

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.1278 of 2018
and
WMP.No.1594 of 2018

G.Saravanan
S/o.M.Govindasamy

.. Petitioner

versus

1.The Commissioner
HR & CE Department
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner
HR & CE Department
Nungambakkam, Chennai-600 034.

3.The Assistant Commissioner
HR & CE Department
Nungambakkam, Chennai-600 034.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the 2nd respondent pertaining to the proceedings MP.No.67/2017/A2 dated 21.12.2017 and quash the same.

For Petitioner : Mr.A.Kalaiselvan

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

O R D E R

Mr.M.Maharaja, learned Special Government Pleader (HR & CE) takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the proceedings dated 21.12.2017 made under Section 78(2) of the Hindu Religious and Charitable Endowment Act, 1959.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader (HR & CE) appearing for the respondents.

4. The challenge made in this writ petition is nothing but a show cause notice issued to the petitioner to appear on 24.01.2018 and show cause, as to why he should not be evicted from the subject matter property, by treating him as an encroacher. The grievance of the petitioner is that he is not an encroacher and on the other hand, a tenant, under the Trustees of the subject matter Temple. Therefore, it is contended before this Court that the second respondent is not justified in issuing the impugned notice.

5. This Court, at this stage, is not inclined to go into the merits of the contentions raised by the petitioner with regard to his status, as what is put to challenge before this Court is only a show cause notice. When the jurisdiction of the second respondent is not questioned and his competency to issue the same is also not challenged, the petitioner is not entitled to challenge the show cause notice, by filing the present writ petition. On the other hand, the only course of action left to the petitioner is to appear before the second respondent and raise all the objections before him on the date of enquiry.

6. The learned counsel for the petitioner submitted that there is some procedure to be followed under Section 78(4) of the said Act, which the second respondent has to necessarily follow.

7. Needless to say that the second respondent having issued the notice under Section 78(2) of the said Act, has to necessarily follow other procedures of law and pass final orders, after giving due opportunity of personal hearing to the petitioner as well. Therefore, when such course of action is already available under the Statue, the petitioner's apprehension is highly premature. Accordingly, this writ petition is dismissed, only on the ground that the same is not maintainable, challenging the show cause notice, however, without expressing any view on the merits of the matter as stated supra. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mk

To

1.The Commissioner
HR & CE Department
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner
HR & CE Department
Nungambakkam, Chennai-600 034.

3.The Assistant Commissioner
HR & CE Department
Nungambakkam, Chennai-600 034.

+1cc to the Government Pleader, S.R.No.5112

W.P.No.1278 of 2018

SR(CO)
RRK(06/02/2018)



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