



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.7559 of 2018

and

W.M.P. (MD) No.7204 of 2018

WEB COPY

R.Velkumar

.. Petitioner

Versus

1. The Secretary to Government,
Hindu Religious and Charitable
Endowment Department,
Secretariat,
Chennai.

2.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Chennai - 600 034.

3.The Joint Commissioner and
Executive Officer,
Arulmigu Subramaniya Swamy Temple,
Tiruchendur.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the entire records pertaining to the impugned order passed by the third respondent in his proceedings in Na.Ka.No.807/2018/E2, dated 21.03.2018 and quash the same as illegal.

For Petitioner	:	Mr.M.S.Jeyakarthik
For R1 and R2	:	Mr.P.Subbaraj
		Special Government Pleader
For R3	:	Mr.M.Muthugeethayan

ORDER

The petitioner has challenged the impugned order of the third respondent, dated 21.03.2018, bearing Na.Ka.No.807/2018/E2, which called upon the petitioner to handover vacant possession of the shop at Door No.6-1-1.

2.It is the specific case of the petitioner that the impugned notice has been issued only on the ground that there was an order of the Commissioner, dated 14.02.2018, calling upon the Temple authorities to take steps to vacate all the tenants those who are in possession in close proximity to the Temples in Tamil Nadu in the wake of fire accident of Arulmighu Meenakshiamman Temple, Madurai.



3.The learned counsel for the petitioner submits that the impugned proceedings initiated by the third respondent is contrary to the law settled by the Hon'ble Supreme Court in **S.Kumar vs. The Commissioner and others** [S.L.P.(C)Nos.3007-3051 of 2019, dated 08.04.2019].

4.After hearing the learned counsel appearing for the parties, I am of the view that the impugned proceedings asking the petitioner to vacate the premises notwithstanding the fact that the reasons given therein appear to be in violation of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the HR & CE Act'].

5.It appears that the petitioner is in possession of the property and is holding perpetual lease, though the Act contemplates that any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the Institution as per Section 34 of the HR & CE Act. Section 34-A of the Act contemplates fixation of fair rent by the Committee, consisting of Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be. The fair rent is to be fixed once in three years by the said Committee.

6.Chapter VII of the HR & CE Act deals about encroachments. Encroachment has been defined in Explanation to Section 78 of the HR & CE Act. It is noticed that a method has been prescribed for terminating the lease and for taking steps to evict a person encroaching the Temple property. In this case, admittedly, the petitioner is in possession of the property with the permission of the respondents. But, for the reasons given in the impugned order, it was not on account of any fault of the petitioner.

7.The third respondent has not called upon the petitioner to vacate the property and take an alternate property. Thus, there is no attempt to break the lease, but only transfer the location of the shop. The petitioner who is a perpetual lessee or licensee cannot dictate terms and continue to be in possession of the property, if such property is required to be vacated to protect the Temple as such.

8.Therefore, this Writ Petition is disposed of by directing the third respondent to issue appropriate notice under the provisions of the HR & CE Act read with the provisions of the Religious Institutions (Lease of Immovable Property) Rules, 1963. Needless to state that the petitioner shall be heard and given adequate opportunity before any adverse order is passed.



9.It is made clear that in case the property is to be vacated on account of risk, which has been noticed by the respondents, the petitioner may be directed to vacate the said premises, the said premises and the said premises shall not be leased or licensed to any third party. In other words, the impugned proceedings shall not be used as a ruse to vacate the petitioner from the premises to lease it out to a third party. Either way, both the petitioner and the respondents are directed to enter into a fresh terms of lease reducing the terms of lease in writing for the ensuing period. The petitioner is directed to co-operate with the respondents.

10.With the above observations, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn2

To

1. The Secretary to Government,
Hindu Religious and Charitable Endowment Department,
Secretariat,
Chennai.

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai - 600 034.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-5533[F] dated 11/02/2022)

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-5635[F]
dated 11/02/2022)

+1 CC to M/s.SPL.GP (SR-5708[F] dated 11/02/2022)

WP (MD) No.7559 of 2018
10.02.2022

SE (CO)

GC (28.02.2022) 3P 6C