

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.27688 of 2011

Saroja
W/o.Late Dhandapani ... Petitioner/Petitioner

Vs

- 1.The Commissioner
Hindu Religious & Charitable Endowments
Chennai-34.
- 2.The Joint Commissioner.
H.R.& C.E, Villupuram,
Villupuram District.
- 3.The Assistant Commissioner,
H.R.& C.E, Cuddalore,
Cuddalore Town.
- 4.The Executive Officer,
A/M Padaleeswarar Thirukovil,
Thirupathiripuliyur,
Cuddalore Taluk & District ... Respondents /Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified filed mandamus calling for the records of the 1st respondent in R.p.No.50/2010 D2 dated 23/11/2010 confirming the order of the 2nd respondent in M.p.No.37 of 2007 dated 02/06/2009 and quash the same and further direct the respondents to recognize the petitioner as tenant for 176 sq ft. in T.S.No.1515/1 in Thirupathiripuliyur, larence street, mission lane, opposite to flour mill which is more fully set out in Sl.No.8 of the Tender/Auction Notice of the 3rd and 4th respondent dated 14/11/2011.

For Petitioner : Mr.B.Jawahar

For Respondents: Mr.R.Venkatesh

Government Advocate for R1 to R3

Mr.T.Sudhan Raj for R4

O R D E R

The petitioner is admittedly an encroacher in the property in S.No.1515/1 belonging to Arulmighu Padaleeswarar Temple, Thirupapuliyur, Cuddalore District (Temple) as there is no valid arrangement qua the petitioner and the Temple in terms of Section 34 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act') in respect of the aforesaid property. Proceedings under Section 78 were initiated to evict him that were challenged before the Commissioner, who confirmed the order of eviction. The operative portion of the order of the Commissioner is as follows:

2.Thiru G.Jayachandran, Counsel appeared for the petitioner. M/s. T.Sudhan Raj and Basu K.Balayanantham, Counsel appeared for the second respondent. I have heard the Counsel and perused the connected records. According to the second respondent/Executive Officer, the property measuring an extent of 13500 sq.ft was originally let out to one Kothandarama Naidu. The petitioner has encroached upon an extent of 176 sq.ft of the said property and is running a Cycle repair shop. No permission was obtained by the petitioner and her predecessor from the authorities. Hence, neither the petitioner nor her predecessor could be recognized as a tenant of the respondent temple. Husband of the petitioner Dhandapani had caused the encroachment upon the said premises ten years ago and had not paid any rent. Hence, the petitioner and her husband are not the original tenants. They have entered into possession of the premises only by way of encroachment. No permission has been granted by the second respondent/temple to the petitioner for carrying upon any business. Their possession and enjoyment of the property is illegal. Hence, the impugned order passed by the joint Commissioner cannot be interfered with and it is hereby confirmed. The revision petition be and is hereby dismissed.

2.The facts recorded by the Commissioner are not in dispute and no attempt is made to defend the conclusion of the

Commissioner. Learned counsel for the petitioner would only request that as and when the property is auctioned she may also be permitted to participate in the auction.

3. The Temple confirms the position that possession of the property has been taken over as early as in 2009 and proceedings dated 30.12.2009 to this effect are placed on record. However, by virtue of an interim order of stay granted by this Court, the Temple has not been able to conduct an auction for letting out of the property.

4. The stay is vacated forthwith. Let an auction be conducted within a period of eight (8) weeks from today. The petitioner is at liberty to participate in the same, if she so desires and the proceedings conducted in accordance with law. With the aforesaid directions, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ska

To

1.The Commissioner
Hindu Religious & Charitable Endowments
Chennai-34.

2.The Joint Commissioner.
H.R.& C.E, Villupuram,
Villupuram District. सत्यमेव जयते

3.The Assistant Commissioner,
H.R.& C.E, Cuddalore,
Cuddalore Town.

4. The Executive Officer,
A/M Padaleeswarar Thirukovil,
Thirupathiripuliyur,
Cuddalore Taluk & District

W.P. No.27688 of 2011

BR(CO)
RMP(05/02/2021)