



W.P.No.13236 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.13236 of 2016
and W.M.P.No.11610 of 2016

1.K.Sekar
2.M.Geetha

.... Petitioners

-Vs-

1.The Commissioner
Hindu Religious and Charitable Endowments
Department, Chennai 600 034.

2.The Joint Commissioner
Hindu Religious and Charitable Endowments
Department, Chennai 600 034.

3.The Assistant Commissioner / Executive Officer
Arulmighu Thiyagaraja Swamy Thirukkoil
Thiruvottiyur, Chennai 600 019.

4.Mrs.Yamunabai

5.Mr.Aruljothi

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the orders in Nada.Na.Ka.No.839/2009/A2 dated 04.03.2016 (Posted on 23.04.2016, received by the writ petitioners on 25.03.2016) on the file of the 2nd respondent and consequential letter No.Nil dated 24.03.2016 issued by the 3rd respondent, quash the same.



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For Petitioners : Mr.S.Pushpakaran
For Respondents : Mr.K.Karthikeyan
Government Advocate – for RR1 to 3

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 04.03.2016, wherein the 2nd respondent has directed the occupiers of the temple property to vacate and hand over the same within 15 days failing which further proceedings will be initiated to take possession with the aid of the police.

2. Heard Mr.S.Pushpakaran, learned counsel for the petitioners and Mr.K.Karthikeyan, learned Government Advocate for the respondents 1 to 3.

3. The case of the petitioners is that one Kasambigai Ammal was the tenant under the 3rd respondent temple. The 1st petitioner purchased a portion of the property measuring 1180 sq.ft out 4160 sq.ft with the superstructure and the leasehold right. He was also paying proportionate rent to the 5th respondent who is the legal heir of the above said Kasambigai Ammal.

4. The 3rd respondent, through notice dated 23.08.2013 informed that the arrears of rent to the tune of Rs.8,14,324/- must be paid and the monthly rent of



Rs.8,361/- must also be paid with effect from 01.07.2013. It was further informed that if the property is under the occupation of persons whose name has not been recognised by the temple, necessary application must be submitted for change of name.

5. The 1st petitioner accordingly made a representation on 17.09.2013 seeking for change of name with respect to the subject property. The 3rd respondent responded to the 1st petitioner stating that proceedings will be initiated under Section 78 of the Hindu Religious and Charitable Endowments Act (hereinafter referred to as 'the Act') against the original tenant and subject to the result of the proceedings, the request made by the petitioner will be considered.

6. The 2nd respondent initiated proceedings under Section 78 of the Act. Notice was also served on the 1st petitioner. The 2nd respondent through proceedings dated 04.03.2016 came to a conclusion that the 1st petitioner and the 5th respondent are encroachers in the eye of law and accordingly directed the occupier of the property to vacate and hand over possession. The same has been put to challenge in the present writ petition.

7. There is no dispute with regard to the fact that the petitioners were never recognised as tenants by the temple. Merely because the petitioners were making



representations to the Department to recognise them as tenants and that they are willing to pay the rent, does not automatically elevate the status of the petitioners from that of an encroacher to that of a lessee.

8. Learned counsel for the petitioners questioned the order passed by the 2nd respondent on the ground that no opportunity was given. The petitioners were admittedly never recognised as tenants by the temple and that fact is enough to initiate proceedings under Section 78 of the Act and there is nothing more for the petitioners to state before the concerned authority. Hence, the so-called opportunity that has been urged by the learned counsel for the petitioners is illusory and it serves no purpose.

9. It is also brought to the notice of this Court that the 5th respondent has independently challenged the order passed by the 2nd respondent by way of filing a suit before the concerned civil court at Tiruvallur and this suit was dismissed. Thereafter, an appeal was filed and the same is pending. Hence, the impugned order in the present writ petition has already been put to challenge by the 5th respondent parallelly before the civil court.

10. The present writ petition is liable to be rejected by this Court on yet another ground that the petitioners had an efficacious alternative remedy under the Act and



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inspite of the same, the petitioners have chosen to file this writ petition. The same impugned order was challenged before two forums. The 5th respondent had challenged the impugned order before the civil court and the petitioners have challenged the impugned order before this Court by filing the present writ petition. This Court does not find any ground to interfere with the proceedings of the 2nd respondent and there are absolutely no merits in this writ petition.

11. In the result, the writ petition stands dismissed. No costs. If the petitioners want to be recognised as tenants, the same has to take place in the manner known to law and as and when any such action is initiated by the temple, it is left open to the petitioners to participate in the process and make their claim. Consequently, connected miscellaneous petition is also dismissed.

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Index : Yes/No
Neutral Citation : Yes/No
KST



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To

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N.ANAND VENKATESH, J.

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