

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.02.2018

Pronounced on :13.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.14003 of 2012 &
M.P.No.2 of 2012

S.Dhananjay Adithan ... Petitioner
Vs

1. The Tiruchendur Arulmigu Subramaniasamy
Thirukoil Idol represented by its,
Joint Commissioner/Executive Officer,
Tiruchendur.
2. The Commissioner,
H.R. & C.E.,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.
3. The Secretary,
Tamil Development Religious Endowments &
Information Department,
Secretariat,
Fort St. George,
Chennai-600 009. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 3rd respondent in G.O.Ms. No.114 dated 19.04.2012 and the consequential demand letter issued by the 1st respondent in his proceedings Na.Ka.No.199/2005/E-2-2, dated 09.05.2012, quash the same.

For Petitioner : Mr.Babu Rangasamy

For Respondent : Mr.M.Maharaja
Spl. Govt. Pleader (H R & C E) for R2&R3
Mr.Sriram for
M/s.A.S.Kailasam & Associates for R1

O R D E R

The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed

by the 3rd respondent in G.O.Ms. No.114 dated 19.04.2012 and the consequential demand letter issued by the 1st respondent in his proceedings Na.Ka.No.199/2005/E-2-2, dated 09.05.2012, quash the same."

2. The petitioner was allotted a 512 sq. ft. size shop on a monthly rental basis for running a photo studio for a period of three years commencing from 21.07.2005. After taking the shop for lease for running a photo studio, the petitioner had changed the usage of the shop by converting part of the shop for selling various items like palm sugar, etc., Therefore, a notice was issued by the first respondent on 12.08.2006 seeking explanation from the petitioner for converting the shop for different usage. Since there was no reply forthcoming from the petitioner, further notice was sent by the first respondent dated 01.11.2006 directing the petitioner not to use the shop for any other purpose except for which it was originally allotted. Once again, there was no response from the petitioner.

3. Therefore, on 16.11.2006, the first respondent cancelled the lease and the same was communicated to the petitioner. In 2007, the first respondent approached the Joint Commissioner, H.R. & C.E., Tirunelveli under Section 78 of the H.R. & C.E. Act, to declare the petitioner as encroacher and for delivery of possession. The Joint Commissioner (H.R. & C.E.), Tirunelveli, issued a notice to the petitioner for hearing on 31.07.2007. However, despite the receipt of notice, the petitioner did not choose to appear before the Joint Commissioner, H.R. & C.E., Tirunelveli. Thereafter, the petitioner appeared for the proceedings on 14.09.2007 and a counter affidavit was also filed through his counsel.

4. After hearing the parties, the Joint Commissioner, H.R. & C.E., passed an order dated 13.10.2010, declaring the petitioner as encroacher with effect from 06.11.2006 and directed him to handover the possession to the first respondent on or before 30.11.2010. The authority also directed the payment of rental dues by the petitioner vide G.O.No.456 dated 09.11.2007. As against the order passed by the Joint Commissioner, H.R. & C.E., a Revision Petition was filed before the Commissioner/the second respondent herein in R.P.No.114 of 2010 and the same was dismissed on 05.04.2011. Further, the Review Application filed before the third respondent was also dismissed on 19.04.2012. Thereafter, a demand notice was sent by the first respondent Temple on 09.05.2012, directing the payment of rental dues and damages to the tune of Rs.13,35,598/-. The present writ petition has been filed challenging the demand notice as well as eviction. While admitting the writ petition, this Court has granted an order of interim stay.

5. According to the petitioner, out of total payment, a sum of Rs.8,00,400/- has been paid by the petitioner. In view of the interim order, the petitioner continued to do business in the shop allotted to him though he declared as encroacher from 2006.

6. Upon notice, Mr. Sriram for M/s. A.S. Kailasam & Associates, learned counsel entered appearance on behalf of the first respondent and filed a detailed counter affidavit.

