...Petitioner

Versus

1.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Coimbatore.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Tirupur,
Tirupur District.

4.The Executive Officer,
Arulmighu Kadayeeswarar Swamy Thirukovil,
Kadaiyur Post, Kangeyam Taluk,
Tirupur District.

.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the 2nd respondent to number and dispose of the petition to set aside exparte order filed by the petitioner on 29.1.2018 in M.P.No.25 of 2016 and further to direct the respondents 3 and 4 to remove the lock and seal put up in premises bearing Door No.71/145, Kadaiyur Post, Kangeyam Taluk, Tirupur District, within a time frame.

For Petitioner : Mr.R.Kamaraj

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

O R D E R

Mr.M.Maharaja, learned Special Government Pleader takes notice for the respondents 1 to 4. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner seeks for a writ of mandamus, directing the second respondent to number and dispose of the petition dated 29.1.2018 to set aside the exparte order in M.P.No.25 of 2016 and further direct the respondents 3 and 4 to remove the lock and seal put up in premises bearing Door No.71/145, Kadaiyur Post, Kangeyam Taluk, Tirupur District.

3. The case of the petitioner is that the land in Survey Field No.402/1, measuring an extent of 190 Sq.ft. was under the occupation of the petitioner's ancestors for more than fifty years and they have also constructed a small tiled house. The forefathers of petitioner are Poojaris of the Arulmighu Kadaeeswarar Swamy Thirukovil.

4. The grievance of the petitioner is that the second respondent has passed an exparte order dated 13.12.2017 in MP.No.25 of 2016, directing the petitioner to vacate the premises immediately. Hence, the petitioner has filed a petition on 29.1.2018, to set aside the exparte order and in the meanwhile, the property was locked and sealed by the respondents 3 and 4.

5. The learned counsel for the petitioner submitted that the petitioner has been residing in the house for more than fifty years and they have not paid the B.Memo charges to the Government and there was no demand from the respondents for payment of rent, till the second respondent initiated proceedings in the year 2016. It is further submitted that, if the land belongs to the respondents temple, the petitioner is ready to pay the rent to the temple.

6. On the other hand, the learned Special Government Pleader appearing for the respondents, on instructions submitted that from the inception of the tenancy, neither the petitioner nor his forefathers have paid the rent to the temple and the petitioner deliberately absented himself before the second respondent, therefore no indulgence could be shown to the petitioner.

7. In the present case, it is not in dispute that the petitioner has been in occupation of the house bearing Door No.71/145, Kadaiyur Post, Kangeyam Taluk, Tirupur District. The second respondent passed an order in MP.No.25 of 2016, dated

13.12.2017 against the petitioner under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act. Though the petitioner has received a notice, for the reasons set out in the application dated 29.1.2018, he could not participate and an exparte order was passed on 13.12.2017. The petitioner had enclosed a property tax receipts, Aadhaar Card and Ration Card to show the petitioner is in occupation of the premises for a long number of years.

8. In such circumstances, in order to meet the ends of justice, the second respondent is directed to pass appropriate orders on the set aside petition of the petitioner dated 29.1.2018, on merits and in accordance with law. In the meanwhile, the respondents 3 and 4 are directed to remove the lock and seal of the premises at Door No.71/145, Kadaiyur Post, Kangeyam Taluk, Tirupur District forthwith.

9. With the above observation and direction this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Coimbatore.

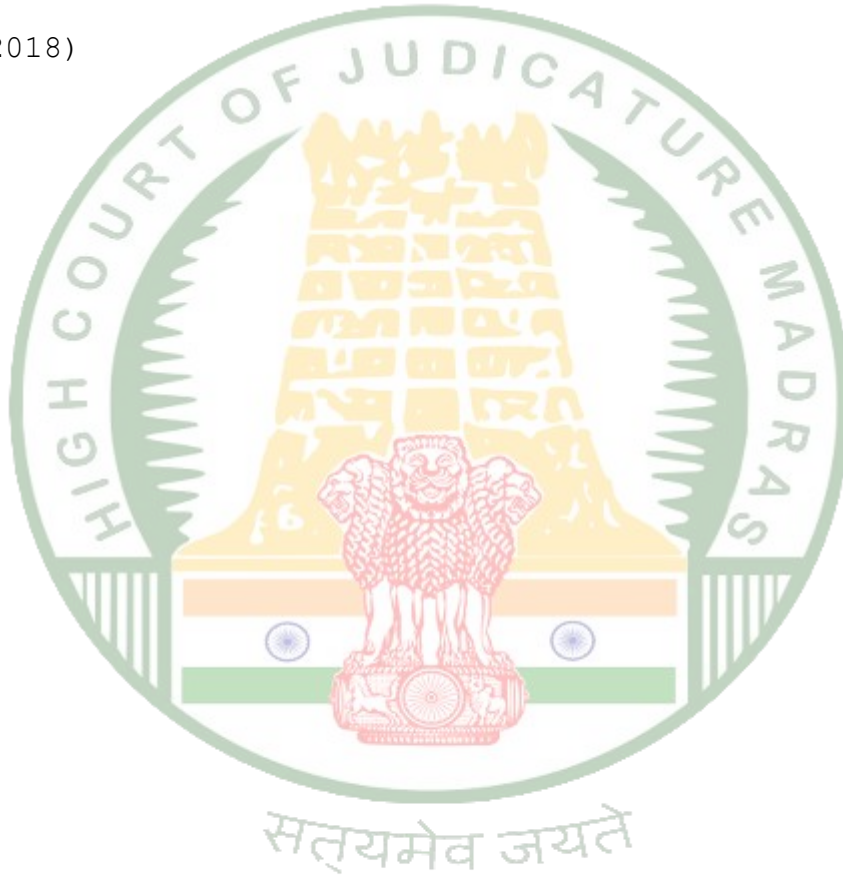
3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Tirupur,
Tirupur District.

4.The Executive Officer,
Arulmighu Kadayeeswarar Swamy Thirukovil,
Kadaiyur Post, Kangeyam Taluk,
Tirupur District.

+1cc to Mr.R.KAMARAJ, Advocate, S.R.No. 12377

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and
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RJ(CO)
TR(19/02/2018)



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