

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.3.2019

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WRIT APPEAL NO.1099 OF 2019 & CMP.NO.7970 OF 2019

R.Somasundaram ...Appellant/16th Respondent

Vs

1. P.Selvarajan .. Respondent/Petitioner

2. The Principal Secretary/Commissioner
Hindu Religious & Charitable Endowments
Department, 119, Uthamar Gandhi Salai,
Chennai-34.

3. The Joint Commissioner, Hindu Religious
& Charitable Endowments Department
Administration Department, 319,
Thirugnanasambandar Street,
State Bank Colony, Salem-4.

4. The Executive Officer, Arulmighu
Vellai Pillayar Thirukkivil, Attur,
Salem District - 636 102.

5. Y.Abdul Kalam Azad

6. M.Rajalakshmi

7. G.Venkatesan

8. T.M.Gurusamy Chettiar

9. N.S.Selvan

10.T.Vanavil

11.S.Senthikumar

12.A.V.Thangavel

13.S.Arunachalam

14.R.Sethu

15.S.Govindarajulu

16.V.Subhash Chandra Bose

17.B.Periyasamy

18.S.Muthu

19.T.A.Sampathkumar

20.A.M.Ramasamy

21.N.Ramachandran
22.J.Ramaraju
23.V.P.Rajan
24.A.Nirmal Prakash
25.V.Selvan
26.R.Prabakaran
27.A.Thiyagarajan
28.V.Madheswaran
29.R.Dharmakrishnan
30.R.Muthu Gounder
31.Padmavathi

...Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent against the order passed in W.P.No.28499 of 2018 dated 19.12.2018.

W.P.No.28499 of 2018:-

This Writ Petition filed under Article 226 of Constitution of India, praying to direct the 1st to 3rd Respondents to conduct fresh auctions for the shops situated in 2.78 Acres of Land belonging to the Arulmigu Vellai Pillayar Kovil Attur Salem District within time stipulated by this Honorable Court

For Appellant : Mr.M.Rajendiran

For Respondents 2-4 : Mr.M.Maharajan, SGP (HR & CE)

Judgment was delivered by T.S.SIVAGNANAM, J

This appeal filed by the 16th respondent in W.P.No.28499 of 2018, is directed against the order dated 19.12.2018 filed by one Mr.P.Selvarajan, who is the first respondent herein, to direct the official respondents/officials of the Hindu Religious and Charitable Endowment Department to conduct a fresh auction for the shops situated in an extent of 2.78 acres of land belonging to the fourth respondent temple.

2. The said writ petition was disposed of with the following directions.

"4. Today, the learned Special Government Pleader appearing for the HR & CE Department submitted that already Section 78 proceedings have been initiated against the occupants of the shops and he says that it will take atleast three months to complete. Therefore, this Court is of the opinion that three months period may be granted to the department for completing the enquiry under Section 78 of HR & CE Act and recover possession from the occupants/encrochers.

Thereafter, the HR & CE has to conduct fresh auction for the shops by fixing fair rent for each of the shops.

5. It is alleged in the writ petition that many of the original lessees have either died or vacated long back and the present occupants are all not original lessees and have entered into shops on pagadi by paying exorbitant amount to third parties. The temple lands have been ransacked by the encroachers because of the inefficiency of the officials.

6. The third respondent is directed to complete Section 78 proceedings within a period of three months from the date of receipt of a copy of this order, as no further time will be granted in this regard and thereafter to auction the shops as per the rate that may be fixed by the Rent Fixation Committee within a period of one month. In the meanwhile, the arrears recovered from them may be properly accounted for."

3. The grievance of the appellant is that soon after the said writ petition was disposed of, the Executive Officer issued a proceedings dated 31.12.2018, by which, there was not only a demand for enhanced rent with retrospective effect, but also a direction to the appellant to pay the enhanced rent, vacate and hand over vacant possession of the premises in the occupation of the appellant. The appellant filed W.P.No.2626 of 2019 before this Court, challenging the proceedings of the Executive Officer dated 31.12.2018, but subsequently he had withdrawn the same and filed the present appeal on the ground that the proceedings of the Executive Officer dated 31.12.2018 is sequel to the order passed in the said writ petition, which is the subject matter of the appeal.

4. Learned counsel for the appellant would submit that the entire arrears demanded in the proceedings dated 31.12.2018 have been paid by the appellant, but, yet there is a threat of being forcibly dispossessed from the premises, since in the proceedings dated 31.12.2018, there was a direction to the appellant to pay arrears of rent and license fee and vacate and hand over the vacant possession of the premises.

5. Learned Special Government Pleader appearing for respondents 2 to 4 would submit that the appellant need not have

any such apprehension because the proceedings dated 31.12.2018 is a demand for payment of rent/ license fee at the appropriate rate and if the same has been remitted by the appellant, then he has to execute fresh documents in favour of the temple. It is further submitted that some of the occupants, who were also arrayed as respondents in the said writ petition, have preferred appeals before the Commissioner of Hindu Religious and Charitable Endowment Department against the proceedings of the Executive Officer dated 31.12.2018 and the matter is now pending before the Commissioner.

6. We are of the view that if any such appeal is filed by the appellant before the first respondent, it will be numbered, provided the appellant produces the proof to show that the entire payment as demanded in the proceedings dated 31.12.2018 issued by the Executive Officer, has already been paid. In the light of the above, the apprehension of the appellant that he will be evicted from the premises is without any basis and more particularly in the light of the stand taken by the learned Special Government Pleader appearing for the official respondents herein.

7. Accordingly, the writ appeal stands disposed of giving liberty to the appellant to pursue the appeal remedy before the Commissioner, Hindu Religious and Charitable Endowment Department, if so advised. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Principal Secretary/Commissioner,
Hindu Religious & Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Chennai 600 034.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowments
Department Administration Department,
319, Thirugnanasambandar Street,
State Bank Colony, Salem-636 004.

3. The Executive Officer,
Arulmighu Vellai Pillayar Thirukkivil, Attur,
Salem District-636 102

+1cc to Mr.M.Rajendiran, Advocate, S.R.No.29925

WA.No.1099 of 2019&
CMP.No.7970 Of 2019

RJI (CO)
CS/13/05/2019



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