

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.943 of 2017
and
C.M.P.No.13099 of 2017

The Assistant Commissioner
Hindu Religious and Charitable Endowment Board
A/M padaleeswarar Thirukoil
Cuddalore.

... 2nd Respondent/ Appellant

versus

1.R.Balaji Murugan ...Petitioner/ 1st Respondent

2.The Joint Commissioner
Hindu Religious and Charitable Endowment Board
Villupuram.

... 1st Respondent/Respondent

PRAYER: Appeal filed against the order passed by this Court dated 02.11.2016 made in W.P.No.31713 of 2016.

W.P.No.31713 of 2016:

Petition filed under Article 226 of the constitution of India praying for a Writ of Mandamus directing the respondent to recognize the petitioner as a tenant based on the petitioner representation dated 20.6.2016.

For Appellant : Mr.K.Chandrasekaran,

For Respondents : Mr.C.Umasankar for R1.
Mr.M.Maharaja,
learned Special Government Pleader
HR & CE for R2.

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

Aggrieved by the order of the learned Single Judge made in W.P.No.31713 of 2016 the Assistant Commissioner/ Executive

Office of Arulmigu Pataleeswarar Thirukoil, Cuddalore has come forward with this Appeal.

2. The said Writ Petition in W.P.No.31713 of 2016 was filed by the 1st respondent seeking a Writ of Mandamus directing the respondents to recognize the petitioner as a tenant based on his representation dated 20.06.2016.

3. Though, the Writ Petition was resisted by the respondents contending that the father of the petitioner who was tenant under the temple has suffered an eviction decree which has been confirmed by this Court in S.A.No.1861 of 2004, while the process of execution is pending the 1st respondent had made various representations to the Authorities and had come forward with the above Writ Petition. Therefore, according to the temple Authorities the 1st respondent herein cannot seek a mandamus directing the temple Authorities to recognize him as a tenant.

4. The learned Single Judge, however, directed the temple Authorities to recognize the 1st respondent as a tenant by directing to pay a sum of Rs.7,00,000/- as donation to the temple and also pay a sum of Rs.10,000/- as rent from 01.11.2016 excluding electricity charges. The learned Single Judge also directed the 1st respondent to pay enhanced rent of 5% every year. The execution proceedings were directed to be kept in abeyance. The learned Single Judge also directed in the event of default in payment of donation or the rent, it was open to the temple Authorities to execute the decree for eviction made in O.S.No.386 of 2001 which was confirmed by this Court in S.A.No.1861 of 2004.

5. Aggrieved by the said direction creating the lease in favour of the 1st respondent, the Executive Officer of the temple who also happens to be the Assistant Commissioner in the Department has come forward with this intra-Court appeal.

6. We have heard Mr.K.Chandrasekaran, learned counsel for the appellant, Mr.C.Umasankar, learned counsel appearing for the 1st respondent and Mr.M.Maharaja, learned Special Government Pleader, HR & CE appearing for the 2nd respondent.

7. Mr.K.Chandrasekaran, learned counsel appearing for the appellant would contend that the father of the 1st respondent who was a tenant under the temple in respect of a commercial building situate in prime commercial locality of Cuddalore town had suffered an eviction decree and when the decree was being executed, the 1st respondent had come forward with this Writ Petition. According to Mr.K.Chandrasekaran, learned Single Judge was not right in directing the temple to recognize the 1st respondent as its tenant de hors the decree which was in the process of being executed.

8. Per contra, Mr.C.Umasankar, learned counsel appearing for the 1st respondent would submit that, no doubt true that the father of the 1st respondent had suffered a decree for eviction but considering the fact that the temple in any event is going to let out the premises to 3rd parties, he had made a representation seeking to be revised as a lessee and had also signified his willingness to pay higher rent as well.

9. The learned Single Judge has only taken note of the fact that the temple will be immensely benefited while passing an order impugned in this appeal.

10. Mr.M.Maharaja, learned Special Government Pleader appearing for the 2nd respondent would submit that as per the directions of the Commissioner, HR & CE, the Commercial properties belonging to the temple are to be leased out only by public auction, therefore, the direction given by the learned Single Judge directing the temple to recognize the 1st respondent as a tenant is unworkable.

11. We have no doubt that the order of the learned Single Judge cannot be sustained. Once the tenancy has been terminated and a Civil Court has passed a decree for recovery of possession in favour of the temple, this Court sitting under Article 226 of Constitution of India cannot override the said decree and direct the temple to recognize the 1st respondent as a tenant. We are therefore, of the considered opinion that the order of the learned Single Judge cannot be sustained and it needs to be interfered with, accordingly, the order of the learned Single Judge is set aside.

12. At this juncture Mr.C.Umashankar, learned counsel appearing for the 1st respondent would plead that if the temple is to put up the property for leasing it out by public auction, then he should be given preference. He would also submit that he is willing to pay enhanced rent upto Rs.15,000/- per month.

