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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.24406 of 2021
and W.M.P.Nos.25719, 25721 and 25723 of 2021

R.Raja

... Petitioner

-Vs-

1. The State of Tamil Nadu
rep.by its Secretary to Government
Hindu Religious and Charitable Endowments
Department, Fort St.George, Chennai 600 009.

2. The Commissioner
Tamil Nadu Hindu Religious and Charitable
Endowments Department, Nungambakkam
Chennai 600 034.

3.The Joint Commissioner
Hindu Religious and Charitable
Endowments Department, Nungambakkam
Chennai 600 034.

4.The Executive Officer
Arulmighu Sengaluneer Pillayar Thirukkoil
No.131, Sengaluneer Pillayar Koil Street
Chennai 600 001.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 3rd respondent in Na.Da.Na.Ka.No.13988/2013/A2 dated 21.07.2016 (served on 13.10.2021) and quash the same and direct the respondents 3 and 4 to de-seal the premises bearing Door No.135, Sengaluneer Pillayar Koil Street, Chennai 600 001.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.S.Yashwanth,
Additional Government Pleader
- for RR 1 - 3



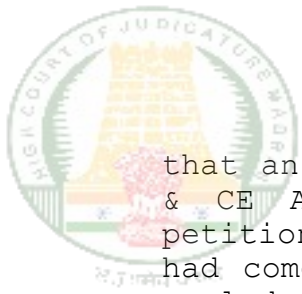
ORDER

The prayer sought for herein is for Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 3rd respondent in Na.Da.Na.Ka.No.13988/2013/A2 dated 21.07.2016 (served on 13.10.2021) and quash the same and direct the respondents 3 and 4 to de-seal the premises bearing Door No.135, Sengaluneer Pillayar Koil Street, Chennai 600 001.

2. The case of the petitioner is that, one M.R.Krishnamoorthy was a tenant under the fourth respondent temple in respect of the premises to the extent of 300 Sq.ft. After some time, the petitioner joined with the said M.R.Krishnamoorthy in the partnership firm and both were doing partnership business in the name and style of M/s.Raja Dye Works. In this context, after some time, the said Krishnamoorthy seems to have retired from the partnership. Therefore, the petitioner claimed to have continued with the business in the same premises belongs to the fourth respondent temple.

3. That is how it is claimed by the petitioner that, the petitioner has become the direct tenant of the fourth respondent temple. In this context, according to the petitioner, the fourth respondent temple issued a notice dated 10.06.2013 and by virtue of the said notice, the fourth respondent had recognized the petitioner as a tenant, however fair rent was fixed at Rs.8,754/- per month with effect from 01.07.2013 enhancing the same from the earlier rent of Rs.5,005/- per month from 01.11.2001.

4. It is the further case of the petitioner that, such an enhancement of rent and the demand of the enhanced rent, according to the petitioner, is arbitrary. Hence, in this context the demand made by the fourth respondent temple from the petitioner for payment of arrears of rent to the extent of Rs.7,96,352/- was an exorbitant demand. Therefore, in this context it is the case of the petitioner that, before fixing the rent under Section 34A of the HR & CE Act, 1959 (In short 'the Act'), proper opportunity should have been given to the petitioner and then only the fair rent should have been fixed and based on such fixation only, if at all any enhancement can be made, that can be demanded from the petitioner, without which they straight away fixed the rent and enhanced the same and based on such enhancement unilaterally made, since they made the demand, which could not be paid by the petitioner, they already initiated proceedings under Section 78 of the HR & CE Act, and such proceedings if any initiated against the petitioner, the same would be untenable. It is the further case of the petitioner that, when that being so, on 21.07.2016, it seems



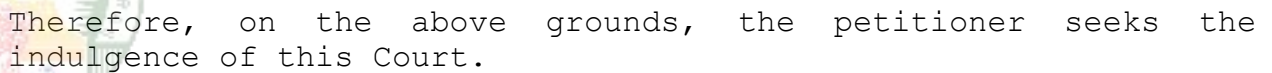
that an order has been passed under Section 78 and 79 of the HR & CE Act. However, the same has not been served on the petitioner and only recently when the fourth respondent temple had come forward to seal the premises and accordingly when they sealed the premises, then only the petitioner came to know that the said Section 78 and 79 proceedings have been initiated unilaterally against the petitioner in the year 2016. However, a copy of the same has been served on the petitioner only recently. Therefore, in order to challenge the said proceedings dated 21.07.2016 and for a consequential direction to the respondents to de-seal the premises, which has been sealed, where the petitioner has been continuing his business, and his belongings have also been placed in the said premises, the petitioner has filed the present writ petition with the aforesaid prayer.

