



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD) .No.12557 of 2022

and

W.M.P(MD) .No.8894 of 2022

S.Ramachandran

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
No.119, Uthamar Gandhi Road,
Nungambakkam,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai Division,
No.H306, TNHB Colony,
Ellis Nagar,
Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai Division,
No.H306, TNHB Colony,
Ellis Nagar,
Madurai.

...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 relating the impugned order passed by the third respondent in his proceedings in ந.க.எண் .3109/2017-1, ஆ1, dated 08.06.2022 and quash the same as illegal and consequentially to forbear the third respondent from taking any coercive action against the petitioner till the disposal of the revision petition filed by the petitioner in R.P.No.163 of 2021 pending before the first respondent.



For Petitioner : Mr.Ajmal Khan
Senior Counsel for M/s.Ajmal Associates
For Respondent : Mr.P.T.Thiraviam
Government Advocate

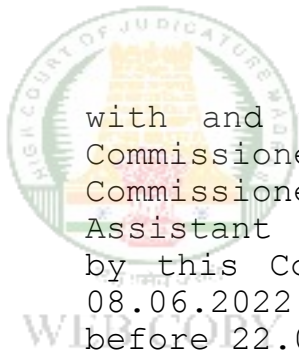
ORDER

The petitioner is a resident of Melur Town, Madurai District running grocery shop and hotel business. The property measuring to an extent of 27 cents comprised in Old Survey No.9/2, 1B part, New T.S.No.23, Ward D, Block 4, Melur Town, Madurai District, originally belongs to one Angamuthu Servai and 10 others. The petitioner purchased the above said property by way of registered sale deed, dated 28.09.2011 by Document No.250/2012. Thereafter, the petitioner, constructed a hotel in the above said property by obtaining proper permission from the Commissioner, Melur Municipality during the year 2017 and obtained electricity connection in his name. The petitioner running the above said hotel in the name of Muthupandi without any hindrance and interference. The above said hotel was constructed in 5 cents and rest of the lands is lying vacant.

2. This being the case, one M.Chockalingam, who is close relative of petitioner's vendor, namely, Angamuthu Servai creating problem by one after other after demise of petitioner's vendor. The said M.Chockalingam, Hereditary Trustee of the Arulmigu Shree Sundara Ganesa Moorthy Kovil Trust, Melur filed W.P(MD).No.21387 of 2017 seeking direction to remove the encroachment. Thereafter, proceedings under Section 78 of HR&CE Act initiated against the petitioner by the second respondent. The petitioner in M.P.No.158 of 2017 made his objections and filed his statements. The second respondent by order, dated 15.09.2021 in M.P.No.158 of 2017 found that the petitioner an encroacher and ordered to be removed.

3. Thereafter, the petitioner filed revision in R.P.No.163 of 2021 under Section 21 of the HR&CE Act, 1959, before the Commissioner, HR&CE Department against the order passed in M.P.No.158 of 2017. In R.P.No.163 of 2021, they filed a miscellaneous petition seeking stay but no notice was ordered and no stay was granted. Now, R.P.No.163 of 2021 is pending before the Commissioner, HR&CE Department.

4. In the meanwhile, one S.Ammaiyappan, third party, nothing to do with the Arulmigu Shree Sundara Ganesa Moorthy Kovil Trust filed W.P.(MD).No.5335 of 2022 seeking direction to direct the Joint Commissioner and Assistant Commissioner, HR&CE Department, Madurai to remove encroachment made by the petitioner as per the order passed in M.P.No.158 of 2017, dated 15.09.2021. In the writ petition, neither the petitioner nor the official respondents informed about the pendency of R.P.No.163 of 2021 before the Commissioner, HR&CE Department. Though, in W.P(MD).No.5335 of 2022, petitioner was shown as fourth respondent, notice has been dispensed



with and thereafter, orders have been passed that the Assistant Commissioner, HR&CE Department to implement the order of the Joint Commissioner in M.P.No.158 of 2017, dated 15.09.2021. Now, the Assistant Commissioner, HR&CE Department based on the order passed by this Court in W.P(MD).No.5335 of 2022, issued a notice, dated 08.06.2022 calling upon the petitioner to vacate the land on or before 22.06.2022.

5. The learned Government Advocate for the respondents submits that though the petitioner filed a revision before the Commissioner, HR&CE Department, he has not obtained stay. In view of the same, the petitioner cannot challenge the impugned order and eviction. He fairly submits that during the proceedings in W.P(MD).No.5335 of 2022, this Court was not informed about the revision pending before the Commissioner, HR&CE Department in R.P.No.163 of 2019.

6. Considering the submission and perusal of the matter, it is seen that already the petitioner filed R.P.No.163 of 2019, which is pending, no stay granted. It is the Court of first appeal, it would be appropriate that outcome of R.P.No.163 of 2019 to be awaited otherwise the petitioner's right would be prejudice. He further submitted that he is ready for the R.P.No.163 of 2019 to be completed within a period of three months till such time no coercive action more-so by way of impugned order to be taken.

7. Considering the same, this Court is inclined to grant stay of the order of the impugned notice, dated 08.06.2022. No coercive action to be taken against the petitioner. In the meanwhile, the first respondent is directed to complete the proceedings in R.P.No.163 of 2019 within a period three months from the date of receipt of copy of this order.

8. The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

21/06/2022

Sub Assistant Registrar(CS)

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To

1.The Commissioner,
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No.119, Uthamar Gandhi Road,
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<https://hcservices.ecourts.gov.in/hcservices/>



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Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-27015[F]
dated 21/06/2022)

+1 CC to M/s.SPL.GP (SR-27175[F] dated 21/06/2022)

W.P(MD).No.12557 of 2022
20.06.2022

NA(CO)
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