



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

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Writ Petition (MD) No.7349 of 2018
and
W.M.P. (MD) Nos.7038 and 7039 of 2018

A.P.Venkatesan

.. Petitioner

Versus

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

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Tiruchirappalli.

3.The Executive Officer,
Arulmigu Selva Vinayagar Temple,
Kamatchiamman Kovil,
College Road,
Trichy.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings pending before the second respondent in M.P.No.10/2018/B4 under Section 78(2) of the Hindu Religious and Charitable Endowments Act, and quash this same as illegal and forbearing the respondents from collecting the rent against the order passed by the II Additional District Munsif Court, Tiruchirappalli, in I.A.No.361 of 2012 in O.S.No.1138 of 2012.

For Petitioner	:	Mr.S.Muthukrishnan
For R1 and R2	:	Mr.P.Thiraviam Government Advocate
For R3	:	Mr.V.Chandrasekaran

ORDER

The petitioner has challenged the impugned proceeding of the second respondent bearing M.P.No.10 of 2018/B4, dated 04.01.2018, signed on 17.01.2018 and issued to the petitioner on 17.01.2018.

2.The challenge to the impugned communication of the second respondent is primarily on the ground that the petitioner had earlier filed O.S.No.1138 of 2012 before the II Additional District



Munsif Court, Tiruchirappalli, and that the petitioner had secured an interim order in I.A.No.631 of 2012 in O.S.No.1138 of 2012 in respect of the demand of fair rent of Rs.1071/- per month.

3.The learned counsel for the petitioner submits that pending the above said proceedings before the II Additional District Munsif Court, Tiruchirappalli, the respondents have initiated proceedings under Section 78(2) of the H.R. & C.E. Act, 1959 in M.P.No.10 of 2018, contrary to the above said injunction granted by the II Additional District Munsif Court, Tiruchirappalli.

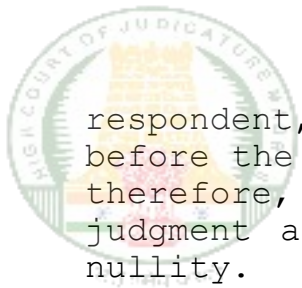
4.The learned counsel for the petitioner further submits that the suit was partly decreed on 30.09.2021, whereby, a notice dated 19.04.2012 of the third respondent was declared as null and void and mandatory injunction was granted directing the third respondent to issue a fresh notice after following due procedures, rules and regulations and a permanent injunction restraining the third respondent from collecting ground rent of Rs.1071/- per month in respect of the property until fair rent is fixed by the third respondent.

5.Opposing the prayer, the learned counsel for the third respondent submits that the suit itself was without jurisdiction. The suit was entertained by the learned II Additional District Munsif, Tiruchirappalli, inasmuch as there is an express bar under Section 108 of the H.R. & C.E. Act. It is submitted that as per Section 108 of the H.R. & C.E. Act, no suit or other legal proceedings in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in the Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of the Act.

6.It is submitted that it is a fit case for exercising Article 227 of the Constitution of India inasmuch as the learned II Additional District Munsif, Tiruchirappalli, overstepped the jurisdiction by entertaining the suit and has partly decreed the suit, even though there is a specific bar under Section 108 of the H.R. & C.E. Act. That apart, it is submitted that the petitioner has an alternate remedy under Section 34-A of the H.R. & C.E. Act, regarding fixation of lease rent and that the learned II Additional District Munsif, Tiruchirappalli, cannot usurp the jurisdiction of the Commissioner or the Joint Commissioner and this Court and therefore, the Writ Petition is devoid of merits.

7.It is submitted that the judgment and decree of the trial Court is a nullity and is not binding on the official respondents or the third respondent Temple or on this Court and therefore, prays for dismissal of the Writ Petition.

8.By way of rejoinder, the learned counsel for the petitioner submits that there is an acquiescence on the part of the third respondent.



respondent, inasmuch the third respondent filed written statement before the II Additional District Munsif Court, Tiruchirappalli, and therefore, it is not open to the third respondent to state that the judgment and decree dated 30.09.2021, in O.S.No.1138 of 2012, was nullity.

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9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the third respondent.

10.The proceedings initiated before the II Additional District Munsif Court at Tiruchirappalli, in O.S.No.1138 of 2012 was clearly barred under law. Instead of filing application under Order 7 Rule 11 of C.P.C., for rejection of the plaint, the third respondent acquiesced into the proceedings and also filed a written statement. The trial Court has also not been declined to entertain the suit and has proceeded to pass judgment and decree in O.S.No.1138 of 2012 on 30.09.2021. The suit has been partly decreed in favour of the petitioner. The decree reads as under:-

'1. that the suit is partly decreed.

2. that it is hereby declared that the notice dated 19.04.2012 issued by the defendant is as null and void.

3. that Mandatory Injunction is granted directing the defendant to issue fresh notice after following due procedures, rules and regulation.

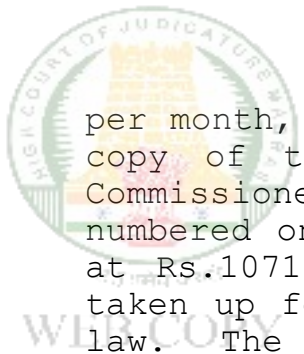
4. that Permanent Injunction is granted restraining the defendant from collecting the house site rent of Rs.1071/- in respect of the suit property until fair rent is fixed by the defendant.

5.that the suit for declaration in respect of demand notice dated 15.11.2005 is dismissed.

6. that it is hereby ordered as No cost.'

11.The aforesaid decree was a nullity. The petitioner has been squatting over the property for a period of over a decade and more and is still not paying the fair rent that was fixed in 2012. The petitioner, being the tenant, cannot initiate proceedings before the Court, which does not have jurisdiction. The petitioner had an alternate remedy by way of appeal before the Commissioner under Section 34-A of the H.R. & C.E. Act and further recourse to the order of the Commissioner, before this Court under Articles 226 and 227 of the Constitution of India. The petitioner appears to have been paying paltry rent of Rs.80/- per month, which was enhanced periodically.

12.Considering the fact that the petitioner has been in possession of the property, I am inclined to dismiss the Writ Petition, by giving liberty to the petitioner to approach the Commissioner for re-fixation of fair rent subject to the condition that the petitioner pays arrears as on date on the rent at Rs.1071/-



per month, within a period of 60 days from the date of receipt of a copy of this order. The appeal of the petitioner before the Commissioner under Section 34-A of the H.R. & C.E. Act will be numbered on production of proof of having paid the arrears of rent at Rs.1071/- per month. The proposed appeal shall be thereafter taken up for hearing and disposed on merits and in accordance with law. The first respondent Commissioner shall endeavour to dispose the appeal within a period of three months thereafter after giving the petitioner adequate opportunity of being heard. The respondents are at liberty to issue appropriate notice to the petitioner in accordance with law to demand fair rent from the petitioner for the period when the rent of Rs.1071/- was due for revision. If the petitioner fails to remit the amount, the respondents are at liberty to initiate appropriate proceedings to evict the petitioner.

13.This Writ Petition stands disposed of in terms of the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

To

1. The Commissioner,
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- 2.The Joint Commissioner,
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- 3.The Executive Officer,
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+1 CC to M/s.S.MUTHU, Advocate (SR-13560[F] dated 22/03/2022)

+1 CC to M/s.V.CHANDRASEKAR, Advocate(SR-13685[F] dated 23/03/2022)

+1 CC to M/s.SPL GP (SR-13500[F] dated 22/03/2022)

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