

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2019
CORAM:
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN
W.P.No.33559 of 2014
and
M.P.No. 2 of 2014

Mrs. Therasy Vinod Kumar,
W/o. Vinod Kumar

... Petitioner

Vs.

1. The Commissioner,
H.R. & C.E. Admin Departments,
Chennai.
2. The Additional Commissioner,
H.R. & C.E., Admin Departments,
Chennai
3. The Executive Officer,
Arulmigu Agastheeswarar Prasanna,
Venkatesaperumal Temple,
Nungambakkam,
Chennai 600 034.
4. Dakshayaniammal,
W/o. Panchacharam

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the 2nd respondent, dated 24.09.2014 bearing Na.Ka.No.46669/2014R2 and quash the same and consequently direct the respondents to transfer the tenancy in the name of the petitioner for the property situate in Door No.7, Appu Street, Nungambakkam.

For Petitioner : Mr. B. Ravindran,
Sr. counsel
for Mr. KrishnaRavindran

For Respondents : Mr M.Maharaja,
Spl. G.P.,
for R1 & R2

: Mr. A.S.Kailasam,
for Kailasam Associates.,
for R3

ORDER

This writ petition has been filed challenging the order passed by the second respondent.

2. The brief facts, leading to file the writ petition, reads as follows:

An extent of 2295 sq.ft. Vacant site at No.7, Appu Street, Nungambakkam belongs to the third respondent temple was leased to the fourth respondent. Due to non payment of rent, an eviction proceedings has been initiated by the third respondent temple, and a suit has been filed against the fourth respondent in O.S.No.1384 of 1983, the suit was decreed, and the appeal filed by the fourth respondent in A.S.No.319 of 2004 also came to be dismissed. Thereafter, the temple filed an execution proceedings in E.P.No.1560 of 2009 and the same is pending on the file of the X Assistant City Civil Court, Chennai. Pending execution proceedings, the petitioner and the fourth respondent said to have made some arrangements, by which, the petitioner said to have paid the entire arrears on behalf of the fourth respondent. Thereafter, the petitioner made an application before the Joint Commissioner for compromise in the said execution proceedings to transfer the tenancy in favour of the petitioner. Earlier Joint Commissioner, H.R & C.E., by an order 27.12.2010 recommended for transfer of the tenancy in favour of the petitioner and to enter into a compromise between the parties. Thereafter, another Joint Commissioner, H.R.& C.E., Chennai, has rejected the proposal for transfer of tenancy by an order dated 28.06.2013. Challenging the above said order, the

petitioner has filed a Revision in R.P.No.94 of 2013 D2 under Section 21 of the H.R.& C.E. Act before the Commissioner and the Commissioner by an order dated 28.10.2013 set aside the order passed by the Joint Commissioner holding that the Joint Commissioner has no jurisdiction to pass the order and he had usurped the power of the Commissioner, and only the Commissioner has the power to deal with such matters. Thereafter, once again, the Additional Commissioner, without considering the order passed by the first respondent/Commissioner dated 28.10.2013 in R.P.No.94/2013, rejected the proposal of compromise by an order dated 24.09.2014 in Na.Ka.No.46669 of 2014 and directed the parties to expedite the execution proceedings. Now, the above order is challenged in this writ petition.

3. Mr.M.Ravindran, learned Senior Counsel, appearing for the petitioner would submit that earlier the order passed by the Joint Commissioner rejecting the proposal for compromise has been set aside by the Commissioner on the ground that only the Commissioner has power to entertain any petition for compromise, and also for transfer of lease. But the second respondent/Additional Commissioner, without even considering the order passed by the Commissioner, has passed the impugned order, for which she has no jurisdiction. Hence, it is liable to be dismissed.

4. Mr.M.Maharaja, learned Special Government Pleader, appearing for the respondents 1 and 2, on instructions, would submit that pending writ petition, possession was taken by the temple and the Execution Proceedings is also closed. Now, the third respondent temple is in possession of the property. Since the Execution Proceedings has already been closed, and possession was also taken, at this stage, the petitioner's request for compromise and transfer of lease cannot be considered and the prayer sought for in the writ petition is also infructuous.

5. I have considered the submissions made on either and perused the materials available on records carefully.

6. The grievance of the petitioner is that the petitioner has paid the entire lease amount, and sought for transfer of lease in his favour by entering into a compromise in the suit filed by the temple, the Additional Commissioner has arbitrarily rejected the petitioner's request, for which he has no jurisdiction and he was also supported by the order passed by the Commissioner in R.P.94/2013 dated 28.10.2013, wherein, the Commissioner has stated that the power for permitting compromise is only vest with the Commissioner.

7. Now it is submitted that the Execution Petition has already been closed and possession also taken by the temple. At this stage, there is no possibility of entering into compromise in the suit. Considering the above circumstances, the relief sought by the petitioner cannot be granted at this stage. However, considering the fact that the petitioner has paid the entire arrears of lease amount and also sought for lease in his favour, the petitioner is directed to submit a fresh representation before the first respondent/Commissioner seeking for granting of lease in his favour.

8. The petitioner is directed to submit his representation within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Commissioner is directed to consider the same and pass suitable orders on merits in accordance with law within a period of six weeks thereafter, after giving opportunity to the petitioner. Till then, the respondents are directed not to lease out the subject property to any other third party.

9. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

To

1. The Commissioner,
H.R. & C.E. Admin Departments, Chennai.

2. The Additional Commissioner,
H.R. & c.E., Admin Departments,
Chennai

+1 cc to the Government Pleader sr92701
+1 cc to Mr.Krishna Ravindran Advocate sr92582
+1 cc to M/s.A.S.Kailasam & Associates advocate sr92254

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