



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.18892 of 2020

and W.M.P. (MD) No.15827 of 2020
(Through Video Conference)

N.Selvarajan

... Petitioner

Vs

1.The Commissioner,
Hindu Religious & Charitable
Endowments Department,
Nungambakkam, Chennai.

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

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to consider the Appeal filed before him as A.P.R.C.No.52256 of 2020 dated Nil within a stipulated period and that thereby directing the second respondent to de-seal the tenanted demised premises of the third respondent situated in Survey No.746/4, Sobanapuram, Thoraiyur Taluk, Trichy District.

For Petitioner

For RR 1 to 3

For R4

: Mr.S.Madhavan

: Mr. R.Murugaraj,
Government Advocate

: Mr.V.Chandrasekar,
Standing counsel



O R D E R

This writ petition has been filed for a Mandamus to direct the first respondent to consider the appeal filed by him in A.P.R.C.No.52256 of 2020 dated Nil within a stipulated period to be fixed by this Court and for a consequential direction to the second respondent to de-seal the tenanted demised premises of the third respondent situated in Survey No.746/4, Sobanapuram, Thoraiyur Taluk, Trichy District.

2. Mr.R.Murugaraj, learned Government Advocate accepts notice for the respondents 1 to 3 and Mr.V.Chandrasekar, learned standing counsel accepts notice for the fourth respondent. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

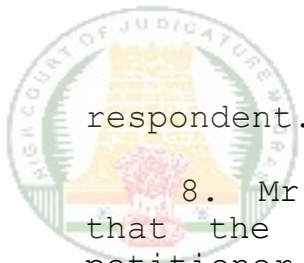
3. It is the case of the petitioner that he is a tenant under the fourth respondent Temple and he has been paying the rent regularly without committing any default. It is the further case of the petitioner that the second respondent initiated proceedings against him under Section 80 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter referred to as T.N. H.R. & C.E. Act) on the ground that the petitioner's property is marring the ambience of the subject Temple namely Kasi Viswanatha Swamy Temple.

4. An order dated 27.10.2020 was passed by the second respondent in M.P.No.91 of 2020 cancelling the lease granted in favour of the petitioner on the ground that the petitioner's property mars the ambience of the subject Temple. Aggrieved by the same, the petitioner has preferred a statutory appeal under Section 81 of the TN HR & CE Act before the first respondent in A.P.R.C.No.52256 of 2020.

5. However, on 02.12.2020, the third respondent has sealed the premises of the petitioner. It is the contention of the petitioner that without authority under law, the premises of the petitioner has been sealed when the petitioner has already preferred the statutory appeal under Section 81 of the TN HR & CE Act.

6. Learned counsel for the petitioner drew the attention of this Court to section 81(5) of the TN HR & CE Act and would submit that when the statutory appeal has been preferred, aggrieved by the order dated 27.10.2020 passed by the second respondent, under Section 80 of the Act, the third respondent does not have the power to take possession of the petitioner's property. According to him, the sealing of the petitioner's premises on 02.12.2020 by the third respondent is arbitrary and illegal.

7. Heard Mr.S.Madhavan, learned counsel for the petitioner, Mr.R.Murugaraj, learned Government Advocate for the respondents 1 to 3 and Mr.V.Chandrasekar, learned standing counsel for the fourth respondent.



respondent.

8. Mr.V.Chandrasekar, learned standing counsel would submit that the present writ petition is not maintainable since the petitioner will have to approach the first respondent under section 81(2) of the TN HR & CE Act, if he seeks to obtain stay of the order dated 27.10.2020 passed by the second respondent under Section 80 of the TN HR & CE Act. Since there was no stay of the order dated 27.10.2020 passed by the second respondent, the Assistant Commissioner, viz. the third respondent herein has sealed the premises of the petitioner and has taken possession of the same on 02.12.2020.

9. Admittedly, the statutory appeal namely A.P.R.C.No.52256 of 2020 is pending on the file of the first respondent. The petitioner has preferred the said statutory appeal aggrieved by the order dated 27.10.2020 passed by the second respondent under Section 80 of the TN H.R. & C.E. Act. The eviction order dated 27.10.2020 has been passed by the second respondent on the ground that the petitioner's property is marring the ambience of the subject Temple viz. Kasi Viswanatha Swamy Temple.