5. Making submissions based on the aforesaid facts projected by the petitioner, Mr.L.Chandra Kumar, learned counsel appearing for the petitioner would submit that, first of all, if at all the fourth respondent temple wanted to fix any rent or revise the rent, that should have been made only in consonance with Section 34A of the HR & CE Act. In this context, no such proceedings, to the knowledge of the petitioner, has been initiated by the fourth respondent temple.

6. Moreover, insofar as the petitioner is concerned, in view of the notice having been issued against him in the year 2013, they recognized the petitioner as a tenant / lessee. When that being so, the petitioner cannot be considered as an encroacher or occupier of the premises concerned. Therefore, the question of initiating any proceedings under Section 78 followed by Section 79 proceedings against the petitioner does not arise.

7. When that being so, the proceedings said to have been issued unilaterally without the knowledge of the petitioner dated 21.07.2016 stating that Section 78 proceedings is already over and therefore Section 79 proceedings has to be initiated calling police protection to evict the petitioner forcibly, is untenable. Therefore, the learned counsel for the petitioner seeks the indulgence of this Court.

8. He would also submit that, insofar as the arrears of rent is concerned, the said claim made by the fourth respondent is based on the unilateral enhancement of the rent without following the procedure contemplated under Section 34A of the Act. Therefore, such kind of demand cannot be made. However, insofar as the arrears of rent is concerned, whatever the arrears if any to be paid by the petitioner, the petitioner is ready and willing to pay the same and to the best knowledge of the petitioner, no such arrears is payable by the petitioner.



9. Per contra, Mr.S.Yashwanth, learned Additional Government Pleader appearing on behalf of the respondents, on instructions, would submit that, so far there has been an arrears of rent / lease amount to the extent of Rs.18,13,571/-. However, even the said amount, if it is paid, it cannot be stated that, the petitioner is not liable to face the Section 78 proceedings followed by Section 79 proceedings to evict him by treating him as an occupier of the premises.

10. The learned Additional Government Pleader would also contend that, insofar as the premises in question is concerned, the petitioner has never been a tenant or lessee, as only M.R.Krishnamoorthy was the lessee, and if at all the petitioner joined with him as partner in the partnership firm and was continuing the partnership business, that would not ipso-facto confer any right on the petitioner to claim a right as the tenant / lessee in the premises belonging to the fourth respondent temple.

11. Be that as it may. Learned Additional Government Pleader would submit that, insofar as the arrears of rent is concerned, it can only be treated as damages for the use and occupation of the premises despite notices have been given.

12. In this regard, since the said damages have not been paid and the petitioner was considered to be an occupier of the premises concerned, proceedings under Section 78 of the HR & CE Act was initiated, which was also culminated by the order dated 03.09.2013. Against this order, the petitioner has not moved any appeal or challenged the same. Subsequently, since the Section 78 order has been passed, despite the fact, since the petitioner has not voluntarily come forward to vacate the premises, it became necessitated for the temple to initiate proceedings under Section 78 and that order was initiated on 21.07.2016. The said order has now has been belatedly challenged in the year 2021, therefore the challenge cannot stand in the legal scrutiny.

13. Learned Additional Government Pleader would further submit that, insofar as the arrears of rent or damages for use and occupation of the premises it has mounted to the extent of Rs.18,13,571/-, further permitting the petitioner to continue in the possession of the premises would be detrimental to the property of the fourth respondent temple. Therefore, the fourth respondent temple decided to seal the premises. Accordingly, the premises was sealed and therefore it need not be de-sealed, he contended.



14. Though submissions were made in the earlier occasions when this case was taken up for hearing, after having considered the rival case projected by the parties, this Court passed the following order on 23.11.2021.

