

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.16779 OF 2022

AND

W.M.P.NOS.16090 & 16091 OF 2022

M.Vairam Achari

... Petitioner

Vs

1. The Commissioner,
Hindu Religious and Charitable Endowment,
Administration Department,
Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.
2. The Joint Commissioner/Enquiry Officer,
Hindu Religious and Charitable Endowment,
Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment,
Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.
4. The Executive Officer,
Arulmighu Chennamalleswarar Chennai Kesava
Perumal Thiru Koil,
Devaraj Mudali Street,
Chennai - 600 002.
5. Trustees,
Arulmighu Chennamalleswarar Chennai Kesava
Perumal Thiru Koil,
Devaraj Mudali Street,
Chennai - 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the second respondent to permit the petitioner to reside in the superstructure till the disposal of S.R.No.34233 of 2022 against the order passed by the Joint Commissioner in M.P.No.10 of 2021/A3 dated 09.06.2022.

For Petitioner : Mr.M.Maharaja
For Respondents :
For R1 to R4 : Mr.N.R.R.Arun Natarajan
Special Government Pleader

ORDER

Mr.N.R.R.Arun Natarajan, learned Special Government Pleader takes notice on behalf of the first to fourth respondents.

2. The petitioner has suffered with an eviction order under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Pursuant to a writ petition filed by one B.Senthilvelan in W.P.No.20686 of 2021, wherein, the petitioner herein was arrayed as a fifth respondent and the first, second and fourth respondents herein were arrayed as first, second and third respondents therein.

3. The said writ petition was disposed of by this Court vide order dated 08.10.2021 with the following directions:-

"6. The learned Government Advocate, appearing on behalf of the HR&CE Department, on instructions, made a submission that the original Lessee Smt.Komalammal is not in possession of the temple property and her whereabouts are not known. The petitioner and the fifth respondent are fighting each other for illegal occupation of the temple premises and under these circumstances, under Section 78 of the Act, proceedings are initiated to remove the encroachments. It is contended that actions are initiated to evict the encroachers by following the procedures as contemplated under the Act.

7. This being the factum placed before this Court, neither the petitioner nor the fifth respondent has got any valid leasehold right in respect of the temple properties. Thus, there is no infirmity, as such, regarding the initiation of eviction proceedings under Section 78 of the Act. After completion of eviction proceedings, if the petitioner wishes to take lease, he has to approach the Authorities in the manner known to law.

8. It is made clear that the subject property belongs to temple. The petitioner and the fifth respondent are fighting each other. Thus, the Police Authorities have no role to play in respect of the dispute between the petitioner and the fifth respondent and also the temple, which is to be decided in accordance with the provisions of the Act.

9. The learned Government Advocate, appearing on behalf of the HR&CE Department and the Police Department, made it clear that they are initiating eviction proceedings under the provisions of the Act and by exercising the powers conferred under the Act.

10. However, the eviction proceedings are initiated, as the petitioner and the fifth respondent are not valid leaseholders and they are encroachers for the purpose of initiation of action under the provisions of the Act. Thus, the respondents 1 to 3 are directed to initiate appropriate proceedings for eviction of encroachers in the temple premises immediately and complete the said process, within a period of four weeks from the date of receipt of a copy of this order.

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

4. As as sequitur to the aforesaid order, a Show Cause Notice on 10.03.2015 was issued to the petitioner under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The second respondent herein, the Joint Commissioner/Enquiry Officer has passed an order dated 09.06.2022 under Section 78 and directed the petitioner to vacate and hand over the possession of the property, which has allegedly encroached by the petitioner.

5. It is the case of the petitioner that the petitioner has purchased the property from the erstwhile owner and has paid the ground rate to the owner. It is submitted that the order of the second respondent dated 09.06.2022 is unsustainable and is now subject matter of a revision petition filed before the first respondent Commissioner on 24.06.2022.

6. The learned counsel for the petitioner submits that the petitioner is willing to pay the amount demanded by the Temple

Authorities amounting to Rs.3,00,000/- by their communication dated 23.06.2022. It is further submitted that pending disposal of the revision petition filed under Section 21 of the HR&CE Act before the first respondent Commissioner against the order dated 09.06.2022 of the second respondent, the petitioner should not be ousted from the property. According to the petitioner, the action of the second respondent to evict the petitioner under Section 78 read with Section 79 of the HR&CE Act was unwarranted.

7. Opposing the prayer, the learned Special Government Pleader for the first to fourth respondents would submit that the petitioner herein was the fifth respondent in W.P.No.20686 of 2021. The petitioner herein and the petitioner therein are fighting over the property of the Temple and therefore, proceedings have been initiated in accordance with law, pursuant to the directions of this Court in W.P.No.20686 of 2021.

8. It is further submitted that the petitioner in the aforesaid writ petition has been filed Contempt Petition in Cont.P.No.556 of 2022 and that on account of the aforesaid contempt petition, tomorrow (i., on 01.07.2022) the petitioner herein is going to be ousted from the property in compliance of the order of the second respondent dated 09.06.2022.

9. By way of rejoinder, the learned counsel for the petitioner would submit that the due amount of Rs.3,00,000/- will be paid by him immediately. This undertaking of the learned counsel for the petitioner stands recorded.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the first to fourth respondents.

11. Ultimately, the object of the official respondents is only to recover the arrears of rent that are allegedly due and recoverable for.

12. Therefore, this Writ Petition is disposed of by directing the petitioner to deposit Rs.3,00,000/- with the fourth respondent within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent is directed to pass appropriate orders on merits and in accordance with law in the revision petition filed by the petitioner against the order of the second respondent ordering eviction of the petitioner under Section 78 read with Section 79 of the HR&CE Act, 1959. This exercise shall be carried out by the first respondent within a period of eight weeks from the date of payment being made by the petitioner. Pending such exercise, the eviction of the petitioner shall be kept in abeyance. It is made clear, if the petitioner fails to

comply with this order, this order will automatically stand vacated sine die. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.M.Maharaja, Advocate, S.R.No.41469

W.P.No.16779 of 2022
and
W.M.P.Nos.16090 & 16091 of 2022

PMK(CO)
PM/12/07/2022