

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.06.2018

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

W.P.No.31702 of 2017

and

W.M.P.No.34849 of 2017 and W.M.P.No.5912 of 2018

N.Rafeeq ..Petitioner

vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Hindu Religious and Charitable Endowment Department,
Fort St. George, Chennai 600 009.
 - 2.The Commissioner,
Hindu Religious and Charitable Endowment Department.,
Nungambakkam, Chennai 600 034.
 - 3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department.,
Nungambakkam, Chennai 600 034.
 - 4.The Executive Officer,
Arulmigu Venugopala Swamy Thirukovil,
Udhagamandalam, Nilgiris District.
- ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the proceedings of the 4th respondent herein in Na.Ka.No.P/11/3/1-1427 dated 17.11.2017 and quash the same.

For Petitioner : M/s.Dr.R.Gouri

For RR 1 to 3 : Mr.M.Maharaja
Special Government Pleader

For R4 : Mr.K.Ashok Kumar

O R D E R

The order passed by the the fourth respondent / Executive Officer directing the writ petitioner to vacate the temple premises and hand over the possession in proceedings dated 17.11.2017 is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is not an encroacher. Further, he was allowed to continue in the temple premises by the Executive Officer. This apart, the Executive Officer has no jurisdiction or authority to issue such a notice to the writ petitioner under Section 78 of the HR&CE Act. For all these reasons, the impugned order is liable to be scrapped. The learned counsel further contended that the writ petitioner is in continuous occupation from the year 2010 onwards. He is regularly paying the monthly rent to the temple authorities and they are also receiving the rent without any objection or otherwise. Thus, it is to be construed that the writ petitioner is in occupation of the temple premises with the consent and permission of the temple authorities and therefore he cannot be designated as encroacher for the purpose of eviction under the provisions of the Act.

3. The learned Special Government Pleader appearing on behalf of the respondents states that the temple authorities have taken a decision that the premises are required for the usage of the temple and further the writ petitioner is a sub-tenant and no lease has been granted in favour of the writ petitioner. In the absence of any valid lease agreement between the competent authorities and the writ petitioner, he is to be treated as an encroacher and therefore, there is no infirmity as such in respect of the order passed by the fourth respondent / Executive Officer.

4. May that it be, this Court is of an opinion that Section 78 of the Act contemplates certain procedures to be followed even to vacate the encroachers in respect of the temple premises. Admittedly, there is no lease agreement in existence in respect of the writ petitioner with the competent authorities of the temple. In the absence of any lease agreement, this Court is of an opinion that the writ petitioner is to be treated only as a sub-tenant and the authorities competent had illegally permitted the writ petitioner to continue in the premises for the past eight years. In this regard, the Executive Officer who was in charge of the temple during the relevant point of time committed an act of misconduct.

5. Any Executive Officer is bound to maintain the temple premises intact. The temple properties are to be maintained by the authorities competent in accordance with the provisions of the HR&CE Act. The Officers who all are violating the provisions of the Act, are certainly amenable to disciplinary proceedings to be initiated under the Discipline and Appeal Rules. The Executive Officers are not empowered to grant any oral permission or consent for the purpose of occupying temple properties. If any oral consent or permission is granted by the Executive Officer, then such permission or consent is to be declared as illegal and in violation of the provisions of the HR&CE Act and stringent actions are to be taken by the Commissioner, HR&CE Department against such Executive Officers throughout the State. Thus, the Commissioner, HR&CE Department is bound to initiate action against all the Executive Officer who all are giving such oral consent or unauthorised permission to continue in temple premises without proper lease deed under the provisions of the Act and Rules. The Commissioner is hereby directed in this regard to initiate disciplinary proceedings against the Executive Officers concerned who had committed such irregularity or illegality in the matter of dealing with the temple properties.

6. In respect of the arguments advanced by the learned counsel for the writ petitioner, this Court is of an opinion that the procedures contemplated under Section 78 of the Act is to be scrupulously followed by the authorities while evicting the occupants of the temple properties. In this regard, the Joint Commissioner has to issue proper notice and thereafter proceed with the matter by following the procedures. Admittedly, such procedures had not been followed.

7. In this view of the matter, the Joint Commissioner is directed to take note of the developments and proceed against the writ petitioner under Section 78 of the Act in accordance with the procedures contemplated and by issuing show cause notice in appropriate terms. The exercise shall be done by the Joint Commissioner concerned within a period of eight weeks from the date of receipt of a copy of this Order.

8. Accordingly, the writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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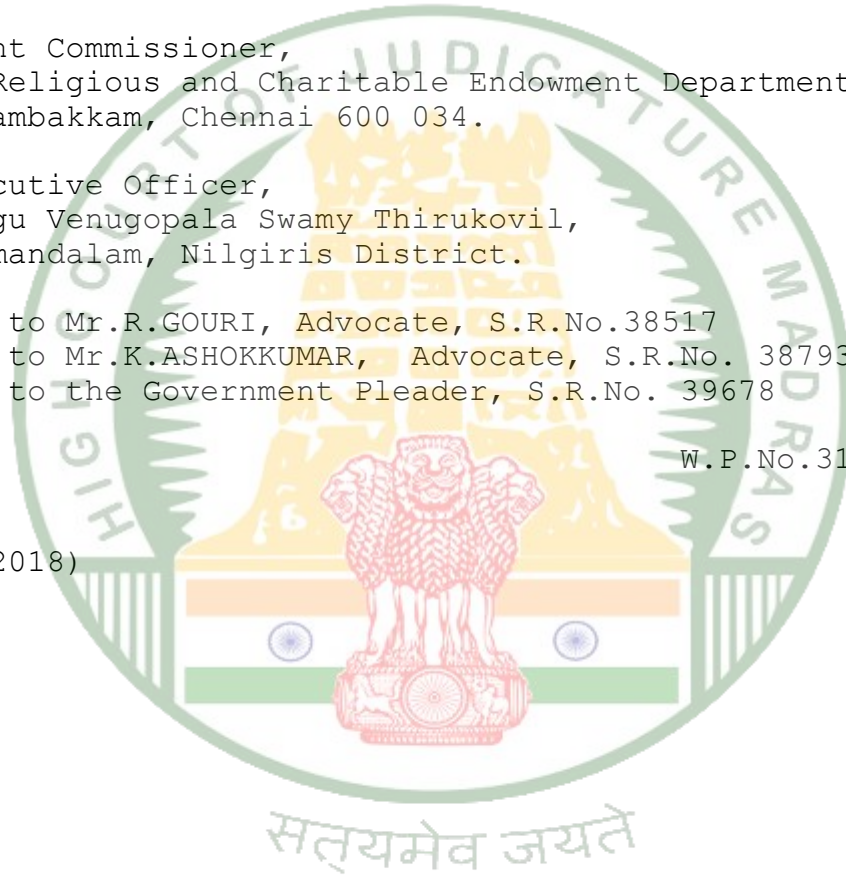
To

- 1.The Secretary to Government,
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- 4.The Executive Officer,
Arulmigu Venugopala Swamy Thirukovil,
Udhagamandalam, Nilgiris District.

+1cc to Mr.R.GOURI, Advocate, S.R.No.38517
+1cc to Mr.K.ASHOKKUMAR, Advocate, S.R.No. 38793
+1cc to the Government Pleader, S.R.No. 39678

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