

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

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

W.P. No. 28185 of 2019

P. Viswanathan

... Petitioner

-vs-

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.
3. The Executive Engineer,
Agastheswarar Thirukkoil,
Villivakkam,
Chennai - 600 049.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to dispose the Petitioner's representation dated 28.08.2019 and consequently pass direction directing the Respondents handing over the school play ground possession, granting time to pay the arrears of rent.

For Petitioner : Mr. P. Venkateshan

For Respondents: Mr. M. Maharaja,
Special Government Pleader
(for R1 & R2)

Mr. A.K. Sriram
for M/s. A.S. Kailasam Associates
(for R3)

O R D E R

The Writ Petition has been filed for direction to the Respondents to dispose the representation dated 28.08.2019 made by the Petitioner to hand over the school playground and grant time to pay arrears of rent.

2. It is brought to the notice of this Court by Learned Counsel for the Third Respondent relying on the Counter Affidavit filed by the Third Respondent that the Petitioner had earlier filed the Writ Petition in W.P. No. 2297 of 2017 challenging the eviction proceedings against him and the same has been dismissed by the Division Bench of this Court in the order dated 31.01.2017 passed by this Court, which has been confirmed by order dated 02.03.2017 in W.A. No. 195 of 2017. It is submitted that the Petitioner had not paid the rent which had accumulated to huge arrears and further action has been taken to resume possession of the property from the Petitioner on 09.01.2017 even when the Writ Appeal was pending as recorded in para 11 of the order dated 02.03.2017 in W.A. No. 195 of 2017. It would be useful here to refer to para 11 of the Counter Affidavit of the Third Respondent, which reads as follows:-

"11. I further state that after the said land was cordoned off and compounded, the Temple requested by letter dated 18.01.2017 and was granted permission by the First Respondent by proceedings dated 20.06.2017 to use the said land as a parking lot. I state that based on the said permission, a separate security system has been put in place and the entire extent of land is being used for a parking lot for tankers, lorries as well as private vehicles. I state that on and from February 2018, the said land is being used as a parking lot. I state that for parking, all the vehicles are charged a parking fee depending upon the time and/or days for which the facility is used. I state that the Temple receives approximately Rs.60,000/- per month towards parking fees and the said amount can only increase with passage of time. I state that security for the said land is being provided by High Profile Security facility Service. I state that the temple is paying a sum of Rs.20,000/- per month for the security being provided for the said land. I therefore state that the subject land has been put to other use which is now earning substantial benefit to the Temple. I state that in any case, the request of the Petitioner cannot be granted since the tenancy has been admittedly terminated, proceedings for eviction initiated, possession taken and all the above orders have been confirmed by the Hon'ble

Division Bench. I state that the Petitioner is not entitled as a matter of right to get the said land on lease since assuming without conceding that the said land is going to be leased out, the same will be only by way of public auction. I state that in any case, the letters from the cricket and tennis coaches will show that the Petitioner has approached this Hon'ble Court with not only unclean hands but fraudulent suppression of facts pretending as though the playground was being used exclusively for the benefit of handicapped children. I further state that the Petitioner has been receiving money on a monthly basis from both the cricket and tennis coaches by allowing them to conduct their coaching classes on the land belonging to the Temple but has not paid the Temple its rightful due, which resulted in the eviction proceedings. I state as on 09.01.2017, the arrears payable by the Petitioner was Rs.1,13,65,958/- based on the fair rent fixed previously. I state that the approximate fair rent for 18,250 sft of land as on dated would be 1,46,730/-. I state that the Petitioner has been using the leased land along with encroached lands for commercial purpose and earning profits from the same, due to which, they were not entitled to any concessional rate which is applicable to charitable institutions and therefore all the averments to the contrary are hereby denied as incorrect."

A perusal of the same show that the land sought to by the Petitioner has already been leased by the Third Respondent for parking lot and as such, the question of considering the representation dated 28.08.2019 made by the Petitioner does not arise for consideration at this distance of time. In view of the aforesaid circumstances, nothing remains for further consideration in the matter.

3. In the result, the Writ Petition is dismissed. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
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3. The Executive Engineer,
Agastheswarar Thirukkoil,
Villivakkam,
Chennai - 600 049.

+1cc to Mr.P.Venkateshan, Advocate Sr.85946
+1cc to Mr.A.S.Kailasam & Associates, Advocate Sr.85900
+1cc to the Government Pleader Sr.86597

W.P. No. 28185 of 2019

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srg 21/10/2019