



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.2468 of 2017
and WMP Nos.2462 and 2463 of 2017
and Memo in W.P.No.2468 of 2017

1 R.Kannappan (deceased)
2 K.Deepa
3 K.Srinivasan
(Petitioners 2 and 3 are legal heirs of
the 1st petitioner vide order dated 12.08.2021)
made in WP.2468/2017 by ASMJ ... Petitioner

Vs

1 The Commissioner
H.R & C.E. Department Nungambakkam
Chennai- 34
2 The Joint Commissioner
H.R. & C.E. Department Nungambakkam
Chennai- 34
3 The Assistant Commissioner
H.R. & C.E. Department Nungambakkam
Chennai- 34
4 The Executive Officer
Arulmigu Thenupureeswarar Temple Madambakkam
Chennai-73 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for records relating to the second respondents proceedings made in Nada. Na. Ka. No.15148/ 2008/ A2 dated 15.12.2016 to quash the same.



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For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.N.R.R.Arun Natarajan,
Government Advocate - R1 to R3
Mr.R.Mahalingam - R4

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner, Mr.N.R.R.Arun Natarajan, learned Government Advocate for R1 to R3 and Mr.R.Mahalingam, learned counsel for R4.

2. The dispute in this matter is in relation to a communication dated 15.12.2016 which calls upon the petitioner to remit the arrears of rent in relation to the property at S.No.705, No.3, Sannadhi Street, Madambakkam Village, Tambaram Taluk, Kancheepuram District (property/property in question) belonging to the Thenupureeswarar Thirukoil (temple/temple in question) under threat of dispossessing him of the same if the arrears are not paid within 15 days of receipt of the notice. Interim protection was granted on 02.02.2017 subject to payment of Rs.20,000/- to the credit of O.S.No.174 of 2013, filed by the temple against the petitioner before the District Munsif Court, Tambaram. According to the petitioner the amount has been paid. However, no proof has been produced and Mr.Mahalingam, learned counsel appearing for the temple denies such deposit. Let proof be produced in regard to payment of the sum of Rs.20,000/- as aforesaid.

3. That apart, the case of the petitioner is that, the total land under occupation by him admeasures 4739 sq.ft., of which 3630 sq.ft. belongs to the petitioner. The aforesaid component of 3630 sq.ft., according to the petitioner, had devolved upon him pursuant to an ancestral right. He is resident in the property, regularly remitting tax as well as kist in respect of the said land, classified as Grama Natham in the revenue records. In addition to the aforesaid property, 567 sq.ft. of land, belongs to temple and the petitioner had acquired lease hold rights in respect of the same. Thus, according to the petitioner, it is only in respect of the 567 sq.ft. of land that the temple is entitled to collect rent. The amount of rent per month is a sum of Rs.955/- as per the



fixation of rent in 2017, though no order of fixation of rent has been produced. The sum of the land under occupation is only 4197 sq.ft. (3630 + 567) and not 4739 sq.ft. When this was put to the petitioner, he was unable to reconcile the difference. Let the same be explained before R2 in the course of the remand proceedings as per paragraph 9 of this order) and the quantum resolved.

4. Mr.Arun as well as Mr.Mahalingam would submit that the the entirety of the 4739 sq.ft. belongs to the temple and that the petitioner is liable to pay rent for the same.

5. Learned counsel for the respondents however, fairly concedes to the position that the impugned order has come to be passed by the Joint Commissioner without hearing the petitioner. All the communications in the reference section of the order have been issued by the Assistant Commissioner and no prior notice has been issued to the petitioner.

6. Thus, and as it was incumbent upon the Joint Commissioner to have heard the petitioner prior to passing of order under Section 78/79 of the Hindu Religious and Endowments Act, 1959 (in short 'Act'), the impugned order shall be treated as a show cause notice. The petitioner shall appear before the Joint Commissioner/R2 on 23.08.2021 at 10.30 a.m. without awaiting any further notice. The Executive Officer of the temple in question/R4 shall also be present with all records.

7. At this juncture, learned counsel for the petitioner would state that R.Kannappan, who is the petitioner in this Writ Petition has passed away in 2020 and this fact was intimated to him only recently. He has filed a memo dated 12.08.2021 to this effect also indicating to his knowledge, who the legal heirs of the deceased petitioner are (K.Deepa and K.Srinivasan, his daughter and son). As there is no objection expressed by the respondents for the legal heirs of the deceased petitioner to be brought on record, the memo is so ordered.

8. The above submission changes the tenor of the enquiry before the Joint Commissioner. He shall, prior to adjudicating upon the legitimacy of the petitioner's occupancy, adjudicate upon the aspect of continuation of the tenancy rights in the hands of the legal heirs, in the light of Section 34 of the Act



in consultation with the Commissioner, HR & CE/R1. This shall be decided as a preliminary issue. If the official respondents are so inclined to continue the tenancy in hands of the legal heirs of the deceased petitioner, proper arrangement as contemplated under Section 34 shall be put in place. This is one aspect of the matter.

9. As regards Section 78 proceedings that have been initiated against the deceased petitioner, the issue of determination of land under lease as well as the proper rental in that regard shall be decided and the arrears of rent, if any quantified and due demand be raised upon the legal heirs of the deceased petitioner. This is an issue distinct and separate from the preliminary issue to be decided and shall be decided independent of the preliminary issue.

10. The aforesaid shall be completed within a period of eight (8) weeks from today. The pendency of O.A.No.174 of 2013 before the District Munsif Court, Tambaram and the interim protection obtained by the Temple/plaintiff therein will have no bearing on this matter, since what has been sought by the temple in the Suit is only an injunction preventing the petitioner herein/defendant in the Suit from effecting construction upon the 567 sq.ft. of land admittedly belonging to the temple. Therefore, the pendency of the suit does not stand in the way of giving effect to the directions in this order.

11. With this, the Writ Petition is disposed with no order as to costs. Connected Miscellaneous Petitions are closed.

12. List the matter for reporting compliance and for production of orders on 25.10.2021.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner
H.R & C.E. Department Nungambakkam
Chennai- 34

2.The Joint Commissioner
H.R. & C.E. Department Nungambakkam
Chennai- 34

3.The Assistant Commissioner
H.R. & C.E. Department Nungambakkam
Chennai- 34

4.The Executive Officer
Arulmigu Thenupureeswarar Temple Madambakkam
Chennai-73

Copy To:

The Section Officer, (Writ Section),
High Court, Madras.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.40090

+1cc to Mr.R.Mahalingam, Advocate, S.R.No.40101

+1cc to the Government Pleader, S.R.No.40560

W.P. No.2468 of 2017
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PMK(CO)
SB(05/10/2021)