



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.5975 of 2022

and

W.M.P. (MD) No.4676 of 2022

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G.Fathima Beebi

... Petitioner

/vs./

1.The Secretary to Government,
Tourism, Culture and Religious Endowments Department,
119, Uthamar Gandhi Salai,
Chennai 600 034.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Chennai 34.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Theppakulam Street,
Neelagireeswarar Thoppu, Thiruvanaikaval,
Trichy District 625 005.

4.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Theppakulam Street,
Neelagireeswarar Thoppu,
Thiruvanaikaval, Trichy District 625 005.

5.The Fit Person,
Arulmigu Thirobathiamman Temple,
Poonthottam, Puthur,
Trichy Taluk, Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the 4th respondent in Na.Ka.No.1275/2016A8 dated 10.03.2022 and quash the same as illegal.

For Petitioner : Mr.R.R.Kannan
For R1 to R4 : Mr.P.Subbaraj
Special Government Pleader
For R5 : Dr.Ramesh Mahadev

ORDER

The petitioner has filed this writ petition for a Certiorari to call for the records relating to the impugned order passed by the



4th respondent in Na.Ka.No.1275/2016A8 dated 10.03.2022 and quash the same as illegal.

2.It is the case of the petitioner that the petitioner's mother was a tenant of the 5th respondent temple and after her death, the petitioner, who is a single woman, is residing in the aforesaid premises. It is submitted that since the building that was put by the petitioner's mother during her life time was dilapidated, the petitioner undertook construction and therefore, the respondents initiated proceedings against the petitioner in M.P.No.98 2016.

3.It is further submitted that the aforesaid proceeding was allowed by the 3rd respondent by an order dated 26.02.2019. Aggrieved by the same, the petitioner had earlier attempted to file a writ petition in W.P.(MD) No.9326 of 2019 before this Court, which was dismissed by directing the petitioner to approach the 2nd respondent/the Commissioner under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (*herein after referred to as Act*).

4.Under these circumstances, the petitioner also filed a revision petition in R.P.No.147 of 2019 before the 2nd respondent, which was dismissed by order dated 04.07.2020. Aggrieved by the same, the petitioner has now preferred an appeal before the 1st respondent under Section 114 of the Act. It is submitted that the said revision petition has also been numbered as R.P.No.122 of 2020 and the petitioner has also been intimated that the revision petition will be taken up for hearing and appropriate notice of hearing will be intimated to the petitioner. It is therefore submitted that during the pendency of the aforesaid revision petition, the proceeding initiated by the 4th respondent, vide a communication dated 10.03.2022, was uncalled for.

5.Opposing the prayer, the learned counsel for the official respondents submits that the petitioner lost the case in two rounds before the respondents 2 and 3 and therefore, the petitioner cannot continue to remain in the property. It is therefore submitted that the order of the 3rd respondent asking the petitioner to vacate the premises cannot be interfered with.

6.The learned counsel for the 5th respondent temple on the other hand submits that no doubt the petitioner's mother was a tenant of the 5th respondent temple. However, the petitioner has put up a huge construction in the form of a multi storey building and is receiving rents from 11 tenants. It is submitted that the petitioner's mother was paying a ground rent of Rs.435/- only. It is submitted that the construction put up by the petitioner was neither with the permission of the 5th respondent nor with the approval of any statutory authorities for putting up a construction. It is therefore submitted that the respondents were justified in



terminating the lease in terms of Section 34B of the Act. It is submitted that no mercy should be shown as the petitioner has violated the terms of lease and the construction put up by the petitioner was contrary to Section 34B of the Act.

7. It is further submitted that the orders passed by the respondents 2 and 3 are well reasoned where the petitioner adopted dilatory tactics right from 2016 and has ended up constructing the building even though attempts were made to thwart the petitioner from continuing with the aforesaid construction.

