

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.01.2020
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.2487 of 2012
and
WMP No.16286 of 2018

Subramaniya Pillai

...

Petitioner

Vs

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

2. The Executive Officer,
Dharmaraja Vembuliamman Devasthanam,
Vijaya Vigneswarar Koil Street,
Choolai,
Chennai - 600 112.

..... Respondents

Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Mandamus against the
respondents directing them to execute and register the sale deed
in respect of the schedule mentioned property to and in favour
of the petitioner, within a period that may be stipulated by
this Court.

For petitioner : Mr.V.Raghupathi

For respondents : Mr.R.Venkatesan,
Govt. Advocate - HR & CE - R1
Mr.R.Mahalingam for R2

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ORDER

This writ petition has been filed for a Mandamus to direct
the respondents to execute and register a sale deed in favour of
the petitioner in respect of the property bearing House and
Ground Old Door No.93, subsequent Door No.93/2, Present door
No.102, Vijaya Vigneswarar Koil Street, Choolai, Chennai - 600
112.

2. It is the case of the petitioner that he was a tenant under the second respondent Temple and he has put up a super structure over the land, which is the subject matter of the tenancy. According to the petitioner, he is in possession of the property for more than 50 years. It is also his case that his father Govindasamy Pillai, who was the original tenant was paying the rent regularly to the Temple. But according to him, the Temple filed an Ejectment Suit in Ejt.S.No.30 of 1981 on the file of the learned III Judge, Court of Small Causes, Chennai against the petitioner as well as his father to evict them from the afore mentioned premises.

3. It is the case of the petitioner that he filed a petition in Ejectment Suit No.30 of 1981 under Section 9 of Tamil Nadu City Tenants Protection Act in MP No.505 of 1981 seeking for a direction to the Temple to sell the land for a price fixed through a Commissioner appointed by the Court. According to the petitioner in MP No.505 of 1981, the Court passed the following order on 16.08.1982 :

6. In the result, the market value of the suit land is fixed at Rs.11,740/- and the petitioner defendant is permitted to pay the market value on 34 monthly instalments at the rate of Rs.345/- p.m. commencing from 15.09.1982 and the balance on the 35th instalment without any default. In case of default in payment of amount by the tenant of any one installment, the application shall stand dismissed. After payment of the entire amount, the plaintiff will execute the sale deed in response to the suit claim at the defendant cost. There will be no order as to cost in this petition.

4. According to the petitioner, he has paid the entire amount, as directed by the Court in 35 monthly instalments into the Treasury of the Small Causes Court, Chennai, for which receipts have also been issued. According to the petitioner, the Advocate, who was representing the petitioner is dead and due to the said reason, he was unable to get the papers relating to further proceedings for the purpose of obtaining a sale deed in his name. It is also his case that he was under the impression that the Temple authorities will execute and register a sale deed in his favour in accordance with the order passed in MP No.505 of 1981 in Ejt.S.No.30 of 1981.

5. According to the petitioner to his shock and surprise, the second respondent instead of executing the sale deed has been sending notices to the petitioner fixing an increased rent at an exorbitant rate for the land without complying with the order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S.No.30 of 1981.

6. In the above circumstances, this writ petition has been filed for a Mandamus to direct the respondents to execute the sale deed in favour of the petitioner in accordance with law, as per order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S. No.30 of 1981.

7. A counter affidavit has been filed separately by both the respondents. According to them, the writ petition is not maintainable as the petitioner has not executed the order dated 16.08.1982 passed by the III Judge, Court of Small Causes, Chennai, vide order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S. No.30 of 1981 by filing an execution petition. According to them, pursuant to the amendment to the Madras City Tenants' Protection Act, 1921 which came into effect from 11.01.1996, Section 9 of the Madras City Tenants Act, 1921 is not applicable for public religious institutions. Therefore, according to them, no sale deed can be executed in favour of the petitioner.

8. It is also the case of the respondents that the petitioner miserably failed to file an execution petition to get the sale deed executed in his favour by the Court immediately after having paid the entire sale consideration to the credit of Court of Small Causes Court, Chennai. Since, the petitioner has failed to get the sale deed executed before the amending Act came into force in the year 1996, he cannot get a sale deed executed now as public religious institutions have now been exempted from the applicability of Section 9 of the Madras City Tenants' Protection Act, 1921 with effect from 11.01.1996.

9. It is also the case of the second respondent Temple that the instalment amounts were not directly paid to the Temple by the petitioner but was paid to the credit of the Small Causes Court, Chennai. According to the Temple, if it was paid directly to them, within the time stipulated by the Small Causes Court by its order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S. No.30 of 1981, they would have executed the sale deed in petitioner's favour. According to the Temple, the petitioner has slept for 26 years and 5 months and only now the petitioner has invented unbelievable stories by invoking Article 226 of the Constitution of India that too when the temple has demanded enhanced rent from the petitioner. According to them, the petitioner has approached this Court after a lapse of 18 years after the amendment made to Section 9 of the Madras City Tenants Protection Act, came into force on 11.01.1996. It is also the case of the Temple that the rent payable by the petitioner has been subsequently revised and as on date of the filing of the counter i.e. on 27.08.2012, a sum of Rs.83,968/- is due and payable by the petitioner to the Temple towards arrears of rent.

10. Heard Mr.V.Raghupathi, learned counsel for the petitioner, Mr.R.Venkatesan, learned Government Advocate for HR & CE and Mr.R.Mahalingam, learned counsel for the second respondent.

Discussion :

11. It is not in dispute that the learned III Judge, Court of Small Causes passed the following order on 16.08.1982 in MP No.505 of 1981 in Ejt. S. No.30 of 1981 in a petition filed by the petitioner under Section 9 of the Madras City Tenants Protection Act, 1921.

