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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15772 of 2021

and

W.M.P.No.16676 of 2021

V.Kumar,
S/o.Venkatesan

.. Petitioner

-vs-

- 1.The State, Rep., by
The Commissioner of HR & CE,
Nungambakkam High Road,
Chennai-34.
- 2.The District Collector,
Ranipet District,
Ranipet.
- 3.The Joint Commissioner of HR & CE,
Nungambakkam High Road,
Chennai-34.
- 4.The Executive Officer,
Arulmigu Punnakeswarar Temple,
Nemili Nagar & Taluk,
Vellore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the 1st respondent to number the revision and dispose the same after granting due opportunity which was filed by the petitioner on 08.01.2020 as against the impugned order dated 05.03.2019 vide proceeding No.Se.Mu.Na.Ka.En.12098/2017/E1 passed by 3rd respondent which was served to the petitioner through Registered Post only on 16.12.2019.

For Petitioner : Mr.R.Thirumoorthy

For Respondents : Mr.N.R.R.Arun Natarajan,
Government Advocate



ORDER

The relief sought for in the present writ petition is to direct the first respondent to number the revision and dispose the same after granting due opportunity, which was filed by the petitioner on 08.01.2020 as against the impugned order dated 05.03.2019 passed by the third respondent, which was served to the petitioner through registered post on 16.12.2019.

2.The petitioner states that he was residing in the subject property for about 40 years. The property belongs to Arulmigu Punnageswarar Temple, Nemili Taluk, Vellore District. The petitioner states that he had put up a hut and residing there.

3.The learned counsel for the petitioner states that the petitioner is doing handloom work and put up a small house to an extent of 605 sq.ft. The petitioner claims that he has been paying donation to the temple festival for each year, but the authorities had not issued any receipt to that effect. The petitioner submitted several representations to fix a rent and issue proper receipt. However, the respondents have not considered the case of the petitioner. Thereafter, an action under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "HR & CE Act") was initiated and the Joint Commissioner, HR & CE Department passed an order of eviction on 05.03.2019. In view of the fact that the petitioner has not evicted the premises, a notice was issued on 19.07.2021 and subsequently, the petitioner was evicted and the temple authorities have taken possession of the property on 27.07.2021. The writ petition is filed on the ground that the petitioner has filed the revision petition even before eviction and it was returned and thereafter, the petitioner re-presented the same.

4.Perusal of the copy of the revision petition would reveal that the revision petition itself was dated at Chennai on the 22nd day of July, 2021. The revision petition was sealed by the office of the Commissioner of HR & CE Department on 22nd Day of July, 2021, which is enclosed at page no.18 of the typed of set of papers filed along with the writ petition. However, at page 23, the learned counsel for the petitioner and the petitioner signed by stating that the writ petition was dated at Chennai on the 22nd day of July, 2021. Though the petitioner states that this is the clean copy of the revision petition and even in case, a revision petition was submitted earlier, the petitioner could not able to establish any right regarding the subject property, which belongs to the temple. The petitioner has not produced any document to establish that he was granted with lease, permission or otherwise. In the absence of any such



right, the petitioner was treated as an encroacher and an action was initiated under Section 75 of the HR & CE Act. Mere filing of a revision petition against an order of eviction is not a ground to claim that the petitioner must be allowed to continue in the premises, which is encroached by him.

5.The learned Government Advocate appearing on behalf of the respondents states that an order of eviction was passed in the year 2019 and after issuing notice, the petitioner was evicted from the premises and the temple authorities have taken possession of the property.

6.Under these circumstances, this Court is of the considered opinion that an encroacher of a temple property has no right to claim possession of the same or any lease or otherwise can be claimed as a matter of right under the provisions of the HR & CE Act. The petitioner could not able to establish that he was a rightful occupant. Per contra, the respondent could able to establish that the petitioner was an encroacher and accordingly, evicted the petitioner from the premises. This being the factum, the petitioner is at liberty to pursue the revision petition filed before the higher authorities. However, this Court is of the opinion that the petitioner has not established any right in the present writ petition so as to consider the relief as such sought for and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner of HR & CE,
The State of Tamil Nadu,
Nungambakkam High Road,
Chennai-34.
- 2.The District Collector,
Ranipet District,
Ranipet.
- 3.The Joint Commissioner of HR & CE,
Nungambakkam High Road,
Chennai-34.



4.The Executive Officer,
Arulmigu Punnakeswarar Temple,
Nemili Nagar & Taluk,
Vellore District.

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+1cc to the Government Pleader, S.R.No.37058

W.P.No.15772 of 2021

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