



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.30545 of 2013 & 8452 of 2014
and
MP.Nos.1 & 2 of 2014

R.T.Sambandam

..Petitioner
(in both Wps)

vs

1.The Commissioner,
H.R. & C.E.,
Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.

2.The Joint /Dy.Commissioner,
H.R. & C.E.,
Sathuvachari, Vellore.

3.Arulmigu Ekambaraeswarar Thirukoil,
Represented by Executive Officer,
14A, V.O.C.Street, Chengalpet.

4.Jotheeswari

.. Respondents
(in both Wps)

Prayer in WP.No.30545 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the 3rd respondent to consider the petitioner's representation dated 05.08.2013 and another representation dated 12.09.2013 through petitioner's lawyer to effect restoration of the petitioner's name as lessee, succession in the interest in respect of the land and owner of the superstructure bearing No.1E, G.S.T.Road and 1E1, Varadanar Street(Timmarajakulam Street) comprised in T.S.No.370/1 in ward No.3(Old) Chengalpet deleting the name of the fourth respondent Jotheeswari as lessee.

Prayer in WP.No.8452 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to implement the G.O.Ms.No.298, T.D. & R.I Dept. dated 20.07.2010 on the file of Government of Tamilnadu and revise the rent in terms of the G.O. and determine the monthly rent w.e.f 09.11.2007 and renew the lease in respect of the premises No.1E, G.S.T. Road, Chengalpet



WEB COPY

and 1E1, Varadanar Street, Chengalpet.

For Petitioner : M/s.J.R.K.Bhavanantham
(in both WP)
For R1 & R2 : Mr.M.Maha Raja
Special Government Pleader
For R3 : Mr.Sri Ram
For M/s.A.S.Kailasam & Associates
For R4 : M/s.P.Uma

C O M M O N O R D E R

The relief sought for in these writ petitions are for a direction to direct the third respondent to consider the petitioner's representation dated 05.08.2013 and another representation dated 12.09.2013, to effect restoration of the petitioner's name as a Lessee, successor in the interest in respect of the land and owner of the superstructure bearing No.1E, G.ST. Road and 1E1, Varadanar Street (Timmaraajakulam Street) comprised in T.S.No.370/1 in ward No.3(Old) Chengalpet, by deleting the name of the fourth respondent Jotheeswari as lessee.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is running a welding shop in the ground floor facing Vedachalam Nagar. The said vacant land belongs to the third respondent Arulmigu Ekambareswarar Thirukoil, Chengalpet. During the year 1950, the grandfather of the writ petitioner Sri.Natesa Mudaliar had taken the said land on lease from the temple. The petitioner claims that his grandfather had leveled the said site and maintained the same and after obtaining building plan permission from the Chengalpet Municipality constructed building consisting ground floor and first floor. The writ petitioner claims that he inherited the lease from his grandfather and accordingly continue to be in possession of the said property belongs to the temple.

3.The petitioner states that he is in possession and enjoyment of the said property and while so, the fourth respondent interfered in the peaceful possession of the writ petitioner at the instance of the third respondent without any authority. The writ petitioner in this regard sent a representation to cancel the lease deed executed in favour of the fourth respondent and to put back the writ petitioner in possession of the entire building.

4.In view of the fact that the said representation had not been considered by the competent authority the writ petitioner is constrained to move these present writ petitions.



5.The learned counsel appearing on behalf of the 4th respondent opposed the contention of the writ petitioner by stating that the fourth respondent is a lessee and he entered into an agreement with the Temple. Therefore, the fourth respondent is in legal occupation and with the permission of the executive officer of the Temple. Thus, the claim of the petitioner is false and devoid of merits.

6.The learned counsel appearing on behalf of the third respondent Temple contested the claim made out both by the writ petitioner as well as the fourth respondent by stating that both the petitioner as well as the fourth respondent are not lease holders as of now. The lease executed in favour of the grandfather of the writ petitioner expired long back so also the permission granted in favour of the fourth respondent is also not in force. It is contented that the writ petitioner as well as the fourth respondent are in unlawful occupation of the temple properties and they have to be construed as encroachers under Section 78 of the HR & CE Act. Both the petitioner as well as the fourth respondent are liable to be evicted under the provisions of the Act, since, none of them are having any valid lease or permission from the department. They are not paying the monthly rent. It is stated that the writ petitioner has not paid the monthly rent for many years and for all these reasons the writ petitioner is liable to be evicted.

