

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 27.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.6965 of 2016
and
W.M.P.No.6181 of 2016

P.K.Dhanasekaran

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

2.The Arulmighu Kabaleeswarar Thirukoil
Represented by
The Joint Commissioner/Executive Officer,
Mylapore,
Chennai - 600 004.

3.The Arulmighu Valeeswarar Thirukoil,
Rep. by its Executive Officer,
Mylapore,
Chennai - 600 004.

.. Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the impugned communication of the third respondent in Na.Ka.No.606/2008-5/A4 dated 11.08.2009 and impugned proceedings of the 2nd respondent in Na.Ka.No.204/2010/A4 dated 10.02.2016 and quash the same and consequently direct the 2nd and 3rd respondents to refix the fair rent to the petitioner land at No.54, G.N.Chetty Street, Mylapore, Chennai - 600 004, as per G.O.Ms.No.298, Hindu Religious and Charitable Endowment Department dated 20.07.2010 and Commissioner, H.R. & C.E. Circular dated 03.08.2010.

For Petitioner : Mr.B.Ullasavelan

For R1 : Mr.M.Maharaja
Special Government Pleader (HR & CE)

For RR2 & 3 : Mr.Sarvesh
for M/s.A.S.Kailasam Associates

O R D E R

The Writ Petition is filed challenging the communication of the third respondent in Na.Ka.No.606/2008-5/A4 dated 11.08.2009 and proceedings of the second respondent in Na.Ka.No.204 / 2010/A4 dated 10.02.2016 and consequently direct the respondents 2 and 3 to refix the fair rent to the petitioner's land, as per G.O.Ms.No.298, Hindu Religious and Charitable Endowment Department dated 20.07.2010 and Commissioner, H.R. & C.E. Circular dated 03.08.2010.

2. The petitioner is in occupation of the property belonging to the third respondent-Temple. He was living in a tiled house behind the present building and was paying rent to one D.Jayaram Naidu, who was the original owner of the superstructure, and in the year 2005, from the children of the said Jayaram Naidu, the petitioner seems to have purchased the superstructure and later, put up a pucca construction and using it for residential purpose.

3. While so, the third respondent had issued a show cause notice on 19.12.2015 calling upon the petitioner to show cause as to why his licence be cancelled for having put up the construction without permission of the Temple. The alleged construction is nothing but a cement sheet on the terrace which according to the Temple is put up for the purpose of commercial use. In response to the said notice, the petitioner also had replied on 04.01.2016 stating that the temporary sheets were fixed on the terrace only for arresting the leakage from the terrace and the said superstructure is only temporary in nature. Without adverting to the said reply and also not offering an opportunity of personal hearing to the petitioner, the second respondent had passed an order on 10.02.2016 cancelling the Rental Agreement dated 29.02.2016 and calling upon the petitioner to hand over the possession of the said premises. The petitioner continues to reside in the same premises, by virtue of the interim order granted by this Court. It is now pointed out that though the petitioner had given a reply to the show cause notice within the time stipulated, the authorities have not considered the same and have not even provided an opportunity of hearing stating as to why the said construction was put up.

4. It is admitted by the learned counsel for the respondents that the impugned order did not refer to the reply notice given by the petitioner.

5. In such circumstances, the order passed by the second respondent has to be set aside, as the same is without adverting to the principles of natural justice. Considering the facts and

circumstances of the case and the submissions made on either side, this Court, without expressing any opinion on the merits of the case, sets aside the order passed by the second respondent, and the matter is remanded back to the second respondent for fresh consideration and the second respondent, after issuing notice to the petitioner and the persons interested in this regard and also affording them an opportunity of personal hearing, decide the matter, and pass appropriate orders on merits and in accordance with law as expeditiously as possible.

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

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

srn

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.
- 2.The Joint Commissioner/Executive Officer,
Arulmighu Kabaleeswarar Thirukoil
Mylapore,
Chennai - 600 004.
- 3.The Executive Officer,
Arulmighu Valeeswarar Thirukoil,
Mylapore, Chennai - 600 004.

+lcc to M/s.A.S.Kailasam Associates, Advocate, S.R.No.30075

+lcc to the Government Pleader, S.R.No.30694

+lcc to Mr.B.Ullasa Velan, Advocate, S.R.No.30328

W.P.No.6965 of 2016

and

W.M.P.No.6181 of 2016

EV(CO)

RRS(10/06/2019)