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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.8161 of 2023
and W.M.P No.8392 of 2023

R.M.Palaniyappan

Petitioner

VS.

The Executive Officer,
Arulmigu Vengeeswarar Alagarperumal and
Nagathamman Temple, Vadapalani,
Chennai – 600 026.

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned notice dated 24.02.2023 issued by the respondent and quash the same,

For Petitioner : Mr.Abdul Mubeen

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader for HR & CE

ORDER

The writ petition was filed challenging the impugned notice issued by the respondent dated 24.02.2023, wherein, the petitioner was directed to vacate and handover possession of the subject property within a period of fifteen days from the date of the notice, failing which, proceedings will be initiated under Section 78 and



(hereinafter referred to as “the Act”).

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2.The case of the petitioner is that he is a tenant in the subject property from the year 1987 onwards and was paying the monthly rent to the temple authorities without fail. The petitioner obtained building permission and had put up a superstructure in the property. Earlier proceedings were initiated for fixation of fair rent and pursuant to the same, the demand notice was issued and the same was put to challenge by the petitioner in W.P.No.2703 of 2011 and this writ petition was disposed of by this Court by an order dated 07.02.2011 by directing the demand notice to be treated as a Show Cause Notice and the petitioner was given an opportunity to make his objections to the proposed increase of rent. The petitioner also accordingly gave his objections and no further orders were passed fixing the fair rent.

3.The grievance of the petitioner is that the respondent all of a sudden issued the impugned notice dated 24.02.2023 and the petitioner was categorized as an encroacher and he was directed to vacate and handover the subject property. According to the petitioner, the impugned notice came to be issued pursuant to an order passed in Public Interest Litigation in W.P.No.14031 of 2018 and according to the petitioner, this order will not apply to the petitioner, since the petitioner was not the encroacher and he was a lessee under the respondent. Aggrieved by the same, the



present writ petition has been filed before this Court.

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4. When the writ petition came up for admission on 27.03.2023, this Court passed the following order:

Mr.K.Karthikeyan, learned Government Advocate, appears for the Respondent. Heard the learned counsel for the Petitioner and the learned Government Advocate.

2. Initially in respect of the Petition property, fair rent was fixed in the year 2011. Against which, the Petitioner herein has filed W.P.No.2703 of 2011, wherein this Court has directed the 3rd Respondent therein/Hereditary Trustee to consider the impugned notice therein as a showcause notice and do pass orders. Though this Court has directed the Hereditary Trustee to do so, in WP.No.2703 of 2011, for the reasons best known, he has not passed any orders. Meanwhile in the year 2019, the Hereditary Trustee/3rd Respondent was removed by the HR & CE Department. Against the removal of Hereditary Trustee, he has preferred statutory Appeal to the Government under Section 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and order was passed, confirming the removal of Hereditary Trustee. As against the same, he has preferred CMA.No.3442 of 2021 and by order dated 01.08.2022, order of the Commissioner was set aside and the matter was remitted to the Respondent therein/Government viz., the Principal Secretary, Tourism, Culture and Endowments to dispose of the application.



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3.Learned counsel for the Petitioner would contend that since the Hereditary Trustee has not passed any orders on his representation for fixation of fair rent and his Trusteeship is under challenge before the Commissioner, he need not pay fair rent. Thereafter, after the Executive Officer assumed charges, he was issued a notice on 20.12.2019, fixing the fair rent at Rs.19,000/-, for which, the Petitioner has made an representation dated 03.01.2020 to reconsider the fixation of fair rent.

4.At this juncture, learned Government Advocate draw my attention to the fact that against the fixation of fair rent, there is an appeal pending before the Commissioner under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Admittedly, he has not filed any objection and hence, the representation of the Petitioner dated 03.01.2020 could not be processed by the Executive Officer. The Petitioner appears to have a commercial building in the petition property and as on date, Rs.31,00,000/- is pending as arrears of rent and he is in occupation of 2000 sq. ft.

