

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.25739 & 25756 of 2018

and

W.M.P.Nos.29946, 29950 & 29965 of 2018

P.Vijaya Lakshmi

...Petitioner in both W.Ps.

Vs.

1.The Secretary,
Tourism, Culture and Religious
Endowment Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Tourism, Culture and Religious
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai.

3.The Joint Commissioner,
Tourism, Culture and Religious
Endowment Department,
Dr.Balasundaram Road,
Coimbatore.

4.The Fit Person cum Executive Officer,
A/m. Ponkalamman Temple,
Palladam, Tiruppur District.

...Respondents in both W.Ps.

Prayer in W.P.No.25739 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 1st respondent in G.O.(Ms).No.166 dated 10.09.2018 confirming the order passed by the 2nd respondent in Na.Ka.No.21735/2017/M2 dated 20.01.2018 and quash the same and consequently direct the respondents to allot the land measuring an extent of 55 cents in S.F.No.332/1, Palladam Taluk and Town,

Tiruppur District to the petitioner on a fair rental basis and fix the fair rent.

Prayer in W.P.No.25756 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the notice issued by the 4th respondent dated 18.09.2018 and quash the same.

For Petitioner : Mr.V.Ragavachari
in both W.Ps. for M/s.D.R.Arun Kumar

For Respondents : Mr.M.Maharaja,
in both W.Ps. Special Government Pleader for R1 to R3
Mrs.G.Sumitra for R4

COMMON ORDER

In W.P.No.25739/2018, the petitioner is aggrieved against the order of the 1st respondent dated 10.09.2018 confirming the order of the 2nd respondent dated 21.08.2018 passed under Section 78 of the HR & CE Act seeking for eviction from the subject matter property. Consequently, the petitioner seeks for a direction to the respondents to allot the land measuring an extent of 55 cents in Survey No.332/1, Palladam Taluk and Town, Tiruppur District.

2. In W.P.No.25756 of 2018, the very same petitioner challenged the proceedings dated 18.09.2018 issued by the 4th respondent demanding a sum of Rs.4,67,064/- from the petitioner towards damage for use and occupation of the above said property.

3. Heard Mr.V.Ragavachari, learned counsel appearing for the petitioner and Mr.M.Maharaja, learned Special Government Pleader for the respondents 1 to 3.

4. It is seen that the petitioner is running a Kalyanamandapam in a property owned by her. It is further seen that adjacent to such property, another piece of land situated at Survey No.332/1 measuring an extent of 55 cents belongs to Arulmighu Ponkaliamma Temple, Palladam. The petitioner has used the said adjacent property for the purpose of parking the vehicles and also as a reception hall for the said Kalyanamandapam. The HR & CE Department initiated proceeding to vacate the petitioner from the Temple land by exercising power under Section 78 of the HR & CE Act. Consequently, an order of eviction was passed on 20.01.2018 by the 2nd respondent. Challenging the said order, the petitioner preferred a revision before the 1st respondent, who in turn rejected the same on 10.09.2018.

5. Perusal of the order of the 1st respondent would show that there is no dispute between the parties with regard to the

title of the subject matter property belonging to the said temple. In fact, it is seen that the petitioner herself in the enquiry before the authorities admitted to vacate and handover the possession within two months. However, the petitioner claims that the said property may be leased out to her on a reasonable rent, so that she can continue to utilize the said property.

6. It is seen that in pursuant to the order passed under Section 78 by the 2nd respondent confirmed by the 1st respondent, the possession of the subject matter property has already been secured from the petitioner. Thus, it is admitted that the petitioner is not in possession. Now the present dispute before this Court is focussed mainly on the demand made by the authorities towards damage for use and occupation of the petitioner in the past. According to the petitioner, the amount claimed in the impugned demand dated 18.09.2018 is not payable by her, apart from the fact that there is no break up details as to how such sum has been arrived by the authorities.

7. Since the petitioner disputes the quantum arrived by the authorities and it is also claimed by the petitioner that she was in occupation of only 1100 sq.ft., out of the 55 cents of the land and the remaining was used by the persons visiting the Kalyanamandapam to park their cars, this Court is of the view that such disputed contention on the question of liability to pay the damage for use and occupation has to be agitated before and adjudicated upon only by the competent Civil Court. Since the petitioner has already handed over possession of subject matter property to the temple, it is for the parties to work out their remedy before the competent Civil Court with regard to the claim towards damage for use and occupation as demanded in the impugned proceedings dated 18.09.2018. Granting such liberty, both the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

1.The Secretary,
Tourism, Culture and Religious Endowment Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Commissioner,
Tourism, Culture and Religious Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai.

3.The Joint Commissioner,
Tourism, Culture and Religious Endowment Department,
Dr.Balasundaram Road, Coimbatore.

4.The Fit Person cum Executive Officer,
A/m. Ponkaliasman Temple,
Palladam, Tiruppur District.

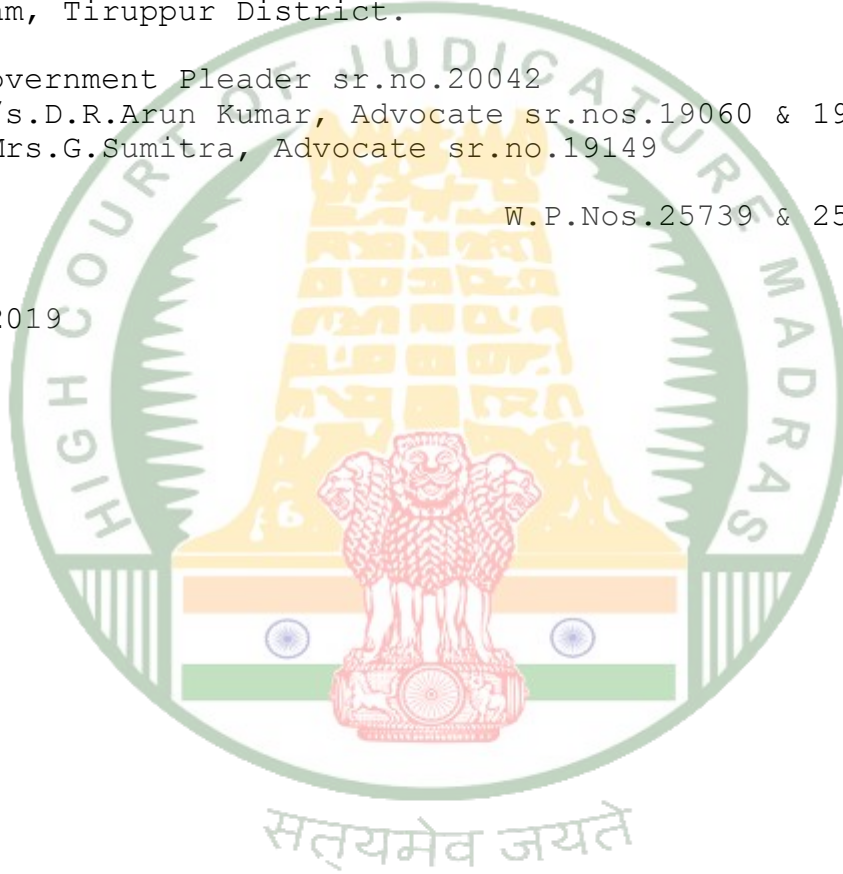
+1cc to Government Pleader sr.no.20042

+2cc to M/s.D.R.Arun Kumar, Advocate sr.nos.19060 & 19059

+2cc to Mrs.G.Sumitra, Advocate sr.no.19149

W.P.Nos.25739 & 25756 of 2018

vd(co)
nr 11/04/2019



WEB COPY