



WEB COPY

W.P.No.27324 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27324 of 2016

and

W.M.P.Nos.23522, 23523 & 28146 of 2016

Mr.K.Manoharan

... Petitioner

Vs.

The Fit Person and Executive Officer,
Veerasami Water Pandal Charity of
Arulmigu Marudeeswarar Temple,
Thiruvanmiyur,
Chennai – 600 041.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the respondent in connection with his notice dated 28.06.2016 issued in connection with the property at Door No.145/68, Kalki Krishnamurthi Salai, Chennai - 600 041, and quash the same.

For Petitioner

: Mr.J.Chandran Sundar Sashi Kumar
For Mrs.Mythili Srinivas

For Respondent

: Mr.P.Willson Topaz
For M/s.A.S.Kailasam and Associates



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ORDER

The writ of certiorari is filed to call for the notice dated 28.06.2016 issued by the respondent is under challenge in the present writ petition.

2. The petitioner states that his father took the vacant land in the property at Door.No.145/68, Kalki Krishnamurthi Salai, Chennai - 600 041, from the respondent Charity attached to the Marudeeswarar Temple. He built a superstructure on the property. After the demise of his father, the petitioner is paying the rent to the landlord. While so, the respondent issued a registered notice on 28.06.2016 setting out certain allegations and asked the petitioner to vacate the premises and hand over possession to the respondent. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner mainly contended that the respondent / Authority is bound to follow the procedures as contemplated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The petitioner was considered as a tenant after the demise of his father and he was paying the rent and therefore, the respondent is bound to provide



an opportunity and in the event of fixing any fair rent, the petitioner is willing to accept the same.

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4. The learned counsel appearing on behalf of the respondent raised an objection by stating that the petitioner is not a tenant but an encroacher. Thus, action under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is to be initiated. The petitioner has sublet the property in violation of the Rules. More so, he sublet the property for commercial purposes and earning huge amount from and out of the property, which belongs to the respondent Charity. Thus, the petitioner is not entitled for any relief from the hands of this Court.

5. The learned counsel appearing on behalf of the respondent further states that proceedings under Section 78 are yet to be initiated and a notice issued by the respondent is under challenge in the present writ petition. Thus, the writ petition is not maintainable.

6. No writ against a notice issued by the authorities competent is entertainable in a routine manner. A writ against the notice may be



maintained only if it is issued by an incompetent authority having no jurisdiction or tainted with the allegations of *mala fides*.

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7. In the present case, the respondent has asked the petitioner to pay damages for use and occupation. While issuing the notice, the respondent has stated that the petitioner violated the rules and sublet the property for commercial purposes to the third party. That apart, the tenancy was not in subsistence and thus, the petitioner is an encroacher and action will be initiated under Section 78 of the Act. Instead of submitting a reply, the petitioner has chosen to file the present writ petition.

8. The contentions raised by the petitioner is that the due process of law is to be followed. The authorities competent, undoubtedly, is bound to follow the procedures as contemplated even in case where Section 78 proceedings are initiated or recovery proceedings are initiated to recover the damages for use and occupation or the fair rent fixed or otherwise. Thus, the respondents are directed to follow the procedures as contemplated under the Act and Rules for initiation of all further actions against the petitioner under the provisions of the Act and Rules.



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9. In view of the fact that the writ petition is pending for the past more than six years, the respondent is unable to take action. More so, the petitioner is enjoying the property, which belongs to the respondent. Therefore, the The respondent is directed to complete the exercise within a period of three (3) months from the date of receipt of a copy of this order.

10. With these clarifications, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.03.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Fit Person and Executive Officer,
Veerasami Water Pandal Charity of
Arulmigu Marudeeswarar Temple,
Thiruvannmiyur,
Chennai – 600 041.



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S.M.SUBRAMANIAM, J.

Jeni

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