

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.05.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12289 of 2018
and W.M.P.No.14405 of 2018

A.Jaffarullah

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. by its Secretary,
Hindu Religious and Charitable Endowments,
Fort St. George, Chennai-9.

2.The Commissioner,
Hindu Religious and Charitable Endowments,
Nungambakkam High Road, Chennai-34.

3.Executive Officer,
Arulmigu Sivasubramaniaswami Thirukovil,
V.P.Street, Coonoor, The Nilgiris.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the entire records pertaining to the notice dated 25.04.2018 issued by the third respondent in Na Ka No.M-1/6 dated 25.04.2018 and to quash the same.

For Petitioner : Mr.Rajkumar Paul

For Respondents : Mr.M.Maharaja,
Special Government Pleader (HR & CE)

ORDER

The relief sought for in this writ petition is to call for the records pertaining to the notice issued by the third respondent in proceedings dated 25.04.2018 and to quash the same.

2. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner has been served with a notice by the third respondent in respect of the premises under his occupation. The petitioner is running Nilgiri Agro

Agencies at Door Nos.6 & 7 at V.P.Street, Coonor. Admittedly, the property belongs to Arulmigu Sivasubramaniaswami Thirukovil, V.P.Street, Coonoor, The Nilgiris. There is no dispute in respect of the title or ownership of the property and the third respondent/temple is the owner of the property. The petitioner claims that he is regularly paying rent to the temple. However, the learned counsel for the petitioner contended that the Executive Officer has no authority to issue any such notice of eviction. Thus, the impugned order is liable to be set aside.

3. The learned Special Government Pleader appearing on behalf of the respondents opposed the contention by stating that the writ petitioner is an encroacher. There is no lease or licence has been granted in favour of the writ petitioner and he is in illegal occupation. Even on a perusal of the entire typed set of papers filed in support of the present writ petition, it is seen that only two documents are enclosed in the typed set of papers. The first document dated 03.10.2017, is the rental receipt issued by the Executive Officer and the second document is the impugned notice dated 25.04.2018. The writ petitioner has not filed even a single document to show that he is having a valid lease or licence granted by the competent authority of the HR & CE Department. In the absence of any such lease/licence, the persons, who are in occupation of the temple property have to be treated as encroachers. Thus, there is no infirmity in respect of the action initiated against the writ petitioner.

4. Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short "the Act") reads as under:-

"78. Encroachments by persons on land or buildings belonging to religious institutions.

Where the Assistant Commissioner having jurisdiction over the area in which the religious institution is situated has reason to believe that any person has encroached upon any land or building belonging to the religious institution which is appurtenant to or adjoins the religious institution, or any sacred tank, well, spring or water-course, appurtenant to the religious institution, whether situated within or outside the precincts thereof or any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institution (hereinafter in this Act referred to as the encroacher), the Assistant Commissioner shall report the fact together with relevant particulars to the Joint or Deputy Commissioner having jurisdiction over the division in which the

religious institution or endowment is situated.

Explanation." For the purpose of this section, the expression "encroacher" shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include-

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and

(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where, on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not be made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where after considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for reasons to be recorded, require the encroacher to remove the encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed."

5. The mode of eviction of the encroachers are stipulated in Section 79 of the Act reads as under:-

"79. Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner.

(1) Where within the period specified in the order under sub-section (4) of section 78, the encroacher has not removed the encroachment and has not vacated the property, the Assistant Commissioner having jurisdiction over the division may remove the encroachment and obtain possession of the property encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall render necessary help to the Assistant Commissioner.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of section 78 from instituting a suit in a Court to establish that the religious institution or endowment has no title to the property:

Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of section 78 :

Provided further that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee, of the religious institution or endowment.

(3) No injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Joint Commissioner under section 78."

6. The present writ petition has been filed challenging the very notice issued by the third respondent by invoking Sections 78 and 79 of the Act. It is stated that the writ petitioner should vacate the premises and handover the key and possession to the third respondent/Executive Officer within a period of one week from the date of receipt of the notice. Further, the reason for eviction has also been stated. However, the said premises are required for extension of temple office and therefore, the premises in occupation to be evicted.

7. The property belongs to the temple ought to be utilized for the benefit of the devotees at first instance. When the temple itself wants to develop and extend the temple premises, there is no reason to lease or grant licence in respect of the premises in occupation by the writ petitioner. It is of paramount importance that the facilities in the temple to be provided to the devotees at first instance, and if the properties are not useful for the purpose of running the temple, then the same alone can be given by way of lease or licence. When it is specifically stated that the premises in occupation

of the petitioner is to be evicted for the purpose of extending the temple office, even there is no reason to consider the case of the writ petitioner by the authorities or by this Court.

8. No writ can be entertained as against the notice issued by the competent authority. In the present writ petition, the learned counsel appearing for the writ petitioner has stated that the third respondent has no authority to issue any such notice. However, such a contention has not been substantiated by the learned counsel.

9. On a perusal of Sections 78 and 79 of the TNHR & CE Act, it is unambiguous that the Executive Officer is competent to evict the encroachers by following the procedures under the provisions of the Act. Thus, the grounds raised are untenable.

10. In view of the fact that the writ petitioner is an illegal occupant/ encroacher and the writ petitioner has not produced any document to show that a valid lease/licence has been granted by the competent authority, there is no reason to interfere with the impugned notice issued by the third respondent for the eviction of the writ petitioner from the premises belongs to the temple.

11. A writ against a notice can be entertained only on exceptional circumstances, wherein the authority, who issued the notice is having no jurisdiction or authority or if an allegation of malafides are raised. Even in the case of allegation of malafides, the authority against whom such an allegation raised has to be impleaded as a party respondent in his personal capacity in the proceedings. In the absence of any such of legal ground, judicial review against such show cause notice is certainly impermissible.

12. In respect of the present writ petition, the writ petitioner has not established even a semblance of legal right so as to consider the relief as such sought for in this writ petition. In view of the provisions enumerated in the Act, the writ petitioner is an encroacher and therefore, the eviction proceedings initiated against the writ petitioner is in order and there is no infirmity. However, the third respondent is duty bound to conduct proceedings in accordance with the provisions of the Act and Rules and complete the eviction process as early as possible in the interest of the temple and for the welfare of the devotees, who are coming over to the temple premises for worship.

13. At this juncture, when this Court considered all these aspects and granted permission to the authorities to proceed with the eviction, the learned counsel for the writ petitioner has expressed his willingness to withdraw the writ petition and further it is stated that the petitioner would submit a reply to the notice issued to him. Thus, the petitioner is permitted to withdraw the writ petition.

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

Sd/-

Assistant Registrar/Vacation Officer

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
The Government of Tamil Nadu,
Hindu Religious and Charitable Endowments,
Fort St. George, Chennai-9.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments,
Nungambakkam High Road, Chennai-34.
- 3.The Executive Officer,
Arulmigu Sivasubramaniaswami Thirukovil,
V.P.Street, Coonoor, The Nilgiris.

+1cc to Mr.Rajkumar Paul, Advocate sr.no.33576

+1cc to Government Pleader sr.no.33562

W.P.No.12289 of 2018

ssi(co)
nr 04/06/2018

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