

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

CORAM

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

W.P. No. 30537 of 2019

and

W.M.P. Nos. 30577, 30578 and 30581 of 2019

B. Shaji

... Petitioner

-vs-

1. The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
I Floor, R.T.O. Salai,
Sathuvachari,
Vellore - 632 009.

2. C. Adilakshmi

3. The Tahsildar,
Purasaiwalkam Taluk,
Purasaiwalkam,
Chennai - 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with order in Say Mu Misc. No. 3/2010/A-1 dated 04.07.2019 passed by the First Respondent and quash the same and further direct the First and Third Respondents desal the leased premises which was sealed on 03.10.2019 in terms of order made in Say Mu Misc. No. 3/2010/A-1 dated 04.07.2019.

For Petitioner : Mr. A.L. Somayaji, Senior Counsel for
Mr. P. Sidharthan

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

Mr. D. Rajagopal (for R2)

Mr. R. Venkatesh,
Government Advocate (for R3)

O R D E R

Heard Mr. A.L. Somayaji, Learned Senior Counsel assisted by Mr. P. Sidharthan, Learned Counsel appearing for the Petitioner and Mr. M. Maharaja, Learned Special Government Pleader (HR & CE) appearing for the First Respondent, Mr. D. Rajagopal, Learned Counsel appearing for the Second Respondent and Mr. R. Venkatesh, Learned Government Advocate appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a tenant of the premises situated at No. 4, Vengu Chetty Lane, Park Town, Chennai - 600 003 belonging to the Second Respondent, is aggrieved by the order dated 04.07.2019 in Se. Mu. Miscellaneous Petition No. 3/2010/Aa1 passed by the First Respondent for his eviction therefrom under Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and has sought for consequential direction to the First and Third Respondents to de-seal the premises, which has been sealed on 03.10.2019 pursuant to that order.

3. It is strenuously urged by the Learned Senior Counsel appearing for the Petitioner that before passing the impugned order, the First Respondent had not duly served notice to the Petitioner in the eviction proceedings and, in particular, it is complained that Rule 3 of the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules, has not been followed. In such circumstances, he seeks that the impugned order may be set aside and restoration of possession of the property, which has been sealed on 03.10.2019 pursuant to the impugned order, to the Petitioner may be ordered.

4. Learned Special Government Pleader (HR & CE) appearing for the First Respondent, who has produced the records pertaining to the impugned eviction proceedings, contends that it could be seen that for the hearing on 20.06.2019, notice had been sent to the Petitioner and the Second Respondent, for which there is proof of postal registration, though the acknowledgement card in respect of the Petitioner is not available, and that in respect of the notice sent for the hearing on 04.07.2019, it could be seen that the same has been returned with the postal endorsement 'unclaimed', and as such, the Petitioner cannot have any grievance that he has not been issued with any notice in the eviction proceedings before the impugned order was passed.

5. Learned Counsel appearing for the Second Respondent referring to the Counter Affidavit dated 13.11.2019 filed by the Second Respondent, contends that notice of hearing in the eviction proceedings before the First Respondent had been duly sent by the First Respondent through Registered Post to the

Petitioner for the hearings on 20.06.2019 and 04.07.2019, and as the Petitioner had failed to appear on the said dates, the Petitioner cannot complain that the principles of natural justice has been violated, so as to set aside the impugned order of eviction. It is further pointed out that the Second Respondent has taken possession of the property on 03.10.2019 on which date, the premises has been sealed pursuant to the impugned order dated 04.07.2019 after prolonged litigation for eviction of the Petitioner from the year 2000. It is also submitted by him that the Petitioner had been in arrears of payment of the contractual rent of a paltry sum of Rs.1,500/- per month for more than a decade from January 2009 to September 2019 aggregating to a sum of Rs.1,93,500/-, which the Petitioner did not pay all along on the due dates. It is further brought to the notice of this Court that after adjusting the sum of Rs.1,84,000/- paid by the Petitioner by way of demand draft No. 285333 dated 07.11.2019 drawn in favour of the Second Respondent, a sum of Rs.9,500/- remains payable, apart from the interest for delayed payment. It is pleaded that if the premises is now brought for auction, it would fetch a fair rent of atleast Rs.75,000/- per month, and if the Petitioner is permitted to re-occupy the premises at this stage, it would cause irreparable hardship to the Second Respondent and considering the equities between the parties, the Second Respondent may be permitted to proceed to lease out the property through public auction as per rules, in which the Petitioner could participate, if he intends to continue as lessee there.

6. Having regard to the rival submissions on behalf of the parties, the short question that arises for consideration is whether the Petitioner has been duly served with notice following Rule 3 of the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules, before passing the impugned order Se. Mu. Miscellaneous Petition No. 3/2010/Aa1 dated 04.07.2019 directing his eviction from the premises belonging to the Second Respondent, under Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959?