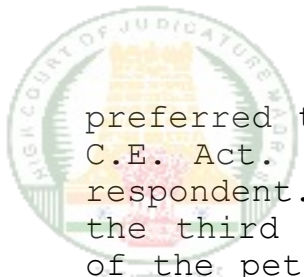
10. Learned counsel for the petitioner drew the attention of this Court to the photographs of the property where the petitioner was a tenant and would submit that the said property is far away from the subject Temple and does not mar the ambience of the subject Temple.

11. Section 81(5) of the TN H.R. & C.E. Act. reads as under:

"81. Appeals against the orders of 1[Joint Commissioner or Deputy Commissioner] under section 80:

(5) Where no appeal against an order of 2[the Joint Commissioner or the Deputy Commissioner, as the case may be], has been preferred under subsection (1) or where such an appeal has been preferred and dismissed, the Assistant Commissioner may enter into possession of the land after a specified date and the trustee of the religious institution shall forthwith take steps for restoring the artistic appearance or religious atmosphere of the religious institution. Any Police Officer whose help is required by the Assistant Commissioner for obtaining possession of the land shall be bound to render the necessary help."

12. This Court after perusing and examining Section 81(5) of the Act is of the *prima facie* view that only after the disposal of the statutory appeal filed by the petitioner under Section 81 of the TN H.R. & C.E. Act., the Assistant Commissioner, (third respondent herein) has got the power to take possession of the petitioner's property. Admittedly, in the case on hand, the petitioner has



preferred this statutory appeal under Section 81 of the TN H.R. & C.E. Act. and the same is still pending on the file of the first respondent. Even before the disposal of the said statutory appeal, the third respondent (Assistant Commissioner) has taken possession of the petitioner's property on 02.12.2020 as seen from the letter dated 02.12.2020 filed in the typed set of papers filed along with this writ petition. Though the petitioner could have sought for stay in the order dated 27.10.2020 passed by the second respondent before the first respondent in A.P.R.C.No.52256 of 2020 there is no bar for this Court to grant stay of all further proceedings. Whether at all, section 81(5) of the TN H.R. & C.E. Act. prohibits the Assistant Commissioner (third respondent herein) to take possession of the petitioner' property when the statutory appeal filed by the petitioner under Section 80 of the TN H.R. & C.E. Act. is pending with the first respondent, has to be considered in the statutory appeal filed by the petitioner before the first respondent in A.P.R.C.No.52256 of 2020.

13. The contentions of the petitioner that when the statutory appeal filed under Section 80 of the TN H.R. & C.E. Act. is pending on the file of the first respondent, the Assistant Commissioner does not have the power to take possession of the petitioner's property has to be examined by the first respondent while passing final orders in A.P.R.C.No.52256 of 2020. However, this Court is of the considered view that pending disposal of A.P.R.C.No.52256 of 2020 on the file of the first respondent, the petitioner' interest will have to be protected as according to him, his property does not mar the ambience of the subject Temple. At the same time, this Court is of the considered view that the statutory appeal filed by the petitioner under Section 80 of the TN H.R. & C.E. Act. in A.P.R.C.No.52256 of 2020 will have to be disposed of as expeditiously by the first respondent which will be in the interest of the petitioner as well as the respondents.

14. For the foregoing reasons, this Court directs the first respondent to dispose of the appeal filed by the petitioner in A.P.R.C.No.52256 of 2020 dated nil and pass final orders on merits and in accordance with law after affording sufficient opportunity to the petitioner to raise all contentions available to him under law and pass final orders within a period of three months from the date of receipt of a copy of this order and till such time, all further proceedings pursuant to the order dated 27.10.2020 passed by the second respondent in M.P. No.91 of 2020 shall remain stayed. While passing the final orders, the first respondent shall also consider the petitioner's request for de-sealing the tenanted demised premises situated in Survey No.746/4, Sobanapuram, Thoraiyur Taluk, Trichy District and hand over the same to the petitioner.

15. With the aforesaid directions, this writ petition stands disposed of. However, there shall be no order as to costs.



Consequently, connected W.M.P.(MD) No.15827 of 2020 is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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 Religious & Charitable
Endowments Department,
Nungambakkam, Chennai.
2. The Joint Commissioner
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Endowments Department,
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Trichy Division, Trichy District.
4. The Executive Officer,
A/m Kasi Viswanatha Swamy Temple,
Sobanapuram, Thoraiyur Taluk,
Trichy District

+1CC to M/s.SPL GP,SR.No.27067 dated 23/12/2020

W.P. (MD)No.18892 of 2020
21/12/2020

PU(CO)
KB(07.01.2021) 5P 6C