



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.9417 of 2020

and W.M.P. (MD)No.8544 of 2020

P.Pitchai Mani

... Petitioner

Vs.

1.The Commissioner,
Hindu Religion & Charitable Endowment,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religion & Charitable Endowment,
Madurai - 625 001.

3.The Assistant Commissioner,
Office of the Assistant Commissioner,
Hindu Religion & Charitable Endowment,
Madurai - 625 001.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in his proceedings in Na Ka No.4573/2013-4 B1 dated 27.07.2020 and quash the same and permit the petitioner to continue the business in Shop No.15, Thepam Therku Old Building, Perumal Teppakulam South Zone, Town Hall Road, Madurai - 625 001 within the stipulated period by this Court.

For Petitioner : Mr.H.Velavadhas

For Respondents : Mr.K.P.Narayana Kumar,
Special Government Pleader

O R D E R

The petitioner challenges the impugned eviction notice dated 27.07.2020 issued by the Assistant Commissioner, Hindu Religion & Charitable Endowment, Madurai/third respondent.

2.The petitioner's counsel contends that when he suffered an eviction order at the hands of the Joint Commissioner, the petitioner filed R.P.No.228 of 2016 before the Commissioner, Hindu Religion & Charitable Endowment, Chennai. The Commissioner by order dated 09.09.2016 disposed of the revision petition in favour of the petitioner by putting him on terms. Though the petitioner has filed a review petition before the Government, he has been careful enough to comply with the conditions imposed in the revision petition by the Commissioner. According to him, he is not in arrears and that therefore, the impugned order deserves to be set aside.



3. Though I was swayed by the said submission of the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents points out that the writ petition suffers from a fundamental defect. The petitioner claims to be a tenant under Arulmigu Koodal Alagar Perumal Temple. But the temple in question has not been made as party to the proceedings. I therefore sustain his objection that the writ petition deserves to be dismissed on the ground of non-joinder of necessary party.

4. More than anything else, as rightly pointed by the learned Special Government Pleader, the issue is not landlord-tenant dispute, it is something different. He draws my attention to the fact that the Hon'ble Division Bench of this Court had taken up the cause of protecting the temple tank of Arulmigu Koodal Alagar Perumal Temple by way of public interest litigation in W.P.(MD) No.1451 of 2011 and has been issuing continuing mandamus to the authorities for removing encroachments and for protecting the Theppakulam. He points out that as on date the petitioner is not having any subsisting lease. He should therefore be considered as a statutory encroacher. More than anything else, in view of the mandamus issued by the Hon'ble Division Bench, the beauty of the Theppakulam has to be protected. On account of the location of scores of shops right on the bund of the Theppakulam, there has been flowing of sewerage water into the tank, thereby causing pollution. He would also point out that because of the location of the shops adjacent to each other on all the four sides, even the Theppakulam has not been visible. That is why the Hon'ble Division Bench had directed removal of encroachments. He draws my attention to the order of the Hon'ble Division Bench dated 13.03.2020 in W.P.(MD)Nos.5060 of 2020 and etc., batch. In fact both the Hon'ble Division Benches have dismissed identically placed occupants. I am squarely bound by the aforesaid orders passed by the Hon'ble Division Bench. Therefore, I am not in a position to interfere with the order impugned in this writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



Ias

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Commissioner,
Hindu Religion & Charitable Endowment,
Chennai - 600 034.
- 2.The Joint Commissioner,
Hindu Religion & Charitable Endowment,
Madurai - 625 001.
- 3.The Assistant Commissioner,
Office of the Assistant Commissioner,
Hindu Religion & Charitable Endowment,
Madurai - 625 001.

+1 CC to SGP (SR-14403[F] dated 19/08/2020)

W.P. (MD) No. 9417 of 2020
18.08.2020

__KM (27.08.2020) 3P 5C