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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 09.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.23925 OF 2021

AND

W.M.P.NOS.25255 & 25256 OF 2021

Dr.K.Thiyagarajan

... Petitioner

-Vs-

1. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.
3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.
4. The Executive Officer,
Arulmigu Anjineiyaswamy Thirukoil,
Villupuram Town and Taluk,
Villupuram District.

... Respondents

PRAYER:-

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for records of the impugned communication dated 27.09.2021 made by the 4th respondent herein from unlawfully evicting the petitioner herein from the property situated at Villupuram Registration District, Villupuram Joint - 1 Sub 12, Old Survey No.453/3, New Survey No.40 measuring to an extent of



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364.50 Sq.ft, based on the lapsed eviction order dated 08.10.2013 and without following the due process of law.

For Petitioner : Mr.P.Dinesh Kumar

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for records of the impugned communication dated 27.09.2021 made by the 4th respondent herein from unlawfully evicting the petitioner herein from the property situated at Villupuram Registration District, Villupuram Joint - 1 Sub 12, Old Survey No.453/3, New Survey No.40 measuring to an extent of 364.50 Sq.ft, based on the lapsed eviction order dated 08.10.2013 and without following the due process of law.

2. The case projected by the petitioner as has been averred in the affidavit filed in support of the writ petition is that, the property to the extent of 364.50 Sq.ft at Old S.No.453/3, New S.No.40 at Thiru Vi.Ka.Street, Villupuram Town and District belongs to the fourth respondent temple. The petitioner claims that, he has taken out the said property for lease in the year 1985 and since then, he has been in possession and enjoyment of the property as a tenant by running a clinic in the name and style of S.R.Clinic.

3. While so, for the alleged reason of non-payment of rent to the temple authorities, in the year 2013 ie., on 04.08.2013, termination of lease and consequential proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (In short, H.R.&C.E., Act) was issued and consequently, an eviction order in proceedings dated 08.10.2013 was issued, declaring the petitioner as an encroacher.

4. Though such an eviction proceedings was issued on 08.10.2013 by the respondent temple authorities, the same was not acted upon or put into execution, and in the meanwhile, the petitioner has paid the rental arrears including the rental arrears as per the enhanced rent of Rs.3,151/- per month from July 2013, which comes to Rs.3,56,456/- upto 31.10.2014.

5. Therefore, according to the petitioner, upto 31.10.2014, rent with arrears including the rental arrears based on the enhanced rent from July 2013 has been paid. After having paid the said rental arrears upto 31.10.2014, it is the further case



of the petitioner that, on 06.12.2019, a notice was issued, whereby the rent has been enhanced, which according to the petitioner is an unilateral enhancement, that too arbitrarily, without giving any opportunity to the petitioner.

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6. Thereafter, the present order has been issued on 27.09.2021, wherein a proceedings has been interdepartmentally issued by the fourth respondent to the Inspector of Police, Villupuram, wherein it is stated that, under Section 79(1) of the H.R.&C.E., Act, already orders have been passed by the Joint Commissioner to evict the petitioner and therefore, in order to have smooth eviction of the petitioner, police protection is required on 01.10.2021, as on that date it is proposed to evict the petitioner. Only at this juncture, the petitioner has moved this writ petition with the aforesaid prayer challenging the said communication of the fourth respondent addressed to the Inspector of Police dated 27.09.2021.

7. Heard Mr.P.Dinesh Kumar, learned counsel appearing for the petitioner, who would submit that, though in 2013 eviction order was passed on 08.10.2013, for the reasons best known to the temple authorities, they have not proceeded further or the said eviction order has not been put into execution.

8. Subsequently, the rent was enhanced to Rs.3,151/- per month and even according to the enhanced rent with effect from July 2013, including the earlier arrears ie., before enhancement upto June 2013 altogether upto 31.10.2014, since the entire arrears came to Rs.3,56,456/- the said amount had been paid in one lump sum by the petitioner and thereafter no proceedings whatsoever was issued except the further enhancement of rent by proceedings dated 06.12.2019, and based on such proceedings, if at all the respondent temple authorities now come forward to evict the petitioner as if that the petitioner has been in huge arrears by taking into account the calculation of revised rent unilaterally made from the year 2019, that action on the part of the respondents is bad in law, as no opportunity had been given to the petitioner for enhancement of rent and the order enhancing the rent also since has not been issued or served on the petitioner, the petitioner has lost the option of challenging the same under the provisions of the H.R.&C.E., Act. Therefore, only on this ground, the petitioner challenges the present move of forcible eviction of the petitioner by seeking the assistance of police protection under Section 79(1) of the Act and accordingly, the impugned order is infirm and hence, the learned counsel appearing for the petitioner seeks the indulgence of this Court against the impugned order.

9. Per contra, Mr.N.R.R.Arun Natarajan, learned Government Advocate appearing on behalf of the respondents, on



instructions, would submit that, if at all an eviction order has been issued in the year 2013 and the same has not been executed immediately, the reason being that subsequently the petitioner has paid the rental arrears upto 31.10.2014.

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10. However, from 01.11.2014 the petitioner has not come forward to pay the rent. He would also submit that, if at all there is any dispute with regard to the further enhancement of rent from the year 2019, at least the earlier rent which has been fixed at Rs.3,151/- per month should have been paid by the petitioner from 01.11.2014. However, admittedly even the said rent or rental arrears has not been paid till date. Therefore, the petitioner has no locus to challenge the order passed by the respondents to evict the petitioner by invoking the provisions of the H.R. & C.E., Act especially under Sections 78 and 79 and therefore, the learned Government Advocate would contend that, the impugned order does not require any interference from this Court.

