

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.NO.4964 OF 2016

J.Padmavathy

.. Petitioner

Vs.

1. The Commissioner
Tamil Nadu Hindu Religious and
Charitable Endowment Department
Uttamar Gandhi Salai
Nungambakkam, Chennai - 600 034

2. The Executive Officer
Arulmighu Pachaiaammal Temple Devasthanam
and Boothaperumal Temple
Anna Salai, Chennai - 600 002

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to execute a sale deed in favour of the petitioner in S. No.913, Door No.8, Boothaperumal Naicken Street, Chennai - 600 002 to an extent of 748 sq.ft.

For Petitioner : Mr.V.Jayaprakash

For R1 : Mr.G.N.Jayantheeswar
Government Advocate

For R2 : Mr.P.Wilson Topaz
for M/s.A.S.Kailasam Associates

O R D E R

This writ petition is filed for issuing a writ of mandamus directing the second respondent to execute a sale deed in favour of the petitioner in respect of a land in S. No.913, Door No.8, Boothaperumal Naicken Street, Chennai - 600 002 to an extent of 748 sq.ft.

2. The brief facts that are necessary to dispose of the writ petition are as follows:

The petitioner was a tenant under the second respondent temple in respect of a property, which is the subject matter of the present writ petition. The second respondent herein filed an Ejection Suit in E.S. No.77 of 1983 before the 3rd Small Causes Court, Chennai. Later the petitioner filed a petition under Section 9 of the Tamil Nadu City Tenants Protection Act, for purchasing the tenanted portion. The learned Judge of the 3rd Small Causes Court, Chennai, has passed an order on 08.10.1985, enabling the petitioner to pay an amount of Rs.38,000/- in 25 installments at the rate of Rs.1,520/- per month to the second respondent towards sale consideration. Stating that the petitioner has paid the amount of Rs.46,280/- from 08.04.1986 to 04.10.1998, she approached the second respondent, to get a sale deed in her favour, pursuant to the order she obtained under Section 9 of the Tamil Nadu City Tenants Protection Act. Since the respondent has not yielded to the request of the petitioner and contended that, by virtue of the amendment vide Act 2 of 1996, namely Madras City Tenants' Protection (Amendment) Act, 1994, the order of the Sub Court cannot be implemented, the petitioner has approached this court with the above prayer.

3. The short question that arises for consideration before this court revolves around the applicability of the Tamil Nadu Act 2 of 1996 to the instant case.

4. It is not in dispute that, by virtue of Tamil Nadu Act 2 of 1996, the property belongs to the religious institutions are exempted from the purview of Tamil Nadu City Tenants Protection Act. The validity of the Act was upheld by this court and the Hon'ble Supreme Court.

5. The question before this court is, whether the order passed by the Small Causes Court under Section 9 of the Tamil Nadu City Tenants Protection Act enabling the petitioner to purchase the property for a price fixed in 1985, can be implemented or executed despite the Amendment Act, which came into force with effect from 11.01.1996. In other words, whether the exemption given to the religious institutions by the amendment in 1996 disable the tenant to enforce the order under Section 9 of the Tamil Nadu City Tenants Protection Act.

6. In the present case, it is not in dispute that the consideration for the sale was paid up to 04.10.1998 and the

direction was to pay the said amount in 25 monthly installments. So, it took the petitioner to pay the money, even according to her, till October 1998. The Amendment Act was introduced and came into effect from 11.01.1996. The issue, whether the amendment has saved the religious institutions from an order that was obtained before amendment, was considered by the Hon'ble Supreme Court in S.Bagirathi Ammal vs. Palani Roman Catholic Mission reported in (2009) 10 SCC 464, wherein, the Hon'ble Supreme Court at paragraph Nos.24 and 25 held as under:

"24. The relevant provisions are as follows:

9. (3) (a) On payment of the price fixed under clause (b) of sub-section (1) the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any, the stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated."

It is clear that if the tenant complies with the order passed under Section 9 (1) (b) and deposits the amount within the time as fixed, the Court has to pass an order directing the conveyance by the landlord to the tenant. It is true that as per Section 9 (3) (b) on passing an order under clause (a) the suit or proceeding shall stand dismissed. In the light of the language used in clause (a) i.e. "conveyance" to be made by the landlord to the tenant, till the proper document conveying title to the tenant it is presumed that the proceeding is kept pending. To put it clear that unless the sale deed is executed by the landlord in favour of the tenant or in the alternative by the Court on behalf of the landlord the fruits of the decree can not be realized. The suit or proceeding will come to an end immediately on execution of sale deed either by the landlord or by the Court on behalf of the landlord. In our case, as said earlier, the sale deed was executed only on 28.10.1996, however the amended Act 2/96 came into force on 11.01.1996 much earlier to the execution of sale deed. The view

expressed in the Full Bench decision runs counter to the language used in the statute and we are unable to accept the same.

25. From the materials, we are satisfied that the conclusion reached by the High Court holding that the review petitioner/respondent herein is a "religious Mission"/ "institution" within the meaning of amended provision and entitled to the benefits of amended Act. Further if the same is not applied to the Mission, it would result in miscarriage of justice and it had been rightly rectified by the High Court by the impugned judgment. The benefit that has been bestowed upon the religious institution by the Legislature cannot be ignored lightly merely because the issue was decided by way of review applications."

7. It is to be noted that, by virtue of Section 3 of Tamil Nadu Act 2 of 1996, every proceeding instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, in so far as the proceeding relates to any matter falling within the scope of the principal Act, as amended by this Act, in respect of such land, abate, and all rights and privileges which may have accrued to that tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and determine and shall not be enforceable. It is to be noted further that the proviso to Section 3 of Act 2 of 1996 states that nothing contained in the section shall be deemed to invalidate any suit or proceedings in which a decree or order passed by the court has been executed or satisfied in full before the said date. Hence the proviso saves the tenant only if he gets the sale deed executed before the amendment.

8. In the present case, it is admitted that the tenant has filed a petition for execution of a sale deed and the sale deed has not been executed. Since the decree as such is not satisfied, it is not open to the tenant now to pursue further after the amendment was introduced. I do not find any merit in the writ petition and the writ petition for execution of sale deed, cannot be entertained, after introduction of Tamil Nadu Act 2 of 1996 to the existing provisions of Tamil Nadu City Tenants Protection Act.

9. For the foregoing reasons, the writ petition is dismissed. However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Asr

To

1. The Commissioner
Tamil Nadu Hindu Religious and
Charitable Endowment Department
Uttamar Gandhi Salai
Nungambakkam, Chennai - 600 034
2. The Executive Officer
Arulmighu Pachaiaammal Temple Devasthanam
and Boothaperumal Temple
Anna Salai, Chennai - 600 002

+1cc to M/s.A.S.Kailasam Associates, Advocate, S.R.No.13768

W.P.No.4964 of 2016

SKY(CO)
CS/15/04/2021

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