



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1437 of 2022
and
W.M.P.No.1589 of 2022

G.Ramachandran

...Petitioner

Vs.

- 1.The Commissioner,
HR & CE, (Administration) Department,
Chennai - 600 034.
- 2.The Joint Commissioner,
HR & CE (Administration) Department,
Salem.
- 3.The Asst., Commissioner,
HR & CE (Administration) Department,
Salem.
- 4.The First Person / Executive Officer,
Arulmigu Lakshmi Narsimha Swamy &
Someswara Swamy Temple,
Nangavalli Mettur Taluk, Salem District.
- 5.The District Revenue Officer,
Salem District, Salem.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, calling for the records of the 2nd respondent relating to order in Pa.Ma.No.80/2021/B1 dated 18.08.2021, quash the same and to issue consequential directions to the respondents to desist from evicting the petitioner from Devadayam Inam Land in S.No.241, Nangavalli Village, Mettur Taluk, Salem District, including the constructed house of an extent of 1023 sq. ft., which are legally in possession, occupation and enjoyment of the petitioner's family as confirmed by the 5th respondent District Revenue Officer, vide Doc.TD No.45 dated 28.07.1862 in favour of petitioner's ancestors.



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For Petitioner : Mr.R.Dhanasekar

For R1 to R4 : Mr.Yashwanth
Additional Government Pleader
[For HR & CE]

For R5 : Mr.V.Manoharan
Additional Government Pleader

O R D E R

The order passed under Sections 78 and 79 of the HR&CE Act, declaring the writ petitioner as an encroacher and the directions issued for eviction of the encroacher is under challenge in the present writ petition.

2. The petitioner states that the subject property was leased out and the said property belongs to Arulmigu Lakshmi Narasimha Swamy & Someswara Swamy at Nangavalli, Mettur Taluk, Salem District. The petitioner states that he is a lessee and he acquired the right through his ancestors. The petitioner is in possession of the subject property by way of inam granted and therefore, the order impugned passed under Sections 78 and 79 of H.R.&C.E. Act is liable to be set aside.

3. This Court is of the considered opinion that in respect of the disputed facts and with reference to the lease and other connected documents, the petitioner has to approach the Appellate Authority for effective adjudication of the disputed issues. However, in the present case based on the petition filed by the temple authorities, the Joint Commissioner HR&CE department adjudicated the issues and arrived at a conclusion that the petitioner is an encroacher and accordingly, directed for eviction of encroachment. The findings of the Joint Commissioner in the impugned order reveals that the encroacher has not furnished any details nor handed over the subject property belonged to the temple.

4. It is further contended that the petitioner is in occupation of the said property without any approval of the competent authority and there is no valid lease or mortgage or license in existence in respect of the property occupied by the petitioner. Thus, the petitioner is treated as an encroacher and accordingly, an order of eviction is passed.

5. This being the factum, the petitioner has to approach



the Appellate Authority under the provisions of the Act for effective adjudication of the factual issues with reference to the documents and evidences available.

6. The opportunity of appeal contemplated under the Statute need not be taken away unnecessarily as such an opportunity would provide a remedy for an aggrieved person. This apart, the parties has to verify the original records if any available and made a finding. In the absence of such a finding, the High Court will not be in a position to exercise the power of judicial review as the disputed facts remains as it is.

7. This being the factum, the importance of appeal remedy is to be considered and the parties are bound to approach the appellate authority. Therefore, the petitioner is at liberty to approach the Competent Appellate Authority by filing an appropriate appeal in the prescribed format and in the event of filing any such appeal, the Appellate Authority shall consider the appeal on merits and in accordance with law and dispose of the same as expeditiously as possible.

8. With these observations, the Writ Petition stands disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Jeni/Cse

To

- 1.The Commissioner,
HR & CE, (Administration) Department,
Chennai - 600 034.
- 2.The Joint Commissioner,
HR & CE (Administration) Department,
Salem.
- 3.The Asst., Commissioner,
HR & CE (Administration) Department,
Salem.



4.The First Person / Executive Officer,
Arulmigu Lakshmi Narsimha Swamy &
Someswara Swamy Temple,
Nangavalli Mettur Taluk, Salem District.

5.The District Revenue Officer,
Salem District, Salem.

+1cc to Mr.R.Thamaraiselvan, Advocate SR.No.6791
+1cc to the Government Pleader (HR & CE) SR.No.7031
+1cc to the Government Pleader SR.No.7436

W.P.No.1437 of 2022

RSV(CO)
GN(15/02/2022)