11. I have considered the submissions made on either side and have perused the materials placed before this Court.

12. Insofar as the earlier eviction order passed in the year 2013 is concerned, whether it has been executed or not and the reason for non execution of such order being the petitioner had paid the rental arrears upto 31.10.2014 are not the matters to be gone into at this juncture because, it is an admitted case on the part of the petitioner that, only upto 31.10.2014 he has paid the rent. However, from 01.11.2014 till date, he has not come forward to pay the rent. Therefore, there is a rental arrears for seven years without paying a single rupee to the temple authorities.

13. Even if there is one month default, the owner of the property would have a right to invoke the relevant provisions of the Rent Control Act. However, in the case of H.R. & C.E., properties are concerned, it is governed by the H.R. & C.E., Act, 1959 where extensive provisions have been given as to how to deal with a person who is a lessee and has become a defaulter.

14. Once he has become a defaulter for long years, the temple authorities has got every right to cancel the lease. Therefore, the lease was cancelled and Sections 78 and 79 were invoked and these provisions give such powers to the temple authorities to forcibly evict the defaulters by treating them as encroachers. In order to appreciate the said legal position, the relevant portions in Sections 78 and 79 of the H.R. & C.E., Act 1959 are extracted hereunder.



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"78. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers. —

(1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situated belonging to the religious institution or endowment (hereinafter referred to as "the property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.

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.

.....

79. Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner. — (1) Where within the period specified in the order under sub-section (4) of section 78, the encroacher has not removed the encroachment and has not vacated the property, the Assistant Commissioner having jurisdiction over the division may remove the encroachment and obtain possession of the property encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall render necessary help to the Assistant Commissioner.

....."



15. Here in the case in hand, the petitioner has raised a point that, in 2019 the temple authorities has enhanced the rent further unilaterally without giving an opportunity to the petitioner.

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16. Be that as it may. It is an admitted case that the rent prior to the recent revision was earlier revised to Rs.3,151/- per month from July 2013. That has been accepted by the petitioner. Accordingly, the rental arrears upto 30.10.2014 has been paid to the extent of Rs.3,56,456/- for which receipt has also been given by the fourth respondent, which reads thus,

“ எண். 5311

Dr.K.தியாகராஜன், கடை எண். 143நு-க்கு நியாய வாடகை 31.10.2014 வரை நிலுவை முழுவதும் அவர்களிடமிருந்து தொகை ரூ.3,56,456/- தொகை விபரம் ரூபாய் மூன்று இலட்சத்து ஐம்பத்து ஆறாயிரத்து நானூற்றி ஐம்பத்து ஆறு மட்டும் 31.10.14 முடிய நியாய வாடகைப் படி நிலுவை பெற்றுக் கொள்ளப்பட்டது.

ஒப்பம் /-
செலுத்துபவர்

ஒப்பம் /-
செயல் அலுவலர்”

17. Therefore, upto 31.10.2014, there could be no quarrel since the fourth respondent has accepted the rental arrears from the petitioner. Hence, the question of executing the 2013 eviction order does not arise.

18. However, after 31.10.2014, ie., from 01.11.2014 the petitioner should have paid the rent regularly and if at all in the year 2019 or in earlier period there had been any further enhancement unilaterally made as alleged by the petitioner, that could have been faced by the petitioner in the manner known to law. No such challenge has been made and if at all the said unilateral enhancement order has not been served on the petitioner, the petitioner also could have taken steps to get that order and accordingly could have put the said order into challenge in the manner known to law.

19. However, the petitioner has not chosen to take out any such route and he has been conveniently enjoying the property in question without paying a single rupee as rent for the past seven years. Therefore, the petitioner has no locus to claim any right or relief from this Court by filing the present writ petition.



20. Moreover, for the purpose of rental arrears, already a chance had been given to the petitioner, as several years he has not come forward to pay the rent. Therefore, on 31.10.2014 upto that date, huge amount of arrears ie., a sum of Rs.3,56,456/- was paid. Therefore, it shows that the petitioner is not in the habit of paying the rent regularly to the temple authorities.

21. After 31.10.2014, admittedly the petitioner has not paid the rent even till date. Therefore, there is every justification on the part of the fourth respondent to invoke the provisions of the H.R. & C.E., Act especially Sections 78 and 79 of the Act. Only now the forcible eviction proceedings has been initiated, where the date of eviction has been fixed for which police protection has been sought for. That is the order which is impugned in this writ petition.

22. Therefore, this Court is of the considered view that the petitioner since has not made out any case to interfere with the impugned communication, as he is an admitted chronic defaulter of rent payable to the temple authorities, by virtue of that, he should be treated only as an encroacher as per the aforesaid provisions of the H.R. & C.E., Act. Accordingly, an encroacher can very well be removed in the manner known to law especially under the provisions of the H.R. & C.E., Act. Therefore, invoking such provisions if the petitioner is forcibly evicted or to be evicted, such kind of proceedings need not be interfered by this Court.

23. For all these reasons, this Court feels that this writ petition fails and the same is accordingly dismissed. As a sequel, if the petitioner has not already been evicted, he shall be evicted forthwith and it is open to the fourth respondent to recover the rental arrears from the petitioner as arrears of land revenue under the Revenue Recovery Act.

24. With these observations, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

KST



To

1. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.
3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.

+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.57799
+1cc to the Government Pleader, S.R.No.57734

W.P.NO.23925 OF 2021

VBM(CO)
PBS/25/11/2021