



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **M.SATHYANARAYANAN**
and
THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

W.A. (MD)No.437 of 2018
and
C.M.P (MD)Nos.2616 and 2617 of 2018

A.Sikkanthar .. Appellant/Respondent

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Utthamar Gandhi Salai,
Nungambakkam, Chennai - 34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
West Chitirai Street, (Near Meenakshi Amman Temple),
Madurai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai - 1.
4. The Executive Officer,
Arulmigu Mahadeva Swamy Thirukovil,
10,Raja Mill Road,Madurai -1. .. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act, to set side the order dated 25.01.2018 made in W.P(MD)No.14819 of 2017 on the file of this Court.

Prayer in W.P(MD)No.14819 of 2017:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the 4th respondent dated 04.07.2017 and the order passed by the second respondent dated 10.07.2017 in Na.Ka.No.10687/2015/E1 and quash the same as illegal and consequently direct the respondents to regularise the petitioner as lawful tenant on the premises in D.No.10 PQ (Madurai Ward No.5, Block No.35, Town Survey No.7 to 24) of Rajamill Road, Madurai



Town, Madurai and fix a fair rent by the fair rent committee by following G.O.Ms.No.353, (Tamil Development Religious Endowments and Information Department) dated 04.06.1999.

For Appellant : Mr.S.Sukumar

For R-1 to R-3 : Mr.C.M.Mari Chelliah Prabu,
Additional Government Pleader

For R-4 : Mr.S.Manohar

JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**]

By consent, the main Writ Appeal itself, is taken up for final disposal.

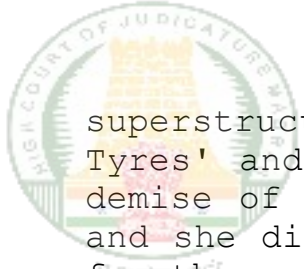
2. Mr.C.M.Mari Chelliah Prabu, learned Additional Government Pleader, appears for respondents 1 to 3 and Mr.S.Manohar, who on caveat, appears for the fourth respondent.

3. The Writ Petitioner is the appellant. The Writ Petitioner made a challenge to the order dated 04.07.2017 passed by the fourth respondent and also the order of the second respondent dated 10.07.2017 as illegal and to consequently, direct the respondents to regularise him as a lawful tenant in respect of the premises, bearing Door No.10 PQ, situated in Rajamill Road, Madurai Town, Madurai and to fix a fair rent by the Fair Rent Committee by following G.O.Ms.No.353, Tamil Development Religious Endowments and Information Department, dated 04.06.1999.

4. The said Writ Petition, after contest, came to be dismissed on 25.01.2018 and the appellant/writ petitioner was granted liberty to file a fresh application for granting lease in his favour in the light of the fact that the appellant/writ petitioner has offered to pay Rs.20,000/- per month as a fair rent and upon receipt of such application, the second and fourth respondents were directed to consider the same and pass suitable orders, within a stipulated time and challenging the legality of the said order, the present Writ Appeal is filed.

5. The facts leading to the present litigation, have been narrated in detail in the impugned order, which is the subject matter of challenge in this Writ Appeal and therefore, it is unnecessary to re-state the same.

6. Originally, one Rajathiammal and her husband, namely, one A.P.Govindaraj, were granted lease in respect of the said shop by the Trustees and the Executive Officer of the fourth respondent Temple and after getting lease, they erected



superstructure and were carrying on the Trade of 'Retreading of Tyres' and the monthly rent was fixed at Rs.1290/- and after the demise of said A.P.Govindaraj, Rajathiammal continued as a tenant and she did not pay the monthly rent on time and according to the fourth respondent Temple, there was a rental arrears to the tune of Rs.2,76,823/- and therefore, action was initiated under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 and eviction was ordered and challenging the same, she filed a revision before the first respondent in R.P.176/2016 D2 and during pendency of the same, the said Rajathiammal died. The application made by the appellant/writ petitioner, who is the son of Rajathiammal, to come on record, came to be rejected by the first respondent and the first respondent confirmed the order of eviction passed by the second respondent.

7. In the said revision, the appellant/writ petitioner would claim that he became sub-tenant under Rajathiammal and insofar as the claim of arrears of rent is concerned, admittedly, he has paid the same in the name of Rajathiammal and the same is evidenced through receipt dated 23.08.2016, bearing No.2208 and at the time of remission of arrears, it was promised by the officials of the fourth respondent Temple that his request for direct tenantry under the fourth respondent Temple, would be favourably considered and however, the fourth respondent Temple without recourse to law has unlawfully evicted him and put a lock and seal on 06.07.2017 and the Writ Petition filed challenging the impugned proceedings, came to be dismissed without properly appreciating the reasons and the grounds raised by the appellant/writ petitioner and hence, prays for interference.

