

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27468 of 2019
and
W.M.P. Nos. 26954 & 26956 of 2019

R.Gopalakrishnan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by Secretary to Government,
HR & CE Department,
Fort St. George, Chennai - 600 080.
2. The Commissioner,
HR & CE Administration Department,
Nungambakkam, Chennai - 600 034.
3. The Joint Commissioner,
HR & CE Department,
Arulmighu Kapaleeshwarar Thirukoil,
Nungambakkam, Chennai - 600 034.
4. The Assistant Commissioner,
HR & CE Department,
Arulmighu Kapaleeshwarar Thirukoil,
Nungambakkam, Chennai - 600 034.
5. Executive Officer,
HR & CE Department,
Arulmighu Kapaleeshwarar Thirukoil,
Mylapore, Chennai - 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Second and Third Respondents to consider the representation of the Petitioner dated 15.05.2019 and conduct an enquiry after affording opportunity of the Petitioner, with respect to sealing of the property bearing No.53, G.N. Chetty Street, Mylapore, Chennai - 600 004 leased to the Petitioner.

For Petitioner : Mr. V. Sivalingam

For Respondents : Mr. M. Maharaja

Special Government Pleader (HR & CE)

O R D E R

The Writ Petition has been filed for a direction to the Second and Third Respondents to consider the representation of the Petitioner dated 15.05.2019 and to conduct an enquiry after affording opportunity to the Petitioner, with respect to sealing of the property bearing No.53, G.N. Chetty Street, Mylapore, Chennai - 600 004 leased to the Petitioner.

2. Learned Special Government Pleader (HR & CE) appearing for the Respondents, on instructions, submits that the aforesaid representation of the Petitioner dated 15.05.2019 has already been considered and an order dated 13.09.2019 has been passed and a copy of the same has been produced.

3. In addition to the same, a detailed Counter Affidavit has been filed giving full details of the true state of affairs of the matter and it would be relevant to extract the following paras from the same :-

"4. It is submitted that the land to an extent of 1800 Sq.Ft. Belonging to A/m Kapaleeswarar Temple (hereinafter referred to as the temple for brevity and clarity) was originally leased out to one Mr. Rengarajalu Naidu who was the father of the Petitioner herein. After the death of his father, the Petitioner approached this Respondent Department to effectuate name transfer in his name and further agreed to pay the rental arrears due to the temple. The Petitioner had further agreed to abide by the condition to be fixed by the temple.

5. It is submitted that on 20.12.2012, a rental agreement was executed by the Petitioner herein after paying the arrears to the temple and also agreed to abide the 13 conditions. It is pertinent to note that condition No.4 clearly states that the Petitioner cannot sub-let the property to any third parties and condition No.9 states that the property shall be used only for residential purpose. It is further submitted that the rent was fixed at Rs. 1559/- per month with 15% increase thereon.

6. It is submitted that on 08.10.2018 a Notice was issued to the Petitioner herein directing him not to let the property to any third parties and further it was found out that the Petitioner had taken all the articles from the house portion and locked the house. Therefore, a Notice was sent to the Petitioner herein that if the property is let out to any third parties, the same will be sealed

by the authorities. The Petitioner received the Notice.

7. It is submitted that in the month of January 2019, the Petitioner had taken out all the articles in the house portion and locked the house site. It is pertinent to note that out of the 1880 Sq. Ft., the house portion occupied by the Petitioner is only 885 Sq. Ft. In the remaining portion one part to an extent of 100 Sq. Ft. was let out to a Grocery Shop and 80 Sq. Ft. was sub-let by the Petitioner to a Tailor Shop. It is further submitted that the 885 Sq. Ft. house site was illegally sold by the Petitioner to third parties.

8. It is submitted that, the temple Officials had went for the Site Inspection and it was informed that the Petitioner had taken all the articles in the house and had further sub-let it to third parties violating the rental agreement. It is further most humbly submitted that this Respondent sealed the house site and took possession of the property since the same was abandoned by the Petitioner. It is false to state that the Petitioner has kept articles inside the house site and he is put to strict proof of the same.

9. It is submitted that on 08.03.2019, 15.05.2019 and 16.05.2019, the Petitioner had sent a representation to this Respondent to remove the seal and thereafter filed the present Writ Petition to direct the Respondent to consider the representation.

10. It is most humbly submitted that on 13.09.2019, the representation made by the Petitioner was rejected and orders were passed by this Respondent in Na.Ka.No.124/2012/A4 dated 13.09.2019. It is pertinent to note that since the address of the Petitioner was not known to the authorities, when the Writ Petition No.27408 of 2019 filed by the Petitioner came up for hearing on 17.09.2019, the copy of the order passed on this representation was served upon the Counsel for the Petitioner.

11. It is most humbly submitted that the Petitioner has no semblance of right to maintain the said Writ Petition. From the facts narrated supra it can be seen that the Petitioner violated the rental agreement and had also sub-let the property belonging to the temple. Further, the house site was also illegally sold to third

parties which is against the provisions of Section 34 of the HR & CE Act, 1959. The HR & CE Rules as well as the rental agreement clearly states that if any property/house site is abandoned or not used by the tenants the same can be taken over by the temple authorities to avoid from encroachment and the possession vests with the temple. It is pertinent to note that this Respondent had also forwarded the details of the land and house site to the Commissioner, herein."

The aforesaid contentions of the Respondents, which are borne out of the record, deserve acceptance and the Petitioner cannot be aggrieved by the bonafide action taken against him in accordance with law.

4. In view of the aforesaid subsequent events, nothing remains for further consideration in the matter.

5. Accordingly, the Writ Petition is disposed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsa/maya

To

1. The Secretary,
State of Tamil Nadu,
HR & CE Department,
Fort St. George, Chennai - 600 080.
2. The Commissioner,
HR & CE Administration Department,
Nungambakkam, Chennai - 600 034.
3. The Joint Commissioner,
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Nungambakkam, Chennai - 600 034.

5. The Executive Officer,
HR & CE Department,
Arulmighu Kapaleeshwarar Thirukoil,
Mylapore, Chennai - 600 034.

+1cc to the Government Pleader, SR.84211/19

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GP (CO)
CB(09/10/2019)



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