



WEB COPY



Writ Petition No.7538 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.7538 of 2023
and WMP Nos.7647 & 7649 of 2023

1. T.R.Harikrishnaiah
2. R.Deenadayalan

.. Petitioners

versus

1. The Joint Commissioner,
HR&CE Dept-Chennai Zonal II,
Hindu Religious & Charitable Endowment Dept.,
R.K.Mutt Road,
Chennai – 600 004.

2. The Assistant Commissioner,
HR&CE Dept.,
Padi, Chennai – 600 050.

3. The Executive Officer,
A/m Ekambareswarar Thiru Koil,
Aminjikarai,
Chennai-29.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, to call for the records from the 1st respondent relating to her proceedings passed in M.P.No.39/2022/A3 dated 23.01.2023 u/s 78 (2) of HR and CE Act, 1959 and quash the same as the respondents have no jurisdiction to invoke Section 78 HR and CE Act, 1959 in regard to the land specified in the proceedings above mentioned and consequently pass an order of injunction restraining the respondents from

<https://www.mhccourt.org>



Writ Petition No.7538 of 2023

interfering with the petitioners peaceful possession and enjoyment of the site bearing Door No.17, West Arasa Marath Street, Aminjikarai, Chennai-29 comprised in T.S.No.59, Block No.24 of Aminjikarai within the Greater Chennai Corporation Limits.

For Petitioners : Mr.V.Venkatasamy

For Respondents : Mr.N.R.R.Arun Natarajan,
Special Government Pleader (HR&CE)

ORDER

The above writ petition is filed by the sons of T.S.Ramadoss Naidu (Late) who were elder and younger brothers. The petition mentioned premises is Door No.17, Arasa Marath Street, Aminjikarai, Chennai – 00 029, comprised in T.S.No.59 in Block No.24 of Aminjikarai Village within the Greater Chennai Corporation Limits.

1. According to the petitioner, originally a minor inam land was granted in favour of Shri Ekambareswarar Koil at Aminjikarai Village and the temple leased the site to the petitioners' father Ramadoss for construction of houses long back in the year 1925-1930. The petitioners' father Ramadoss constructed house in T.S.No.59 in Block No.24 of Aminjikarai Village and lived there since then.

2.

3. Learned counsel Mr.Venkatasamy, appearing for the petitioners



Writ Petition No.7538 of 2023

would contend that in respect of the land in question specified in the impugned notice, the Settlement Tahsildar did not grant patta in favour of the temple. But Settlement Tahsildar granted Ground Rent Patta under Section 13(1) of the Act jointly in favour of the temple and the building owner.

4. The prayer in the writ petition is as under:

“for issuance of a Writ of Ceritorarified Mandamus, calling for the records from the 1st respondent relating to her proceedings passed in M.P.No.39/2022/A3 dated 23.01.2023 u/s 78 (2) of HR and CE Act, 1959 and quash the same as the respondents have no jurisdiction to invoke Section 78 HR and CE Act, 1959 in regard to the land specified in the proceedings above mentioned and consequentially pass an order of injunction restraining the respondents from interfering with the petitioners peaceful possession and enjoyment of the side bearing Door No.17, West Arasa Marath Street, Aminjikarai, Chennai-29 comprised in T.S.No.59, Block No.24 of Aminijikarai within the Greater Chennai Corporation Limits.”

5. Heard the learned Special Government Pleader (HR&CE), appearing for the respondents.

6. Vide the impugned proceedings, the Joint Commissioner, HR&CE, 1st respondent herein called upon the petitioners' herein to show cause as to why possession of the property should not be resumed by the temple for the non payment of rent resulted in declaring them as 'encroacher', under the Tamil



Writ Petition No.7538 of 2023

Nadu HR&CE Act and hence, a show cause notice was issued under Section 78(2) of the Act.

7. (a) The learned Special Government Pleader (HR&CE) would contend that the impugned notice is only a show cause notice and hence, writ petition is not maintainable and further, on instructions, he submitted that the petition mentioned premises is a temple land and initially the arrears of rent to be paid is Rs.646.50 as on 01.07.2001 and the total extent of land is 1860sq.ft.

(b) The petitioners were on default from the year 2001-2013 and in the year 2016, after observing the procedures therefor, fair rent has been fixed in the said proceedings. Copy of the same, was served upon the TR Harikrishnaiah, the 1st petitioner herein.

(c) The revised rent from 01.07.2016 is Rs.9,300/- per month. The fair rent proceedings has been completed. However, he has failed to remit the arrears of rent and was also given the calculation sheet showing that the balance of the rent to be payable as on 28.02.2023 is Rs.16,33,212/- and hence he was treated as an 'encroacher' and the impugned proceedings was issued to him for his appearance on 31.01.2023.

(d) On that day, both the petitioners have appeared before the respondents and took time and the matter is posted today for filing vakalat and



Writ Petition No.7538 of 2023

counter objections, if any.

8. At the outset, I find that the impugned proceedings, is only a show cause notice. So, this writ petition under Article 226 of the Constitution of India, is premature. From the typed set of papers, I find that as early as on 31.03.1971, the petition mentioned land was held to be the land belonging to the Devasthanam of the temple by the Settlement Tahsildar-I and ground rent paid was given in favour of the temple. The petitioners also admitted and accepted the lease granted by the temple and was occupying as a lessee and there was a default in payment and as stated supra, there was revision of fair rent and that is also not paid for several years and arrears amount is to the tune of Rs.16,33,212/- as on 28.02.2023. Once the petitioners paid the rent accepting the relationship as landlord and tenant or lesser and lessee, they cannot question the title of the temple in this writ petition.

9. In this regard, it is relevant to extract Section 116 of the Indian Evidence Act which reads as follows :

“Section 116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at



Writ Petition No.7538 of 2023

the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

Hence, the petitioners are estopped from disputing the title of the temple.

10. In this view of the matter, there is no merit in this case. Accordingly, the writ petition is dismissed. The petitioner is at liberty to appear before the 1st respondent-Joint Commissioner, HR&CE Department, Chennai Zone-II, in the proceedings commenced as stated supra and the Joint Commissioner, HR&CE Department, Chennai Zone-II, the 1st respondent is hereby directed to complete the proceedings and pass final orders, within a period of four months from the date of receipt of a copy of this order.

11. With these observations, the writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

14.03.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
ars



Writ Petition No.7538 of 2023

WEB COPY

To

1. The Joint Commissioner,
HR&CE Dept-Chennai Zonal II,
Hindu Religious & Charitable Endowment Dept.,
R.K.Mutt Road, Chennai – 600 004.

2. The Assistant Commissioner,
HR&CE Dept.,
Padi, Chennai – 600 050.

3. The Executive Officer,
A/m Ekambareswarar Thiru Koil,
Aminjikarai, Chennai-29.



WEB COPY



Writ Petition No.7538 of 2023

RMT.TEEKAA RAMAN,J

ars

Writ Petition No.7538 of 2023

14.03.2023