



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **17.12.2019**
CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)No.25981 of 2019

and

W.M.P. (MD) .Nos.22490 and 22491 of 2019

A.Mohammed Basheer

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
Department,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Mayiladuthurai,
Nagapattinam District.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Kumbakonam Town and Taluk,
Thanjavur District.

4.The Executive Officer,
Arulmigu Illupaiyadi Pillayar Temple,
Kumbakonam Town and Taluk,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the third respondent in Na.Ka.No.3796/2017-1/A7 dated 18.11.2019 and quash the same as illegal.

For Petitioner : Mr.M.P.Senthil

For R1 to R3 : Mr.VR.Shanmuganathan

Special Government Pleader

For R4 : Mr.V.Chandra Sekar

ORDER

Heard Mr.M.P.Senthil, learned counsel appearing for the petitioner, Mr.VR.Shanmuganathan, learned Special Government Pleader



appearing for the respondents 1 to 3 and Mr.V.Chandra Sekar, learned counsel appearing for the fourth respondent.

2.The petitioner has filed this writ petition challenging the impugned order dated 18.11.2019 passed in Na.Ka.No.3796/2017-1/A7 by the third respondent.

3.According to the petitioner, the property comprised in T.S.No.311 situates at Hajiya Street, 1st Ward, Kumbakonam Town and Taluk, measuring to an extent of 602 sq.ft., belongs to one Varadarajulu Naidu and he had purchased the same for a valuable sale consideration on 26.04.2006. After the said purchase, he has developed the property by putting up construction to an extent of 2400 sq.ft., after obtaining due approval from Kumbakonam Municipality. While so, the fourth respondent, who is the Executive Officer, objected his right of enjoyment stating that the suit property belongs to Arulmigu Illupaiyadi Pillayar Temple, Kumbakonam. Subsequently, the fourth respondent has filed a suit in O.S.No.414 of 2006 for bare injunction against the petitioner as well as his vendor and the said suit was decreed. The fourth respondent also filed a suit in O.S.No.910 of 1981 seeking possession of the property and the said suit was decreed in favour of the Temple which was also confirmed in appeal in A.S.No.116 of 1997 and against which, second appeal in S.A.No.385 of 1989 has been filed and the same also met with the same fate. In the mean while, the fourth respondent Temple and the third respondent approached the second respondent to initiate proceedings under Section 78 of the HR&CE Act, in order to evict the petitioner. The second respondent also had taken the matter in M.P.No.229 of 2017 and proceeding under Section 78 of the HR&CE Act, was initiated. Though the petitioner had pleaded that he is a bonafide purchaser, the order of eviction was passed by the second respondent against which, revision has been filed in R.C.No.146 of 2019, which is said to be pending. In the mean while, the third respondent had initiated further proceedings under Section 79 of the HR&CE Act, dated 18.11.2019 calling upon the petitioner to vacate the premises. Aggrieved by the said order, dated 18.11.2019, the petitioner is before this Court.

3.The learned Special Government Pleader appearing for the respondents, upon notice, submitted that the subject property admittedly belonged to the Temple and the petitioner has been treated as an encroacher. Therefore, even assuming that the petitioner is a bonafide purchaser, having purchased the same from a person, who does not have right, title or interest over the property, cannot have any right or title. As the petitioner is facing eviction proceedings, he was directed to file an affidavit accepting the title of the Temple. The petitioner also has filed an affidavit dated 07.12.2019 wherein he had unconditionally accepted the right, title and interest of the fourth respondent temple viz., Arulmigu Illupaiyadi Pillayar Temple, Kumbakonam Town and Taluk and



property. He also undertakes not to claim any title or absolute interest over the disputed property. Further, the petitioner had agreed to withdraw R.C.No.146 of 2019 pending on the file of the first respondent in the event he was accepted to be a tenant.

4.The learned counsel appearing for the fourth respondent submitted that ultimately only the first respondent, has to consider the claim of the petitioner.

5.Therefore, when the revision itself is pending before the first respondent, the petitioner can appear before the first respondent and file an affidavit in the same line as that has been filed before this Court admitting the right and title of the Temple over the disputed property. On filing of such affidavit, it is open to the Commissioner, HR&CE, to consider the case of the petitioner's claim to treat him as a tenant on such a rent that may be fixed by the Commissioner. It is also stated that the revision filed by the petitioner is listed for hearing on 20.01.2020. The petitioner is directed to file an affidavit in similar line before the Commissioner on or before 20.01.2020 enabling the Commissioner to pass an order. Status-quo as on today shall be maintained, till the disposal of the revision by the first respondent/Commissioner, HR&CE.

6.With the above directions, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

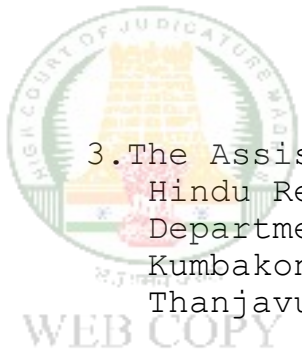
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To

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<https://hcservices.hcma.gov.in/hcservices> District.



3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
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Thanjavur District.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-105515[F] dated 18/12/2019)

+1 CC to SPL.GP (SR-105982[F] dated 19/12/2019)

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MK (22.01.2020) 4P 7C