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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-10-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.17351 OF 2021

AND

W.M.P.NOS.18382 AND 18384 OF 2021

S.Thangamani

... Petitioner

.Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments
Administrative Department,
Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.

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

3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dharmapuri, Dharmapuri District.

4. The Executive Officer,
Arulmighu Sivasubramaniya Swamy Temple,
Kumaraswamypettai,
Dharmapuri,
Dharmapuri District.

... Respondents

PRAYER:-

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records made in Impugned Order Na.Ka.No.1529/2013-1/A6 dated 20.07.2021 passed by the third respondent herein and quash the same as illegal and direct the fourth respondent to receive the arears of rent and run the business of the petitioner is 12.H. Muthuvinayagar Engineering



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Works as a Tenant measuring about 525 sq. ft., situated at C.Block, 40, 41, 42, Kumarasamy Pettai, Dharmapuri Taluk, Dharmapuri District to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu
For Respondents-1 to 3 : Mr.N.R.R.Arun Natarajan
Government Advocate
For Respondent-4 : Mr.V.R.Anna Gandhi

O R D E R

The order dated 20.07.2021 issued by the Assistant Commissioner of Hindu Religious and Charitable Endowments Department, is under challenge in the present writ petition.

2. The order impugned states that the petitioner should vacate the premises and handover the possession to the Temple Authorities on or before 10.08.2021, failing which the petitioner will be evicted with the assistance of the Revenue Department and Police Officials.

3. The petitioner challenging the order mainly on the ground that he was a Lessee based on the Lease Agreement dated 17.03.1984. The monthly rent determined was Rs.250/- per month. The petitioner put up some constructions in the land belongs to the temple.

4. It is contended by the petitioner that he put up permanent constructions in the said site and especially Commercial Workshop. The petitioner was running a Workshop and it is further contended that the lease was renewed on oral basis.

5. The petitioner states that he was paying the rent and was continuing in the temple premises. The petitioner earlier filed WP No.6795 of 2013 to remove the obstructions created by the Temple Authorities. Another writ petition in WP No.4328 of 2017 was also filed, wherein this Court directed the petitioner to pay Rs.2,65,000/- towards arrears of rent and the petitioner paid the said amount of rent. It is contended that the petitioner is aged about 72 years and by running the Workshop, he is leading his livelihood.

6. The learned counsel for the petitioner strenuously contended that the conduct of the Officials of the Hindu Religious and Charitable Endowments Department is objectionable and in the absence of an interim order, the Officials have



evicted the petitioner and therefore, the petitioner must be put back in possession.

7. It is contended that eviction of the petitioner is illegal and made during the pendency of the writ petition. In the absence of an interim order is improper. The Authorities have committed a contempt of Court as the writ petition was pending during the eviction made by the Authorities.

8. The learned counsel for the petitioner relied on the Lease Agreement dated 17.03.1984. Admittedly, the lease was for a vacant land measuring 529 sq. ft. The monthly rent was fixed as Rs.250/-. The petitioner paid a sum of Rs.5,000/- towards advance. The learned counsel for the petitioner drew the attention of this Court with reference to the payment of rent made by the petitioner on several occasions.

9. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of K.Narasimha Rao vs. T.M.Nasimuddin Ahmed [1996 (3) SCC 45], wherein in last paragraph-13 of the judgment, it has been held as under:-

"13. In the present case, excluding from consideration the tenant's claim for adjustment of the amount of Rs.1000 spent on repairs and the amount of Rs.750 sent by demand draft on receipt of the notice, the amount of Rs.2850 with the landlord as the excess amount of advance paid by the tenant to the landlord, was alone sufficient to negative the landlord's claim of ejectment. The arrears of rent from July to November 1990 were only Rs.750, while the excess amount of advance was Rs.2850, far in excess of the arrears. The landlord was bound to immediately refund that excess amount even before the arrears accrued, and he not having made the refund was bound to adjust it towards the rent due from the tenant. On these facts, the tenant could certainly not be held to be a wilful defaulter in the payment of rent. The High Court is, therefore, right in deciding against the landlord."

10. It is contended that the petitioner paid an advance amount of Rs.5,000/- and even in case of default, the rent amount is to be adjusted from the advance amount. Contrarily, the parties cannot initiate coercive steps as the petitioner was the original Lessee right from the year 1984 onwards.



11. At the outset, the learned counsel for the petitioner contended that the due process of law has not been followed by the respondent-Authorities and the petitioner evicted in an improper manner despite the fact that the petitioner was ready and willing to pay the arrears of rent to be calculated by the Authorities Competent. The learned counsel for the petitioner made a submission that the petitioner even now ready to pay the arrears of rent and renew the lease based on the fair rent to be fixed under the provisions of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as the 'Act', in short].

12. The learned Government Advocate, appearing on behalf of respondents 1 to 3, objected the contentions raised on behalf of the petitioner by stating that the petitioner has no right at all in respect of the temple property. The due process of law had been followed and the writ petition itself is filed by suppressing vital facts and thus the writ petition is to be rejected.

