

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.9906 of 2020  
and  
WMP Nos.12039 and 12041 of 2020

A.Kamalakannan,  
Son of the late Annamalai

..Petitioner

Vs

1. The Commissioner,  
H.R and C.E. Department,  
Nungambakkam High Road,  
Chennai -600 034.
2. The Joint Commissioner,  
H.R and C.E. Department,  
Villupuram District-605 602.
3. The Assistant Commissioner,  
H.R and C.E. Department,  
Villupuram District-605 602.
4. The Manager,  
Myilam Bommapuram Adheenam Srimut Sivagnana  
Balaya Swamigal Thirumadam Myilam  
Boomayapalayam, Villupuram District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari call for the records pertaining to the issue of the order in R.P.No.108/2012 D2 dated 30.12.2019 duly passed by Commissioner H.R and C.E Department Administration Department, Nungambakkam, Chennai 600 034 in confirming the order passed by the Joint Commissioner H.R and C.E Department Villupuram District 605 602, the second respondent herein directing the petitioner's eviction and quash the same and direct the respondents to regularize the petitioner's tenancy and collect the fair rent as per law by appointing a committee for such fixation.

For Petitioner : Mr.D.Ashok Kumar  
For Respondents : Mr.M.Karthikeyan,  
Special Government Pleader  
for R1 to R3  
Mr.T.S.Baskaran for R4

O R D E R

The Mailam Bommapuram Adeenam Srimath Sivagnana Balaiya Swamigal Thirumadam, Mailam and Bommaiypalayam/R4 (hereinafter referred to either as 'Math' or 'R4') owns 28.01 acres of lands. The entire extent appears to have leased out to one Ganesa Iyer. That apart, the Central Archaeological Department have declared the area as 'protected', to be deployed only for agriculture. On account of paucity of water, the lessee does not appear to have utilised the land for agriculture and as such hundreds of encroachments have sprung up therein. The petitioner is, admittedly, one such encroacher. The petitioner, who claims to be an ex-service man has encroached on 6.25 cents of the land along with his mother, who was maintaining cows. They have put up a super structure therein. Attempts to regularise the construction are stated to have been made and electricity and water connections obtained. The petitioner has been in occupation of the land from 1970, claiming to have purchased the same from one of the original encroachers by way of private sale. That he is an encroacher is not in dispute insofar as even in the affidavit filed in support of the Writ Petition, the petitioner only anticipates regularisation of the occupation therein at a later date, no such event having transpired till date.

2. Ganesa Iyer along with the Math filed O.S.No.677 of 1981 on the file of the District Munsif, Kancheepuram seeking eviction of the petitioner. The Math was P1 and Ganesa Iyer, the lease holder, P2. Ganesa Iyer sought possession of the 6.25 cents occupied by the petitioner and compensation for encroachment pending possession. On 28.09.1992, the suit was decreed and a compromise entered into between the parties that provided for payment of a sum of Rs.7/- per month as rent and enhancement thereof as per the Rent Control Act on completion of every three years. If the monthly rent was not paid for three consecutive months, Plaintiffs were entitled to take the vacant possession as per decree. The suit property, i.e., 6.25 cents encroached upon by the petitioner was to be used only as a residence. All rules and regulations imposed by the Archaeological Department were to be scrupulously adhered to.

According to the respondents, R1 to R3, the Commissioner and the officials of the HR & CE Department/official respondents and the Math/R4, the petitioner has not been paying the rent and has violated the terms of compromise, since the super structure is being utilised for commercial purposes.

3. According to the petitioner, he has been remitting property tax, electricity charges and all other statutory levies till date. R4 has not revised the rent and no Committee had been formed for fixation of rent. Hence, in the absence of a valid demand of enhanced rent, he cannot be held to be a defaulter.

4. The Math filed W.P.No.1517 of 1994, wherein the petitioner was not arrayed as a respondent and in terms of which the Math initiated proceedings for eviction of all encroachers. Since the petitioner was not arrayed as a party in that Writ Petition, proceedings for eviction were challenged by him in W.P.No.43027 of 2002. The said Writ Petition came to be disposed on 16.04.2014, wherein the Court noted the terms of compromise between the parties and thus concluded that a comprehensive enquiry would be necessary before pressing into operation order dated 20.11.2002 calling upon the petitioner to vacate the premises in question. Hence, the HR & CE Department was granted liberty to issue a fresh show cause notice to the petitioner and proceed in accordance with law. Pursuant thereto, proceedings had again been initiated by the Math that claimed that the compromise decree had been violated. The petitioner responded to the same objecting to proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act').

5. The objections were multifaceted. Firstly, he claimed that the terms of compromise still bound the parties and he was a tenant recognised under compromise decree passed in O.S.No.677 of 1981. Secondly, he stated that no fair rent has been fixed and neither had a Committee been constituted for enhancement and it was for this purpose that he had been unable to tender the rents. He had, according to him, tendered the rents as per his own calculation which they declined to receive.

6. Notwithstanding his objections and his insistence that he had abided by the terms of compromise, an order came to be passed by R2 holding him to be an encroacher in terms of Section

78 of the Act. As against the order of R2, a Revision Petition came to be filed before R1/ Commissioner, wherein the petitioner reiterated his objections to the proceedings for eviction. He also pointed out the difference in computation of the rental arrears in several communications issued by the Math and the official respondents. The Math had claimed arrears of a sum of Rs.8,22,450/-, whereas the Joint Commissioner had raised a demand of Rs.3,50,000/- only. Thus there were a clear discrepancy in the calculation of the amounts and unless a proper enquiry was conducted and all statements and details pertaining to fixation of rent were supplied to him, the proceedings themselves stand vitiated as being contrary to law and bereft of material particulars.

