



W.P(MD).No.10332 of 201 /

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.10332 of 2017

and

W.M.P(MD)No.7904 of 2017

S.Vallamuthu

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

3.The Executive Officer,
Arulmigu Mahadeva Swamy Temple,
Raja Mill Road,
Madurai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records relating to the impugned order, dated 12.05.2017 passed by the first respondent in Miscellaneous Petition No.46 of 2017 and quash the same.

For Petitioner	: Mr.T.R.Jeyapalam
For R1& R2	: Mr.M.Lingadurai Special Government Pleader
For R3	: Mr.S.Manohar Standing Counsel



W.P(MD).No.10332 of 201 /

ORDER

The petitioner is a sub-tenant under one Ramakrishnan, who is a tenant under the third respondent. The said Ramakrishnan entered into an agreement with the petitioner on 15.04.2009, by which petitioner was given possession of the property in lieu of interest free deposit of Rs.2,00,000/-. The third respondent sent a notice on 25.11.2012 to Ramakrishnan, who is no more by then. The petitioner met the third respondent several times with request to make him direct lessee on payment of market rent. The first respondent issued a notice, dated 26.12.2012 to the deceased Ramakrishnan under Section 78 (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Thereafter, the petitioner filed O.S.No.1186 of 2012 before the Additional District Munsif Court, Madurai and obtained decree of permanent injunction, dated 05.01.2015 restraining the third respondent from interfering with the petitioner's peaceful possession and enjoyment of the said property except under due process of law. The Joint Commissioner by order in M.P.No. 46 of 2017, dated 12.05.2017 under Section 78 of the Hindu Religious and Charitable Endowments Act directed the petitioner to hand over the possession of the property to the third respondent temple.



2. The petitioner earlier sent representation seeking to make him as direct tenant under the third respondent, which was not considered. The petitioner ready to pay the fair rent or any rent, fixed by the third respondent, the petitioner to show is bonafide has already paid a sum of Rs.1,00,000/- to the credit of temple on 19.07.2022. The temple authorities received the same and issued receipt. In view of the same, terming the petitioner as encroacher and taking steps to remove the petitioner is not proper. Hence, filed this writ petition.

3. The learned Special Government Pleader for the respondents 1 and 2 submits that the petitioner is a sub-tenant under one Ramakrishnan. The petitioner is due to the tune of Rs.7,32,000/- to the temple. On the request of the third respondent, Assistant Commissioner, HR&CE Department gave report, based on the report, the Joint Commissioner, HR&CE Department issued notice to the petitioner under Section 78 of the Hindu Religious and Charitable Endowments Act, found the petitioner as encroacher, ordered encroachment to be removed. Despite the petitioner receiving notice has not opposed the same, which is contrary to the civil suit order obtained in O.S.No. 1186 of 2012. The petitioner is aware about the consequences and further proceedings as could be seen from the civil Court order. The petitioner



adopting only dilatory tactics to stall the authorities from removal of encroachment.

4. The learned Standing Counsel for the third respondent submits that one Ramakrishnan was leased out 2047.50 square feet of the temple land and the said Ramakrishnan, sublet 680 square feet to the petitioner. The petitioner is not a tenant under the temple. When the temple authorities attempted to initiate action, the petitioner filed civil suit in O.S.No.1186 of 2012, arraying the Ramakrishnan's wife as first defendant and the temple as second defendant. The civil Court by judgment, dated 05.01.2015 passed an order, following due process of law, action can be taken against the petitioner. Thereafter, proceedings initiated under Section 78 of the Hindu Religious and Charitable Act. The petitioner not chosen to participate in the proceedings, knowing well about the proceedings and its consequence. As on date, the petitioner is due to the temple to the tune of Rs.7,32,000/- out of which the petitioner paid Rs.1,00,000/- on 19.07.2022. Now, the petitioner is due to the tune of Rs.6,32,000/-. The petitioner by filing this petition stalled the eviction proceedings successfully from the year 2017 for the past five years. If the petitioner is aggrieved on the orders of Joint Commissioner, Hindu Religious and Charitable Endowments Department, he is to approach the first



respondent seeking for relief by act and conduct of the petitioner, it is clear that the petitioner declared encroacher, he has no intention to pay the rent to the temple and further stalled the proceedings of eviction.

5. Considering the submission and on perusal of the materials, it is seen that the petitioner is a sub-tenant under Ramakrishnan. The petitioner is an encroacher, unauthorised occupant of the temple property. The petitioner knowing well about his status, filed a suit in O.S.No.1186 of 2012 and obtained a decree. Thereafter, proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act initiated, the petitioner knowingly kept away from the same and after getting orders of eviction, the petitioner approached this Court. From the date of admission of this writ petition, the petitioner paid only Rs.1,00,000/- i.e., on 19.07.2022. As on date, the petitioner is due to the tune of Rs.6,32,000/-. This property is one of the prime properties on which the income of the temple depends, which is one of the main source of the temple income. For the past several years, the temple is deprived of its income and the due got accumulated.

6. In view of the same, this Court finds no reason to entertain this petition. Hence, the writ petition stands dismissed. The temple authorities to



W.P(MD).No.10332 of 201 /

proceed as per the order for removal of encroachment, with the aid of police and revenue officials as contemplated under the Hindu Religious and Charitable Endowments Act without further delay. No costs. Consequently, the connected miscellaneous petition is closed.

12.08.2022

Index : Yes / No
Internet : Yes/ No
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To

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M.NIRMAL KUMAR, J.

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