7. Before proceeding further, it would be necessary to extract Rule 3 of the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules, which prescribes the manner in which notice is required to be served on the parties in the proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the same reads as follows:-

"3. Form and service of notice:-

(1) Every notice under Sections 78(2), 79(3), 80(2) and 81(3) shall be in Forms A to D in the Schedule to

these rules and shall be served on the encroacher, lessee, licensee or mortgagee, as the case may be, by registered post with acknowledgment due. A copy of the notice shall be communicated to the trustees of the institution also.

(2) In case of any refusal or evasion to receive the notice sent for service in the manner specified in sub-rule (1), the notice shall be affixed on the front door or any conspicuous place of the residence of the person to whom the notice was sent. If the person has changed his residence, the notice shall be sent to the changed address, if it is known or a copy of the notice shall be affixed on the front door or other conspicuous place of the last known residence. In addition to the affixture of such notice in the manner specified above, such notice shall also be published by affixture in a conspicuous place of the property which forms part of these proceedings so as to complete the service. Such affixture shall be deemed to be sufficient notice to the persons concerned specified in sub-rule (1)."

On a bare perusal of the aforesaid legal provision, it could be seen that in the event of refusal or evasion to receive the notice sent by Registered Post, the notice shall have to be affixed on the front door or any conspicuous place of the residence of the lessee/encroacher for whom notice is sent, as well as on the property, which forms part of the proceedings, so as to complete the service, and that such affixture shall be deemed to be sufficient notice to the persons concerned. This procedure prescribed for serving notice would have to be construed as mandatory in nature as the eviction proceedings definitely entails adverse civil consequences to the Petitioner and it cannot be gainsaid that the aforesaid statutory provision, which prescribes the manner of service of such notice, attracts the celebrated rule in Taylor -vs- Taylor that has stood the test of time and has been recognized by the Hon'ble Apex Court in various decisions including in Ramchand Keshav Adke -vs- Govind Joti Chavare (AIR 1975 SC 915), reiterating that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.

8. As already noticed in the present case, the acknowledgment card for the notice sent for the hearing on 20.06.2019 is not available and the notice sent for the hearing on 04.07.2019 has been returned as 'unclaimed', meaning thereby that the Petitioner has evaded service of notice sent through Registered Post. The First Respondent has not placed any material on record to show that the notice has been affixed thereafter on the front door or in any conspicuous place of the residence of the

Petitioner, and of the property, which forms the part of the proceedings, so as to complete the service as required under Rule 3 of the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules. As a result of such non-compliance of the aforesaid procedure for service of notice, it would follow that the impugned order dated 04.07.2019 for eviction of the Petitioner from the premises cannot be sustained and has to be set aside.

9. At the same time, it cannot also be lost sight of the fact that pursuant to the impugned order after the ordeal of prolonged litigation from the year 2000 onwards, the Second Respondent has secured return of possession of the property from the Petitioner by sealing the premises on 03.10.2019 by the First and Third Respondents. In this backdrop, Learned Senior Counsel appearing for the Petitioner fairly submits that if the impugned order of eviction is set aside and the matter is remitted for fresh adjudication, the Petitioner would promptly attend the hearings before the First Respondent and would fully co-operate for its expeditious disposal. In pursuance thereof, Learned Special Government Pleader appearing for the First Respondent, on instructions, submits that the enquiry before the First Respondent has been fixed at 11.00 a.m. on 27.11.2019. The Petitioner has filed an affidavit dated 11.11.2019 undertaking to attend the said enquiry, which shall commence on 27.11.2019 without insisting for any further notice and has agreed to abide by the time frame that may be fixed by this Court for completing the same.

10. In view of the aforesaid findings and submissions made on behalf of the parties, the impugned order dated 04.07.2019 in Se. Mu. Miscellaneous Petition No. 3/2010/Aa1 passed by the First Respondent is set aside and the matter is remitted for fresh enquiry before the First Respondent, which shall commence on 27.11.2019 and on which date, the Petitioner and the Second Respondent shall appear with their respective Counsel. The First Respondent shall ensure that there are atleast two effective hearings every week showing progress of the case. After affording full opportunity of hearing to all parties concerned, the First Respondent shall consider each of the contentions raised by them and pass reasoned orders on merits in accordance with law, uninfluenced and uninhibited by the impugned order, which has been set aside, and shall communicate the decision taken to them under written acknowledgment and file a report of such compliance before the Registrar (Judicial) of this Court by 31.12.2019. The premises shall continue to remain sealed till final orders are passed by the First Respondent in the eviction proceedings, and further action to de-seal the premises and issue consequential directions shall depend upon its outcome, and the Petitioner shall have liability to pay rent only for the

period that he is in occupation of the property.

11. The Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
I Floor, R.T.O. Salai,
Sathuvachari,
Vellore - 632 009.
2. The Tahsildar,
Purasaiwalkam Taluk,
Purasaiwalkam,
Chennai - 600 003.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.95029
+1cc to Mr.P.Sidharthan, Advocate, S.R.No. 94836
+1cc to the Special Government Pleader, S.R.No. 96182

W.P. No. 30537 of 2019

NR(CO)
GN(25/11/2019)