

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos.33727 and 33731 of 2019

and

W.M.P.Nos.34203 and 34205 of 2019

1.N.Prema Ram .. Petitioner in W.P.No.33727 of 2019
2.G.Mangilal .. Petitioner in W.P.No.33731 of 2019

..Vs..

1.Arulmighu Rathina Vinayagar,
and Durkai Amman Thirukoil,
Rep.by its Executive Officer,
22, Whites Road, Royapettah,
Chennai - 600 014.

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

.. Respondents in both Wps.

COMMON PRAYER : Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, Calling for the records of the 1st respondent in his proceedings in Na.Ka.No.02/2019 dated 27.02.2019 and his letter dated 11.11.2019 and quash the same and consequently direct the 1st respondent to consider the representations given by the petitioners to transfer the tenancy in their names.

For Petitioners : Mr.B.Ullasavelan

For R1 & R2 : Mr.M.Maharaja,
Special Government Pleader,
HR & CE.

O R D E R

These Writ Petitions have been filed seeking a Certiorarified Mandamus, Calling for the records of the 1st respondent in Na.Ka.No.02/2019 dated 27.02.2019 and letter dated 11.11.2019 and also to quash the same and consequently direct the 1st respondent to consider the representations given by the petitioners to transfer the tenancy in their names.

2. W.P.No.33727 of 2019 has been filed by N.Prema Ram and W.P.No.33731 of 2019 has been filed by G.Mangilal. Both the petitioners claimed to be sub-tenants of one Kuppammal, who was the original lessee of 965 Sq.ft., of land in No.17/18, Thiru Vi.Ka. Road, Royapettah, Chennai under the Arulmighu Rathina Vinayagar and Durkai Amman Thirukoil at Whites Road, Royapettah, Chennai.

3. Kuppammal had died about 15 years back. However, the present petitioners and another individual continued to be in occupation. The petitioner in W.P.No.33727 of 2019 is in occupation of 200 sq.ft., and he is running a tyre shop. The petitioner in W.P.No.33731 of 2019 is in occupation of 100 sq.ft., and running a Sweet/Kachori shop. The third person who is not before this Court is in occupation of 500 sq.ft., and running a tyre shop.

4. Before this Court, the petitioners have not filed any rental receipts paid either to Kuppammal or to the legal heirs of Kuppammal. They have not produced any Lease Agreement showing their right to continue in occupation. In the writ petition, they have challenged the notice dated 11.11.2019 issued by the 1st respondent namely, the Executive Officer of the Arulmighu Rathina Vinayagar Durgaiammal Thirukoil, in which it is stated that on or before 27.02.2019, the said Kuppammal and all the three tenants are directed to pay a total sum of Rs.22,75,050/- towards damages for use and occupation. This notice is under challenge before this Court. The locus of the present petitioners is seriously disputed by Mr.M.Maharaja, learned Special Government Pleader for HR and CE, who took notice on behalf of the respondents.

5. The learned counsel stated that the temple Authorities had issued notice to Kuppammal and then found that she had actually died in Puducherry about 15 years back. It is stated that these petitioners have encroached the said property and have put up shops without paying any rent or acknowledging the 1st respondent/landlord. It is also stated that shops are in bad condition and require to be renovated and then re-auctioned. It is also fairly stated by the learned Special Government Pleader that the petitioners may also participate in such re-auction.

6. On the other hand, it is the contention of the learned counsel for the petitioners that principles of natural justice have been violated in this case since, the petitioners have been issued with notice which is dated 11.11.2019 by which notice, it was stated that within 29.11.2019, the property would be taken possession by the temple authorities and within 28.11.2019, the properties must be vacated and vacant possession must be handed over. The learned counsel also stated that just about three days back the temple authorities had received a sum of Rs.2,50,000/- by way of cheque from each one of the two petitioners in the writ petition.

7. At any rate, there is already a demand for payment of Rs.22,75,050/- as damages for use and occupation and if at all the petitioners can only seek adjustment of the amount of Rs.2,50,000/- towards the amount which they are due and payable for use and occupation.

8. One another aspect pointed out by the learned Special Government Pleader is that the petitioners have filed W.P.No. 39177 of 2005 which was dismissed for non-prosecution on 28.06.2019. The only reference that the Writ Petition was filed in the year 2005 and that it was dismissed for non-prosecution in the year 2019 alone had been mentioned in the affidavit filed in support of the writ petitions. It is stated that the said writ petition was also filed for the very same relief seeking regularization of tenancy. The learned Special Government Pleader also drew attention to the reply given by the present petitioners to the notice issued by the department wherein they have stated that application to restore the said writ petition had been filed and is pending before Court. Specific details regarding the sale had been suppressed in the affidavit filed before this Court.

9. Taking into consideration the fact that the petitioners cannot claim any right either as tenants or lessees or even sub-lessees and even as sub-tenant and they have not produced any receipt of payment as rent for their occupation either to Kuppammal or to the legal heirs of Kuppammal or to the respondent temple and since there is also no existing landlord tenant relationship as between the respondent and petitioners, this Court cannot enforce any right or trust on the respondent to recognize the petitioners as tenants. The petitioners will necessarily have to vacate and they can also participate in any auction for renting out the shops by a fresh lease. Granting them that liberty alone, I am afraid I have to hold that no other relief can be granted in the present writ petitions.

10. With the above observations, these Writ Petitions stand dismissed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

11. After dictating the whole order, the learned counsel for the petitioner seeks permission of this Court to withdraw the petitions and he has also made an endorsement to that effect. In view of the endorsement made by the learned counsel for the petitioners, these Writ Petitions stand dismissed as withdrawn. No Costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

smv

To

1.The Executive Officer
Arulmighu Rathina Vinayagar,
and Durkai Amman Thirukoil,
22, Whites Road, Royapettah,
Chennai - 600 014.

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

+1cc to Mr.B.Ullasavelan , Advocate, SR.No.
+1cc to Government Pleader(HR & CE), SR.No.101234

W.P.Nos.33727 and 33731 of 2019
and

W.M.P.Nos.34203 and 34205 of 2019

NMI (CO)
CSR:11/01/2020

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