



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.7492 of 2018

and

W.M.P. (MD) .No.7161 of 2018

Thangamani

... Petitioner

vs.

1.The Joint Commissioner,

Hindu Religious and Charitable Endowment Department,
Madurai.

2.The Assistant Commissioner,

Hindu Religious and Charitable Endowment Department,
Madurai.

3.The Executive Officer,

Arulmigu Mahadeva Swami Thirukovil,
Rajamill Road,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari Mandamus, calling for the records relating to the impugned order of the first respondent in Miscellaneous Petition No.153/2017 on 28.02.2018 and to quash the same as illegal and consequently to forbear the respondents from evicting the petitioner from his property in D.No.10 H, Town Survey No.7 to 24, Block No.35, Ward No.5 of Rajamill Road, Madurai till disposal of the Civil Suit in O.S.No.163 of 2018, pending on the file of the learned District Munsif, Madurai Town, Madurai.

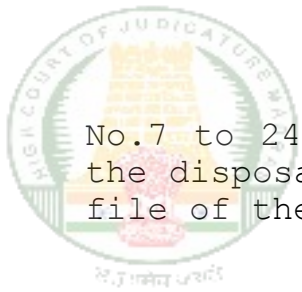
For Petitioner : Mr.S.Sukumar

For RR1 & 2 : Mr.V.Anand
Government Advocate

For R3 : Mr.S.Manohar
Standing Counsel for R3

ORDER

This writ petition has been filed to call for the records relating to the impugned order of the first respondent in Miscellaneous Petition No.153/2017 on 28.02.2018 and to quash the same as illegal and consequently, to forbear the respondents from evicting the petitioner from his property in D.No.10 H, Town Survey



No.7 to 24, Block No.35, Ward No.5 of Rajamill Road, Madurai, till the disposal of the Civil Suit in O.S.No.163 of 2018, pending on the file of the learned District Munsif, Madurai Town, Madurai.

2. Mr.V.Anand, learned Government Advocate, takes notice for the respondents 1 & 2 and Mr.S.Manohar, learned Standing Counsel takes notice for the third respondent.

3. On a perusal of the impugned order passed under Section 78 of the Hindu Religious and Charitable Endowments Act, it is seen that the proceedings have been conducted summarily. The Hon'ble Division Bench of this Court in 2010(1) CWC 490 has held that the summary procedure should not be adopted for the purpose of evicting even from the public premises, by following the judgment of the Hon'ble Apex Court reported in 1995 supp. (2) SCC 290.

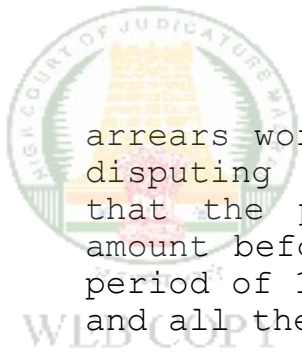
4. In the instant case, the petitioner submits that he has ample documentary proofs to establish that he has a valid title over the property. This aspect is opposed by the learned Standing Counsel appearing for the third respondent/temple. According to the learned Standing Counsel, though an opportunity was given to the petitioner, he had failed to produce any documents and hence, the impugned order came to be passed.

5. It is seen that the petitioner has also approached the Civil Court seeking for declaration of the title over the said property in D.No.10H, Town Survey No.7 to 24, Block No.35, Ward No.5 of Rajamill Road, Madurai and the same is said to be pending.

6. Though, the petitioner has not produced the required documents before the first respondent to establish his rights over the subject land, now, the learned counsel for the petitioner submits that if an opportunity is given to the petitioner, he is willing to produce all the required documents for consideration.

7. In view of the submissions made by the learned counsel for the petitioner, it would be appropriate to direct the first respondent to reconsider the matter. It is made clear that I do not find any infirmity in the order of the first respondent and the matter is being remanded back only for the purpose of giving an opportunity to the petitioner to establish his title.

8. At this juncture, the learned Standing Counsel appearing for the third respondent/temple submits that the petitioner was paying the lease amount and has subsequently, stopped paying and there are arrears to be collected. According to the third respondent, the



arrears works out to a sum of Rs.48,394/-. Since, the petitioner is disputing the title of the temple itself, it would be appropriate that the petitioner be directed to deposit the entire arrears amount before the first respondent, forthwith, preferably, within a period of 15 days from the date of receipt of the copy of this order and all the subsequent monthly rental amount also.

9. With the above observations, the order passed in M.P.153 of 2017, dated 21.02.2018 is set aside and the proceedings are remanded back to the first respondent for fresh consideration, after giving due opportunity to the petitioner and through an appropriate full-fledged enquiry. Such an exercise shall be completed within a period of three months from the date of receipt of the copy of this order. It is made clear that I am not expressing any of my findings with regard to the rights of both the parties and that the first respondent is at liberty to pass appropriate orders on merits of the case. Accordingly, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.
- 3.The Executive Officer,
Arulmigu Mahadeva Swami Thirukovil,
Rajamill Road,
Madurai.

+1cc to M/S.S.Sukumar, Advocate SR.No. 60430
+1cc to M/S.S.Manohar, Advocate SR.No. 60372

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