



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 19.01.2018
PRONOUNCED ON: 25.01.2018
CORAM :
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Writ Petition (MD) No.14819 of 2017
and
W.M.P(MD)Nos.11661 and 11662 of 2017

A.Sikkanthar

... Petitioner

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 Meenkashi Amman Temple),
Madurai.

3.The Assistant Commissioner,

Hindu Religious and Charitable Endowment Department,
Madurai 1.

4.The Executive Officer,

Arulmighu Mahadeva Swamy Thirukovil,
10, Raja Mill Road, Madurai 1.

... Respondents

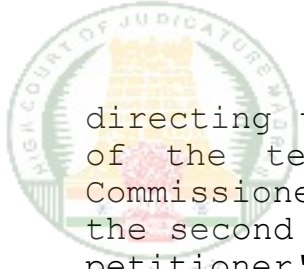
Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 4th respondent dated 04.07.2017 and the order passed by the second respondent dated 10.07.2017 in Na.Ka.No.10687/2015/E1 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 Petitioner : Mr.S.Sukumar
For Respondents 1-3 :Mrs.J.Padmavathydevi,
Special Government Pleader.

For 4th Respondent : Mr.S.Manohar

ORDER

This writ petition has been filed challenging the order passed by the Executive Officer, Arulmighu Mahadeva Swamy Thirukovil, Madurai, the fourth respondent herein dated 04.07.2017,



directing the petitioner to hand over the possession and enjoyment of the temple property and another order passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, the second respondent herein dated 10.07.2017 refusing to accept the petitioner's request to transfer the lease in his favour.

2. Heard Mr.S.Sukumar, learned counsel appearing for the petitioner, Mrs.J.Padmavathidevi, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.S.Manohar, learned counsel appearing for the fourth respondent.

3. According to the petitioner, a vacant lands to an extent of 1024 sq.ft in D.No.10 PQ (Madurai Ward No.5, Block No.35, Town Survey No.7 to 24), Rajamill road, Madurai Town, Madurai belongs to the fourth respondent temple. In the year 1977, the said property has been let out to one Rajathiammal and she has erected superstructure wherein her husband carried on tyre retreading business and they were also paying rent to the fourth respondent. Subsequently, in the year 1995, the above said Rajathiammal, sub-let the said premises to the petitioner and thereafter, he is doing tyre rebution business there and he is also paying rent to the son of the original lessee namely, Rajathiammal. In the year 2011, the fourth respondent has initiated proceedings to evict the original tenant on the ground that there was a huge arrears of lease amount and the second respondent also passed an order dated 27.01.2016 declaring the said Rajathiammal as an encroacher and directed her to hand over the possession.

4. Challenging the above said order, she has filed a revision before the first respondent and pending revision, she died on 10.05.2016. Thereafter, her son has filed an application to implead him as lessee. However, the first respondent by an order dated 18.07.2016 dismissed the revision thereby confirming the order passed by the Joint Commissioner, the second respondent herein. Thereafter, the petitioner himself voluntarily paid the entire arrears of lease amount to the fourth respondent and requested him to permit the petitioner to continue as a lawful tenant. Without considering his request, the fourth respondent has passed an order dated 04.07.2017 directing the petitioner to vacate the premises on the ground that since the original lessee namely, Rajathiammal has sub-let the property in question to the petitioner and an eviction proceedings has already been initiated in accordance with Sections 78 and 79 of the Hindu Religious and Charitable Endowments Act, 1959. Subsequently, the petitioner made a representation to the second respondent to transfer the lease in his favour which was also rejected by the second respondent vide order dated 10.07.2017. Challenging the above said orders, the present writ petition has been filed.

5. Learned counsel appearing for the petitioner would submit that the petitioner is a sub-lessee to the original lessee namely, Rajathiammal and he was paying rents to her son continuously and he was in possession and enjoyment of the premises from 1995 and he was not aware of the eviction proceedings initiated against the original lessee and after coming to know about the arrears, he himself paid the entire arrears to the tune of Rs.2,76,823/- and requested the

authorities to lease out the premises in his favour but the authorities have not considered his request, now, passed the impugned orders.

6.He would further submit that the orders passed by the authorities in evicting the original tenant itself are illegal and they have not followed due process of law in evicting the original lessee. He would further submit that while dismissing the revision filed by the original lessee, the authorities have not considered the case in proper perspective. He would further submit that as the eviction proceedings has been initiated against the dead person, it is non-est in the eye of law. He would further submit that on the legitimate expectation that the petitioner would be permitted to continue in possession in the above said premises, the petitioner has also paid the entire arrears to the tune of Rs.2,76,823/- which has been admitted in the impugned order and therefore, tenancy may be made in his name.

7.Per contra, learned counsel appearing for the fourth respondent would contend that it is an admitted case of sub-lease which is not permissible under law and already an eviction proceedings has been initiated against the original lessee under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 and the revision filed by the original lessee was also dismissed. He would further submit that in view of the dismissal in the revision filed by the original lessee, the eviction order has become final and the fourth respondent only executing the order of eviction and the petitioner being sub-lessee cannot stall the eviction process, as he does not have any independent right. He would further contend that merely because the petitioner has paid the arrears of rent, he cannot claim any right to be in possession and he is not entitled to get lease in his favour. He would further contend that now fair rent has also been revised by the committee which has been fixed at Rs.20,000/- per month and the petitioner is not willing to pay and therefore, the orders passed by the second and fourth respondents do not warrant any interference by this Court.

8.I have considered the rival submissions made by the learned counsel on either side and perused the entire materials available on record carefully.

9.It is an admitted case that the petitioner is a sub lessee under the original lessee namely, one Rajathiammal and an eviction proceedings has also been initiated against the original lessee. Challenging the said eviction proceedings, the original lessee filed a revision which was also dismissed by the authorities. Hence, the order of eviction has become final. In the above circumstances, the petitioner being the sub-lessee cannot contend that he cannot be evicted from the premises as the order of eviction is binding on the petitioner. The petitioner claimed in occupation of the premises from 1995, and admittedly, there was huge arrears of rent payable to the fourth respondent by the original lessee, and only after the order of eviction passed by the fourth respondent, the petitioner came forward to pay the arrears and merely by paying the arrears of rent, the petitioner claim any right over the

property. In the said circumstances, the second and the fourth respondents have rightly passed the impugned orders. I find no infirmity in the above orders.

10. However, taking into consideration of the fact that the petitioner is in possession of the premises from 1995, for more than 22 years, now, if the petitioner is willing to pay the revised fair rent fixed by the authorities namely, Rs.20,000/- per month along with arrears, the petitioner can file a fresh application for granting lease in his favour and if any such application is filed by the petitioner, the second and fourth respondents are directed to consider the application and pass suitable orders granting lease in his favour. It is also made clear that if the petitioner is not willing to pay revised fair rent, it is always open to the respondents to evict the petitioner without any further notice.

11. With the above direction, the writ petition is disposed of. No costs. Consequently, W.M.P(MD) Nos.11661 and 11662 of 2017 are closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner,
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No.119, Utthamar Gandhi Salai,
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 3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai 1.
 4. The Executive Officer,
Arulmighu Mahadeva Swamy Thirukovil,
10, Raja Mill Road, Madurai 1.
- +1cc to Mr.S.SUKUMAR, Advocate, SR.44225
+1cc to Mr.S.MANOKAR, Advocate, SR.44390

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