



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P (MD) .No.2028 of 2021

Samsammal

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
West Chitirai Street, Madurai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment,
Madruai -1.

3.The Executive Officer,
Arulmigu Mahadeva Swami thirukovil,
No.10, Rajamill Road, Madurai -1.

...Respondents

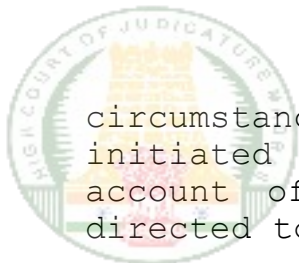
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records pertains to an impugned order dated 29-10-2020 passed by the 3rd Respondent and quash the same as illegal and consequently to direct the 3rd Respondent to repay the amount of Rs.1,50,000/- which was paid by the petitioners late husband Sikkanthar during the course of the case proceedings in WP(MD). No.14819/2017 on the file of this Court.

For Petitioner	: Mr.S.Sukumar
For R1 & R2	: Mr.P.Subbaraj Special Government Pleader
For R3	: Mr.S.Manohar

ORDER

The petitioner has challenged the impugned communication dated 29.10.2020 of the third respondent rejecting the request of the petitioner to refund a sum of Rs.1,50,000/- paid by the petitioner pursuant to interim orders passed in W.P.(MD).No.14819 of 2017.

2. The petitioner is the wife of late A.Sikkanthar, who was a sub tenant of one Rajathiammal. The petitioner's husband as a sub tenant was in occupation of the temple property of the third respondent temple and was a arrears of rent. Under these



circumstances, proceedings to recover the arrears of rent was initiated against the said Rajathiammal and as a consequence on account of failure to pay the rent, the said Rajathiammal was directed to be vacated.

3. The petitioner's late husband A.Sikkanthar therefore filed a writ petition in W.P(MD).No.14819 of 2017. An interim order came to be passed on 18.09.2017, by directing the petitioner's husband to pay a sum of Rs.50,000/- on or before 21.09.2017, which was complied by the petitioner's late husband. Thereafter, by another order dated 13.10.2017, the Court noted that as on 30.09.2017, the due for use and occupation of a temple property was Rs.1,25,000/-, if the rent for lock and seal period of three months is deducted, the actual amount due to be paid comes around Rs.95,000/-. The petitioner's husband remitted a sum of Rs.46,610/-. The petitioner's husband was therefore directed to pay the remaining amount on or before 30.10.2017. It appears that the petitioner's husband has also complied with the same. Finally, by another order dated 25.01.2018, the writ petition filed by the petitioner's husband was disposed of with the following observations:

10. However, taking into consideration of the fact that the petitioner is in possession of the premises from 1995, for more than 22 years, now, if the petitioner is willing to pay the revised fair rent fixed by the authorities namely, Rs.20,000/- per month along with arrears, the petitioner can file a fresh application for granting lease in his favour and if any such application is filed by the petitioner, the second and fourth respondents are directed to consider the application and pass suitable orders granting lease in his favour. It is also made clear that if the petitioner is not willing to pay revised fair rent, it is always open to the respondents to evict the petitioner without any further notice.

11. With the above direction, the writ petition is disposed of. No costs. Consequently, the W.M.P (MD).Nos.11661 and 11662 of 2017 are closed.

4. Thereafter, the petitioner's husband filed W.A(MD).No.437 of 2018. By an order dated 19.03.2018, the said writ appeal filed by the petitioner's late husband A.Sikkanthar was dismissed with the following observations:

18. It is made clear that after taking out the goods/articles by the appellant/writ petitioner, the shop in question shall be re-sealed by the authorities concerned. It is always open to the appellant/writ petitioner that in the light of the liberty granted by the learned Judge, to submit a



fresh application, to the second and fourth respondents. As and when such application is given, the same shall be considered and disposed of, on merits and in accordance with law, within a period of two weeks from the date of receipt of such application.

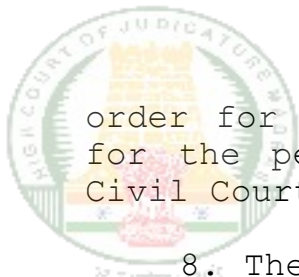
19. If the petitioner is so advised, subject to law of limitation, he may file a suit for recovery of the sum of Rs.2,76,823/-, said to have been paid by him on behalf of the chief tenant, namely, Rajathiammal.

20. In the result, the Writ Appeal is dismissed, confirming the order dated 25.01.2018 passed in W.P (MD).No.14819 of 2017. No costs. Consequently, the connected Miscellaneous Petitions are closed.

5. After the order came to be passed by the Division Bench on 19.03.2018, the property was also vacated under these circumstances. The petitioner's husband sent representation dated 05.12.2018. Thereafter, the petitioner's husband passed away. Under these circumstances, the petitioner sent a representation dated 27.07.2020 with the request to refund the amount paid during the pendency of the writ petition. Since the amount was not refunded, the petitioner filed writ petition before this Court in W.P(MD).No.13263 of 2020. The said writ petition was disposed at the time of admission by an order dated 01.10.2020, by directing the third respondent to pass appropriate orders on the representation of the petitioner within a period of six weeks from the date of receipt of copy of this order.

