

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.09.2018
CORAM
THE HON'BLE MRS. V. BHAVANI SUBBAROYAN
W.P.No.15134 of 2008

N. Raman

... Petitioner

Vs.

1. The Special Commissioner & Commissioner,
H.R. & C.E. Board,
Nungambakkam High Road,
Chennai - 600 034.
2. The Joint Commissioner,
H.R. & C.E. Board,
Salem.
3. P. Pachamuthu,
4. S.Mani
5. K.Sigamani
6. Seetharaman
7. G.Sengodan,
[RR3 to 7 impleaded as per court order
dated 18.07.2008 in M.P.No.1 of 2008
in W.P.No.15134 of 2008]

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the second respondent to consider the petitioner's representation, dated 19.05.2008 within the time framed.

For Petitioner : Mr.B. Kumarasamy

For Respondents 1&2 : Mr. M.Mohanraj
Special Government Pleader [HR&CE]

For Respondents : Mr.M.Vaidyanathan
[3 to 7]

O R D E R

The petitioner has filed this writ petition praying to issue a Writ of Mandamus to direct the second respondent to consider the petitioner's representation dated 19.05.2008 within the time framed.

2. The learned counsel appearing for the petitioner would submit that the petitioner herein is one of the Hereditary Trustees of Sri Mannarsami and Pachaiaiamman Temple situated at Gugai, Salem Town. The petitioner along with six others filed an Original Application in O.A.No.7 of 2001 before the second respondent/Joint Commissioner for declaring the Hereditary Trustees of the said Temple. The second respondent after thorough enquiry and following the procedures declared the petitioner and six others as Hereditary Trustees of the said temple by his order, dated 23.12.2004.

3. The learned counsel for the petitioner would further contend that they were maintaining the day to day affairs of the Temple for the past 150 years. In 1939, the H.R.&C.E. Board sent a letter to the petitioner's father in Memorandum No.73838/42/ADM/A1, dated 08.01.1943 in which the petitioner's father has been permitted to take legal advise in the matter of filing the suit for the recovery of the temple properties. Thereafter, the petitioner's father was taking care of the temple properties and he would further contend that a portion of the temple properties were acquired by the Tamil Nadu Slum Clearance Board in the year 1978 for the construction of the house, the petitioner objected for the same. The Special Tahsildar (Land Acquisition) informed the petitioner that they will proceed further, unless and until the petitioner gets an order from the Court against the land acquisition. Against the said land acquisition, the petitioner has filed the suit in O.S.No.349 of 1987 on the file of the learned District Munsif, Salem, but due to financial crisis, the petitioner could not conduct his case properly.

4. The learned counsel appearing for the petitioner further submitted that due to some misunderstanding between the Hereditary Trustees, the day to day affairs of the Temple and as well as maintenance of the properties that belongs to the Temple were not properly looked after by the trustees. Taking advantage of the misunderstandings one Mr.Thangaraj, has encroached the pathway of the Temple, therefore, the petitioner had no other alternative, but to prefer a complaint before the Deputy Commissioner of Police, Salem. The Deputy Commissioner of Police, enquired the said Thangaraj and warned him. In spite of the said warning the said third party Thangaraj had constructed a building in the said land, hence the petitioner and other trustees filed the suit in O.S.No.763 of 2002 on the file of the learned District Munsif, Salem. Since the other trustees have colluded with the said third party Thangaraj and acted against the temple administration, the petitioner had filed a petition in I.A.No.446 of 2005 to transpose the other trustees as plaintiffs in the suit and add them as defendant in the said suit and the same was allowed.

5. The learned counsel appearing for the petitioner further submitted that the other trustees have acted against the temple and they colluded with the encroachers who had grabbed the Temple property and also taken the Hundi Collections and utilized it for their expenses. He has further submitted that the Hereditary Trustees have taken three Panchaloga Idols against the will of the other trustees which is a grave offence.

6. Aggrieved by the act of said Hereditary Trustees, the petitioner has sent a representation to the second respondent on 20.09.2007 and 19.05.2008, but till date no action has been taken against the Trustees. Simultaneously, it can be seen that the first respondent by proceedings dated 22.05.2008 in Na.Ka.No.30545/7/A2 asked the second respondent to take necessary action against the petitioner's representation. Eventhough there was a direction issued by the first respondent to the second respondent, no action has been taken on the petitioner's representation till date and the petitioner is aggrieved by the said inaction by the second respondent had preferred this writ petition for mandamus to direct the second respondent to consider his representation dated 19.05.2008 within a period of four weeks after giving necessary notice to the parties concerned including the petitioner within a period of one week from the date of receipt of a copy of this order and conduct an enquiry on day to day basis and file a report before this Court on or before 13.07.2018 and the matter was ordered to be posted on 16.07.2018 for reporting compliance. When the matter was listed on 16.07.2018, the second respondent neither filed a report nor as directed by this Court appeared before this Court. When the matter is taken up for hearing, the learned counsel for the petitioner would submit that the relief has been granted nothing survives in this writ petition and made an endorsement to the effect.