8. The learned standing counsel appearing for the appellant/writ petitioner would submit that on account of the promise yielded out by the officials of the fourth respondent Temple, the appellant has paid the sum of Rs.2,76,823/- and he has issued with the receipt dated 23.08.2016 bearing No.2208 and therefore, in all fairness, his request for continuing as a main tenant should be considered and since, he is ready and willing to pay a sum of Rs.20,000/- by way of fair rent, he should have been considered in the light of the above cited Government Order.

9. Per contra, the learned standing counsel appearing for the fourth respondent Temple would submit that unless the sub-tenants are permitted by the Authorities, the original tenant, cannot let out the premises and admittedly, the appellant/writ petitioner became sub-tenant under the original lessee, without the permission of the official respondents and insofar as the remission of Rs.2,76,823/- is concerned, it was a voluntary payment made by him on behalf of the original tenant namely, Rajathiammal. As such, the appellant/writ petitioner cannot claim any vested right to get regularised as a tenant under the said Temple.



10. It is the further submission of the learned standing counsel appearing for the fourth respondent Temple that after following the due process of law only, the lock and seal has been put up on the shop premises on 06.07.2017 and a decision has been taken to auction the said shop premises, by way of tender-cum-auction and it is always open to the appellant/writ petitioner to participate in the auction and prays for dismissal of the Writ Appeal.

11. This Court has carefully considered the rival submissions and perused the materials placed before it.

12. The appellant/writ petitioner became sub-tenant under the original tenant, namely, Rajathiammal, without prior permission from the Temple Authorities or from the official respondents. The appellant/writ petitioner has paid a sum of Rs.2,76,823/- being the rental arrears on behalf of the chief tenant and it is the primordial submission of the learned counsel appearing for the appellant/writ petitioner that the said amount has been paid on the promise made by the officials of the fourth respondent Temple that on such payment, he will be regularised as a main tenant. However, the said fact is seriously disputed by the learned standing counsel appearing for the fourth respondent Temple.

13. In the considered opinion of this Court, whether the payment of Rs.2,76,823/- on the part of the appellant/writ petitioner was at the instance of the officials of the fourth respondent Temple or not, is a disputed question of fact, which cannot be gone into or adjudicated by this Court in exercise of its appellate jurisdiction. Admittedly, the appellant/writ petitioner became sub-tenant under the original tenant, without prior permission of the Temple Authorities.

14. The learned Judge after taking note of the factual aspect, by way of concession, permitted the appellant/writ petitioner, to submit a fresh application to the second and fourth respondents, for the purpose of becoming a chief tenant and the said course adopted by the learned judge, in the considered opinion of this Court, cannot said to be perverse or unsustainable.

15. In the light of the stand taken by the fourth respondent Temple that the shop in question is to be auctioned by way of tender-cum-auction, this Court finds no error apparent or any infirmity in the reasons assigned by the learned Judge for dismissing the Writ Petition and finds no merits in this Writ Appeal.

16. According to the learned counsel appearing for the appellant/writ petitioner, the Goods/Articles still lie inside the



shop and the petitioner may be permitted to take out the same.

17. If the appellant/petitioner submits any representation in this regard to the fourth respondent Temple, it should be immediately considered and a date shall be fixed by the Authorities without any further delay, so as to enable the appellant/writ petitioner to take out the Goods/Articles from the said shop in question.

18. It is made clear that after taking out the Goods/Articles by the appellant/writ petitioner, the shop in question shall be re-sealed by the Authorities concerned. It is always open to the appellant/writ petitioner that in the light of the liberty granted by the learned Judge, to submit a fresh application, to the second and fourth respondents. As and when such application is given, the same shall be considered and disposed of, on merits and in accordance with law, within a period of two weeks from the date of receipt of such application.

19. If the petitioner is so advised, subject to law of limitation, he may file a suit for recovery of the sum of Rs.2,76,823/-, said to have been paid by him on behalf of the chief tenant, namely, Rajathiammal.

20. In the result, the Writ Appeal is dismissed, confirming the order dated 25.01.2018 passed in W.P(MD)No.14819 of 2017. No Costs. Consequently, connected Civil Miscellaneous Petitions, are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To:

1. The Commissioner,
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No.119, Utthamar Gandhi Salai,
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2. The Joint Commissioner,
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Madurai - 1.



4. The Executive Officer,
Arulmigu Mahadeva Swamy Thirukovil,
10, Raja Mill Road, Madurai -1.

+ 1 cc TO Mr.S.Sukumar , Advocate in SR No. 56648
+ 1 cc TO Mr.S.Manohar , Advocate in SR No. 56303
+ 1 cc TO The Special Government Pleader in SR No. 56473

pm

AE/SKN RSK/SAR1/04.04.2018/6P/8C

W.A. (MD) No.437 of 2018
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