6. It is pursuant to the aforesaid order in W.P(MD).No,13263 of 2020, the third respondent has passed the impugned order. By the impugned order, the third respondent appropriated a sum of Rs.1,46,000/- being an amount for the use of an occupation of the temple property by the petitioner's husband between 01.07.2016 and 13.06.2017 at the rate of Rs.12,000/- per month and further a sum of Rs.2,000/- for a period of five days.

7. Opposing the prayer, the learned counsel for the respondents submit that the writ petition was devoid of merits in as much as an alternate liberty was given to the petitioner's husband to recover the amount from the tenant, namely, Rajathiammal by vide order dated 19.03.2018, passed in W.A(MD).No.437 of 2018. It is submitted that since the petitioner's husband was in an occupation of the property, the third respondent cannot be denied of the rent for use and occupation. It is further submitted that the actual rent which was to be paid by the tenant at Rs.20,000/- per month. However, the Court had *suo muto* reduced the aforesaid amount to Rs.12,000/- and therefore the amount paid has been appropriated in the impugned



order for the deposit made by the petitioner. In any event, it is for the petitioner to workout the remedy in a Civil suit before Civil Court as was ordered by the Hon'ble Division Bench.

8. Therefore, the issue for consideration in this writ petition is whether the failure on part of the third respondent to regularise the arrangement between the petitioner and the third respondent would entitle the third respondent appropriate the amount paid by the petitioner during the pendency of the writ petition and/or whether the third respondent was justified in collecting the amount paid by the petitioner towards the use of an occupation.

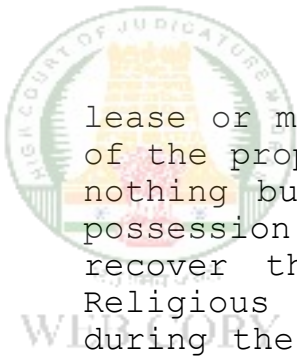
9. Heard the learned counsel for the petitioner and the respondents and perused the impugned communication dated 29.10.2020 of the third respondent and various orders passed by this Court in W.P.(MD).Nos. 14819 of 2017, order passed by the Division Bench in W.A.(MD).No.437 of 2018 on 19.03.2018 and order dated 01.10.2020 in W.P.(MD).No.13263 of 2020 and the impugned communication dated 29.10.2020. There is no privity of contract between the petitioner and the third respondent.

10. The petitioner was merely a wife of a sub tenant of the original tenant Rajathiammal who was in arrears of rent. Originally, the rent appears to have been fixed Rs.2,000/- per month which was subsequently enhanced to Rs.20,000/-. The Calculation given in the impugned communication of the third respondent dated 29.10.2020, indicates that the amount has been reduced to Rs.12,000/- per month.

11. The petitioner's husband had offered to deposit the aforesaid amount, in a bid to regularise the tenancy between the petitioner's husband and the third respondent.

12. The petitioner's husband continued to be in possession of the property between 01.07.2016 to 05.07.2017. The fair rent was fixed on 07.03.2017 to Rs.20,000/-. The respondents have *suo motto* reduced the same to Rs.12,000/- during the course of this Court and refunded a sum of Rs.4,000/- to the petitioner. If there is an excess amount paid, it is for the petitioner to recover the amount as was ordered by the Hon'ble Division Bench in W.A.(MD).No.437 of 2018 from the original tenant.

13. Section 78 (1) of The Hindu Religious and Charitable Endowments Act, 1959, which deals with encroachment by Persons or Building Belonging to Charitable or Religious Institution or Endowment and the Eviction of Encroachers. The explanation to Section 78(1) of The Hindu Religious and Charitable Endowments Act, 1959 makes it clear that any person who is in occupation of property without the approval of the competent authority sanctioning



lease or mortgage or licence is an encroacher. Thus, the possession of the property by the petitioner's husband during his life time was nothing but an encroachment. since the peitioner's husband was in possession of the property, the respondents initiated steps to recover the amount. A reading of Section 78 (5) of The Hindu Religious and Charitable Endowments Act, 1959, makes it clear that during the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be stipulated by him in consideration of the use and occupation of the properties in question in the manner prescribed.

14. Therefore, there is no merits in the present writ petition. The writ petition is dismissed, with a liberty to the petitioner to work out appropriate remedy against the appropriate authority. No costs.

Sd/-

Deputy Registrar (LA & MC)

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Sub Assistant Registrar(CS)

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To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
West Chitirai Street, Madurai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment,
Madruai -1.

3.The Executive Officer,
Arulmigu Mahadeva Swami thirukovil,
No.10, Rajamill Road, Madurai -1.

+1 CC to M/s.S.MANO HAR, Advocate (SR-7368[F] dated 21/02/2022)

+1 CC to M/s.SPL GP (SR-7398[F] dated 21/02/2022)

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