7.As per the directions of this Court, the third respondent- Executive officer filed a Sworn Affidavit on 17th June 2018, by stating that the total extent of 5676 sq.ft. comprising an extent of 4321 sq.ft and 1355 sq.ft was leased out to one Natesa Mudaliar. After the death of said Sri.Natesa Mudaliar, his son Rathina Mudaliar continued in possession of the said land and after the demise of Rathina Mudaliar, his son R.T.Sambandam, continued in possession. The petitioner and his father let out a portion of the said extent of land in favour of the fourth respondent, contrary to the original lease agreement for 4321 sq.ft. of land in proceedings dated 14.03.2002. The fair rent for the land measuring 4321 sq.ft. was fixed at Rs.12,000/-per month, which was never paid by the writ petitioner or his father and by his grandfather.

8.The petitioner was not satisfied with the fixation of fair rent at Rs.12,000/- per month with effect from 01.11.2001. He filed R.C.O.P.No.6 of 2008, for fixation of fair rent before the Rent Controller, Chengalpet, and the said petition was dismissed on 02.02.2013.

9.The petitioner did not pay the fair rent and further sublet the portion of the area measuring 4321 sq.ft in favour of



10. The learned counsel appearing on behalf of the fourth respondent states that the fourth respondent has already paid the rent due to the temple. However, the fact remains that the fourth respondent is also not a lawful lease holder and there is no lease agreement in his favour. This apart, the permission granted in the year 2007 was not renewed. Thus, both the petitioner as well as the fourth respondent are in illegal occupation of the temple premises without any authority.

12. The temple authorities must be vigilant in respect of maintaining the temple properties even during the period of lease and it is duty mandatory on his part of the executive officers to ensure that the monthly rent is being collected periodically and punctually and any lapse in this regard, should be view seriously, since, the same causes financial loss to the temple. After all some great souls donated their valuable properties in favour of the temple out of faith. If the Competent authorities in collusion with some third parties are tampering with the same, this Court is unable understand for what purpose the H.R. & C.E. Act is enacted and for what purpose the officials are functioning as public officials. The officials are duty bound to maintain the Temples as well as the properties belong to the temple. The lapses in this regard ought to be seriously viewed and an appropriate action to be initiated against all the officials concerned. The High Court is witnessing large number of litigations on similar facts. The temple properties in larger extent are misused and abused by some third parties and land grabbers. However, actions are not initiated promptly and quickly by officials. The present case is a classic case, where the writ petitioner as well as the fourth



respondent are being allowed to continue in the temple premises without any authority. Even, at the time of collecting rent from the fourth respondent, it is duty mandatory on the part of the authority to ensure, whether the lease agreement is in existence and properly renewed by the tenant or not. Simply they cannot receive the rent and issue receipt without verifying the fact that the person is in possession of the valid lease agreement and appropriate order in this regard by the Competent Authorities. Negligence in this regard is to be construed as negligence and dereliction of duty on the part of the Competent Authority.

13. In respect of the contentions raised on behalf of the writ petitioner and the fourth respondent, they have admitted that the land belongs to the temple. However, they are not possessing any valid lease agreement as of now. Under these circumstances, the petitioner as well as the fourth respondent are in unlawful occupation and therefore they are liable to be evicted by following the procedures contemplated under the provisions of the H.R. & C.E. Act. Further, it is made clear that the arrears of rent due are to be collected both from the writ petitioner as well as from the fourth respondent which is to be done without any further delay. For all these reasons the writ petitioner has not established even a semblance of legal right for the purpose of considering the relief as such sought for in these writ petitions. Further, considering the factual scenario this court is of an undoubted opinion that the writ petitioner as well as the fourth respondent are in unlawful occupation of the temple property and they are liable to be evicted.

14. Accordingly the respondents 1 to 3 are directed to evict the writ petitioner as well as the fourth respondent from the Temple premises within a period of six weeks from the date of receipt of a copy of this order by following the procedures contemplated under the provision of the H.R. & C.E. Act. Further, the respondents 1 to 3 are directed to recover the entire rental arrears both from the petitioner as well as from the fourth respondent within the said period. If the petitioner and the 4th respondent fails to pay arrears of rent under the provisions of the Act, action is to be initiated against them in accordance with law. It is the joint responsibility of the respondents 1 to 3 to ensure that the eviction of temple premises are done promptly as per the time frame of six weeks granted by this Court.

15. Accordingly, the writ petitions stand dismissed. However, no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.



16. Post these matters after six weeks 'for reporting compliance'.

WEB COPY

stm

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
H.R. & C.E.,
Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.
2. The Joint /Dy. Commissioner,
H.R. & C.E.,
Sathuvachari, Vellore.
3. Arulmigu Ekambaraeswarar Thirukoil,
Represented by Executive Officer,
14A, V.O.C. Street, Chengalpet.

+2cc to M/s. J.R.K. Bhavanantham, Advocate Sr.No. 43112 & 43113

+2cc to M/s. P. Uma, Advocate Sr.No. 43281 & 43282/18

sm:20.7.2018

W.P.Nos. 30545 of 2013 & 8452 of 2014
and
MP.Nos. 1 & 2 of 2014