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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.No.799 of 2021
and C.M.P.No.4345 of 2021

1.A.Mumthaj

2.Minor Sarbunnisa

3.Minor Mohammed Azik
(Minor appellants 2 and 3 are
represented by their next friend
and natural guardian the 1st appellant herein)

4.Ozer Beevi (Died)

.. Appellants

Vs

1.The Commissioner,
H.R & C.E. Department,
Nungambakkam High Road,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.1,West Chithirai Street,
Madurai - 625 001.

3.Chairman of the Trustees,
Arulmigu Sithanathaswamy Thirukoil,
Ramasamy Asari Lane,
South Veli Street, Madurai - 625 001.

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the
order dated 11.11.2020 made in W.P.No.7877 of 2011.

Prayer in W.P.No.7877 of 2011: Writ of ceriorari to call for
the records relating to the order dated.23.11.2010 passed in
R.P.No.54 of 2008 D2 on the file of the first respondent herein
confirming the order dated.12.6.2008 passed in
RC.No.198/2006/E1 on the file of the second respondent herein
and to quash the same.



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For Appellants : Mr.S.Subbiah, Senior Counsel
for Ms.Elizabeth Ravi

For Respondents: Mr.S.John J Raja Singh
Government Counsel
for R1 and R2
Mr.V.Srikanth for R3

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This writ appeal is directed against the order dated 11.11.2020 made in W.P.No.7877 of 2011.

2. The appellants herein, claiming to be the tenants of the respondent/temple, filed writ petition challenging the impugned order dated 23.11.2010 invoking Section 21 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959. The aforesaid impugned order was passed on the revision petition filed by the appellants against the common order passed by the second respondent in exercise of power conferred under Section 78(4) of the HR&CE Act.

3. After hearing the appellants, the second respondent while giving a finding that the lease granted expired long time back and the rent having not been paid, the appellants are declared as encroachers and thus directed them to hand over the possession. Challenging the aforesaid common order passed, revision petition has been filed by the appellants in R.P.No. 54 of 2008. Taking note of the fact that there was no material to hold that the properties were actually let out by the trustee contrary to the provisions of the Act, and, therefore, without obtaining appropriate permission coupled with the lack of renewal, the finding rendered by the second respondent that they are the encroachers was confirmed by the revisional authority. It has also been recorded that the report of the Assistant Commissioner was taken into consideration and there is no basis for continuing the appellants any longer.

4. Learned Single Judge dismissed the writ petition, inter alia, holding that the very lease granted by itself do not conform to the provisions of the Act, no right is created in favour of the appellants. Reliance has been made on Section 77 of the Act. That position being admitted and the occupation of premises by the appellants being within the temple precincts, the learned Single Judge found that the reasoning of respondents 1 and 2 is perfectly in order. Aggrieved over the dismissal of the writ petition, the present appeal has been filed.



5. Learned Senior Counsel appearing for the appellants reiterated the submissions made before the learned Single Judge. It has been submitted that the appellants being in possession for quite number of years, they should be treated as tenants even otherwise.

6. We do not find any reason to interfere with the order passed by the learned Single Judge. We are dealing with the case where the factual findings have been rendered by the second respondent as confirmed by the first respondent. Learned Single Judge found that the very permission granted in the name of so-called lease being contrary to the enactment by the erstwhile trustee, no right is created. We also find that even the so-called lease has expired and there is also arrears of rent. Thus, looking from any perspective, we do not find any reason to interfere with the order passed.

7. We do not know as to how the provisions of the Transfer of Property Act would apply to the case on hand. Thus, we are not in a position to uphold the submissions made as against the findings rendered by respondents 2 and 1, leading to the orders of eviction.

8. Though the learned Senior Counsel for the appellants submitted that taking into consideration the long possession, sufficient time may be granted, we are not inclined to accede to the said request in view of the categorical statement made by the learned counsel appearing for the third respondent that the possession has been taken pursuant to the order of dismissal passed by the learned Single Judge on 26.02.2021, which factum is not denied or disputed.

9. In such view of the matter, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi/ssm

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+1cc to M/s.Elizabeath Rani, Advocate SR.No.33080

W.A.No.799 of 2021

SS(CO)
B.VC(05.08.2021)