



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2022

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THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.P(MD).No.2109 of 2018
and
W.M.P(MD).No.2360 of 2018

V.Ramesh Kumar

... Petitioner

Vs.

1.The Commissioner,
The Hindu Religious and Charitable Endowment,
Chennai.

2.The Joint Commissioner,
The Hindu Religious and Charitable Endowment,
Mayiladuthurai,
Thanjavur.

3.The Executive Officer,
Arulmigu Kasinathar Thirukovil,
Thanjavur.

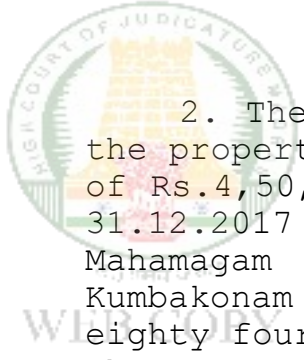
...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents from disturbing his possession of Ambi Tea Stall at Shop No.4, Mahamagakulam Melkarai, Kumbakonam, Tanjore District till a final decision is taken by the first respondent on his appeal dated 30.12.2017 which is pending on his file.

For Petitioner	: Mr.R.Anand
For R1 & R2	: Mr.P.Subbaraj Special Government Pleader
For R3	: Mr.V.Chandrasekar

ORDER

The petition has been filed by the petitioner against the official respondents forbearing the respondents from disturbing his possession of Ambi Tea Stall at Shop No.4, Mahamagakulam Melkarai, Kumbakonam, Tanjore District till the final decision is taken by the first respondent on appeal dated 30.12.2017, on the date of hearing this writ petition which is still pending before the first respondent/Commissioner of the Hindu Religious and Charitable Endowment.



2. The case of the petitioner is that the petitioner has taken the property from the second respondent for lease after paying a sum of Rs.4,50,000/-. The lease commenced from the period 01.01.2015 to 31.12.2017 for a period of three years. During the interregnum, Mahamagam festival was held in the Kasi viswanathaswamy Temple, Kumbakonam between 01.12.2015 and 22.02.2016 for a period about eighty four days and therefore the petitioner was asked to close the shop.

3. The learned counsel for the petitioner submitted that even after the temple festival was over, the Kumbakonam Municipality failed to remove the mobile toilet which hampered the petitioner from running the tea shop between 27.01.2016 and 04.02.2017 and that the petitioner was constrained to file W.P.(MD).No.11801 of 2016. The learned counsel for the petitioner submitted that in the aforesaid proceeding, the Commissioner of Kumbakonam Municipality was arrayed as the first respondent and the third respondent was arrayed as the second respondent herein. The learned counsel for the petitioner submitted that pursuant to the above said order, the mobile toilet placed in the leased premises/petitioner's shop was removed. The learned counsel for the petitioner further submitted that the petitioner was therefore constrained to file another writ petition in W.P.(MD).No.17916 of 2017 seeking for a Mandamus to direct the first respondent herein, namely, the Joint Commissioner to consider the representation of the petitioner, dated 04.08.2017 to extend the period of tenancy for a period of one year and eight days from 31.12.2017 for as the petitioner had already paid a sum of Rs.4,50,000/- as lease rent for the entire period. The learned counsel for the petitioner submitted that the said writ petition was disposed on 21.09.2017, pursuant to which the respondents passed an order by granting partial relief to the petitioner by compensating the period of temple festival between 15.12.2015 and 04.02.2017. It is submitted that for the period thereafter till removal of the mobile toilet has not been compensated and therefore the petitioner is entitled for the relief.

4. Opposing the prayer, the learned counsel for the respondents submitted that the writ petition has become infructuous in the light of the fact that an auction was held on 31.12.2017 for the period from 01.01.2018 to 31.12.2020 and the shop premises has handed over to the successful bidder. The learned counsel for the respondents further submitted that the petitioner, in any event, filed O.S.No.447 of 2017, before the District Munsif Court, Kumbakonam for an alternate relief. It is submitted that the present writ petition is therefore liable to be dismissed. The learned counsel for the respondents further submitted that the petitioner has been resorted to multiple litigation before this Court and before the Trial Court only to disturb the functioning of the respondents.

5. Considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

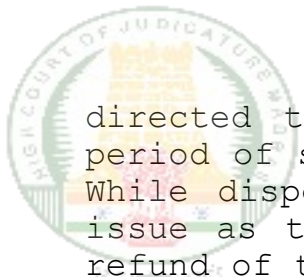


6. The facts are not in dispute, the Mahamagam festival in Kasi Viswanathaswamy Temple, Kumbakonam was held between 01.12.2015 and 22.02.2016 for about 84 days. This was during the lease period between 01.05.2015 and 31.12.2017. The temple attracts pilgrims from all over the country and therefore for the sake of the pilgrim visiting the aforesaid temple festival, some of the shops were directed to be vacated and temporarily closed for the convenience of the pilgrims. The temple festival was conducted by the third respondent under the supervision of the official respondents herein. The Kumbakonam Municipality was involved and had placed mobile toilet at the place where the petitioner's shop was situated.

7. The facts on record also indicate that after the temple festival got over on 22.02.2016, the mobile toilet installed by Kumbakonam Municipality was not removed. The petitioner was constrained to file W.P.(MD).No.11801 of 2016. An order was passed on 09.01.2017. In the said writ petition, an undertaking of the Commissioner, Kumbakonam Municipality was recorded to remove the mobile toilet within a period of two weeks from the date of receipt of copy of this order. Therefore, even the temple festival came to end on 22.12.2016, the petitioner was not allowed to use the leased premises for a period upto third week of January 2017. Thus, for almost one third of the lease period, petitioner was not allowed to use the leased premises between 01.12.2015 and 22.02.2016. During the period of temple festival was held in the temple and thereafter till third week of January 2017, due to the failure of Kumbakonam Municipality to remove the mobile toilet. The mobile toilet was removed, until the order was passed in W.P.(MD).No.11801 of 2016 on 09.01.2017. Thus, the petitioner was justified in asking the respondents to extend the period of lease for a period when the petitioner was not unable to use the lease premises.

8. Apart from the fact, the petitioner has also approached this Court under 482 Cr.P.C. in CrI.OP.(MD).No.4130 of 2016 and before the Principal District Munsif Court, Kumbakonam in O.S.No.447 of 2017. The facts on record also indicate that the petitioner has now vacated the premises and the lease premises has been leased to a third party who have participated in the auction held on 31.12.2017 for the period from 01.01.2018 to 31.12.2019. The Court cannot shut its eyes and ignore the violation of the rights of the petitioner. The authorities exercising the power under HR&CE Act ought to have ensured that there was loss to anybody on account of their action. The petitioner is entitled for suitable compensation by refund of the proportionate amount during when the leased premises could not be removed due to the failure of the Municipality to remove the mobile toilet.

9. Considering the over all facts, it is noted that the petitioner has also filed a revision under Section 21 of HR&CE Act, before the Commissioner on 13.12.2017. The Commissioner therefore



directed to dispose the above appeal of the petitioner within a period of six weeks from the date of receipt of copy of this order. While disposing the appeal, the Commissioner may also examine the issue as to whether the petitioner has entitled for any scope for refund of the aforesaid amount out of Rs.4,50,000/- paid at the time of taking the property on lease pursuant to tender floated by the third respondent as admittedly, mobile toilet facilities was kept at the leased premises under the supervision of the second respondent for the convenience of the general public and pilgrims visiting the temple. The petitioner cannot be found fault if the temple premises was not handed over the leased premises to petitioner without the mobile toilet for the petitioner to re-start the business after temple festival got over. The Writ Petition stands disposed of with the above observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Commissioner,
The Hindu Religious and Charitable Endowment,
Chennai.
- 2.The Joint Commissioner,
The Hindu Religious and Charitable Endowment,
Mayiladuthurai,
Thanjavur.
- 3.The Executive Officer,
Arulmigu Kasinathar Thirukovil,
Thanjavur.

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-5659[F] dated 11/02/2022)

+1 CC to M/s.SPL GP (SR-5979[F] dated 14/02/2022)

W.P(MD) .No.2109 of 2018
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