



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-01-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.1332 of 2022

And

WMP No.1448 of 2022

A.S.Raghavan

.. Petitioner

vs.

1. The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Road,
Thousand Lights West,
Nungambakkam,
Chennai - 600 034.
2. Sri Parthasarathy Swamy Devasthanam,
Represented by its The Executive Officer,
Triplicane,
Chennai - 600 005.
3. A.S.Radhakrishnan
4. A.S.Parthasarathy
5. A.S.Jayaraman
6. A.S.Venkatraman
7. A.S.Jayalakshmi
8. Lakshminarasimhachariyalu
9. Rangachari @ Venkatarangan
10. Banu @ Amirtavalli

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents 1 and 2, their subordinates, officials, and everyone claiming under them or acting on their behalf from in any way interfering with the petitioner and his family members peaceful possession of the schedule mentioned property more fully described thereunder, other than by following the due process of law.



Schedule of Property:-

House and building situated at Old No.70, New No.78/86
TP Koil Street, Triplicane, Chennai 600 005 measuring about 4800
sq.ft.

North by : Pathway to Thirumamani Mandapam
South by : House of Sriram Battachariyar
East by : T.P.Koil Street
West by : Gate leading to the bungalow

For Petitioner : Mr.T.V.Ramanujam,
Senior Counsel for
Ms.R.Ramya.

For Respondents-1 and 2 : Mr.T.Chandrasekaran,
Special Government Pleader
(HR & CE).

ORDER

The lis on hand has been instituted to forbear the respondents 1 and 2, their subordinates, officials, and everyone claiming under them or acting on their behalf from in any way interfering with the petitioner and his family members peaceful possession of the schedule mentioned property more fully described thereunder, other than by following the due process of law.

2. The petitioner states that the subject property belonged to one of his Ancestors by name Shri Venkatacharyulu and he bequeathed the schedule mentioned property by way of a registered Will dated 01.02.1872. As per the Will, the successors of the original ancestors are having various rights in the schedule mentioned property as detailed in the said Will.

3. The grievance of the petitioner is that the second respondent-Shri Parthasarathy Swamy Devasthanam has not been acting as per the terms of the Will and therefore, he was constrained to file the civil suit in O.S. No.645 of 1984 on the file of the City Civil Court at Chennai and suit was decreed in favour of the petitioner and his family members by judgment and decree dated 31.10.1990.

4. An appeal suit was filed in A.S.No.713 of 1991 by the second respondent-Shri Parthasarathy Swamy Devasthanam and the first Appellate Court modified the judgment and decree passed by the Trial Court by judgment dated 25.08.2011. Challenging the



said judgment and decree, the grandmother and other family members of the petitioner and the second respondent filed SLP Nos.25442 and 25443 of 2012 respectively and the Special Leave Petitions were dismissed by the Apex Court on 20.03.2017. Thus, the judgment and decree passed in A.S.No.713 of 1991 became final.

5. The learned Senior Counsel appearing on behalf of the petitioner strenuously contended that the petitioner is in occupation of the subject premises for long years and his right was crystallised in the judgment and decree passed in A.S.No.713 of 1991 and based on the judgment, the official respondents have not issued any notice demanding the subject property for demolition and reconstruction by granting six months time to the petitioner to vacate the premises and hand over the same to the Authorities concerned. Therefore, the writ petition is to be considered.

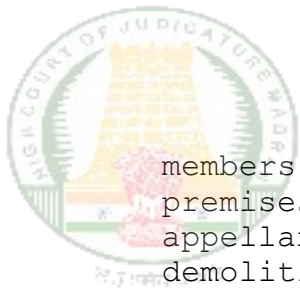
6. The learned Special Government Pleader, appearing on behalf of the official respondents, objected the said contention of the petitioner by stating that the notice was issued to the tenants, whose names are found in the Temple Register and who all are considered as lawful occupants.

7. In view of the fact that the name of the petitioner was not available in the Temple Register of Tenants, the question of issuing notice to the petitioner does not arise at all.

8. The learned Special Government Pleader for the official respondents reiterated by stating that paragraph-23 of the judgment is a representation and the disputes if any in respect of family members are to be adjudicated by the Competent Authorities. Therefore, the petitioner has not established any right to occupy the subject premises and hence the writ petition is to be rejected.

9. Considering the arguments as advanced by the learned Senior Counsel appearing on behalf of the petitioner and the learned Special Government Pleader appearing on behalf of the official respondents, the judgment and decree passed in Appeal Suit in A.S.No.713 of 1991 dated 25.08.2011 is relevant for the purpose of understanding the rights of the parties.

10. Admittedly, the petitioner Mr.A.S.Raghavan is arrayed as the tenth respondent (R-10) in the appeal suit. Therefore, the judgment and decree is binding on the parties and the decree in the appeal suit reveals that in the event of the first respondent desires to demolish item No.1 of 'B' Schedule to the decree of the Court below and reconstruct the same, the family



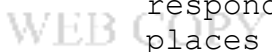
members of the Testator do hand over the possession of the said premises within six months from the date of demand by the appellant/first defendant, to enable him to proceed with the demolition and reconstruction. The decree proceeds by stating that the appellant/first defendant do permit the family members of the Testators to occupy the reconstructed premises on a nominal rent, without making any demand except the existing formalities. Thus, it is crystal clear that the petitioner is entitled for a notice for providing six months time to vacate the premises. Such rights already crystallised in favour of the petitioner, cannot be denied and admittedly, the respondents have issued notice only to the tenants, whose names are found in the Temple Register and no notice was issued to the petitioner Mr.A.S.Raghavan.

11. The learned Senior Counsel appearing on behalf of the petitioner further contended that no doubt, the subject building is very old and the petitioner, by spending some amount, has renovated the building and residing there. Therefore, immediate eviction or any such attempt would cause great hardship to the petitioner and to his family members.

12. Considering the facts and circumstances, this Court is of the opinion that certain disputed facts relating to the issue of civil nature, cannot be adjudicated in the writ proceedings. All such disputes are to be adjudicated before the Competent Civil Court of Law based on the documents and evidences to be produced by the parties concerned.

13. The power of judicial review under Article 226 of the Constitution of India is to scrutinise the processes through which a decision is taken by the Competent Authorities in consonance with the provisions of the Statute and Rules or not, but not the decision itself. But, in the present case, the petitioner has vested with the right to get six months time, if any decision is taken by the Authorities to demolish the building and reconstruct the same. Such a right already finalised is to be honoured by the official respondents also . In view of the said right, this Court is inclined to consider the present writ petition. In respect of all other disputes pertaining to the other rights or the disputes regarding family members etc., are to be adjudicated before the Competent Civil Court of Law by either of the parties. As far as the relief sought for in the present writ petition is concerned, it is only based on the non-issuance of notice as contemplated in the judgment and decree passed in the appeal suit.

14. The learned Senior Counsel appearing on behalf of the petitioner undertakes that the petitioner will vacate the



15. The learned Special Government Pleader for the official respondents made a submission that a sum of Rs.18.735 crores (15 places including the subject property) has been sanctioned from the temple funds for construction of residences and commercial complexes. Therefore, the existing tenants and persons, who all are in occupation of the premises are to be evicted for commencement of demolition and reconstruction works.

17. With the abovesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Sub Assistant Registrar

- +1cc to M/s.R.Ramya, Advocate, S.R.No. 5470
+1cc to the Government Pleader, S.R.No. 5814

GPL (CO)
TE (03/02/2022)