



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.490 of 2018

and

C.M.P (MD)No.2921 of 2018

Ponnusamy

... Appellant/Petitioner

Vs.

1.The Joint Commissioner,
Tamil Nadu Hindu Religious Charitable Endowment Board,
Sivagangai.

2.Aruppukottai, Puliyampatti-Thirunagaram Saliyar Mahajana
Paribalana Sabaikku Pathiyapatta Arulmighu Maha Kaliamman
Vagaiyara Thirukovilgal,
Represented through its Trustee,
N.A.Subramaniam,
Puliyampatti, Aruppukottai,
Virudhunagar District.

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to call for the records pertaining to the impugned order dated 20.06.2017 passed in W.P(MD)No.11142 of 2017 and to set aside the same and consequently, allow the Writ Appeal.

Prayer in WP(MD). 11142/ 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 of the impugned order passed by the 1st respondent herein in his proceedings in Na.Ka.No. 4913/2016-6/A3 dated 10.02.2017 and the consequential communication of 2nd respondent herein dated 15.03.2017 and quash the same as illegal and further direct the respondents herein to re-fix the fair rent for door no. 27-2-52 of Aruppukottai Municipality, Virudhunagar District after issuing notice to the petitioner.

For Appellant

: Mr.V.Sasi Kumar

For R-1

: Mr.A.Muthukaruppan,

Additional Government Pleader

For R-2

: Mr.P.Ganapathi Subramanian

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.A.Muthukaruppan, learned Additional Government Pleader accepts notice on behalf of the first respondent.

3. Mr.P.Ganapathi Subramanian, learned counsel accepts notice on behalf of the second respondent.

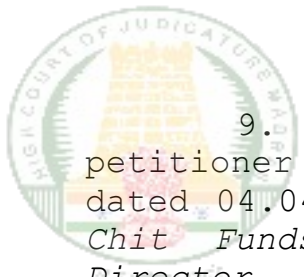
4. It is the claim of the appellant/writ petitioner that a vacant site belongs to the second respondent Trust admeasuring to an extent of 1260 sq. ft., was leased out in the name of his father, namely, Kutralingam, in the year 1973 and initially, a sum of Rs.20/- was fixed as monthly rental and it was paid regularly.

5. The appellant/writ petitioner would state that his father has constructed a mud wall and also laid a tiled roof by fixing stone pillars and and on expiry of his father on 19.12.1985, the appellant/writ petitioner was running a 'Cattle Shed' and he became a tenant under the second Respondent Trust and was paying monthly rental and it was gradually increased to Rs.600/- per month.

6. It is also stated by the appellant/writ petitioner that since the second respondent Trust was trying to dispossess him without recourse to law, he filed O.S.No.1 of 2011 on the file of the Court of District Munsif, Aruppukottai, praying for a decree for permanent injunction restraining the second respondent from evicting him from the premises except under due process of law and the said suit is still pending.

7. The appellant/writ petitioner would further aver that to the shock and surprise, the second respondent has issued the impugned communication dated 15.03.2017, enhancing the monthly rental to Rs.15,160/- based on the impugned proceedings of the first respondent dated 10.02.2017Na.ka.No.4913/2016-6/A3.

8. It is the specific case of the appellant/writ petitioner that the impugned proceedings have been issued without notice to him and without affording any opportunity of hearing and making a challenge to the said orders, the appellant/writ petitioner filed a Writ Petition and it came to be dismissed on the ground that the appellant/writ petitioner is having an effective alternate remedy under Section 34(A)(3) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, vide impugned order dated 20.06.2017. By making a challenge to the said order, the present Writ Appeal is filed.



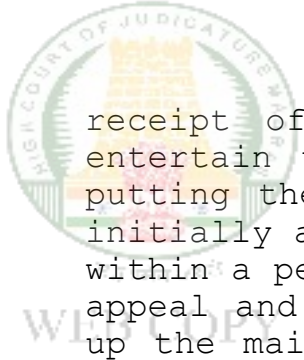
9. The learned counsel appearing for the appellant/writ petitioner has invited the attention of this Court to the order dated 04.04.2017 made in *W.P(MD)No.5721 of 2017 (M/s.Arul Sundaram Chit Funds Private Limited, represented through its Managing Director, M.Nagarajan v. The Joint Commissioner, Tamil Nadu Hindu Religious Charitable and Endowment Board, Sivagangai and another)* and would submit that in similar circumstances, the learned Judge having found that the principles of natural justice have been violated and that there was a statutory violation, has remanded the matter for fresh consideration and since the fair rent has been increased manifold without issuing notice whatsoever to the appellant/writ petitioner, the impugned order passed by the first respondent, may be set aside and the matter may be remanded back to him for fresh consideration.

10. Per contra, the learned Additional Government Pleader appearing for the first respondent would submit that since the appellant/writ petitioner is having an effective alternate remedy, the learned Judge has rightly dismissed the Writ Petition by granting liberty to invoke the appeal remedy and prays for dismissal of this Writ Appeal.

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

12. In the light of the statutory remedy available to the appellant/writ petitioner in the form of appeal, to the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Department, Chennai, under Section 34(A)(3) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, this Court is of the considered view that the Writ Petition is not maintainable and though it is vehemently contented by the learned counsel appearing for the appellant/writ petitioner that the impugned proceedings of the first respondent *per se* violation of principles of natural justice, in the considered opinion of this Court, the said issue can also be gone into by the statutory appellate authority and it cannot presume that the appellate authority would not exercise his function properly.

13. This Court taking into consideration the above facts and circumstances of the case, grants liberty to the appellant/writ petitioner to file a statutory appeal before the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Department, Chennai, under Section 34(A)(3) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, along with a petition for stay with relevant and authenticated documents, within a period of four weeks from the date of receipt of a copy of this judgment and before doing so, he shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the credit of the second respondent Trust, without prejudice to his rights and contentions and produce the receipt at the time of presentation of appeal and the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Department, Chennai, on



receipt of such appeal along with a petition for stay, shall entertain the same, if the papers are otherwise in order, without putting the issue of limitation and take up the petition for stay initially and give a disposal, on merits and in accordance with law, within a period of three weeks from the date of entertainment of the appeal and the said appellate authority is also at liberty to take up the main appeal itself and give a disposal as expeditiously as possible, within a period of ten weeks from the date of entertainment of appeal.

14. In the result, this Writ Appeal is dismissed, subject to above observations. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To

1.The Joint Commissioner,
Tamil Nadu Hindu Religious Charitable Endowment Board,
Sivagangai.

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

+1cc to The Special Government Pleader, SR.No.59060

pm
RL/4C/4P/SV/MMS/SAR2/20/4/2018

W.A(MD)No.490 of 2018

27.03.2018