

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.7548 of 2019

R.Dhankshinamoorthy

...Petitioner

Vs.

1. The Commissioner
Hindu Religious and Charitable Endowments Department
Nungambakkam High Road,
Chennai-600 034.
 2. The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Thanjavur.
 3. The Executive Officer
A/m.Sattanatha Swamy Temple
Nagapattinam.
- ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in R.C.No.376/2018 D2 dated 21.08.2018 passed by the first respondent and quash the same with the consequential direction to the 2nd respondent to re-fix the fair rent for the leasehold land in the occupation of the petitioner after issuing notice to him.

For Petitioner : Mr.J.Ram

For Respondents: Mr.M.Maharaja
Special Government Pleader

O R D E R

Mr.M.Maharaja, learned Special Government Pleader takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the order of the first respondent dated 21.08.2018, in dismissing the appeal filed by the petitioner, as not maintainable under Section 34(A) (3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

4. The petitioner claims to be a tenant under the third respondent-Temple. According to the petitioner, no notice was issued to him before fixing the fair rent. Therefore, the petitioner preferred an appeal as against the order of fixing the fair rent and also an order of eviction passed under Section 78 of the HR&CE Act, 1959. Such appeal preferred by the petitioner before the first respondent with delay of 770 days was initially taken up on 28.02.2018 and a conditional order was passed as follows:

"1. The respondent temple is directed to calculate the unpaid arrears at the existing rate, till the date of intimation of revised rent and arrears at the revised rate from the date of intimation of revised rent till 31.03.2018. The same shall be communicated to the petitioner before 06.03.2019.

2. On receipt of such communication from the temple, the petitioners are directed to settle the arrears in full as per the communication issued by the temple before 27.03.2018 and file proof of deposit of arrears as communicated by the temple before this forum on 03.04.2018.

3. The petitioner shall file an undertaking affidavit to continue to pay the revised rent till the disposal of the appeal petition.

4. The above petition is posted on 03.04.2018 to file an undertaking affidavit along with proof for deposit of arrears to decide the admissibility of the main appeal petition."

5. Thereafter, when the matter was taken up for further hearing on 03.04.2018, it was informed to the first respondent that the conditional order dated 28.02.2018 has not been complied with by the petitioner. Therefore, the first respondent dismissed the appeal as not maintainable.

6. Though the petitioner claims to be the tenant under the third respondent-Temple, the admitted position is that one M.Nagarajan, was the tenant under the third respondent-Temple, from whom only the petitioner seems to have obtained the possession of the subject matter shop. Therefore, it is evident that the petitioner's right of tenancy has not been recognized by the Temple so far. No doubt, the temple has issued few notices as early as in the year 2015 and 2017 calling upon the

petitioner to pay the arrears of rent. However, perusal of those notices would show that the Temple has recognized M.Nagarajan as the tenant and the petitioner as an encroacher. In any event, as the conditional order passed by the first respondent having not been complied with, I do not think that the petitioner is entitled to seek for any indulgence from this Court by stating that the very initial fixation of fair rent proceedings was made behind the back of the petitioner, especially, when the petitioner is not the tenant under the third respondent-Temple. Accordingly, I find no reason to interfere with the order of the first respondent. Hence, this writ petition fails and the same is dismissed. No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner
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2. The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Thanjavur.
3. The Executive Officer
A/m.Sattanatha Swamy Temple
Nagapattinam.

+1 CC to The Govt. Pleader sr 27687.

+1 CC to Mr.R.Gopalan, Advocate sr 26096.

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SSD(CO)
SP(10/04/2019)