13. In respect of the observations made by the Authorities regarding eviction of the petitioner from the temple premises, the learned Government Advocate, appearing on behalf of respondents 1 to 3, clarified that the Government Advocate informed the Authorities that in the absence of any interim order in the writ petition, the Authorities are at liberty to proceed with their actions by following the procedures as contemplated under law. In other words, it is contended that mere pendency of writ petition is not a bar for the Authorities to initiate action in the manner known to law.

14. All along the petitioner was continuing in the temple premises only by way of filing petitions and litigations. The present writ petition is filed challenging the order dated 20.07.2021 by suppressing the fact that Section 78 proceedings were initiated long back and the final order under Section 78 of the Act was passed. On 15.07.2016 itself, the Joint Commissioner passed the order under Section 78 of the Act, the petitioner preferred a revision petition under the provisions of the Act. The Commissioner, Hindu Religious and Charitable Endowments Department, rejected the petition in order dated 22.06.2017. These vital factors are not stated in this writ petition nor the orders passed under Section 78 of the Act, and the revision orders are under challenge. After the revision order passed by the Commissioner, the petitioner has not preferred any further appeal under Section 114 of the Act. Contrarily, in the present writ petition, the petitioner has simply challenged the consequential proceedings issued by the Assistant Commissioner, directing the petitioner to vacate the temple premises. Thus, the writ petition itself is unsustainable and is to be rejected



on the ground that petitioner has not come out with clean hands.

15. The learned counsel for the fourth respondent-Executive Officer in support of the contentions raised by the Hindu Religious and Charitable Endowments Department submitted that the petitioner is not a Lessee as the lease period expired long back. The original lease of the year 1984 was for the period of three years and thereafter, the petitioner was not paying the monthly rent promptly. Further, the lease period was also not extended. The petitioner was in illegal continuation of the temple premises and several actions initiated by the Authorities failed on account of the petitions filed by the petitioner before various Forums continuously and the Authorities could not able to evict on account of such continuous litigations created by the petitioner one way or the other.

16. It is admitted between the parties to the lis that the Lease Agreement was entered into between the temple and the petitioner on 17.03.1984. Perusal of the Lease Agreement would reveal that the petitioner has paid a sum of Rs.5,000/- as advance and Rs.250/- per month was agreed as the rent. The Lease Agreement itself categorically states that the said Lease Agreement is subject to the provisions of the Act. When the Lease Agreement states that it is subject to the provisions of the Act, the validity of the lease of the year 1984 is to be considered.

17. Section 34 of the Act enumerates 'alienation of immovable trust property'. Sub-section (1) to Section 34 of the Act contemplates "Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution". Thus, any lease must be for a term not exceeding five years. If it exceeds, then prior approval of the Commissioner becomes mandatory. In the present case, no such approval by the Commissioner was granted and extension of lease is not proved.

18. Section 34-A provides 'fixation of lease rent'. Accordingly, the Rent Fixation Committee constituted must renew the amount once in three years and fix the fair rent, which is to be collected from the Lessee in this regard. It is not made clear whether any such procedures are followed periodically once in three years and the fair rent is fixed in view of the provisions of the Act. However, the petitioner was allowed to continue his tenement due to various circumstances and on account of litigative processes continued between the parties.



19. The learned counsel for the petitioner states that the petitioner was paying the rent periodically. However, the respondents denied by stating that piecemeal payment of rent was made and the petitioner was not paying the monthly rent promptly and punctually. Even now arrears of rent is to be paid.

20. As far as the challenge of the order made in the present writ petition dated 20.07.2021 is concerned, it is a consequential order passed pursuant to the original order passed under Section 78 of the Act. As pointed out by the learned Government Advocate, appearing on behalf of the respondent-Department, proceedings were initiated under Section 78 of the Act and the Joint Commissioner passed final orders on 15.07.2016. Admittedly, the petitioner preferred revision petition and the said revision petition was also rejected by the Commissioner on 22.06.2017. Thus, these two orders are not under challenge in the present writ petition. However, the learned counsel for the petitioner informed this Court that the writ petitions are pending in respect of the revision order passed by the Commissioner, Hindu Religious and Charitable Endowments Department.

21. Section 78 of the Act, stipulates 'encroachments by persons on land or buildings belonging to Religious Institutions'. Explanation to Section 78 of the Act, reads as under:-

“Explanation.—For the purpose of this section, the expression “encroacher” shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include-

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and

(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.”

22. Section 78 of the Act, makes it clear that any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him is also be considered as an encroacher. Thus, there is no infirmity as such in respect of the proceedings initiated by the Competent Authorities under Section 78 of the Act against the petitioner.



23. Even in case, the petitioner is aggrieved from and out of the order dated 20.07.2021, it is to be construed that the same is a consequential order passed pursuant to the final order passed under Section 78 of the Act, which was confirmed by the Commissioner in proceedings dated 22.06.2017.