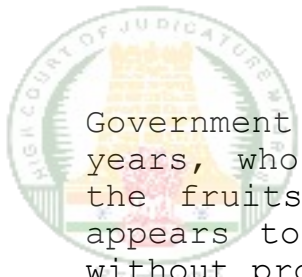
8. By way of rejoinder, the learned counsel for the petitioner submits that the petitioner is a retired Nurse and is a single woman, who is taking care of her ailing brother and therefore, on humanitarian ground also, the petitioner's case deserves to be considered sympathetically pending disposal of the revision petition filed before the 1st respondent in R.P.No.122 of 2020. That apart, the learned counsel for the petitioner submitted that the 5th respondent has refused to receive the rent and therefore, the petitioner attempted to send the rent for the period up to 31.03.2022 by a registered Demand Draft dated 30.03.2022.

9. The learned counsel for the petitioner further submits that the petitioner is not aware whether the aforesaid amount has been encashed by the 5th respondent temple or not. The learned counsel for the 5th respondent temple submits that the amount has been sent by the petitioner voluntarily with a view to get interim orders from this Court.

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

11. The facts on record seem to indicate that there is no proper documents to substantiate that there are any terms and conditions of the lease. It appears that the petitioner's mother was given a vacant land, measuring about 1260 sq., ft., for which the petitioner's mother was paying the ground rent during her life time and thereafter, the petitioner has continued to pay the ground rent. It also appears that the petitioner's mother had put up a construction during her life time, which was removed by the petitioner and thereafter, the petitioner has put up a huge construction consisting of 12 units, out of which 1 unit is being occupied by the petitioner. It is not clear that on what basis the construction was allowed to be completed without the permission of the 5th respondent or from any other statutory authorities under the provisions of the Tamilnadu Town and Country Planning Act, 1971.

12. The petitioner appears to have invested a huge amount by putting up a massive construction. The petitioner is before the



Government by way of a revision. The petitioner is aged about 64 years, who has invested all her earnings as Nurse hoping to enjoy the fruits of the rents by renting out the property. However it appears to be in violation of Section 34B of the Act and perhaps without proper planning permit.

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13.Be that as it may, considering the fact that the petitioner is in possession of the property and since the revision petition has been filed in time and has been numbered as R.P.No.122 of 2020 and duly acknowledged by the 1st respondent on 28.11.2020, I am inclined to dispose of this writ petition by directing the 1st respondent to dispose of the revision petition in R.P.No.122 of 2022 on merits and in accordance with law of the petitioner, within a period of 3 months from the date of receipt of a copy of this order. It is needless to state that before such orders are passed, the petitioner shall also be heard. The 1st respondent shall dispose of R.P.No.122 of 2020 without getting influenced by any of the observations in this order touching on merits. The impugned proceeding initiated by the 4th respondent pursuant to the dismissal of R.P.No.147 of 2019 by the 2nd respondent shall be kept in abeyance during the pendency of the aforesaid proceedings. Since the petitioner is in possession of the property, the respondent temple is at liberty to revise the rent and collect fair rent from the petitioner for use and occupation of the property during the period, when the construction was put up by the petitioner till the disposal of R.P.No.147 of 2019.

14.The writ petition stands disposed of, in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

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To

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119, Uthamar Gandhi Salai,
Chennai 600 034.

2.The Commissioner,
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<https://hcservices.ecourts.gov.in/hcservices/>



3.The Joint Commissioner,
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Theppakulam Street,
Neelagireeswarar Thoppu,
Thiruvanaikaval, Trichy District 625 005.

+2 CC to M/s.DR. RAMESH MAHADEV, Advocate (SR-21440[F] dated
26/04/2022)

+1 CC to M/s.R.R. KANNAN, Advocate (SR-19253[F] dated 19/04/2022)

+1 CC to M/s.SPL.G.P. (SR-19784[F] dated 20/04/2022)

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19.04.2022

NA(CO)
KB(10.05.2022) 5P 9C