



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.9584 of 2020

and

W.M.P. (MD)No.8638 of 2020

M.Vijaya Kumar

... Petitioner

Vs.

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

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

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

4.The Assistant Commissioner/
Executive Officer,
Arulmigu Koodal Alagar Temple,
Madurai-625 001.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the third respondent in his proceedings in Na.Ka.No.2457/2015-4 B1, dated 27.07.2020 and quash the same and permit the petitioner to continue the business in Shop No.5, Perumal Teppakulam East, Town Hall Road, Madurai-625 001.

For Petitioner : Mr.H.Velavadhas

For Respondents : Mr.K.P.Narayanakumar
Special Government Pleader for R.1 to R.3

: Mr.S.Manohar
Standing Counsel for R.4



ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.)**

The petitioner claims to be the present licensee of shop No.5, Perumal Theppakulam East, Town Hall Road, Madurai and he admits that the space/place, on which the said shop is located, belongs to Arulmigu Koodal Alagar Thirukovil (temple) at Madurai. According to the petitioner, the said shop is occupying an area admeasuring to an extent of 107 sqft, having tin sheet roof and side walls and he claims to be a licensee for more than 31 years and also paying the monthly rent fixed in terms of G.O.Ms.No.353, Commercial Taxes and Registration Department, dated 04.06.1999 and G.O.Ms.No.456 Commercial Taxes and Registration Department, dated 09.11.2020.

2. The learned Counsel appearing for the petitioner would submit that the second respondent vide proceedings dated 12.11.2016, in Na.Ka.No.7196/2015/E1, has passed the order against the main licensee viz., N.Veeraiah as well as to the petitioner, who is the sub-licensee, with regard to the eviction and passed a detailed order in and by which, the main licensee as well as sub-licensee were granted time for a period of 30 days, to hand over the possession of the space/place as well as the shop in question failing which, appropriate action will be taken under Section 81(G) of the Hindu Religious and Charitable Endowment Act (Tamil Nadu Act 22/1959) as amended by Act 39 of 1996.

3. The petitioner and other similarly placed persons had filed appeals in A.P.Nos.42 to 141/2016. D2, on the file of the first respondent and vide common order dated 25.04.2017, all the appeals came to be dismissed. It is stated by the petitioner that no further challenge has been made to the said order in the form of revision to the Government and it has become final.

4. The learned Counsel for the petitioner would submit that as consequence of the proceedings/order of the second respondent, dated 12.11.2016, the third respondent has issued the impugned notice dated 27.07.2020, calling upon the petitioner to evict/deliver the vacant and peaceful possession of the area along with the shop in question, on or before 18.08.2020.

5. A primordial submission made by the learned Counsel appearing for the petitioner is that the petitioner alone is targeted and in all fairness, the third respondent would have waited till the disposal of the revision by the Government and the petitioner is not in default of any lease or licence fee and eking out his livelihood by running the shop in question and therefore, prays for interference.



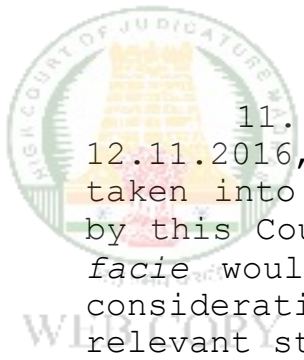
6. Mr.K.P.Narayanakumar, learned Special Government Pleader, accepts notice on behalf of the respondents 1 to 3 and Mr.S.Manohar, learned Standing Counsel, accepts notice on behalf of the fourth respondent.

7. The learned Counsel appearing for the respondents 1 to 3 would submit that the impugned order of the third respondent, which is the subject matter of challenge, is only the consequential order in terms of the order of the second respondent, dated 12.11.2016 and the challenge made by the petitioner in the form of appeal before the first respondent is also ended in failure and it is open to the third respondent to proceed further for the purpose of complying with the order passed by the superior officer viz., the second respondent.

