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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.14129 of 2011
and
M.P(MD)Nos.1 of 2011 and 1 of 2012

Kumaravel .. Petitioner

Vs.

1. The Joint Commissioner,
   Hindu Religious and Charitable Endowments Department,
   Sivagangai.

2. The Executive Officer,
   A/M.Meenakshmi Sundara Vinayagar,
   Nandavana Kattalai,
   Virudhunagar - 626 001. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent made in Na.Ka.No.7722/2011/A3, dated 25.11.2011 and quash the same and consequently declare the petitioner is not an encroacher in terms of lease agreement dated 28.08.2011.

For Petitioner : Mr.N.Mohideen Basha
For Respondent No.1 : Mr.V.R.Shanmuganathan,
Special Government Pleader.
For Respondent No.2 : Mr.B.Prasanna Vinoth

ORDER

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.N.Mohideen Basha learned counsel appearing for the petitioner, Mr.VR.Shanmuganathan, learned Special Government Pleader, appearing for the first respondent as well as Mr.B.Prasanna Vinoth, learned counsel appearing for the second respondent.

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2.The petitioner has filed this writ petition challenging the notice issued under Section 78(2) of the Hindu Religious and

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Charitable Endowments Act, 1959.

3.The main ground raised in this writ petition is that the petitioner has entered into a lease agreement with the second respondent and the lease was valid till 30.08.2016. Admittedly, the second respondent has not obtained permission from the Commissioner to lease out the temple property. We are informed by the learned counsel appearing for the second respondent temple that departmental action has been initiated against the concerned Executive Officer and only thereafter, action came to be initiated by the Department against the petitioner. By efflux of time, the question of the petitioner continuing further in the site in question, does not arise. Even as per the admitted case of the petitioner, the lease came to an end on 30.08.2016. Further, when the Commissioner has not granted permission to lease out the properties of the temple, the lease deed executed by the then Thakkar/Executive Officer itself, is an illegal transaction and no right can accrue to the petitioner, on account of the such illegal transaction. Thus, for the above reasons, the challenge made by the petitioner, should necessarily fail and accordingly, the writ petition is dismissed. The petitioner is granted thirty days time to vacate and hand over the possession of the property to the respondents, failing which, the respondents are entitled to evict the petitioner from the said property and if necessary, they shall seek for police protection. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.

+ 1 CC TO Mr.B.PRASANA VINOTH, ADVOCATE IN SR No. 50508
+ 1 CC TO Mr.N.MOHIDEEN BASHA, ADVOCATE IN SR No. 50870

SMN
TE/JC/SAR-4 : 06/03/2018 : 2P/4C

ORDER MADE IN
W.P(MD)No.14129 of 2011 and
M.P(MD)Nos.1 of 2011 and 1 of 2012
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