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W.A.No.1479 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE Mr.JUSTICE KUMARESH BABU

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M.Kumar

Proprietor of M/s.M.K.Enterprises

Old No.63, New No.36, Mir Bakshi Ali Street

Royapettah, Chennai - 600 014.

.... Appellant / Petitioner

Vs

1.The Commissioner

HR&CE

Nungambakkam

Chennai - 600 034.

2.The Joint Commissioner / Executive Officer

Arulmigu Kabalishwarar Temple

Mylapore, Chennai - 600 004.

3.Jeeven Press

Represented by its Proprietrix N.Kasturi

W/o.S.V.Natarajan

13/7, Murugappa Street

Chepauk, Chennai - 600 005.

.... Respondents / Respondents

[R3 - Rep. by N.Kasturi, the Proprietrix of the third respondent

Jeevan Press is now incharge of the third respondent Vide Court

Order dated 02.09.2022 made in CMP.No.13088/2021 in

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Prayer : Writ Appeal filed under Clause 15 of Letters Patent to allow the Writ Appeal setting aside the order dated 12.03.2019 in W.P.No.21936 of 2018, and to order the writ petition as prayed for.

For Appellant : Mr.T.M.Hariharan

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader for R1
Mr.A.K.Sriram
for M/s.A.S.Koulasan & Associates for R2
Mr.K.A.Mariappan for R3

JUDGMENT

[Order of the Court was made by R.SUBRAMANIAN.J]

The appellant is aggrieved by the dismissal of his writ petition in W.P.No.21936 of 2018. The prayer in the writ petition was for a Mandamus directing the first respondent namely The Commissioner, Hindu Religious and Charitable Endowments Department to consider his representation dated 02.01.2017, to permit him to take his machineries which are locked in the premises bearing No.163, Big Street, Triplicane, Chennai – 600 005.

2. The premises in question bearing No.163, Big Street, Triplicane, Chennai – 600 005 is owned by Arulmigu Kabalieswarar Temple, the second respondent, under the effective control and management of the first respondent,



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which was let out to the third respondent herein. Since the third respondent failed to pay the rents, the lease was terminated and proceedings were launched for eviction under Section 78 of the Hindu Religious and Charitable Endowments Act. An order of eviction came to be passed by the Joint Commissioner on 04.03.2016. This was challenged in a revision before the first respondent in R.P.No.227/2016 under Section 21 of the Act and the same came to be dismissed on 24.10.2016. Thereafter, the Executive Officer namely the second respondent took possession of the premises on 30.06.2016, and sealed the premises. An inventory of the movables was also taken.

3. Though there is a proceeding in the files relating to sealing of the premises and underlining the need to obtain appropriate directions from the first respondent to have the machineries sold to recover the rent, we have been informed that nothing has been done pursuant to the said proceedings.

4. The petitioner approached the first respondent claiming that he is the owner of some of the machineries having been purchased by him by borrowing loans from M/s.Canara Bank, which he had entrusted with the third respondent for certain repairs. Therefore, the machineries that were entrusted by the



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petitioner with the third respondent, which were lying in the premises in question, belonged to the petitioner and hence, he should be allowed to remove those machineries. In this regard, he submitted his representation dated 02.01.2017. Since the said representation was not considered, the appellant had filed the writ petition in W.P.No.5507 of 2017, seeking a direction to the Commissioner, HR&CE Department to dispose of his representation dated 02.01.2017. The same came to be allowed on 06.02.2018. Consequent thereupon, the Commissioner HR&CE by the proceedings impugned in the present writ petition dated 15.06.2018, rejected the request of the petitioner. The rejection is mainly on the ground that the petitioner should have recourse for the third respondent and he cannot seek return of his machineries from the temple authorities. This order of rejection was challenged by the petitioner in the writ petition. The Writ Court dismissed the writ petition, on the conclusion that the petitioner will have to approach the civil Court for return of his movables. Hence, this writ appeal.

5. We have heard Mr.T.M.Hariharan, learned counsel appearing for the appellant and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the first respondent and Mr.A.K.Sriram, learned counsel appearing



for the second respondent and Mr.K.A.Mariappan, learned counsel appearing for the third respondent.

