



ORDER

The petitioner has filed the present Writ Petition for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order issued by the 5th respondent in his proceedings in Na.Ka.No. 4096/2015-4/AA 1 dated 16.10.2017 and quash the same and consequently forbearing the respondents from in any manner dispossessing the petitioner from his dwelling house comprised in S.No. 187, situated at Door No. 10-2/27, Kodangi Thoppu Street, Thirupparankundram, Madurai District.

2. The contention of the petitioner is as follows:

2.1 The petitioner is residing in Door No.10-2/27 Kodangi Thoppu Street, Thirupparakundram, Madurai. The petitioner and one late Arumugam are the legal heirs of one deceased Ramaiah Servai. The petitioner's forefathers have been living there for more than 100 years in the said property. The property measures about 1443 sq.ft. In the said property there are two dwelling houses in the ground floor, two houses in the first floor and one house in the second floor. The petitioner is residing in Door No.27, which is a dwelling house, while four other persons are residing in the other dwelling houses.

2.2 During the year 2016, the Deputy Commissioner/ Executive Officer of Shri Arulmighu Subramaniaswamy temple, Thirupparakundram has initiated eviction proceedings under Section 78 of the HR and CE Act, stating that the land belongs to the temple with patta No.1252, which stands in the name of the temple. Further, he had issued a notice on 05.01.2016 in Na.Ka.No.2324/15-E.5 against the petitioner as well as other tenants/residents, against which, the petitioner and co-owners filed a civil suit in O.S. No.27 of 2016 before the learned District Munsif, Thirumangalam, seeking for the relief of declaration and permanent injunction. In the said suit, the fourth respondent appeared and the said suit is still pending.

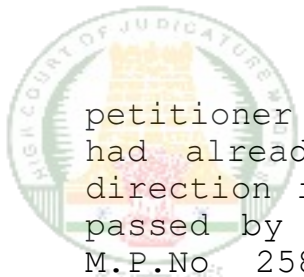
2.3 Further, the fourth and fifth respondents herein have filed a statutory petition under Section 78 of the HR and CE Act before the third respondent / Joint Commissioner, HR and CE Department, who without perusing the documents produced by the petitioner and without conducting any enquiry allowed the petition filed by the fourth and fifth respondents and declared the petitioner as one of the encroachers and also directed the Executive Officer to remove them from the said property vide its proceedings in M.P.Na.Ka. No.258/2016/E.1 dated 05.05.2016. Against the order passed by the third respondent, the petitioner filed another suit in O.S.No.154 of 2016 before the learned District Munsif, Thirumangalam, seeking for a relief of declaration it as null and void. Thereafter, on advice, he has filed a revision petition before the second respondent under Section 21 of the Act challenging the order passed by the third respondent dated 05.05.2016, and the same was taken on file in RP



2.4 In the revision, the petitioner has filed a memo on 25.10.2016, requesting the second respondent to consider his case sympathetically since it is the dwelling house of the petitioner and he has no other house and also requested to treat the petitioner as tenant and to fix a fair rent. The second respondent directed the fourth respondent / Executive Officer to work out the rent along with arrears from the date of initiation of the action under Section 78 of the Act and to file a memo along with the calculation statement under Section 78 of the Act on 03.01.2017 by an order dated 02.02.2016. The second respondent without considering the facts and circumstance of the case, disposed the revision by an order dated 18.04.2017. The second respondent in his order has held that encroachers are residing in the property by putting up construction; further, the temple is not getting income from the said property and the petitioner was willing to pay the rent fixed by the temple. Considering the interest of the temple with certain conditions the order has been passed. The order has been passed stating that the petitioner shall pay the damages towards the use of occupation of the property with annual enhancement at the rate of 15%. For the two houses in the ground floor Rs.2700/- per month was fixed as rent and for the three houses in the first and second floor the monthly rent is fixed as Rs.900/- each was fixed. Further, it is directed that the rent has to be calculated from the date of initiation of proceedings and further to be paid before 5th of every month. It was also directed that, the petitioner shall not make any addition or alterations to the existing structure and pay 10 months damages as advance to safeguard the temple from any default in payment of damages in future and further the petitioner was directed to withdraw all the suit filed by him against the temple. If the petitioner fails to comply with the above conditions, the Joint Commissioner, Madurai has to give effect to the order passed under Section 78 of Act, thereby revision was disposed by the Commissioner.

2.5 Against the said order, the petitioner has preferred an appeal, before the Secretary under Section 114 of the HR and CE Act and the respondents without following any provisions and regulations of the HR and CE Act had taken steps to evict the petitioner. The petitioner moved a petition for stay of proceedings before the first respondent and no action has been taken. In the meanwhile, the fifth respondent has issued proceedings under section 79 of the HR and CE Act in Na.Ka.No.4096/2015-4/AA1 dated 16.10.2017, directing the petitioner to vacate the said premises on or before 31.10.2017. In view of the same, the petitioner apprehends that he may be forcibly evicted and dispossessed from the property and for the said reason, he has filed the present Writ Petition.

