



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)NO.807 OF 2018

and

C.M.P(MD)No.4812 of 2018

The Executive Officer,
Arulmighu Kalyanasundareswarar Temple,
Avaniyapuram, Madurai South Taluk,
Madurai.

:Appellant/5th respondent/5th respondent

.Vs.

1.A.Marimuthu :Ist Respondent/Petitioner/Petitioner

2.The Commissioner,
Hindu Religious and Charitable Endowment Board,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

3.The Deputy Commissioner,
Hindu Religious and Charitable Endowment Board,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

4.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Board,
Ellis Nagar,
Madurai City.

5.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Board,
Ellis Nagar,
Madurai City.

: Respondents 2 to 5 /Respondents 1 to 4/
Respondents 1 to 4

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
praying this Court to set aside the order passed by this Court in
W.M.P(MD)No.7897 of 2018 in W.P(MD)No.8340 of 2018, dated
17.04.2018.

Prayer in WMP(MD). 7897/ 2018 :

To grant an order of Interim Injunction restraining the Respondents and their men, agents, servants or their subordinates or any one acting on behalf of them from in any manner taking steps to evicting the Petitioner from the landed property bearing Survey No.10/11 of an extent of 77 cents including the shed to an extent of 800 sq.ft. situated at Ayan pappakudi, Madurai South Taluk, Madurai District.

Prayer in WP(MD). 8340/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the entire records relating to the impugned fair rent Proceedings issued by the 5th Respondent dated 01.06.2016 and served the same to the Petitioner through notice dated 18.05.2017 of the 5th Respondent and the impugned notice issued by the 3rd Respondent under Section 78 (2) of the Hindu Religious and Charitable Endowment Act dated 17.01.2018 in Miscellaneous petition No.01/2018 and quash the same and consequently direct the respondents herin to fix a reasonable fair rent by considering the nature, usage and location of the property of the vacant site bearing Survey No.10/11 of an extent of 77 cents including the shed to an extent of 800 sq.ft situate at Ayan Papakudi, Madurai South Taluk, Madurai District under possession of the petitioner belongs to the 5th Respondent.

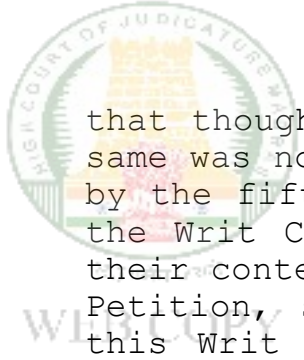
JUDGEMENT

[Judgement of the Court was made by K.RAVICHANDRABAABU, J.]

Aggrieved against the interim order of injunction granted by the Writ Court at the time of hearing the Writ Petition for admission, the present Writ Appeal is filed by the fifth respondent in the Writ Petition.

2.Heard the learned counsel for the appellant and perused the materials placed before us.

3.The first respondent herein as Writ Petitioner, challenged the proceedings of the fifth respondent, wherein and whereby, fair rent in respect of the subject-matter property was fixed by the fifth respondent/Temple and communicated to the Writ Petitioner. The Writ Court after considering the contentions raised by the Writ Petitioner that the impugned order of fixation of fair rent was passed in violation of principles of natural justice, thought fit to grant an ex-parte order of interim injunction restraining the respondents from taking steps to evict the Writ Petitioner from the subject-matter property, with a condition that the Writ Petitioner should pay the admitted rent continuously to the fifth respondent. The Writ Court also posted the matter for further hearing on 06.06.2018.The learned counsel for the appellant further submitted



that though the matter is directed to be listed on 06.06.2018, the same was not listed. At this stage, the present Writ Appeal is filed by the fifth respondent challenging such ex-parte order granted by the Writ Court. Needless to say that the Appellant can raise all their contentions before the Writ Court by filing Vacate Injunction Petition, since the order passed by the Writ Court, challenged in this Writ Appeal, is only an ex-parte order. When such avenue is available to the appellant, it is not proper to file the present Writ Appeal and challenge such ex-parte interim order.

4. Therefore, without expressing any view on the merits of the claim made by both parties, this Writ Appeal is disposed of by permitting the appellant to file Vacate Injunction Petition before the Writ Court raising all the contentions raised in this Writ Appeal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
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Ellis Nagar,
Madurai City.

+1CC to M/s.S.Manohar, Advocate, SR.No.68310

W.A (MD) NO.807 OF 2018

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12.06.2018

VSN

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