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WP.No.6769 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.6769 of 2020 &

WMP.Nos.8054 & 24930 of 2020

D.Mohan,
Proprietor of M/s.Mohan Sound Service,
Thiru Vi Ka Street,
Villupuram Town and Taluk, Villupuram District. ... Petitioner

Vs

1. The Joint Commissioner,
Tamil Nadu Hindu Religious & Charitable Endowments Department,
Villupuram District.
2. The Commissioner,
Tamil Nadu Hindu Religious & Charitable Endowments Department,
No.119, Uthamar Gandhi Salai, Nungambakkam,
Chennai – 600 034.
3. The Executive Officer,
Arulmighu Anjaneya Swai Thirukoil,
Thiru Vi K Road,
Villupuram Town & Taluk,
Villupuram District. ... Respondents



WP.No.6769 of 2020

Prayer :- Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Certiorarito call for the records of the impugned proceedings of the first respondent in Se.Mu.Na.Ka 7860/2013/E2/dated 20.11.2019 and quash the same.

For Petitioner : Mr.P.Dineshkumar

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader [HR & CE]
– R1 to R3

ORDER

This Writ Petition has been filed to quash the impugned proceedings of the first respondent dated 20.11.2019 directing the petitioner to vacate the premises.

2. It is the case of the petitioner that he is doing business of renting out sound equipments and systems for occasions under the name and style M/s.Mohan Sound Services and the said business is conducted in the building situated at Town Survey Number 40, Old Survey N.453/1A, Villupuram Town measuring an extent of 489 sq.ft. and the building was constructed in the land belonging to the Government of Tamilnadu. In the



WP.No.6769 of 2020

WEB COPY

said Survey number there are number of such similar buildings and commercial establishments. According to the petitioner, the first respondent being Tamilnadu Hindu Religious Endowment Department unilaterally issued eviction proceedings, since the land does not belong to them. It is the further case of the petitioner that as per G.O.No.1354 dated 04.04.1963, the property was given temporary possession. On 08.07.1983, a communication of the Tahsildar indicate that the pond belong to the Collector and the Collector has also placed the above mentioned land into the custody of the Municipal Commissioner, Villupuram. Therefore, it is his contention that the third respondent has no right to initiate proceedings under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

3. The learned counsel appearing for the petitioner submitted that the land was in possession of the temple, it was only a grant given by the Government. Subsequently the land was resumed. Therefore, the respondent has no authority to issue any notice for eviction under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act.



WP.No.6769 of 2020

WEB COPY

4. The learned counsel appearing for the respondents would submit that the petitioner was inducted as a tenant in Survey No.453/1A by the temple. As the rent has not been paid from the year 2016, there is a due of about Rs.3,73,200/- and hence, proceedings have been initiated. Even during the pendency of the proceedings, a part of the rent has been paid by the petitioner. Hence, the petitioner cannot deny the title of the temple.

5. I have perused the entire materials available on record. On receipt of notice, the petitioner has appeared before the respondent during the proceedings initiated under section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act on 08.10.2013 and the petitioner has also paid a part of arrears of rent. Thereafter, as the petitioner failed to pay the remaining amount, proceedings has been initiated under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Therefore, once, the petitioner has been recognized as a tenant and paid rent to the authorities, now he cannot question title of the temple in this Writ Petition.

6. It is relevant to extract Section 116 of the Indian Evidence Act which reads as follows :



WP.No.6769 of 2020

WEB COPY

Section 116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

A perusal of the above section makes it clear that a tenant who is inducted by a landlord of an immovable property, cannot deny the title of the landlord of such immovable property. That apart, the very proceedings of the respondent clearly indicate that a part of the rent has also been paid by the petitioner during the pendency of the proceedings. Once, the petitioner has admitted the tenancy, he cannot be permitted to deny the title of the temple. Merely some proceedings of the District Collector show that some pond vested with the District Collector, that cannot be a ground to contend that the temple had no title to the property at all.



WP.No.6769 of 2020

It is also relevant to extract Section 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act which reads as follows :

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.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of section 78 from instituting a suit in a Court to establish that the religious institution or endowment has no title to the property: Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of section 78 : Provided further that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee, of the religious institution or endowment.

(3) No injunction shall be granted by any Court in respect



WP.No.6769 of 2020

WEB COPY

of any proceeding taken or about to be taken by the Joint Commissioner under section 78”

Sub Clause 2 of Section 79 of Tamil Nadu Hindu Religious and Charitable Endowments Act makes it very clear that any aggrieved person can establish in the suit that the religious institution or endowment has no title to the property. Further, the proviso to Sub Clause 2 makes it clear that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee, of the religious institution or endowment and he cannot maintain a suit. Having regard to the above clause, when the petitioner himself has paid the rent and committed default later, he cannot deny the title of the temple. Hence, I do not find any merits in this Writ Petition.

4. Accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

09.12.2022

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WP.No.6769 of 2020

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WEB COPY



WP.No.6769 of 2020

N.SATHISH KUMAR, J.

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WP.No.6769 of 2020

09.12.2022