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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11908 of 2016
and
W.M.P.No.10285 of 2016

P.Venkatesan

... Petitioner

-Vs-

1. The Executive Officer,
Arulmiku Chelliamman
and Muthaiamman Temple,
Aynavaram,
Chennai - 600 023.
2. The Joint Commissioner,
HR & CE Department,
Nungambakkam,
Chennai - 600 034.
3. The Collector,
Office of the Collector,
No.62, Rajaji Salai,
Chennai - 600 001.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ Certiorarified Mandamus calling for records relating to the order dated 18.01.2016 in Ref.No.Na.Ka.No.13324/2008/A2, passed by the second respondent under Section 78 of the HR&CE Act and quash the same and consequently forbear the respondents 1 & 2 from interfering with the petitioner's possession in respect of the property bearing Door No.48, Pattachari Street, Ayanavaram, Chennai - 600 023, comprised in T.S.No.118, Block No.16 of Aynavaram Village measuring 2025 sq.ft.

For Petitioner : Mr.R.Manickavel

For Respondents

For R2 & R3 : Mr.M.R.Gokul Krishnan
Government Advocate.



ORDER

WEB COPY This Writ Petition has been filed to call for the records relating to the order dated 18.01.2016 in Ref.No.Na.Ka.No.13324/2008/A2, passed by the second respondent under Section 78 of the HR&CE Act and quash the same and consequently forbear the respondents 1 & 2 from interfering with the petitioner's possession in respect of the property bearing Door No.48, Pattachari Street, Ayanavaram, Chennai - 600 023, comprised in T.S.No.118, Block No.16 of Aynavaram Village ad measuring 2025 sq.ft.

2. The case of the petitioner is that he is in occupation of land comprised in T.S.No.118, Block 16, Door No.48, Pattachari Street, Aynavaram, Chennai-600 023, to an extent of 2025 sq.ft. In the said land, he constructed residential building and assessed to the house tax. It is classified as Sarkar poramboke and he occupied the said land for more than 50 years. He never a tenant nor the occupant under the first respondent. While being so, on 13.11.2008, the first respondent informed that the petitioner is the encroacher of the temple land and demanded to vacant and hand over the said land. The petitioner sent reply dated 17.12.2008 stating that the subject land is classified as Sarkar Poramboke and it never belonged to the first respondent herein. However, the first respondent passed the impugned order by treating the petitioner as encroacher and directed the petitioner to vacate the premises and hand over the vacant possession of the subject land. Hence, the petitioner filed this Writ Petition with the above said prayer.

3. The learned counsel appearing for the petitioner would submit that the petitioner is in occupation of the subject property for more than 50 years. The property is not belonged to the first respondent and it is classified as Sarkar Poramboke and he never be a tenant under the first respondent and as such he is not liable to pay any rent as claimed by the first respondent.

4. On instruction, the learned Government Advocate appearing for the respondents submitted that the land ad measuring 2025 sq.ft., is leased out to the petitioner at Rs.10/- as monthly rent. Thereafter, as per G.O.Ms.456, the rent has been enhanced to Rs.955/- per month. Accordingly, the petitioner was issued notice and even then he did not come



forward to pay the arrears of rent and thereafter he was issued notice under Section 78 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959. In pursuant to the notice, eviction order has been passed under Section 79 of the said Act.

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5. Heard Mr.R.Manickavel, learned counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents.

6. Though the petitioner produced property tax receipt, Mortgage Deed and Discharge of Mortgage Deed etc., the petitioner is a tenant under the first respondent. As on 20.09.2021, the petitioner is in arrears of rent for a sum of Rs.2,63,285/- in respect of the subject property. Therefore, the second respondent rightly passed the impugned order and this Court finds no infirmity or illegality in the order passed by the second respondent and the Writ Petition is devoid of merits and is liable to be dismissed. However, the petitioner is at liberty to make representation before the respondents 1 & 2, seeking permission to continue the occupation of the said premises on payment of entire arrears of rent demanded by the respondents.

7. In the result, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Executive Officer,
Arulmiku Chelliamman
and Muthaiamman Temple,
Aynavaram,
Chennai - 600 023.



2. The Joint Commissioner,
HR & CE Department,
Nungambakkam,
Chennai - 600 034.

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3. The Collector,
Office of the Collector,
No.62, Rajaji Salai,
Chennai - 600 001.

+1cc to M/s.R.Manickavel, Advocate, S.R.No.48742

+1cc to the Government Pleader, S.R.No.49000

W.P.No.11908 of 2016
and
W.M.P.No.10285 of 2016

VSN-II (CO)
SU (05/10/2021)