8. It is also brought to the knowledge of this Court by Mr.K.P.Narayanakumar, learned Special Government Pleader appearing for the respondents 1 to 3 that similar challenge has been made by some of the licensees/lessees in W.P.(MD)Nos.5338 and 5339 of 2020 [***Rajamani Vs. the Government of Tamil Nadu, represented by its Principal Secretary, Tourism, Culture and Charitable Department, Fort St.George, Chennai-600 009 and five others***] as well as in W.P. (MD)Nos.5060 of 2020 etc., batch cases [***T.Balu Vs. the Government of Tamil Nadu, represented by its Principal Secretary, Tourism, Culture and Charitable Department, Fort St.George, Chennai- 600 009***] and the same also came to be dismissed on 13.03.2020 and the case of the petitioner is no way different from that of the petitioners in the above cited writ petitions and hence prays for dismissal of writ petition with exemplary costs.

9. The learned Standing Counsel appearing for the fourth respondent would submit that admittedly the petitioner is the sub-licensee and the license was given only to put push-cart, whereas a permanent structure in the form of side walls have been put up and it is hiding and spoiling the beauty of the century old temple tank and in compliance of the various orders passed by this Court, especially the order dated 05.11.2013 made in W.P(MD)No.1451 of 2011, action has been taken and in compliance of the order/proceedings of the second respondent, dated 12.11.2016, the third respondent has passed the consequential impugned proceedings, dated 27.07.2020 and unless the impugned order is set aside in a manner known to law, it is not open to the petitioner to challenge the incidental/consequential proceedings and hence, prays for dismissal of the writ petition.

10. This Court has carefully considered the rival submissions and also gone through the order of the second respondent, dated 12.11.2016 as well as the impugned proceedings/order of the third respondent dated 27.07.2020.



11. A perusal of the order of the second respondent, dated 12.11.2016, would disclose that the entire factual aspects have been taken into consideration as well as various orders/directions given by this Court from time to time in various litigations and it *prima facie* would disclose that the order has been passed after clear consideration and appraisal of the relevant facts and also the relevant statutory provisions.

12. It is pertinent to point out at this juncture that the petitioner made unsuccessful challenge to the said order in the form of appeal before the first respondent, which is also dismissed. As rightly pointed out by the learned Special Government Pleader appearing for the respondents 1 to 3 and the learned Standing Counsel appearing for the fourth respondent, it is open to the third respondent to proceed further in compliance of the order passed by the superior authority, viz., the second respondent.

13. It is also not in serious dispute that the petitioner is only sub-licensee and the main licensee viz., Mr.N.Veeraiah had not been arrayed as respondent in this matter, as to support the case/cause of the writ petitioner.

14. The petitioner cannot have impression that since he is a sub-licensee, he is having a perpetual right in the property for ever and other looking fact is that he is not a main licensee and further also appears that the main licensee failed to comply with the terms and conditions of the allotment and being a sub-licensee, he is not having any better right and title than that of the main licensee viz., Mr.N.Veeraiah.

15. This Court, on thorough consideration of the materials placed and careful analysis of the relevant facts and circumstances, is of the view that there is no merit in this Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently the connected Writ Miscellaneous Petition is also dismissed.

Sd/-

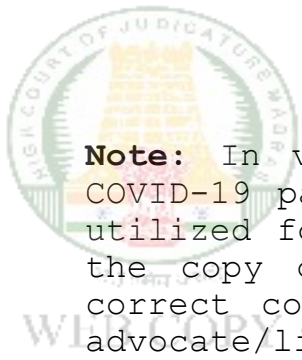
Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

SSL



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,
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- 2.The Joint Commissioner,
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- 3.The Assistant Commissioner,
Office of the Assistant Commissioner,
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Madurai-625 001.
- 4.The Assistant Commissioner/
Executive Officer,
Arulmigu Koodal Alagar Temple,
Madurai-625 001.

+1 CC to M/s.GP (SR-14392[F] dated 19/08/2020)

+1 CC to M/s.S. MANOHAR, Advocate (SR-14365[F] dated 19/08/2020)

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and
W.M.P. (MD)No.8638 of 2020
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AP(01/09/2020) 5P 7C