



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.19517 of 2017

and

W.M.P.(MD).No.15814 of 2017

WEB COPY

A.Vairamani

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.

4.The Executive Officer,
Arulmigu Koodal Alagar Temple,
Madurai - 625 001.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order dated 14.10.2017 in Na.Ka.No.4393/2013-4/Aal Passed by the third respondent and quash the same and consequently directing the fourth respondent to recognise the petitioner as the lawful tenant of the property bearing Old Door No.25, New Door No.73, School Lane, Pandiyavellalar Street, Madurai belonging to the fourth respondent temple.

For Petitioner	: Mr.J.Bharathan
For R1 to R3	: Mr.P.T.Thiraviam Government Advocate
For R4	: Mr.K.R.Laxman

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3 and the learned counsel for the fourth respondent.



2. The petitioner had challenged the consequential order of the communication of the third respondent, dated 14.10.2017, in pursuance of the eviction order passed under Section 78 of the Hindu Religious and Charitable Endowments Act on 21.09.2016.

3. It is the case of the petitioner that the property was originally leased out to Alagu Kone, in the year 1950 and after his demise, his wife Ammapillai Ammal continued to be in possession. It is the further case of the petitioner that after the demise of Ammapillai Ammal, the petitioner's father continued to occupy the premises and also continued to pay the rent. It is submitted that after the petitioner's father death, the petitioner continued to pay the rent.

4. The learned counsel for the petitioner submits that as on 24.08.2020, the petitioner has paid a sum of Rs.24,500/-. He submits that the petitioner is infirm and depends on the income of the son. To support the above submission, there are no documents to substantiate that the petitioner is infirm and he is currently immobile, due to paralysis. The learned counsel for the petitioner submits that in the counter filed by the fourth respondent, the petitioner stated to be in arrears of Rs.44,070/- as on date and the petitioner is willing to pay the arrears.

5. Opposing the prayer, the learned counsel for the official respondents, namely, the respondents 1 to 3 and the learned counsel for the fourth respondent submit that what has been challenged by the petitioner is only a consequential order of communication of the third respondent, dated 14.10.2017. It is submitted that in absence of any challenge to the eviction, dated 21.09.2016 of the second respondent, the present writ petition is devoid of merits and it is liable to be dismissed.

6. The learned counsel for the fourth respondent has relied on the following decisions of this Court:

(1) Reference to **D.S.Narayanan Vs The Commissioner, Hindu Religious and Charitable Endowments Department and others**, the learned counsel for the fourth respondent submits that in terms of the above order, the petitioner has to be treated as a person who is in occupation without any approval of the competent authority and the lease having not been attorned or transferred in favour of the petitioner.

(2) Reference to **Palanichamy Vs The Commissioner, Hindu Religious and Charitable Endowments Department and others** was made to state that the petitioner has not *locus standi* as the petitioner is merely an encroacher.

(3) The reference to **Somu @ Somasundaram and E.Pari @ Mohammed Pari Vs Commisisoner and others** was made to state that is the



only remedy available to the petitioner therein to file a revision before the Commissioner under Section 21 of The Hindu Religious and Charitable Endowments Act, 1959.

7. I considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the official respondents and the learned counsel for the fourth respondent.

8. The petitioner is aged about 65 years old. She claims right over property from her predecessor from the year 1950. Whether the petitioner has been paralysed or is unwell, is of no concern. There are also no document to substantiate the same. Be that as it may, considering the fact that the petitioner has been in possession of the property and has not taken any steps for redressing her grievance against order, dated 21.07.2016, Court inclined to give liberty to the petitioner to work out the remedy as against the aforesaid order, in accordance with law either by filing petition under Section 21 or under Section 69 of The Hindu Religious and Charitable Endowments Act, 1959. If such, whether the remedy under Section 21 or Section 69 of the Hindu Religious and Charitable Endowment Act is preferred, if it is to be preferred by the petitioner and such application shall be filed by the petitioner within a period of thirty days from the date of receipt of copy of this order. In case, such applications for revision is filed by the petitioner, the Commissioner shall dispose the same, within a period of thirty days thereafter in accordance with law. Pending such orders, the petitioner is directed to pay the arrears within a period of one month from the date of receipt of copy of this order and continue to pay the rent which the petitioner is liable to pay for occupation. All the issues as to whether there was a valid tenancy between the petitioner's father Subbiah and the fourth respondent is left open to be decided.

9. The writ petition stands disposed of with the above observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

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.

<https://hcservices.ecourts.gov.in/hcservices/>



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+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-8484[F] dated 24/02/2022)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-8486[F] dated 24/02/2022)

+1 CC to M/s.SPL GP (SR-8342[F] dated 24/02/2022)

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