7. Since there was an allegation against the Hereditary Trustees and various other individuals citing certain incidents and the allegations were serious in nature. The petitioner has not stated that after filing the writ petition, the petitioner died on 14.10.2012 and the same was not brought to the notice of this Court, when the matter was listed for hearing early at an early point of time. Eventhough the petitioner's complaint wherein allegations who made against the trustees and others needs as certain investigation. Hence, this Court is of the view that this Court need not close the petition and wanted to find the real truth as prayed the petitioner. Hence, this Court directed the Government Pleader to file a report on 14.09.2018. Today, when the matter is taken up for hearing before this Court, the learned Government Pleader filed a report dated 09.07.2018.

8. Since petitioner Raman and Sengodan the respondent died, they did not appear during the hearing held on 02.07.2018 which was conducted as per the order of this Court and hence the other trustees viz., (i) Thiru.S.Mani, Son of Swaminathan, Thiru.Pachamuthu, Son of Petchiyappan Poosari, Thiru.K.Sigamani, Son of Krishnan, Thiru.T.Seetharaman, Son of Thiruvengidam appeared and deposed before the HR&CE Authorities. As per the said enquiry conducted it was found that in Survey Nos.105, 106, 106/2 in 12000 sqft., 48 tenants one occupying and they have been regularly paying the fair rent fixed as per the order of this Court and regarding the 14000sqft., encroached by the Tamil Nadu Slum Clearance Board in 1978 the suit was dismissed and now the HR&CE Department and the Hereditary Trustees have taken necessary steps through HR&CE Department in the year 2015 itself for retrieving the said land.

9. Regarding the suit in O.S.No.763 of 2002 was dismissed in abated and within a stipulated time they have taken action to safeguard the property, it is only due to vengeance certain allegations were levelled and now as per Section 78, HR & CE Act, action has been taken. Petitioner filed before the Joint Commissioner to evict him from the said encroachment and enquiry is conducted and pending the respondents have given a statement that they are colluding with the encroacher of the temple or not mismanaged the temple estate properties and not acting against the temple interests and colluding with the trespassers or encroachers. They have also conducted Kumbabisekam on 17.03.2006 and 25.06.2017 as per custom. Regarding the allegation against the misappropriation of funds by Thiru.R.N.G.Vijayakumar, as per Section 53 action has been taken against the said person and the petition is pending.

(1) The Enquiry Officer has come to the conclusion that steps are being taken to get a compensation from the Tamil Nadu Slum Clearance Board and they are trying to get a legal opinion and to pursue the matter further.

(2) Regarding the encroachment by Thiru.Thangaraj, [HR&CE] Department has filed Miscellaneous Petition Nos.32, 33, 34, 35, 37 and 38 of 2009 before the said Hon'ble High Court and the same has been pending for disposal.

(3) Regarding the tenants, they have been regularly paying the rents and there is no arrears of rent.

The respondent has given only arrears to certain allegations and the petitioner is recovery from 2009 onwards and more than 10 years have lapsed and the same has not been concluded shows no diligent steps taken out by the Temple. Regarding the allegation that 3 idols are missing, the first respondent is directed to make an enquiry regarding the missing idols which belongs to the Temple and kept in the Temple. The HR & CE should inspect the Temple and verify and take necessary steps to protect them and they can forward the said complaint to the necessary wing which deals with Idol theft.

(5) Regarding the rent payable by Tenants, they should be paid without any arrears, rents to be made upto date and that should be verified by the 1st respondent concerned.

10. Thirdly, regarding the suit in O.S.No.763 of 2002 take necessary steps to expedite the pending suits before the Court and regarding the compensation to be claimed before the Tamil Nadu Slum Clearance Board and necessary steps have to be taken and if not, the first respondent is directed to follow up of the same and by intaking legal proceedings after getting the legal opinion from the learned Government Pleader of this Court within a period of four weeks.

11. Regarding the inspection to be conducted for protection of idols, the inspection should be conducted by the 2nd respondent within a period of three weeks and file a report to the 1st respondent. This Court has taken the matter suo motu as the petitioner died pending the writ petition and has passed necessary orders for just cause.

12. Accordingly, the said writ petition is disposed off. No cost.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Special Commissioner & Commissioner,
H.R. & C.E. Board,
Nungambakkam High Road,
Chennai - 600 034.

2. The Joint Commissioner,
H.R. & C.E. Board,
Salem.

+1cc to Mr.M.Vaidhiyanathan, Advocate, S.R.No.47128

W.P.No.15134 of 2008

MR (CO)
GSP(06/03/2019)