



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.19062 of 2018

and

W.M.P. (MD) No.16909 of 2018

WEB COPY

A.Mohamed Ismail

... Petitioner

/vs./

1.The Joint Commissioner,
Hindu Religious Charitable Endowment Department,
Thanjavur,
Thanjavur District.

2.The Assistant Commissioner,
Hindu Religious Charitable Endowment Department,
Thanjavur,
Thanjavur District.

3.Arulmighu Harasabha Vimochana Perumal Temple,
represented through its Executive Officer,
Kandiyur, Thiruvaiaru Taluk,
Thanjavur District.

... Respondents

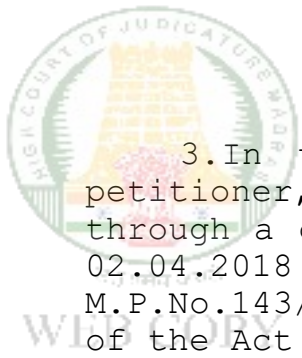
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order vide Pa.Ma.No.143/2017/E2 dated 06.04.2018 and the consequential impugned order vide M.P.No.143/2017E2 dated 10.08.2018 passed by the 1st respondent and quash the same as illegal, void abinitio, without jurisdiction and ultra vires and direct the respondents to pay compensation to the petitioner by this Court.

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

ORDER

The petitioner has challenged the impugned order passed by the 1st respondent/the Joint Commissioner, rejecting the application of the petitioner for setting aside the *ex parte* order dated 02.04.2018.

2.The 3rd respondent temple had initiated proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (*herein after referred to as Act*) before the 1st respondent in M.P.No.143/2017/E2.



3. In the said proceedings, though notice was served on the petitioner, the petitioner had failed to either appear in person or through a counsel and therefore, the petitioner was set *ex parte* on 02.04.2018 and thereafter, an order came to be passed in M.P.No.143/2017/E2 by allowing the petition filed under Section 78 of the Act by the 3rd respondent temple.

4. The petitioner thereafter filed a miscellaneous petition on 01.08.2018. The application has been rejected on the ground that the application for setting aside the order should have been filed on or before 05.05.2018 and since it was beyond the aforesaid period (120 days), the application was liable to be rejected. Aggrieved by the same, the petitioner is in appeal before this Court.

5. The learned counsel for the petitioner submits that the order has been secured from the 1st respondent in M.P.No.143/2017/E2 by the 3rd respondent by suppressing the fact that there was a judgment and decree restraining the 3rd respondent temple from evicting the petitioner in O.S.No.217 of 1993, vide a judgment and decree dated 25.10.1995. That apart, it is submitted that the 3rd respondent had filed a suit in O.S.No.93 of 1996, wherein the trial Court by its judgment and decree dated 27.04.2006, had partly decreed the suit and partly dismissed the suit by holding that the 3rd respondent temple was the owner of the land, whereas the petitioner was the owner of the super structure.

6. It is further submitted that further appeal filed by the petitioner was dismissed by the appellate Court by judgment and decree dated 03.10.2007 and thereby upheld the judgment and decree dated 27.04.2006 of the trial Court in O.S.No.93 of 1996. It is submitted that the proceedings that came to be initiated before the 1st respondent in M.P.No.143/2017/E2 under Section 78 of the Act were predicated on the assumption that the petitioner was an encroacher of the property and that the property was leased out to one Arulanandhan Nadar. Though the judgment and decree of the trial Court have not been brought to the attention of the 1st respondent in M.P.No.143/2017/E2, that could be several reasons for taking steps for declaring the petitioner as an encroacher for instance, if the petitioner had failed to pay the ground rent. The petitioner appears to be paying the ground rent of Rs.1/- for the property measuring an extent of 21 cents of land in S.No.21A/21, Kandiyur Village, Thiruvaiyaru Taluk, Thanjavur District.

7. Heard the learned counsel for the petitioner, learned counsel for the official respondents and the learned counsel for the 3rd respondent.

8. Considering the above and to meet the ends of justice, I am inclined to dispose of this writ petition by giving liberty to the petitioner to file an application before the Commissioner of HR & CE



under Section 21 of the Act subject to the petitioner paying the fair rent that would have been levied on the property for use and occupation during the period. If such proof is filed by the petitioner, the appeal shall be entertained and disposed of by the Appellate Commissioner on merits and in accordance with law expeditiously. All further rights of the petitioner will be subject to the final outcome of the orders to be passed in the proposed appeal of the petitioner under Section 21 of the Act. It is made clear that if no appeal is filed within the time stipulated herein or if the amount of arrears towards use and occupation of the property is not paid by the petitioner till the date of disposal of this writ petition, this order will stand vacated automatically without further reference to this Court.

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

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Joint Commissioner,
Hindu Religious Charitable Endowment Department,
Thanjavur,
Thanjavur District.

2.The Assistant Commissioner,
Hindu Religious Charitable Endowment Department,
Thanjavur,
Thanjavur District.

+1 CC to M/s.R. RAJARAMAN, Advocate (SR-20550[F] dated 22/04/2022)

+1 CC to M/s.SPL.GP (SR-21032[F] dated 25/04/2022)

W.P. (MD) No.19062 of 2018
22.04.2022

RK(06/05/2022) 3P 5C