



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2020

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).No.18498 of 2020
and W.M.P.(MD).No.15472 of 2020

Ramachandran

.. Petitioner

Vs.

1.The Commissioner,
HR & CE Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Trichy Division,
Theppakula Street,
Neelagirishwarar Thoppu, Thiruvanaikaval,
Trichy District.

3.The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Trichy Division, Trichy District.

4.The Executive Officer,
A/m. Kasi Viswanathar Swamy Temple,
Sobanapuram, Thuraiyur Taluk,
Trichy District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Mandamus forbearing the respondents from evicting the petitioner from his room situated in S.F.No.746/4 of Sopanapuram Village, Thuraiyur Taluk, Trichy District, till the disposal of appeal before 1st respondent.

For Petitioner : Mr.N.Madhavagovindan

For Respondents : Mr.K.P.Narayana Kumar for R1 to R3
Special Government Pleader

Mr.V.Chandrasekar, for R4
Standing Counsel



ORDER

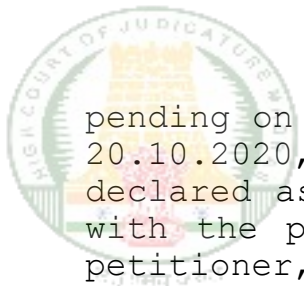
This writ petition has been filed for a Mandamus to forbear the respondent from evicting the petitioner from his shop situated in S.F.No.746/4 of Sopanapuram Village, Thuraiyur Taluk, Trichy District, pending disposal of the appeal filed by the petitioner before the first respondent.

2.Heard Mr.N.Madhavagovindan, learned counsel for the petitioner, Mr.K.P.Narayana Kumar, learned Special Government Pleader, who accepts notice on behalf of the respondents 1 to 3 and Mr.V.Chandrasekar, learned Standing Counsel who accepts notice on behalf of the fourth respondent.

3.By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4.It is the case of the petitioner that an order of eviction dated 20.10.2020 has been passed by the second respondent against his father, who died as early as on 27.10.2015. According to the petitioner, since his father, who was earlier the tenant with the fourth respondent temple, having died even before the date of the order i.e., 20.10.2020, passed by the second respondent, the said order is nullity. It is also the case of the petitioner that aggrieved by the order dated 20.10.2020, passed by the second respondent in M.P.No.90 of 2020 against his father, the petitioner has preferred a statutory appeal before the first respondent on 04.12.2020, which is still pending. However, it is the case of the petitioner that the respondents are attempting to disposses the petitioner, despite the pendency of the statutory appeal. In such circumstances, he has sought for a Mandamus to forbear the respondents from evicting him, pending disposal of the statutory appeal.

5.The learned counsel for the petitioner drew the attention of this court to the order dated 20.10.2020, passed by the second respondent against the petitioner's father, who died on 27.10.2015, as seen from the death certificate filed in the typed set of papers filed in support of this writ petition. Since the petitioner's father died on 27.10.2015 itself, the order dated 20.10.2020, passed by the second respondent evicting the petitioner's father is a nullity. As seen from the order of eviction dated 20.10.2020, passed by the second respondent under Section 80 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, admittedly, no notice has been given to the petitioner, who is the son of Krishna kumar, the tenant of the fourth respondent temple. The petitioner has also filed a statutory appeal aggrieved by the order dated 20.10.2020, passed by the second respondent in M.P.No.90 of 2020, which is



pending on the file of the first respondent. Since, the order dated 20.10.2020, passed by the second respondent in M.P.No.90 of 2020 is declared as nullity by this Court, the respondents cannot interfere with the peaceful possession and enjoyment of the property by the petitioner, who is admittedly the son of the deceased Krishna Kumar.

WEB COPY

6. For the foregoing reasons, even though the prayer sought for in this writ petition is only a restricted prayer namely to forbear the respondents from evicting the petitioner from his shop situated in S.F.No.746/4 Sopanapuram Village, Thuraiyur Taluk, Trichy District, this Court after giving due consideration to the settled position of law that an order passed against a dead persons is nullity, is constrained to issue the following directions, exercising the power under Article 226 of the Constitution of India.

a) The order dated 20.10.2020, passed by the second respondent in M.P.No.90 of 2020, under Section 80 of the Hindu Religious and Charitable Endowments Act, is hereby quashed and the matter remanded back to the second respondent for fresh consideration on merits and in accordance with law and after giving adequate opportunity to the petitioner to place all contentions available to him under law and also by granting him the right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this order.

b) Till the disposal of the proceedings by the second respondent as per this Court's order, the respondents are restrained by an order of injunction from interfering with the peaceful possession and enjoyment of the petitioner's shop situated in S.F.No.746/4 of Sopanapuram Village, Thuraiyur Taluk, Trichy District.

c) The petitioner shall withdraw the statutory appeal filed by him, aggrieved by the order dated 20.10.2020, passed by the second respondent in M.P.No.90 of 2020, within one week from the date of receipt of a copy of this order.

7. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

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,
HR & CE Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Trichy Division,
Theppakula Street,
Neelagirishwarar Thoppu, Thiruvanaikaval,
Trichy District.

3.The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Trichy Division, Trichy District.

+1 CC to M/s.N.MADHAVAGOVINDAN, Advocate
(SR-25917[F] dated 17/12/2020)

+1 CC to SGP (SR-26227[F] dated 18/12/2020)

W.P (MD) .No.18498 of 2020

16.12.2020

MK (CO)

NR (30/12/2020) 4P : 6C