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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15669 of 2021

and

W.M.P.No.16574 of 2021

S.Suriyanarayanan,
S/o.Sitharaman

.. Petitioner

-vs-

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kancheepuram.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Collectorate, Kancheepuram-631 501.

4.The Executive Officer,
Arulmighu Ekambaranathar Thiru Koil,
Hindu Religious and Charitable
Endowments Department,
Kancheepuram-631 502.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records from the file of the 2nd respondent made in Misc.Petition No.6 of 2021 dated 12.07.2021 and quash the same and further direct the 2nd respondent to regularize the tenancy in favour of the petitioner by effecting name change in his favour for the shop measuring an extent of 112 sq. ft. at No.777 (Survey No.229, part), Poonamalle High Road, Kilpauk, Chennai-600 010, which was in consideration from the year 2000 onwards in accordance with rules/proceedings of the 1st respondent.



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For Petitioner : Mr.Su.Srinivasan
for Ms.Vanathi Srinivasan

For RR1 to 3 : Mr.T.N.C.Kaushik,
Government Advocate

For R4 : Mr.R.Bharanidharan

ORDER

The order of eviction, passed by the second respondent in proceedings dated 12.07.2021 is under challenge in the present writ petition.

2.The petitioner states that the lands in S.No.229, Door No.777, P.H.Road, Chennai-10, measuring an extent of 112 sq.ft belongs to Arulmighu Ekambaranathar Temple, Kanchipuram and was leased out to one Mr.K.M.Gangadharan in the year 1952.

3.The petitioner states that he is in occupation of the said premises from the year 2000 onwards and running a tea shop, as the lessee Mr.K.M.Gangadharan became aged and subsequently died. The son of the said Mr.K.M.Gangadharan had no objection for the petitioner to carry on his business in the said shop. The petitioner is running juice/newspaper/tea vending shop in the said premises.

4.The learned counsel for the petitioner reiterated that pursuant to handing over of the property by Mr.K.M.Gangadharan to the petitioner, the petitioner made an application before the competent authority of the Hindu Religious and Charitable Endowments (HR & CE) Department for transfer of name and to regularize the tenancy in his favour. The application was forwarded for consideration. Though the application was forwarded, no decision was taken by the authorities competent. Under these circumstances, actions were initiated against the petitioner under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the HR & CE Act") stating that the petitioner is an encroacher of the temple land. The petitioner had submitted detailed objections along with the documents in the form of a counter. The petitioner defended his case through his counsel Thiru J.Lakshmi Narayanan and without considering any of the documents as well as the grounds raised by the petitioner, the second respondent issued the eviction order under Section 78 of the HR & CE Act. No adequate opportunity was granted to the petitioner even to vacate the premises. Thirty days time has not been granted to vacate the premises, though Section 81 contemplates thirty days time limit for filing an appeal. Under these circumstances, the actions of the second respondent are in



violation of the provisions of the HR & CE Act and therefore, the writ petition is to be considered.

5.The learned Government Advocate appearing on behalf of the respondents made a submission that similar writ petition in W.P.No.15414 of 2021, filed by the encroacher, adjacent to the premises of the petitioner, was dismissed by this Court on 27.07.2021. Even on merits, the authorities have granted opportunity to the petitioner and the petitioner also availed the opportunity and defended his case through his counsel after filing counter statement and documents. Thus, opportunity of being heard was provided to the petitioner, which the petitioner had availed and the the petitioner could not able to establish that he is a valid lease holder and therefore, the authority competent passed an order of eviction under Section 78 of the HR & CE Act. Thus, there is no infirmity or perversity and the writ petition is liable to be rejected.

6.This Court is of the considered opinion that even as per the affidavit filed by the petitioner in this writ petition, he is not the lease holder, nor conferred with any right of possession by the competent authority of the HR & CE Department. He himself has stated that one Mr.K.M.Gangadharan was the lessee and he sold the property to the petitioner. Though the learned counsel for the petitioner said that the said K.M.Gangadharan permitted the petitioner to continue the business, in the explanation submitted by the petitioner to Section 78 proceedings on 23.11.2020, he has stated that "I submit that the land in S.No.229 bearing Door No.777, P.H.Road, Chennai-10 measuring an extent of 112 sq.ft. belongs to Arulmighu Ekambaranathar Temple, Kanchipuram was leased out to one Mr.K.M.Gangadharan. The said K.M.Gangadharan sold the superstructure along with lease hold rights to me in the year 2000".

