

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.1245 of 2019

&

C.M.P.No.8563 of 2019

Thenmozhi

...Appellant/3rd Pary

Vs

1. P.Selvarajan
2. The Principal Secretary / Commissioner
Hindu Religious & Charitable Endowments Department
119, Uthamar Gandhi Salai, Chennai 600 034.
3. The Joint Commissioner
Hindu Religious & Charitable Endowments Department
Administration Department, 319, Thirugnanasambandar
Street, State Bank Colony, Salem-636 004.
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. Senthil Kumar
12. A. V. Thangavel
13. S. Arunachalam
14. R. Sethu
15. S. Govindarajulu
16. V. Subhash Chandra Bose
17. R. Somasundaram
18. B. Periyasamy
19. S. Muthu
20. T. A. Sampath Kumar
21. A. M. Ramasamy
22. N. Ramachandran
23. J. Ramaraju
24. V. P. Rajan
25. A. Nirmal Prakash

26.V.Selvan
27.R.Prabakaran
28.A.Thiyagarajan
29.V.Madheswaran
30.R.Dharmakrishnan
31.R.Muthu Gounder
32.Padmavathy

...Respondents

Writ 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.28499/2018:

This Writ Petition filed under Article 226 of the 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.Rajendran
For Respondents: Mr.M.Maharajan,
Special Government Pleader
(HR & CE)
(for R.2 & R.3)

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

This is an appeal is directed against the order passed in the writ petition dated 19.12.2018. One P.Selvarajan filed a writ petition to direct the official respondents / officials of the H.R.&C.E. Department to conduct fresh auction for the shops situated in an extent of 2.78 acres of land belonging to the fourth respondent temple. The 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/encroachers. 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."

2. The grievance of the appellant, the 31st respondent in the writ petition is that soon after the writ petition was disposed of, the Executive Officer issued a proceedings dated 31.12.2018, by which the Executive Officer has not only demanded enhanced rent with retrospective effect, but directed 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.2135 of 2019 before this Court, challenging the proceedings of the Executive Officer dated 31.12.2018, but subsequently withdrawn the same and filed the present appeal, on the ground that the proceedings of the Executive Officer dated 31.12.2018 is a sequel to the order passed in the writ petition, which is the subject matter of the appeal.

3. Learned counsel for the appellant would submit that the entire arrears, which has been demanded in the proceedings dated 31.12.2018 has been paid by the appellant, and 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 to vacate and hand over the vacant possession of the premises.

4. Learned Special Government Pleader appearing for the respondents 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 she 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 writ petition, have preferred

appeals before the Commissioner of H.R.&C.E. against the proceedings of the Executive Officer dated 31.12.2018 and the matter is now pending before the Commissioner. Mr.M.Rajendran, learned counsel for the appellant would submit that the appellant has also filed a petition before the Commissioner, H.R.&C.E., and the same is yet to be numbered.

5.We are of the view that the appeal possibly 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, is produced before the office of the Commissioner, H.R.&C.E. In the light of the above, the apprehension of the appellant that she will be evicted from the premises is without any basis, more particularly in the light of the stand taken by the learned Special Government Pleader appearing for the official respondents herein. Accordingly, the writ appeal stands disposed of, giving liberty to the appellant to pursue the appeal before the Commissioner, H.R.& C.E. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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.

W.A. No.1245 of 2019
&
C.M.P.No.8563 of 2019

RJI (CO)
SP(12/06/2019)