

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. No.7973 of 2018
and W.M.P.No.9929 of 2018

Murari

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.

3.The Assistant Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.

4.The Joint Commissioner / Executive Officer,
Mylai Sri Kabaleeswarar Temple,
Mylapore, Chennai - 600 004.

.. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in his demand notice cum order in proceedings Na.Ka.No.12/2017/A4, dated 27.02.2018 signed on 12.03.2018 and quash the same and illegal unlawful and arbitrary and consequently direct the second respondent and to pass a fresh assessment order after issuing show cause notice to the petitioner.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.M.Maharaja

For R1 to R4 Special Government Pleader

O R D E R

By consent, this Writ Petition is taken up and disposed of at the stage of admission itself.

2. This Writ Petition is directed against the impugned notice dated 27.02.2018 calling upon the petitioner to pay a sum of Rs.52,10,380/- towards damages and usage of the land in question covered in Survey No.3333 to an extent of 4430.50sq.ft.

3. The learned counsel appearing for the petitioner submitted that the land covered in Survey No.3333 sq.ft. to an extent of 4430.50sq.ft. situated at Old No.35, New No.89, Luz Church Road, Mylapore, Chennai, was given by way of lease for a period of 99 years to the petitioner's family. After the death of his grandfather, namely, Mr.Soundararajan Iyengar, the petitioner being a grandson is in occupation of the entire extent of land but he does not require the entire extent of land. Therefore, he has given a representation on 12.08.2005 to the third respondent expressing his willingness to retain only 1500 sq.ft. for residential purpose and he was ready and willing to surrender the balance land. In the said representation, he has also made it clear that he was willing to pay the lease amount as fixed by the third respondent only for the usage of 1500 sq.ft. of land. Till date, the said representation has not been considered, but before disposing of the said representation, the impugned order should not be issued calling upon the petitioner to pay the huge amount of Rs.52,10,380/- towards damages and usage of the land.

4. Mr.M.Maharaja, learned Special Government Pleader appearing for the respondents submitted that already a proceeding is pending on the file of the Joint Commissioner of Chennai under Section 78 of H.R.& C.E Act treating the petitioner as a encroacher, claiming damages and usage for the unauthorised land in question. He further submitted that if the petitioner will clear his lease amount from 07.11.1981 to till date, the respondents would consider the representation dated 12.08.2005 of the petitioner whether he can be permitted only to occupy 1500sq.ft. of land.

5. In reply, the learned counsel appearing for the petitioner submitted that till date, the respondents have not informed the petitioner that what is the lease amount, damages for usage and occupation of the land in question payable from 07.11.1981.

6. Considering the submissions made by both sides, this Courts directs the petitioner to make a fresh representation to the second respondent / Joint Commissioner, H.R.&C.E. Board,

Chennai, within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the second respondent shall consider the same along with the proceeding pending under Section 78 of H.R. & C.E Act.

7. With these observations, the Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.
- 2.The Joint Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.
- 3.The Assistant Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.
- 4.The Joint Commissioner / Executive Officer,
Mylai Sri Kabaleeswarar Temple,
Mylapore, Chennai - 600 004.

+1 cc to Mr.S.Venkatesh Advocate sr 25285
+1 cc to the Govt Pleader sr 25340

W.P. No.7973 of 2018

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