13. The fact remains that the 1st respondent's father was a tenant of the building in question for several decades and after that the 1st respondent has been continuing the business. Considering the said fact we are of the view that the 1st respondent should be given an opportunity to continue his business in the premise in question. At the same time, we cannot direct the appellant to grant lease in favour of the 1st respondent.

14. We therefore made suggestion to the learned counsel for the appellant that in the event the premises is put up in public auction and the 1st respondent is able to match the highest bid received at the public auction he could be allowed to continue

as tenant for a specified period of 3 years. The learned counsel for the appellant after taking instructions from the Executive Officer of the Temple who is present in the Court would agree to our suggestion. The 1st respondent has also filed an affidavit stating that he had handed over possession of the property to the temple.

15. In view of the above we issue the following directions:

i) The appellant shall conduct the public auction for leasing out the premises in question for a period of 3 years by advertising in the local news papers as is done in respect of other properties in the temple.

ii) It shall be made clear in the advertisement that the minimum rent is Rs.15,000/- per month, inasmuch as the 1st respondent has agreed to pay a sum of Rs.15,000/- for rent for the premise in question.

iii) If any higher bid is received and the 1st respondent is able to match the higher bid, the 1st respondent will be given preference and the premise in question shall be leased to the 1st respondent at such higher bid for a period of three years only.

iv) The bids being equal, the 1st respondent will be entitled to preference.

v) The 1st respondent shall continue to pay the rent of Rs.10,000/- as fixed by the learned Single Judge till such time the auction proceedings are completed. We allow the 1st respondent to continue in possession of the property till the auction proceedings are completed. If the 1st respondent is unsuccessful in the auction proceedings he shall surrender possession forthwith.

vi) It is made clear that this rent of Rs.15,000/- or the rent fetched by the public auction to be conducted shall be the benchmark for the other commercial buildings belonging to the appellant temple situate in the area viz., Lawrence Road, Cuddalore.

vii) The auction proceedings shall be completed within a period of four weeks from the date of receipt of a copy of this order.

16. The Writ Appeal is disposed of with the above directions, however, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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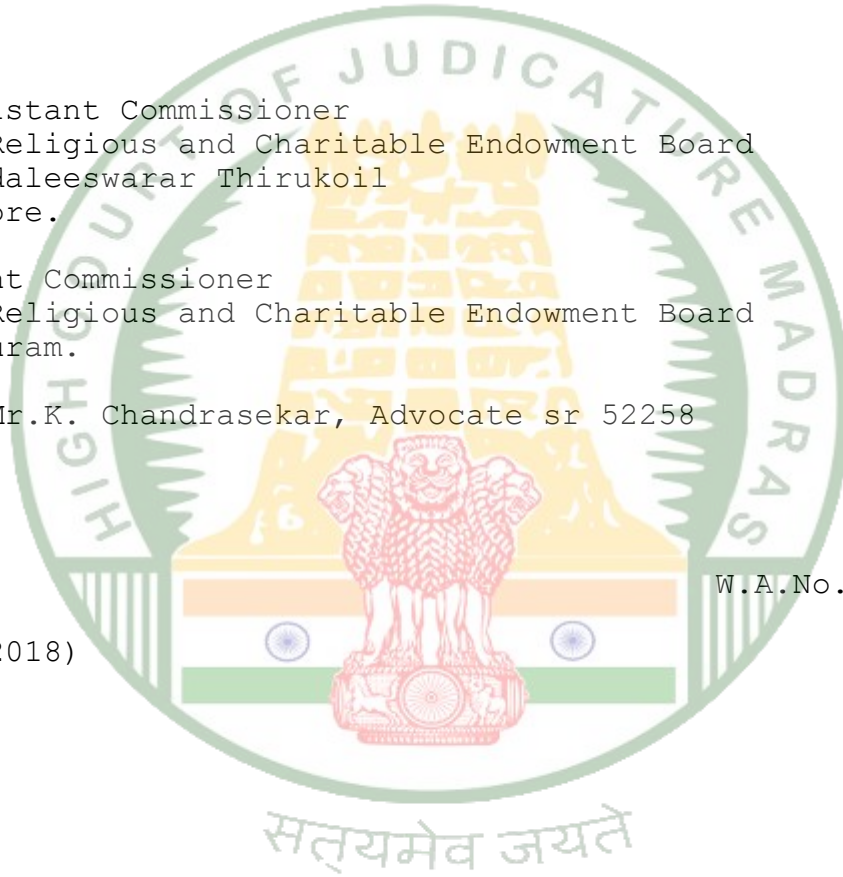
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+1 CC to Mr.K. Chandrasekar, Advocate sr 52258

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SP(11/08/2018)



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