7.Mr.K.M.Gangadharan himself was a tenant and therefore, he has no right to sell the temple property in favour of the petitioner including the superstructure, nor he can sublease the property in favour of any other person. When the original lessee, Mr.K.M.Gangadharan, has no power to lease out the property or sell the property, the petitioner himself admitted that the property was sold by Mr.K.M.Gangadharan in favour of the petitioner. It is an illegality, which is to be dealt with seriously, as the property belongs to the temple was sold by the lessee and the authorities competent have not taken steps for longer time in this regard. The very inaction of the authorities in this regard is to be deprecated. Authorities competent of the HR & CE Department are bound to ensure that the properties belong to the temple/deity are protected in all respects and the lease or otherwise are granted strictly in



accordance with the provisions of the HR & CE Act.

8.Collection of rent is paramount important for the welfare of the temple administration and if there is any lapse, negligence or dereliction on the part of the temple authorities, the same are to be dealt with in accordance with law and there cannot be any leniency or misplaced sympathy in this regard by the higher authorities.

9.Though the learned counsel for the petitioner reiterated that the petitioner is paying rent in respect of the premises in his occupation, the petitioner has no legal right to occupy the premises, as he is an encroacher, even as per his own statement made in his explanation submitted to Section 78 proceedings.

10.As far as the appeal provision is concerned, Section 81 of the HR & CE Act provides "any person aggrieved by an order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be, under Section 80 may, within 30 days from the date of the receipt by him of such order, prefer an appeal in writing to the Commissioner".

11.As far as Section 78 is concerned, the provision contemplates eviction of encroachers of temple properties and therefore, the question of grant of further time would not arise at all. Section 78 deals with 'encroachments by persons on land or building belonging to religious institutions'. Section 79(3) of the HR & CE Act stipulates that "no injunction shall be granted by any court in respect of any proceedings taken or about to be taken by the Joint Commissioner under Section 78". This being the scope of Sections 78 and 79 of the HR & CE Act, this Court do not find any reason for granting further time to the writ petitioner for eviction. Once a person is identified as an encroacher, the HR & CE Department is duty bound to institute action under Section 78 and in the present case, the action was taken in accordance with law and an opportunity was provided to the writ petitioner to establish his case and the petitioner has not produced any document to establish that he is in legal occupation. Even before this Court, the petitioner has clearly stated that he is not a lessee, nor authorized by the HR & CE Department to continue in occupation. When there is no document to establish the right of persons to occupy the temple premises, such persons are liable to be evicted with immediate effect and there cannot be any leniency or grant of further time enabling them to prolong or protract the issues. Encroachers are not entitled for any leniency more specifically, in temple premises.

12.Large number of allegations of collusion of the authorities in dealing with the temple properties are recently



noticed and the HR & CE Department has started initiating action and under these circumstances, the actions are to be initiated by following the procedures contemplated under the statute and in the present case, the proceedings are undertaken by following the provisions of the HR & CE Act and an opportunity was provided, which the petitioner had also availed and thus, there is no infirmity or irregularity as such in respect of the eviction order passed against the writ petitioner. Thus, the petitioner is liable to be evicted immediately and accordingly, the writ petition fails and stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

- 1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Chennai-600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kancheepuram.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Collectorate, Kancheepuram-631 501.
- 4.The Executive Officer,
Arulmighu Ekambaranathar Thiru Koil,
Hindu Religious and Charitable
Endowments Department,
Kancheepuram-631 502.

+1cc to M/s.Vanathi Srinivasan, Advocate, S.R.No.36438
+1cc to the Government Pleader, S.R.No.36686

W.P.No.15669 of 2021

GPL(CO)
SB(23/08/2021)