24. Beyond all this, encroachment of temple properties for years together can never be encouraged by the respondent-Department. Many such instances are brought to the notice of this Court that temple properties are abused due to active and passive collusion with the Hindu Religious and Charitable Endowments Department Officials on several occasions. The Deity, being in a position of a minor, Court is the custodian to protect the interest of the minor Deity in a temple.

25. The High Court is constitutionally duty bound to protect the interest of the minor in all circumstances. The High Court is expected to intervene in all such circumstances, where the interest of the minor is prejudiced or in peril. Thus, beyond all the grounds raised, this Court is of an opinion that the Lease Agreement is not in force as of now. The Lease Agreement entered into between the temple and the petitioner of the year 1984 cannot be sustained beyond the period of five years as per Section 34 of the Act.

26. Admittedly, there was no approval by the Commissioner to continue the lease beyond the period of five years. The petitioner earlier filed writ petitions and some of the writ petitions are disposed of by issuing a direction to pay the arrears of rent and yet another writ petition was disposed of to consider the case of the petitioner. Such orders cannot be taken undue advantage by a Lessee for an indefinite period. The right of the Lessee under the Act, is to be determined by the Courts for the purpose of continuance of lease.

27. In the present case, admittedly, the property belongs to the temple and more specifically, the minor Deity is the owner of the property. Few Great Souls donated their valuable property for doing religious services to the temple. Thus Great Donors had donated their valuable property for the purpose of doing services to the temple as well as to the Devotees of the temple. The purpose and object for which such donations are made are also to be borne in mind by the Authorities, while dealing with the temple properties.

28. No doubt, the right of the Lessee is also to be considered by the Courts. However, such consideration must be in accordance with the provisions of the Act and taking into consideration various facts and circumstances, and no person shall be allowed to take undue advantage of any such temple



properties or abuse of the properties.

29. In the present case, the learned Government Advocate, appearing on behalf of the respondent-Department, brought to the notice of this Court that the petitioner was not only in possession of the property leased out in the year 1984 but he had further encroached the temple property to the extent of 867 sq. ft., and sublet the premises in favour of third parties and was collecting the rent. All these activities continued for several years.

30. Considering the rights of the parties, admittedly, the temple is the owner of the property. The petitioner was a Lessee based on the Lease Agreement of the year 1984. The Agreement expired long back. The petitioner was not paying the rent regularly. Under these circumstances, this Court is able to form an opinion that the petitioner continued in the property belongs to the temple through litigative tactics and on some occasions, due to passive collusion on the part of the Authorities.

31. The rights of the parties are of paramount importance, which is to be determined in any litigation.

32. The judgments relied on by the petitioner are of no avail as the facts and circumstances are not comparable. The general observations made in the judgments cannot be applied in all the cases. Many such observations are identifiable or traceable in numerous judgments, but every case is to be decided predominantly based on the facts and circumstances established and based on the documents placed before this Court and by applying the legal principle in judgments.

33. Section 34-C of the Act, provides 'payment of amount'. Sub-section (1) states that "there shall be paid an amount to the Lessee for the building, superstructure and trees, if any, erected or planted in accordance with the terms of agreement or with the permission of the Commissioner by the lessee on the property vested with the Religious Institution under section 34-B". However, in the present case, the lease expired long back. The petitioner had continued as an encroacher, within the meaning of Section 78 of the Act. The petitioner has not established that the building superstructures are constructed either in terms of Agreement or with the permission of the Commissioner. Under these circumstances, the petitioner is not entitled for any compensation in respect of such superstructures, if any, made in violation of Section 34-C of the Act.

34. The petitioner has suppressed the fact regarding the eviction proceedings initiated by the competent authorities



under Section 78 of the Act. The orders passed by the Joint Commissioner on 15.07.2016 under Section 78 of the Act and the Revision order passed by the Commissioner / HR & CE on 22.06.2017 are also not under challenge in the present writ petition. However, the petitioner has challenged only the consequential order, asking him to vacate and hand over the possession. Thus, the petitioner has not approached this Court with clean hands and therefore, the petitioner is not entitled for any relief.

35. This being the principles to be followed, the petitioner has not established even a semblance of legal right, so as to continue in the temple premises and in fact, he was allowed to continue for several years in violation of the provisions of the Act and on some occasions, based on litigative tactics and on some occasions at the mercy of the Officials or otherwise.

36. This being the factum established, the petitioner is not entitled for any relief and the petitioner had already been evicted from the temple premises and thus no relief needs to be granted.

37. The Temple Authorities are bound to protect the temple properties in the manner prescribed. Accordingly, they are bound to follow the procedures for the purpose of dealing with the property for the benefit and interest of the temple.

38. With the above findings, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Commissioner,
Hindu Religious and Charitable Endowments
Administrative Department,
Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.



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

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3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dharmapuri,
Dharmapuri District.

4. The Executive Officer,
Arulmighu Sivasubramaniya Swamy Temple,
Kumaraswamypettai,
Dharmapuri,
Dharmapuri District.

+1cc to the Government Pleader, S.R.No.56799

W.P.NO.17351 OF 2021

RGN(CO)
PBS/17/11/2021