6. Mr.T.M.Hariharan, learned counsel appearing for the appellant would vehemently contend that the Writ Court has not justified in relegating him to the civil proceedings. The learned counsel would argue that the title to the machineries were not denied by the first respondent. According to him, the third respondent had in fact admitted the title of the petitioner to some of the machineries. In fact, a request has been made by the third respondent to the first respondent to return the machineries belonging to the petitioner, to the petitioner. The learned counsel would further point out that none of the provisions of the Tamilnadu Hindu Religious and Charitable Endowments Act create a charge over the tenant's properties or the movables found in the premises of which possession is recovered by the temple.

7. Section 79-C of the Tamilnadu Hindu Religious and Endowments Act provides that any arrears of rent due to religious institution may be recovered as if it is a land revenue and the officers who are authorised by the Commissioner can exercise the powers vested with the Collector under the Tamil Nadu



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Revenue Recovery Act, 1864. Admittedly, no such powers has been exercised till date either by the Commissioner or by the Officer authorised by the Commissioner. No steps have been taken to rather recover the arrears from the third respondent. Be that as it may, we are concerned with the right of the petitioner to seek delivery of the immovables which are in the premises, which has been sealed by the second respondent.

8. Mr.A.K.Sriram, learned counsel appearing for the Temple would submit that the Writ Court was justified in directing the petitioner to approach the civil Court inasmuch as the question of title to the machineries that are available in the premises cannot be decided in a proceedings under Article 226 of the Constitution of India. He would also point out that the remedy of the petitioner is against the third respondent and not against the Temple.

9. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the Commissioner, HR&CE Department, would submit, the fact that the third respondent had not taken any steps for recovery of the movables, it would show that the petitioner and the third respondent are colluding with each other.



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10. We have considered the rival submissions. Section 78 of the Tamilnadu Hindu Religious and Endowments Act enables that proceedings to be initiated for eviction of persons who are in unauthorised occupation or against persons whose lease is deemed to have expired or terminated or cancelled, as the case may be as explained under Section 78 of the Act. Section 79 of the Act provides for mode of eviction pursuant to the order of eviction passed under Section 78. Section 79 authorises the Assistant Commissioner having jurisdiction over the Division, in which the property is situated, to remove the encroachment and take possession of the property after taking police assistance as may be necessary. Therefore, the power of the Assistant Commissioner or the Executive Officer of the Temple to recover possession under Section 79 and thereby taking over possession and sealing the premises is not disputed. Unfortunately, the Act and Rules therein are silent about the fate of the movables that are found in the premises. Rightly, the inventory of the movables have been taken by the Executive Officer when possession of the property was taken. The movables have not been sold for realizing the rent also. In fact, the Act and Rules are silent about the steps that ought to be taken for disposal of the movables that may be found in the premises, of which possession is recovered



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under Section 79.

11. The Writ Court had relegated the petitioner to a civil Court mainly on the ground that the title to the machineries cannot be gone into in a writ proceedings. We find that the said conclusion of the Writ Court may not be correct. The title of the machineries was never in dispute. The third respondent who was in possession of property, in whose custody the machineries were placed, had admitted the title of the petitioner of the machineries. It is not the case of the third respondent that the machineries belongs to him. Therefore, we are unable to subscribe to the view of the Writ Court that there was a dispute relating to the title of the machineries. The contention that the petitioner should have recourse to the third respondent, since the petitioner had put the machineries in the custody of the third respondent, cannot also be upheld as the machineries are in effective custody of the second respondent, and that the third respondent has no physical control over the machineries as of today. Therefore, having recourse to the third respondent for the machineries can only be on paper and it cannot be an effective remedy.

12. We therefore find that the Writ Court actually relegated the petitioner



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to an ineffective remedy in the absence of any statutory charge being created over the movables found in the premises, possession of which is recovered under Section 79, we cannot, but direct return of the machineries to the owners thereof. Since we find that the third respondent has admitted the title of the petitioner to the machineries, the writ petition will stand allowed and the order of the Commissioner, impugned in the writ petition is set aside. There will be a direction to the second respondent to remove the seal and open the premises in the presence of the petitioner to enable the petitioner to remove the machineries that belonged to him as per the list appended to in the writ petition and the invoice dated 22.11.2016. The third respondent shall also co-operate in the process of delivery of machineries belonging to the petitioner. The second respondent is directed to carry out the directions contained above, within a period of four weeks from the date of receipt of a copy of this order. No costs.

[RSMJ] [KBJ]
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Index : Yes / No
Speaking order / Non-speaking order
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