

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6741 of 2016
and
W.M.P.No.6010 of 2016

K.Nagappan

..Petitioner

vs

- 1.The Secretary,
Government of Tamil Nadu,
Tourism, Culture & Religious Endowment Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
- 3.The Joint Commissioner, Chennai,
Office of the Joint Commissioner,
H.R. & C.E. Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
- 4.The Assistant Commissioner, Chennai,
Office of the Assistant Commissioner,
H.R. & C.E. Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
5. The Executive Officer,
Arulmighu Kailasanathar Temple,
Vanagaram, Chenna-95.

6.R.Gandhi

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order dated 22.12.2015 made in

G.O.Ms.No.291 passed by the first respondent confirming the order dated 08.08.2014 made in R.P.No.138 of 2013 passed by the second respondent and confirming the eviction order dated 14.08.2013 made in Pro.RC.No.365/2013 A3 passed by the third respondent and quash the same and direct the respondents 1 to 4 to regularize the lease of the petitioner.

For Petitioner : Mr.V.Srikanth
For Respondents : Mr. M.Maharaja
Special Government Pleader(HR & CE)
: Mr.K.V.Dhanapalan for R5
: No appearance for R6

O R D E R

The order passed by the first respondent in G.O.Ms.No.291 dated 22.12.2015 under Section 114 of the Hindu Religious & Charitable Endowment Act(HR & CE), confirming the eviction order dated 14.08.2013 passed by the third respondent, is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner contended that the Secretary, Tourism, Culture & Religious Endowment Department, Chennai, who heard the Revision Petition, had not passed the orders. After hearing of the entire matter, the Secretary was retired from service and a new Secretary joined in the place. However, the Secretary, who joined, had failed to hear the parties and passed the impugned order without providing any opportunity and without even hearing the parties. Thus, the order impugned has been issued without complying with the principles of natural justice.

3.Apart from the facts and merits of the case, the learned counsel urged this Court by stating that the order passed by the incumbent Secretary is non est in law in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of Gullapalli Nageswara Rao & others Vs. Andhra Pradesh State Transport Corporation & another reported in AIR 1959 SC 308. The said judgment was relied upon by the Apex Court in subsequent judgments and the officer, who heard the matter, must pass the final orders. On account of transfer or retirement, if any new officer has taken charge of the post, then a fresh hearing is mandatory and only after hearing the parties, an order can be passed in the appeal/Revision petitions.

4.Admittedly, in the present case, the Secretary, who heard the matter, had not passed the orders. However, the incumbent Secretary without hearing the parties, pass the orders based on the files available. Such a procedure adopted is not in consonance with the legal principles settled in the matter of hearing of appeals and hearing of the parties is a pre-condition

and therefore, the 1st respondent ought to have heard the parties and then take a decision and pass orders.

5.This being the factum of the case, this Court is of an opinion that the present writ petition is a fit case for remand. Accordingly, the impugned order passed by the 1st respondent in G.O.Ms.No.291, Tourism, Culture & Religious Endowment Department dated 22.12.2015 is quashed and the matter is remanded back to the first respondent for the purpose of hearing the parties and thereafter, pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

6.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
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2. The Commissioner,
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Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

5. The Executive Officer,
Arulmighu Kailasanathar Temple,
Vanagaram, Chenna-95.

+1cc to Mr.V.Srikanth, Advocate sr.no.57064
+1cc to Government Pleader sr.no.57612

W.P.No.6741 of 2016
and
W.M.P.No.6010 of 2016

mr(co)
nr 10/09/2018



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