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W.P.No.22519 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.22519 of 2022

Deepak

...Petitioner

-Vs-

1.The Commissioner,
Greater Corporation of Chennai,
Rippon Building,
Chennai – 600 003.

2.A/m.Sri Rathina Vinayagar &
Sri Durgai Amman Thirukoil,
Represented by its Executive Officer,
No.49, Whites Road,
Royapettah, Chennai – 600 014.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the second respondent to remove the lock and seal on the premises at bearing Old No.28, New No.44, Whites Road, Royapettah, Chennai – 600 014.

For Petitioner : Mr.S.Arivazhagan

For Respondent – 1 : Mr.Rahul Aditya for
Mrs.P.T.Rama Devi
Standing counsel

For Respondent – 2 : Mr.A.K.Sriram for
Mr.A.S.Kailasam & Associates



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ORDER

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It is a case where a temple is unable to get possession of its properties though it is being enjoyed by encroachers who claim to be sub lessees of the original lessee of the temple.

2. It is admitted that the property belongs to the second respondent temple. It is also admitted in the course of hearing that the temple has instituted a Suit and obtained a Decree as against the original tenant and the execution proceedings have also been initiated by the temple. However, it is stated that the petitioner who claims to be a sub lessee under the original lessee has filed a civil revision petition and obtained an interim order of stay of the execution proceedings.

3. It is established that the whole premises in the property of temple and the temple has also obtained an order of eviction. Irrespective of the fact that the temple has initiated execution petition, there is no legal impediment to initiate proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. However, the temple cannot pass orders directly to remove the encroachment without following the due process of law.



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4. It is submitted that the second respondent has put the premises under lock and seal. This Court is unable to find any statutory provisions to justify taking possession without following the procedure under Section 78 of the Act. It is not appropriate for the Executive Officer to take possession without recourse to law. Therefore, the impugned order cannot be sustained.

5. During the course of hearing, the learned counsel appearing for the petitioner submitted that the petitioner has been paying the arrears of rent as directed by this Court in W.P.No.12067 of 2022 filed by this petitioner against the first respondent. The writ petition under reference is one among a batch of writ petitions filed against the first respondent. However, it is seen that the said batch of writ petitions were filed challenging the levy of property tax levied on the petitioner and others. The previous writ petition was disposed of by directing the first respondent herein to recalculate the arrears of property tax properly and notify the petitioners of the same, so that it may be paid by them. The said writ petition has no connection with the impugned order.

6. It is submitted by the learned counsel appearing for the petitioner that even earlier batch of writ petitions in W.P.Nos.18881 of 2009 etc., were



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preferred by the petitioner challenging the impugned demand notice dated 01.09.2009 for payment of arrears towards property tax. This Court had quashed the demand notice and directed the respondents to issue fresh demand notice and further directed the petitioner to remit the rent to the first respondent / Commissioner herein towards arrears of tax. However, from the order in the earlier writ petition, this Court is unable to find the petitioner's name in any one of the writ petitions. The second respondent is not a party and the order is not binding on the temple. It is stated by the second respondent that huge amount of arrears has not been paid either by the principal lessee or the petitioner and other tenants. As on date arrears from all the sub tenants has accumulated. As per the impugned order more than Rs.2.75 crore is claimed as arrears. By impugned order purported to have been issued under Section 34 B of the Act, it is stated that possession is taken. However, possession cannot be taken without resorting to Sections 78 and 79 of Tamil Nadu Hindu Religious and Charitable Endowments Act after following the procedure.

7. It is admitted that the premises are now under lock and seal and therefore it is necessary to direct the respondents to remove the lock and seal on the premises at bearing Old No.28, New No.44, Whites Road, Royapettah,



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Chennai – 600 014. However, liberty should be given to the second respondent to initiate proceedings under Sections 78 and 79 of the Act and take possession after passing an order directing the petitioner to remove the encroachment and vacate the premises. When an application is made by the second respondent to the Joint Commissioner, he should consider the same and initiate proceedings for removal of encroachment against the petitioner and other tenants. The Joint Commissioner shall initiate action and complete the proceedings within a period of eight weeks from the date of receipt of an application from the second respondent. However the petitioner has approached this Court with unclean hands and hence the writ petition invoking extraordinary jurisdiction of this Court is entertained subject to certain condition.

8. The petitioner has not produced even a scrap of paper to indicate payment of any amount towards rent or lease amount to the temple. The petitioner in the affidavit states that rent is paid to corporation towards property tax due. Due to complex facts, this Court need not go further, except observe that the liability of encroacher towards damages for use and occupation of vacant land cannot be disputed. In such circumstances, this Court directs the second respondent to de-seal the premises on condition that the petitioner shall



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pay a sum of Rs.5,00,000/- [Rupees Five Lakhs Only] towards damages for use and occupation. The respondents shall open or de-seal the premises only upon the receipt of payment of Rs.5,00,000/-.

9. It is now admitted that the petitioner himself is in possession of an extent of 300 Sq.ft. of land and building in Whites Road. The fair rent if assessed on the basis of the provisions under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it will not be less than Rs.30,000/- per month under Section 78(5) of the Act, during the proceedings, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified in consideration of the use and occupation of the premises. Hence, this Court in the instant case having regard to the admitted facts is inclined to allow this writ petition subject to terms indicated above.

10. Accordingly, this writ petition stands disposed of. No costs.

23.09.2022

cda

Index : Yes/No

Speaking/Non Speaking order



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To

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S.S.SUNDAR. J.,

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