



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) Nos.13095 and 13096 of 2011

WEB COPY

Sri Ammaluammal @ Guruvammal
Charitable Endowments at
Alwarpuram, Madurai,
through its Managing Trustee,
S.P.Vasudevan,
No.9A, Vaduga Kaval Kooda Street,
Madurai 625 001.

(Petitioner name and address has been
amended vide order dated 12.04.2022)

... Petitioner in both W.Ps.,
/vs./

1.The Commissioner,
H.R. and C.E. (Admn) Department,
Nungambakkam High Road, Chennai 600 034.

2.The Joint Commissioner,
H.R. and C.E. (Admn) Department, Madurai.

3.The Assistant Commissioner,
H.R. and C.E. (Admn) Department,
Madurai.

... Respondents 1 to 3 in both W.Ps.,

4.Ramesh

... 4th Respondent in
W.P.(MD) No.13095 of 2011

4.R.Kanchanamala

... 4th Respondent in
W.P.(MD) No.13096 of 2011

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent dated 29-08-2011 passed in Na.Ka.Nos.7910/10/E1 and 7911/10/E1 and quash the same and direct the 2nd respondent to pass orders on merits in the petition filed by the Petitioner under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act within a time fixed by this Court.

For Petitioner
in both W.Ps.,
For R1 to R3
in both W.Ps.,

: Mrs.J.Anandhavalli
: Mr.P.T.Thiraviam
Government Advocate

For R4
in both W.Ps.,

: Mr.T.Selvam



COMMON ORDER

The petitioner in both the writ petitions are one and the same. The petitioner has challenged the impugned order passed under Section 78 of the Tamil Nadu Hindu Religious Charitable and Endowment Act, 1959 (*herein after referred to as Act*) in these two writ petitions.

2.The 4th respondent in the respective writ petitions are husband and wife. It appears that these 4th respondent, to whom the shop premises of the petitioner was given on rent, had properly paid rent and therefore proceedings were initiated under Section 78 of the Act against them. The 2nd respondent/the Joint Commissioner has passed an impugned order by directing the petitioner to collect the rents from these respondents, notice of which appears to have refused to accept.

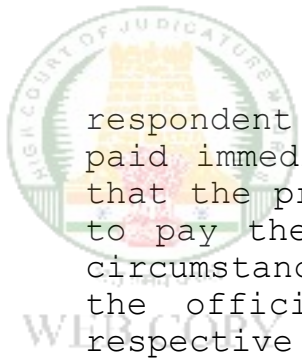
3.The learned counsel for the petitioner submits that the impugned order is without jurisdiction, as the 2nd respondent cannot ask the petitioner to collect arrears of rent from the defaulting tenants, namely the 4th respondent in the respective writ petitions.

4.Opposing the prayer, the learned Government Advocate for the official respondents submits that the facts on record indicate that the respective tenants offered to pay tax including by way of Demand Draft, but was refused to be received. Therefore, they have sent the arrears through RPAD. It is therefore submitted that the writ petition is without any merits.

5.I have considered the arguments advanced by the learned counsel for the petitioner, the learned Government Advocate for the official respondents and the learned counsel for the 4th respondent.

6.Section 78 of the Act contemplates initiation of eviction proceedings against a person, who is an encroacher. Explanation to Section 78 (i) defines the expression 'encroacher' to mean any person, who un-authorisedly occupies any tank, well, spring or water-course or any property to include a) any person, who is in occupation of the property without the approval of the competent authority sanctioning lease or mortgage or licence and b) any person, who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.

7.The proceedings under Section 78 of the Act can be initiated after there is a default and after there is a termination of the lease. Only after the lease is terminated, proceedings for initiation for encroachment under Section 78 of the Act can be taken up before the Joint Commissioner. In this case, the petitioner appears to have issued with a legal notice, calling upon the 4th



respondent to pay the arrears. It appears that the arrears were not paid immediately thereafter. However, the facts on record indicate that the private respondent in the respective writ petitions offered to pay the amount, which was refused to be received. Under these circumstances, the 2nd respondent/the Joint Commissioner has directed the official respondents to first receive the amount from the respective 4th respondent in the respective writ petitions.

8.I do not find any merits in these writ petitions. The petitioner cannot force a default to initiate proceeding under Section 78 of the Act before the 2nd respondent/the Joint Commissioner. Section 78 of the Act contemplates first a notice and thereafter termination of the lease and then, as a third step, a proceeding under Section 78 of the Act. In this case, the notice terminating the lease has been bye-passed and straightaway proceedings have been initiated before the 2nd respondent under Section 78 of the Act. That apart, the facts also indicate that the 4th respondent in the respective writ petitions have offered to pay the arrears, which was deliberately refused to receive with a view to evict the 4th respondent. The facts on record also indicate that the petitioner may not have received the rent for the subsequent period and have therefore deprived the rents to the petitioner/temple by not taking steps to accept the rent during the period of last 11 years.

9.Under these circumstances, I am inclined to dismiss these writ petitions by directing the 4th respondent in the respective writ petitions to pay the arrears within a period of 30 days from the date of a notice to be issued by the petitioner to the respective 4th respondent. In case, the respective 4th respondent fail to pay the rent that is due as on the date, petitions under Section 78 of the Act can be initiated after issuing a notice and after terminating the lease/tenancy for evicting the respective 4th respondent under Sections 78 and 79 of the Act.

10.These writ petitions stand dismissed, in terms of the above observations. No costs.

Sd/-

Assistant Registrar (PROTOCOL)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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To

1.The Commissioner,
H.R. and C.E. (Admn) Department,
Nungambakkam High Road, Chennai 600 034.

2.The Joint Commissioner,
H.R. and C.E. (Admn) Department, Madurai.

3.The Assistant Commissioner,
H.R. and C.E. (Admn) Department,
Madurai.

+1 CC to M/s.SPL.GP. (SR-18612[F] dated 13/04/2022)

+2 CC to M/s.J. ANANDHAVALLI, Advocate (SR-18719,18718[F] dated
13/04/2022)

W.P. (MD) Nos.13095 and 13096 of 2011
12.04.2022

RK(28/04/2022) 4P 7C