7. The Commissioner however confirmed the order of eviction in R.P.No.108 of 2018 dated 30.12.2019, as against which, the present Writ Petition has been filed.

8. Certain admitted facts are necessary to be appreciated in this matter and a perusal of the impugned order, wherein the petitioner has been fully heard, would reveal these facts. Firstly, the land in question admittedly stands in the name of the Math and the petitioner does not dispute the ownership of the Math in this regard. Admittedly, the petitioner has purchased the property in question from a person who was himself an encroacher. There is no documentation that the petitioner is able to produce that establishes or entitles his possession of the land, save the terms of compromise passed in O.S.No.677 of 1981 dated 28.09.1992. The basis of the petitioner's claim for continued possession is thus the terms of compromise alone.

9. Thus, all that one has to see to decide on the question of possession and continued occupation is whether the petitioner has adhered to the terms of compromise. At the risk of repetition, the terms stipulate the following three conditions:

- i) Payment of monthly rent of Rs.7./- per month to be enhanced every three years as per the Rent Control Act.
- ii) Failure to remit the rent continuously for three months would disentitle the petitioner from possession and
- iii) The property in question was to be utilised only as a residence.

10. Admittedly, the petitioner has not been remitting the rents for a very long time. However, certain disputes are raised by him on the quantification of the rents insofar as, according to him, there has been no fixation of rent in proper manner and his offer to pay rent at the prevailing rates have been rejected by the Math. Then, there remains the question of utilisation of the property itself. Though the terms specifically stipulate that the property was to be used only as a residence, there is no dispute on the question that the petitioner has been exploiting the property commercially and this admitted violation would suffice to confirm the impugned order, that records the written explanation of the petitioner dated 25.09.2017 wherein he admits that the suit property has been sub-let for commercial purposes, i.e., two shops and nine rooms with wash room attached.

11. In the light of the above, the impugned order insofar as directs eviction and handing over of the property to the Math is confirmed. As far as fixation of rent is concerned, no material has been placed before me to establish that the petitioner has been put to notice prior to enhancement and fixation of rent. Thus, while proceedings for eviction of the petitioner will be initiated forthwith, the respondents will communicate to the petitioner the basis for fixation of rent as well as the details of the arrears and action to recover the same from the petitioner will be initiated in accordance with law, by way of a separate proceeding.

12. This Writ Petition is dismissed with the above directions. No costs.

Sd/-  
सत्यमेव जयते

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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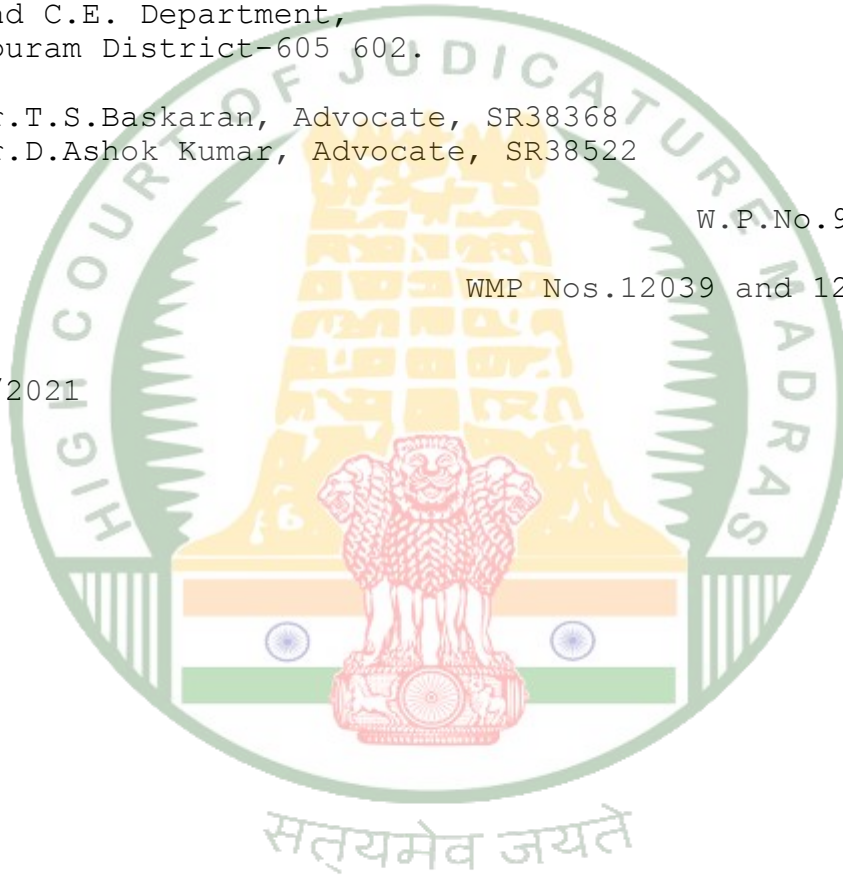
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+1cc to Mr.T.S.Baskaran, Advocate, SR38368  
+1cc to Mr.D.Ashok Kumar, Advocate, SR38522

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CO (NMI)  
BDL/18/01/2021



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