7. In the counter affidavit, it is stated that the lease was only for a period of three years commencing from 21.07.2005 and the same had expired in July, 2008. The petitioner managed to squat on the property for nine years by embarking on needless litigation against the legitimate action initiated by the temple authority. The detailed averments as contained in para-4 of the counter affidavit are extracted below:

"4. I state that the averments and grounds contained in paragraph 6(a) are misconceived since the lease was only for a period of 3 years from 21.07.2005 and the petitioner has managed to squat on the property for almost 9 years after expiry of the lease period by filing frivolous cases one after another. I therefore state that the question of violation of the principles of natural justice does not arise. I state that the ground as contained in paragraph 6(b) is incorrect and the Petitioner is called upon to substantiate the same. I state that ground 6(c) is again misconceived since the Petitioner has conveniently suppressed the fact that the original lease period has lapsed by efflux of time. I state that grounds in paragraph 6(d) is demise as incorrect since the Writ Petition itself has been filed in 2012 which makes it clear that the Petitioner has been in possession of the shop and has been doing business for 7 years from the date of expiry of the original lease due to which the Temple has income revenue loss. If the property is leased out in public auction, the temple will get more income. But the petitioner is preventing the temple from getting its legitimate share of income from the temple by illegally squatting on the property."

8. The learned counsel for the petitioner would submit that he was originally inducted as a lawful tenant and therefore, the decision that he was declared as encroacher cannot be countenanced both in law and on facts. The factum of

conversion of usage of shop for a different purpose for which it was originally leased has not been disputed, more over, the petitioner has been unsuccessful before the Joint Commissioner, H.R. & C.E. and also before the third respondent Government. However, the petitioner has managed to challenge the orders passed by the authorities by approaching this Court and obtained interim order and continued his business by running the shop for more than 9 years, after expiry of the lease period in 2008.

9. Though the learned counsel for the petitioner initially submitted that some reasonable time may be granted to the petitioner for vacating the premises i.e. at least six months time, the said request, in the facts and circumstances of the case, appears to be not reasonable, for the simple reason that the petitioner has successfully remained in possession of the shop from 2006 when he was declared as encroacher, till date.

10. More over, the learned counsel for the first respondent would submit that all the shops which were originally let out by the first respondent Temple had been razed down as the same were in dilapidated condition and was posing a grave threat to the safety of the devotees visiting the temple. The petitioner alone obtained interim orders from this Court and managed to stay on. Therefore, any further request for extending time need not be considered as that will be against public interest.

11. This Court, after taking note of the submissions and the facts and circumstance of the case, is of the considered view that no further time is to be granted to the petitioner in response to the request made by the learned counsel, as the petitioner has managed to be in possession of the shop since 2005 to till date. More over, the fact that the other shops had been demolished in view of critical condition of the structure, there cannot be any further justification by this Court to allow any concession to the petitioner alone, other wise, as rightly contended by the learned counsel for the first respondent that continuing the petitioner would pose grave threat to the safety of the devotees visiting the temple and admittedly, the lease period had also expired wayback in 2008 and therefore, there is absolutely no cause of action for the petitioner to continue to hold on the premises. The petitioner having unsuccessful before the authorities concerned cannot remain in possession of the shop indefinitely against the interest of the first respondent.

12. Lastly the learned counsel for the petitioner would submit that the first respondent Temple may be directed to consider his request for waiver of remaining rental and damages amount payable to the Temple. Even this request cannot be entertained by this Court in view of the facts and circumstances of the case. However, it is open to the petitioner to approach the first respondent Temple by giving appropriate representation seeking waiver of any payments

towards rents and damages. On such representation being made, the first respondent may consider the same and pass orders.

13. In view of the foregoing reasons, this Court finds no merit in the writ petition and the same is dismissed as devoid of merits and substance and the interim order granted by this Court, dated 30.05.2012, is vacated forthwith. It is open to the first respondent Temple to forthwith proceed with their action as they may be advised in order to safeguard the safety of the devotees and the properties of the first respondent Temple. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kal
To

1. The Tiruchendur Arulmigu Subramaniasamy Thirukoil Idol represented by its, Joint Commissioner/Executive Officer, Tiruchendur.
2. The Commissioner, H.R. & C.E., 119, Uthamar Gandhi Salai, Nungambakkam, Chennai-600 034.
3. The Secretary, Tamil Development Religious Endowments & Information Department, Secretariat, Fort St. George, Chennai-600 009.

+1cc to Government Pleader SR.No.11409
+1cc to M/s.Babu Rangasamy, Advocate SR.No.11101
+1cc to M/s.A.S.Kailasam, Advocate Sr.No.11094

KAN(CO)
sm:16.2.2018

order made in
W.P.No.14003 of 2012 &
M.P.No.2 of 2012