IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WP No.19080 of 2023
and WMP No.18334 of 2023

D.Ravi ...Petitioner

Vs

1.The Commissioner,
Hindu Religious Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious Charitable Endowments Department,
No.308, Arcot Road, Kakithapattarai,
Vellore – 632 012.

3.The Assistant Commissioner,
Hindu Religious Charitable Endowments Department,
No.1, C.V. Naidu Salai, Jayanagar,
Thiruvallur – 602 001. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to impugned order bearing No.Na.Ka.7183/2016/E1 dated 30.06.2017 passed by the 2nd respondent in respect of the property situated at Maduravasal village, comprised in Survey No.181, Arani Taluk, Thiruvallur District, measuring an extent of 0.17 cents and quash the same and forbear the respondent or anybody on their behalf from initiating any coercive action of eviction and direct the 1st respondent to admit the Revision Petition filed in N.Dis.No.33266/2023/D2 preferred by the petitioner and number the same.

For Petitioner : Mr.S.C.Pratheep Ashok Kumar

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent in Na.Ka.7183/2016/E1 dated 30.06.2017 and for a consequential direction forbearing the respondents from taking any coercive steps to evict the petitioner from the subject property.

2.Heard Mr.S.C.Pratheep Ashok Kumar, learned counsel appearing on behalf of the petitioner and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing on behalf of the respondents.

3.Shorn of unnecessary facts, the crux of the case involved in the present writ petition is that the petitioner was in possession and enjoyment of the subject property and the 2nd respondent initiated proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act"), on the ground that the petitioner is an encroacher in the subject property. After enquiry, the impugned order dated 30.06.2017, came to be passed and the petitioner was directed to vacate and handover possession of the property failing which, a direction was given to the Assistant Commissioner to take possession of the property with police help. The petitioner failed to challenge this order passed by the 2nd respondent on time and had approached the 1st respondent only in the year 2023. Since the 1st respondent did not have the jurisdiction to entertain any appeal beyond the period of limitation prescribed under the Act, the appeal preferred by the petitioner was not entertained. Left with no other option, the present writ petition has been filed before this Court.

4.The learned counsel for the petitioner submitted that a Sale Deed was executed in favour of the father of the petitioner in the year 1990 with respect to the subject property. Thereafter, on threat, a Release Deed was snatched from the father of the petitioner and father of the petitioner was treated as a tenant in the subject property. Even thereafter, the father of the petitioner was paying the rents to the temple from the year 1999-2012. After the year 2012, the temple administration refused to receive the rentals. The learned counsel therefore submitted that all these factors were not taken into consideration by the 2nd respondent before the impugned order was passed. The learned counsel in order to substantiate his submission, relied upon the judgment of the Division Bench of this Court in W.A.Nos.849 etc of 2009 dated 09.12.2011. The learned counsel submitted that the Division Bench has held that where the rents have been paid by the lessee and subsequently, the same is not received, the non-renewal of the lease by itself cannot make the person in possession of the property as an encroacher.

5.Per contra, the learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioner ought to have challenge the order passed by the Joint Commissioner and the order that has been put to challenge is of the year 2017 and hence, contended that this writ petition is liable to be dismissed on the ground of laches. The learned counsel further submitted that the revision that is filed beyond the period of limitation prescribed under the Act, cannot be entertained by the Commissioner and hence, the petitioner has lost his right under the Act and it cannot be revived by way of filing a writ petition. To substantiate the same, the learned Special Government Pleader relied upon the judgment of this Court in W.P.(MD)No.7657 of 2021 dated 09.04.2021.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.In the considered view of this Court, the fact remains that the 2nd respondent had passed the impugned order in the year 2017. The Act prescribes a time limit for filing an appeal before the Commissioner. If no appeal is preferred within the time limit prescribed under Section 69(1) of the Act, the Commissioner does not have the power to entertain the appeal by condoning the delay, since Section 5 of the Limitation Act will not apply. This law has been settled by the Apex Court in ***Ganesan Rep by Its Power Agent G. Rukmani Ganesan Versus The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board & Others*** reported in ***2019 3 CTC 469***. In view of the same, the non-entertainment of the appeal by the Commissioner, cannot give rise to a cause of action to file this writ petition. If the Commissioner does not have the jurisdiction to entertain the appeal, the filing of the writ petition cannot be substitute for the same and this Court will never exercise the jurisdiction under such circumstances.

8.The judgment relied upon by the learned counsel for the petitioner will not come to the aid of the petitioner since in this case, the father of the petitioner stopped paying rent from the year 2012 onwards. If really, the rents were not received by the temple, the father of the petitioner ought to have taken steps to approach the appropriate authority to pay the rents. It is quite evident from the records that right from the year 2012 onwards, no rents have been paid to the temple. Obviously, the father of the petitioner had over stayed in the property and beyond the year 2012, the person in possession of the property can only be termed as an encroacher who is liable to be evicted under Section 78 of the Act.

9.In the light of the above discussion, this Court does not find any ground to entertain this writ petition. It is brought to the notice of this Court that the property in question is a residential property. In view of the same, the petitioner is given sixty days time from today to vacate and handover possession to the respondents. It is also made clear that the petitioner will not put up any additional constructions and if any such attempt is made, the protection given by this Court will cease to operate and it will be open for the respondents to proceed further to evict the petitioner. If the petitioner does not vacate and handover the property to the respondents after the expiry of sixty days, it will always be left open to the 3rd respondent to initiate action for taking possession of the property and if required with police protection. This breathing time is given to the petitioner only to ensure that the petitioner looks for an alternative place and it does not give any vested right to the petitioner.

10.In the light of the above discussion, this writ petition is dismissed in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

28.06.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
ssr

N.ANAND VENKATESH, J

ssr

To

1.The Commissioner,
Hindu Religious Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious Charitable Endowments Department,
No.308, Arcot Road, Kakithapattarai,
Vellore – 632 012.

3.The Assistant Commissioner,
Hindu Religious Charitable Endowments Department,
No.1, C.V. Naidu Salai, Jayanagar,
Thiruvallur – 602 001.

WP No.19080 of 2023
and WMP No.18334 of 2023

28.06.2023