

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2019

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.5525 of 2016
and
W.M.P.No.4866 of 2016

Anwar Batcha

.. Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Department,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Department,
Chennai - 600 034.
3. The Assistant Commissioner,
Hindu Religious and Charitable Department,
Chennai - 600 034.
4. The Deputy Commissioner/Executive Officer,
Arulmegu Parthasarathy Swamy Thirukoil,
Triplicane, Chennai - 5.

.. Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent by its order dated 20.01.2016 in R.P.No.129 of 2015/D2, by confirming the order passed by the 2nd respondent in its proceedings No.Nata.Na.Ka.No. 6700/2009/A2, dated 06.05.2015 and quash the same as illegal and direct the 4th respondent to transfer the tenancy agreement in respect of the property situated in Survey No.1822, Door No.130 TP Koil Street, Triplicane, Chennai - 600 005 in favour of the petitioner.

For Petitioner : Mr.A.Muthukumar
for M/s.R.Ganesh Babu

For 1st to 3rd
Respondents : Mr.M.Maharaja
Special Govt. Pleader (HR & CE)

O R D E R

The instant Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent by its order dated 20.01.2016 in R.P.No.129 of 2015/D2, by confirming the order passed by the 2nd respondent in its proceedings Nata.Na.Ka.No. 6700/2009/A2, dated 06.05.2015 and quash the same as illegal and direct the 4th respondent to transfer the tenancy agreement in respect of the property situated in Survey No.1822, Door No.130 TP Koil Street, Triplicane, Chennai - 600 005 in favour of the petitioner.

2. The father of the writ petitioner was a tenant to an extent of 135 sq.ft., which belongs to the 4th respondent-Temple and he was in occupation from 1953 and after his demise in 1990, the petitioner was continuing there, though the temple authorities have not attorn the tenancy of the petitioner. While so, the petitioner was served Section 78 notice and he was set an ex parte and the order of eviction was passed directing the petitioner to vacate the shop. Against the said order, the revision petition was filed before the first respondent and the first respondent has also confirmed the order of eviction.

3. The learned counsel for the respondents stated that as on date, there is an arrears of Rs.3,00,441/- and the rent was also revised in the year 2016 as Rs.10,350/- per month.

4. The petitioner expressed that there is difficulty to pay the amount and he cannot continue in the possession of the property.

5. Further, it is stated that an interim order was passed by the 2nd respondent/Joint Commissioner directing the petitioner to pay 50% of arrears, but, the same is not complied with.

6. It appears that the petitioner is only deemed to be an encroacher and he has to be evicted by the authorities under Section 78 of the Act. As the petitioner is in possession, he is bound to pay the damages for use and occupation till the possession is handed over to the temple.

7. Admittedly, as there is no lease agreement in favour of the petitioner, he is rightly termed as an encroacher and the order of eviction does not suffer from any infirmity and the same is confirmed.

8. In view of the above, this Writ Petition is dismissed. One month time from the date of receipt of a copy of this order is granted to the petitioner to vacate the premises.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Department,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Department,
Chennai - 600 034.
3. The Assistant Commissioner,
Hindu Religious and Charitable Department,
Chennai - 600 034.
4. The Deputy Commissioner/Executive Officer,
Arulmegu Parthasarathy Swamy Thirukoil,
Triplicane, Chennai - 5.

+1cc to Mr.R.Ganesh Babu, Advocate, SR.No.24548/19
+1cc to the Govt.Pleader, Vide Sr.No.25186

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and
W.M.P.No.4866 of 2016

Kak (08/05/2019)

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