6. In the result, the market value of the suit land is fixed at Rs.11,740/- and the petitioner defendant is permitted to pay the market value on 34 monthly instalments at the rate of Rs.345/- p.m. commencing from 15.09.1982 and the balance on the 35th instalment without any default. In case of default in payment of amount by the tenant of any one installment, the application shall stand dismissed. After payment of the entire amount, the plaintiff will execute the sale deed in response to the suit claim at the defendant cost. There will be no order as to cost in this petition.

12. It is also not in dispute that the petitioner has paid the amount to the credit of the Court of Small Causes, Chennai in compliance with the aforesaid order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S. No.30 of 1981. However, the petitioner has not filed any execution petition to execute the order passed by the Small Causes Court, Chennai in MP No.505 of 1981. The order was passed on 16.08.1982. There is no explanation given in the affidavit filed in support of the writ petition, the reasons for the inordinate delay of almost 26 years and 5 months from the date of the order dated 16.08.1982 for not filing the Execution Petition. Excepting for stating that the petitioner's Advocate Mr.P.Devadas died and that he was unable to get the papers relating to further proceedings pertaining to Ejt. S No.30 of 1981, no other reason has been given by the petitioner. No dates have been mentioned with regard to the death of the petitioner's Advocate P.Devadass as well as no dates have been mentioned with regard to the communications sent by the petitioner to the Temple requesting them to execute the sale deed in terms of the order dated 16.08.1982 passed in MP No.505 of 1981. Without filing an Execution Petition, the petitioner has directly approached this Court by way of this writ petition under Article 226 of the Constitution of India, without giving any reasons for not filing the execution petition to execute the order passed in Mp No.505 of 1981 for obtaining a sale deed in his favour from the Court.

13. The Madras City Tenants Protection Act, 1921 was amended in the year 1994 and the amendment came into force on 11.01.1996. Section 2 of the Madras City Tenants' Protection (Amendment) Act, 1996 reads as follows :

Certain pending proceedings to abate : (3) Every proceeding instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any Court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, in so far as the proceeding relates to any matter falling within the scope of the principal Act, as amended by this Act, in respect of such land, abate, and all rights and privileges which may have accrued to that tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and determine and shall not be enforceable :

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date.

14. As seen from the aforementioned amendment to the Act, it is clear that Section 9 of the Madras City Tenants' Protection Act, 1994 is no more applicable to lands owned by Religious Institutions, belonging to Hindu, Muslim, Christian or other religions and pending before any Court or other authority with effect from 11.01.1996.

15. The learned counsel for the petitioner drew the attention of this Court to the proviso contained in the said amendment and submitted that since the payments have been fully made in compliance with order dated 16.08.1982 in MP No.505 of 1981 in Ejt. S. No.30 of 1981, the petitioner has satisfied in full the conditions imposed by the Court. He further contended that the term "satisfied in full" found in the proviso will mean only the payments and hence the proviso will get attracted and therefore the petitioner according to him, is now entitled for a sale deed in his favour in terms of the order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S.No.30 of 1981.

16. However, Section 9 (3) (a) of the Madras City Tenants' Protection Act, 1921 reads as follows :

(3) (a) On payment of the price fixed under clause (b) of sub-section (1), the Court shall pass an

order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

17. Section 9 (3) (a) of the Madras City Tenants Protection Act', 1921 makes it clear that the Court will have to record the full satisfaction of the payments made by the petitioner towards purchase of land pursuant to the order passed under Section 9 of the Madras City Tenants' Protection Act, 1921.

18. In the case on hand, the Court has not recorded that the petitioner has paid the payments as per the order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S. No.30 of 1981. Without recording full satisfaction by the Court, the petitioner cannot rely upon the proviso to the amendment, which came into force on 11.01.1996 for the purpose of getting a sale deed executed in his favour. Unless and until full satisfaction is recorded by the Court, the term "satisfied in full" found in the proviso to the amendment which came into force on 11.01.1996 will not enure to the benefit of the petitioner.

19. Admittedly, the petitioner has approached this Court under Article 226 of Constitution of India to execute the order dated 16.08.1982 passed in MP No.505 of 1981 in Ejt. S. No.30 of 1981 after a lapse of more than 26 years. No explanation whatsoever has been given in the affidavit filed in support of the petition for this enormous delay. Even for the execution of a judgment and decree, the time limit prescribed under the Limitation Act is 12 years. The petitioner, who is barred from filing the Execution Petition under law without giving any explanation for the enormous delay has filed this writ petition under Article 226 of the Constitution of India, which in the considered view of this Court is not maintainable. Further, the order dated 16.08.1982 passed by the Small Causes Court in MP No.505 of 1981 in Ejt. S. No.30 of 1981 can be executed only by an execution petition and not through a writ petition filed under Article 226 of the Constitution of India. Hence, this writ petition is not maintainable not alone on the ground that the claim of the petitioner is hopelessly barred by the law of limitation but also on the ground that a writ petition cannot be filed to execute an order passed under Section 9 of the Madras City Tenants Protection Act.

20. For the foregoing reasons, there is absolutely no merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

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To

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

2. The Executive Officer,
Dharmaraja Vembuliamman Devasthanam,
Vijaya Vigneswarar Koil Street,
Choolai,
Chennai - 600 112.

+1cc to Mr.R.Mahalingam, Advocate, SR.No.6592.

+2cc to Mr.V.Raghupathi, Advocate, SR.No.6633.

LN(CO)
CSR:25.02.2020

W.P. No.2487 of 2012

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