



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)NO.1260 OF 2018
and
C.M.P(MD)No.8818 of 2018

The Assistant Commissioner,
HR &CE Department,
Alagercoil,
Madurai District.

:Appellant/2nd respondent

.vs.

1.S.Muthuramalingam : Ist Respondent/Writ
Petitioner

2.The Joint Commissioner,
HR&CE Department,
Madurai. :2nd Respondent/Ist
Respondent

3.G.Vivekanandan :3rd Respondent/3rd Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
praying this Court to set aside the order passed by this Court in
W.P(MD)No.18875 of 2017, dated 27.06.2018

Prayer in WP(MD). 18875/ 2017 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a writ of
Mandamus directing the respondents 1 and 2 herein directing the 1st
and 2nd respondents herein to hand over the seized Papers, which
were taken away by them on 28.09.2017 from the premises bearing
D.No.46, North Perumal Maistry Street, Madurai, to the petitioner.

For Appellant	:Mr.M.Muthugeethayan
For Respondent-1	:Mr.P.Subburaj
For Respondent-2	:Mr.Aayiram K.Selvakumar Addl.Govt.Pleader
For Respondent-3	:Mr.J.John



JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J.]

This Writ Appeal is preferred by the temple authorities aggrieved over the direction issued by the learned Single Judge in W.P(MD)No.18875 of 2017 directing the appellant to refund Rs.10 lakhs deposited by the first respondent namely, Mr.S.Muthuramalingam.

2.Heard Mr.M.Muthugeethayan, learned counsel for the appellant, Mr.P.Subburaj, learned counsel for the first respondent, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the second respondent and Mr.J.John, learned counsel appearing for the third respondent and perused the materials placed before this Court.

3.By a common order, the revision petition filed by the original tenant Mr.M.Gurusamy and Writ Petitions filed by him challenging the cancellation of the lease and the Writ Petition filed by the sub-tenant were disposed of.

4.It is the case of the appellant that one Mr.M.Gurusamy was a tenant under the temple on a monthly rent of Rs.6,000/-. But the said Mr.M.Gurusamy sub-let the premises to one Mr.Muthuramalingam for a rent of Rs.15,000/- p.m. According to the temple, the arrears of lease amount is to the tune of Rs.51 lakhs.

5.W.P(MD)No.18875 of 2017 was filed by the said Muthuramalingam for a direction to the authorities to hand-over the seized papers which were taken away by them on 28.9.2017. It is not in dispute that during the pendency of the Writ Petition, the seized goods were directed to be returned to the sub-tenant on deposit of Rs.10 lakhs. Accordingly, the said amount was deposited and the goods were returned to the sub-tenant.

6.While disposing the cases, this Court in paragraph 22, has held as follows:

'22.Now the money to be deposited by the Writ Petitioner is available with the respondents. The temple authorities may not be aware of the ownership of the goods seized from the premises. Hence, upon satisfying the Executive Officer of the temple as to the ownership of the goods that were taken by the second respondent from the Petitioner, the second respondent is directed to pay the amount collected from the Writ Petitioner pursuant to the direction of this Court. Since the Petitioner was a sub-tenant under the main tenant without the consent of the temple authorities, the temple authorities is directed to make payment out of money which is to be collected from the Petitioner pursuant to the direction of this Court, in the connected Writ Petitions. It is open to the temple authorities to



approach this Court for further direction in this regard in case any clarification is required in the event of any unforeseen circumstances.''

7. It is urged by the learned counsel for the appellant that admittedly, the sub-tenant un-authorizedly used the property of the appellant as go-down and when the principal tenant had huge arrears of rent to his credit, it would be unjust to direct the appellant to return the amount of Rs.10 lakhs to the sub-tenant. According to the learned counsel, if the principal tenant pays the entire arrears, the authorities may not have any objection to return the amount of Rs.10 lakhs to the sub-tenant. We find force in the said contention of the learned counsel for the appellant.

8. The grievance of the appellant is that when the main tenant has not paid the arrears amount of Rs.51 lakhs, direction issued to the appellant to return Rs.10 lakhs to the sub-tenant is not sustainable.

9. Undisputably, the sub-tenant was in possession of the property and goods were seized from him. Since there is a huge outstanding from the main tenant, direction issued to the temple authorities to return Rs.10 lakhs to the sub-tenant cannot be sustained and it is liable to be set aside and accordingly set aside. It is made clear if the main tenant pays the entire arrears of Rs.51 lakhs to the temple authorities, the temple authorities shall return the amount of Rs.10 lakhs to the sub-tenant.

10. Accordingly, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AD-I)

/TRUE COPY/

Sub Assistant Registrar

To
The Joint Commissioner,
HR&CE Department, Madurai.

+1. C.C. to M/S.M.Muthugeethayan, Advocate SR.No. 54058
+1. C.C. to M/S.J.JOHN, Advocate SR.No. 54088
+1 cc to Special Government Pleader, SR.No. 45401

JUDGMENT MADE IN
W.A (MD) NO.1260 OF 2018
and
C.M.P (MD) No.8818 of 2018
14.03.2019