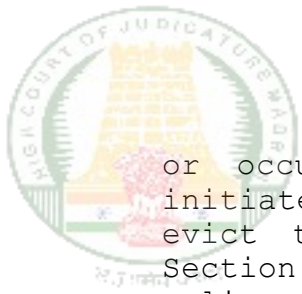
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"Pursuant to the earlier direction dated 19.11.2021, Mr.NRR.Arun Natarajan, learned Special Government Pleader has produced the original Despatch Register of the Joint Register Office, where, what are all the tapals and communications being sent to various addressees have been maintained with the postal receipt to show that, the tapal concerned has been sent to the addressee by registered post. Accordingly, on 21.09.2016, the order under Section 78 has been dispatched to both the petitioner as well as that Krishnamurthy, who was the original lessee by registered post. Therefore, it can easily be presumed that, Section 78 order has been dispatched and as per the settled legal proposition, once it has been dispatched by the registered post, it is the responsibility of the addressee to prove otherwise. Therefore, the Section 78 order has been served on both the petitioner as well as the original lessee.

2. Insofar as the offer made by the present petitioner that he would pay a sum of Rs.5,00,000/- now and after desealing the premises, he will pay another Rs.5,00,000/- after some time, for such kind of arrangement, the respondent H.R. & C.E. Department is not agreeing, as per the submission of the Special Government Pleader.

3. Therefore, Mr.L.Chandrakumar, learned counsel appearing for the petitioner, on getting instant instruction from the petitioner, has submitted that, within the maximum period of ten days, the petitioner would pay a sum of Rs.10 lakhs to the respondent and on payment of the said Rs.10 lakhs, let the H.R. & C.E. Department desal the premises, thereafter, the further course of action with regard to the issue raised in this writ petition can be decided by this Court.

4. For the said arrangement, the learned Special Government Pleader also has agreed. Hence, this Court is inclined to pass the following interim order :



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or occupier of the temple premises, such a proceeding was initiated, which ended in favour of the fourth respondent to evict the petitioner on his own voluntary action or invoke Section 79 of the Act to evict him forcibly with the help of police.

17. When that being so, those proceedings initiated in the year 2013 and 2016 at this length of time, merely because this writ petition is filed and the petitioner has paid part of the damages payable by the petitioner for use and occupation of the premises, he cannot earn any new right that, he should be considered as a lessee or tenant and accordingly he should be permitted to continue as a lessee / tenant, learned Additional Government Pleader contended.

18. I have considered the rival submissions made by the learned counsel appearing on either side and have perused the materials placed on record.

19. Insofar as the impugned proceedings dated 21.07.2016 is concerned, it shows that as early as on 31.03.2016 itself, the proceedings under Section 78 has been concluded, followed by which only the proceedings dated 21.07.2016 was issued to take the help of the police by initiating the proceedings under Section 79 of the Act.

20. In this context, it is the definite case of the petitioner that, no notice had been given and the petitioner was having no knowledge about the proceedings issued either in the year 2013 or in the year 2016.

21. However, insofar as the proceedings dated 21.07.2016, which is impugned herein is concerned, the said proceedings, though was claimed by the petitioner that, it has not been served on the petitioner, when this Court invited the original records pertaining to the sending of the letters including the notice that is impugned herein, the learned Additional Government Pleader produced the records during the last hearing. After perusing the same, this Court found that, on 21.07.2016, the impugned notice has been dispatched to the petitioner as well as the original tenant Krishnamoorthy by registered post. Therefore, as per the settled proposition of law, once the proof has been shown by the sender, then it is the responsibility of the addressee to disprove the same, as the post office is only the agent of the addressee and therefore, in this context it cannot be construed that the proceedings dated 21.07.2016 has not been served on the petitioner.

22. Be that as it may. Now the petitioner has come forward to challenge the proceedings dated 21.07.2016. However, prior



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date the arrears either as a lease amount or rent amount or damages for use and occupation, as the case may be, can be demanded by the fourth respondent temple from the petitioner and if any such demand comes, the same has to be complied with by the petitioner.

- e) In view of the aforesaid directions, neither the 2013 order passed under Section 78 nor the 2016 order which is impugned herein, intimating the intention of proceedings under Section 79 of the HR & CE Act, need not be given effect to.

26. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

KST

To

1. The Secretary to Government
Hindu Religious and Charitable Endowments
Department, Fort St.George, Chennai 600 009.
2. The Commissioner
Tamil Nadu Hindu Religious and Charitable
Endowments Department, Nungambakkam
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Arulmighu Sengaluneer Pillayar Thirukkoil
No.131, Sengaluneer Pillayar Koil Street
Chennai 600 001.

+1cc to M/s.L.Chandrakumar, Advocate, S.R.No.64579

+1cc to the Special Government Pleader(HR & CE), S.R.No.64734

W.P.No.24406 of 2021

JP-II (CO)

SB(14/02/2022)