IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.6811 of 2014
and MP.No.2 of 2014

V.Ananda Mudaliar ... Petitioner

..Vs..

1.Joint Commissioner,
Hindu Religious & Charitable
Endowments Department,
Villupuram.

2.The Executive Officer,
Arulmigu Pataleeswarar Thiurkoil,
Cuddalore-607 002. ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records and quash the proceeding of the 1st respondent in his R.C.No.7876/2013/C2/dated 10.12.2013 on the file of the 1st respondent (Joint Commissioner, Villupuram).

For Petitioner : Mr.R.Gururaj
For Respondents : Mr.M.Maharaja
Special Government Pleader
(HR & CE) for R1

Mr.K.Chandra Sekaran for R2

O R D E R

The show cause notice issued under Section 78 (2) of the Hindu Religious Charitable and Endowments Act, 1959 by the 1st respondent Joint Commissioner is under challenge in this writ petition.

2. The writ petitioner states that the issue relates to the dispute in respect of the building in Cuddalore Town is in T.S.No.1589 & 1590 to an extent of 1027 sq.ft. The writ petitioner is running a jewelery shop in the said property. The building is an old one and in occupation of

the tenants. The erstwhile tenant of the Temple has not paid arrears of rent to the temple. Therefore, the Temple has filed a suit in O.S.No.57/1975 against the erstwhile tenant before the District Munsif Court for eviction and for recovery of arrears of rent. Without paying the rent and the arrears of rent, the erstwhile tenant has vacated the premises. Under these circumstances, the 2nd respondent laid down the conditions that the petitioner should clear all the rental arrears of the previous tenant and the cost of the suit. The petitioner consented and accordingly paid Rs.18,830/- towards rental arrears on 09.09.1981 and subsequently, the petitioner was inducted as a tenant in the said building.

3. The learned counsel appearing for the petitioner states that the petitioner has paid huge amount for the renovation of the building belongs to the Temple and he is continuing as a tenant and paying the monthly rent of Rs.1,200/- regularly.

4. Even in the counter affidavit filed by the 2nd respondent, it is stated that the Assistant Engineer, HR & CE Department in turn has fixed the fair rent as per the guidelines and the total cost of the building also has been raised and the monthly rent of Rs.9,000/- was fixed. As per the Government orders, fixing revenue of rent and increase it 15% over three years, a calculation was made and arrears of rent upto 31.05.2015 is arrived at Rs.23,34,373/-. The calculation itself is as per the earlier guidelines. Now the arrears is amounting to Rs.28,00,000/-. The calculation has been made in accordance with the Government orders. When the payment is demanded by the 2nd respondent Temple, the writ petitioner has failed to pay the arrears of rent as demanded as per the Government order.

5. The learned Special Government Pleader appearing for the respondents made a submission by stating that huge amount of arrears of rent is due and the writ petitioner has failed to clear the arrears of rent amount as demanded by the 2nd respondent Temple. Therefore, the impugned show cause notice has been issued under Section 78 (2) of the HR & CE Act to evict the writ petitioner from the temple premises.

6. This Court is of an opinion that the property is situated in Cuddalore town and payment of Rs.1,200/- per month in respect of the commercial shop measuring 1207 sq.ft is certainly not in commensurate with the market rent prevailing in the Cuddalore Town. However, the writ petitioner is a defaulter and not paid the arrears of rent as demanded by the 2nd respondent/Temple.

7. The eviction proceedings are initiated under Section 78 of the Act on account of the fact that the writ petitioner has failed to pay the arrears of rent amount of more than Rs.28,00,000/-. Admittedly, the property belongs to the temple and situated in Cuddalore town in a prime locality. The building is a commercial one and yielding much revenue.

8. This being the factum of the case, this Court is of an opinion that the rent and enhancement of rent must be fixed in commensuration with the market value of that area and at any circumstances, the competent authority should not fix the rent lesser than the market rent, which is prevailing in that particular locality. In other words, the authorities competent must be prudent enough in fixing the rent for the benefit of the temple concerned and there cannot be any compromise in this regard, so as to favour the tenants or the lessees, who are all in occupation of the temple premises. In the event of any negligence on the part of the officials concerned, then the Commissioner, HR & CE Department, must initiate appropriate action in this regard against the authorities concerned. At the time of assessing fair rent or fixation of rent, the authorities must be prudent enough to ensure that the Temple properties are dealt with in accordance with law and for the welfare of the deity. This being the principles to be followed, the Commissioner should overview all these aspects periodically, so as to ensure that the subordinate officials are functioning in accordance with the provisions of the Act, while dealing with the properties belonged to the Temples and religious institutions. Thus, the writ petitioner is bound to pay the arrears of rent, failing which, he may be liable to face the eviction proceedings, already initiated through the impugned notice under Section 78 (2) of the HR & CE Act.

9. No writ can be entertained against the issuance of show cause in a routine manner. Judicial review against the show cause notice is certainly limited. Writ against the show cause notice can be entertained, only if the same has been issued by an incompetent authority having no jurisdiction or if any allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of raising allegation of malafides, the authority against whom such an allegation raised is to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any of these legal grounds, no writ proceedings can be entertained against the show cause notice.

10. In respect of the present writ petition on hand, admittedly the property in question belongs to the Temple. Further the writ petitioner has failed to pay the arrears of rent as demanded by the 2nd respondent / Temple, running to more than Rs.28,00,000/-. Thus, the authorities competent has issued the impugned show cause notice by invoking Section 78 (2) of the HR & CE Act. In this view of the matter, the writ petitioner has to deposit the arrears of rent as demanded by the competent authorities failing which, he has to face the eviction proceedings in accordance with the law and pursuant to the impugned show cause notice issued under Section 78 (2) of the Act, the writ petitioner has not established any acceptable legal ground so as to consider the relief as such sought for in this writ petition.

11. The learned Government Pleader informed this Court that the eviction proceedings under Section 78 of the Act are now pending before the Joint Commissioner, HR & CE Department at Villupuram in RC.NO.78 & R7/2013/C. The Joint Commissioner / 1st respondent is directed to proceed with the eviction proceedings by following the procedures contemplated and conclude the same within a period of four weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands dismissed. However there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.Joint Commissioner,
Hindu Religious & Charitable
Endowments Department,
Villupuram.

2.The Executive Officer,
Arulmigu Pataleeswarar Thiurkoil,
Cuddalore-607 002.

+1 CC TO GOVERNMENT PLEADER SR.NO. 59236
+1cc to Mr.K.Chandra Sekaran , Advocate SR.No. 58758

W.P.No.6811 of 2014

ASK(25/09/2018)