5.Learned counsel for the Petitioner would contend that in view of the order passed in CMA.No.3442 of 2021 dated 01.08.2022, the Executive Officer cannot be considered as authority to control the temple and the Hereditary Trustee is deemed to be a controller of the temple.

6.I am unable to subscribe the said view of the learned



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counsel for the Petitioner for more than one reason that the order seeking for reappointment of the Hereditary Trustee has been rejected and on Appeal it has been confirmed, against which, CMA was filed under Section 53(5-A) of the Tamil Nadu Hindu Religious and Charitable Endowments Act and the matter was remitted to the State Government to consider and passed fresh orders. Though the prayer in the CMA is for restoration of the status of the Hereditary Trustee, the same was not passed and hence, I have no hesitation to reject the said contention of the learned counsel for the Petitioner.

7.After taking note of the fact that there is arrears of rent to the extent of Rs.31,00,000/- (Rupees of thirty one lakh only). If the Petitioner is depositing as sum of Rs.15,00,000/- (Rupees fifteen lakh only) in three equal instalments in the following manner, viz., 1st instalment on or before 10.04.2023, 2nd instalment on or before 24.04.2023 & 3rd instalment on or before 08.05.2023, there shall be an order of interim stay, failing which, the interim stay granted by this Court shall stand automatically vacated. The Petitioner is further directed to pay the monthly rent regularly, without any default.

8.The Petitioner is at liberty to approach the appropriate forum for appropriate relief.

5.When the matter was taken up for hearing today, the learned Special

Government Pleader appearing on behalf of the respondent submitted that out of the

<https://www.mhc.tn.gov.in/judis>

total amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only), the petitioner has



already paid a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) and what remains to be paid is only the balance amount of Rs.3,00,000/- (Rupees Three Lakhs only).

6.Heard Mr.Abdul Mubeen, learned counsel appearing on behalf of the petitioner and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing on behalf of the respondent.

7.The impugned notice was issued by the respondent only on the ground that the subject property is a water body and that the petitioner is occupying the same and he was treated as an encroacher. The materials available on record shows that the petitioner was a lessee under the respondent temple. The impugned notice seems to be the after effect of the order passed in Public Interest Litigation in W.P.No.14031 of 2018 and this order became the subject matter of challenge before the Apex Court and the Apex Court by an order dated 04.09.2018 has granted leave and also directed *status quo* to be maintained. By virtue of this interim order, the direction issued in the Public Interest Litigation has been kept in abeyance.

8.The petitioner continues to be in occupation of the subject property and the learned Special Government Pleader submitted that the petitioner is paying a monthly rent of a sum of Rs.19,045/-.



9. In the considered view of this Court, the direction issued by this Court in the Public Interest Litigation has become a subject matter of challenge before the Apex Court and *status quo* has been directed to be maintained. The petitioner has been occupying the property in his capacity as a lessee and there is no dispute with regard to lease. The temple is also getting its income by virtue of the amount that was deposited by the petitioner and the monthly rent paid by the petitioner. Therefore, no useful purpose will be served in keeping this case in limbo.

10. In the light of the above discussion, the respondent is directed to withdraw the impugned notice dated 24.02.2023. The petitioner shall pay the balance amount of Rs.3,00,000/- (Rupees Three Lakhs only) within the time stipulated by this Court and thereby, the petitioner would have paid the entire amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the respondent. The petitioner shall also continue to pay the monthly rent at the rate of Rs.19,045/-. The respondent shall immediately initiate proceedings for fixation of fair rent for the subject property. The petitioner is directed to co-operate during the enquiry and the proceedings for fixation of fair rent shall be completed, within a period of three months from the date of the initiation of the proceedings by the respondent. This order will balance the rights of both the petitioner as well as the respondent.



N. ANAND VENKATESH, J.

ssr

11. This writ petition is disposed of in the above terms. No Costs.

Consequently, connected miscellaneous petition is closed.

05.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

The Executive Officer,
Arulmigu Vengeeswarar Alagarperumal and
Nagathamman Temple, Vadapalani,
Chennai – 600 026.

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