3. The fourth respondent/Deputy Commissioner/Executive Officer of the temple has filed his counter narrating the sequence of events. <https://hcc.madurai.judges.org>, it is stated that the petition filed by the



petitioner is not maintainable for the reason that the Commissioner had already disposed the petitioner's revision petition with a direction in RP No.253/16 D2 dated 18.04.2017, confirming the order passed by the Joint Commissioner, Madurai dated 05.05.2016 in M.P.No. 258/2016. The Assistant Commissioner/5th respondent was directed to remove the encroachment by invoking Section 79 of the HR and CE Act. As against the order passed by the second respondent dated 18.04.2017, the petitioner has filed revision petition which is said to have been filed before the Secretary, which details have not been produced. The 5th respondent in order to comply with the direction issued by the 2nd and 3rd respondents dated 18.04.2017 and 05.05.2017 in RP Nos.253/16 and MP.No.258/16 had issued notice dated 16.10.2017, fixing the date for eviction on 31.10.2017.

4. It is not in dispute the property belongs to the temple/fourth respondent. The temple is the absolute owner and the property which is situated in S.No.187, patta and Chitta all stands in the name of the temple. The petitioner is an encroacher of the said property and constructed five houses, two in the ground floor, two in the first floor and one in the second floor. The petitioner is residing in one of the house and four other houses have been leased out to Navaneetha Krishnan, Muthukumar, Ariyamuthu. During the course of hearing, the petitioner was directed to pay a sum of Rs.3,07,925/- to the temple on 01.11.2017, for which, the petitioner handed over a DD bearing No.274315 drawn on Indian Overseas Bank, Thiruparankundram. The other houses situated in the said property has been taken possession by the fifth respondent vide proceedings in Na.Ka. No.4096/2015-4/AA1 dated 16.10.2017 and handed over possession to the fourth respondent temple on 31.10.2017. The fourth respondent by way of notice on 24.05.2017 directed the petitioner to comply with the order of the Commissioner dated 18.04.2017. Though notice has been issued to the petitioner, the petitioner has not complied with the order of the Commissioner. The fifth respondent communicated the order passed by the second and third respondents to take steps to hand over possession of the property to the fourth respondent, thereby, he has invoked Section 79 of the HR and CE Act and issued notice on 16.10.2017. Civil suits filed by the petitioner in O.S. No.27 and 2016 and 154 of 2016 before the District Munsif, Thirumangalam, for declaration are not maintainable as per section 79(3) of the HR and CE Act. As per Section 93 of the HR and CE Act, the said suits are barred as per Section 108 of the HR and CE Act in view of the decision of this Court in **2012(1)CTC 474 and 2011 (3)MLJ 230**. It is submitted that for construction of 15 houses in S.No.187, which property belongs to the temple, proceedings has been initiated against the petitioner by the third respondent and passed an order dated 30.11.2016 in M.P.No.6820/2016 and the said fact has been suppressed by the petitioner. As regards the property pertaining to the above five houses, the possession of four houses have been taken over by the temple. In view of the fact that the petitioner having not complied with the order of the Commissioner and failed to make the payment of arrears amount, cannot maintain



5. The fifth respondent filed his counter and other respondents reiterated submissions made by the respondents. The sum and substance of the respondents counter is that the property belongs to the temple and the petitioner is an encroacher. He had failed to pay the rent to the temple. Further he has also let out some portion of the property to third persons, which has now been reclaimed by the temple. The petitioner has filed civil suits, adjudication before the temple authorities and also writ petition and all the three proceedings pertain to the one and the same cause of action. One thing is certain that the petitioner has not paid the rent and made himself liable to be prosecuted under Section 78 of the said Act and since he has been declared as an encroacher and not complying with the order of authorities, now liable to be evicted under Section 79 of HR and CE Act.

6. Heard the learned counsel for the petitioner, learned counsel for the respondents and perused the materials available on record.

7. It is seen that the petitioner has stoutly defended the notice issued under Section 78 of the Act, participated in the proceedings before the Joint Commissioner and thereafter, under Section 21 of the Act filed a revision before the Commissioner, filed a memo to be considered as a tenant and willing to pay the rent and arrears. Thereafter, filed revision before the Secretary under Section 114 of the Act. Further, he has also filed Civil Suits in O.S. No.27 of 2016 and 254 of 2016 and now the present petition.

8. The petitioner admits that the land belongs to the temple and he is a tenant, wherein he is residing there along with four others and now the four others have been evicted and the possession has been handed over to the temple authorities. The petitioner having failed to make payment of arrears of rent has become encroacher and is liable to be evicted under Section 79 of the Act. In view of the same, quashing of the impugned order dated 16.10.2017 issued under Section 79 of the HR and CE Act is not sustainable, hence the Writ Petition stands dismissed. The temple authorities are free to take possession of the property, if it is not done so far. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/06/2022

Sub Assistant Registrar(CS)



To

1. The Secretary to Government
Government of Tamil Nadu,
Hindu Religious Charitable Endowments Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Commissioner,
Hindu Religious Charitable Endowments Department,
Chennai-600 009.
3. The Joint Commissioner
Hindu Religious Charitable Endowments Department,
Administrative Department, Madurai.
4. The Deputy Commissioner/Executive officer
Arulmighu Subramaniaswamy Temple,
Thiruparakundram
Madurai.
5. The Assistant Commissioner
Hindu Religious Charitable
Endowments Department,
Madurai.

+1 CC to M/s.SPL.GP (SR-25925[F] dated 15/06/2022)

W.P. (MD) No.19998 of 2017
and

WMP (MD) Nos.16277 of 2017 and 7726 of 2021

14.06.2022

RK/27.06.2022 : 6P/7C