



W.P(MD)No.19971 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19971 of 2013

and

M.P.(MD)No.1 of 2013

S.Velu

... Petitioner

Vs.

- 1.The Commissioner,
The Tamil Nadu Hindu Religious and
Charitable Endowments Board,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai-34.
- 2.The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowments Board,
Tirunelveli.
- 3.The Assistant Commissioner,
The Tamil Nadu Hindu Religious and
Charitable Endowments Board,
Tirunelveli.
- 4.Arulmigu Thirukuttralanathasamy Thirukkivil,
Represented by its Executive Officer,
Courtallam, Tenkasi District,
Tirunelveli District.

5.S.Palavesam

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the file of the 1st respondent with respect of the impugned order in R.P.NO.90/2013 D2 dated 3.10.2013, quash the same and further direct the respondents to regularize the petitioners tenancy as envisaged under the proceedings of the 1st respondent in Na.Ka.No. 29424/2011, M3 dated 2.3.2012 as the arrears of rent was padi and received as envisaged in the said proceedings on 25.10.2013 and 05.11.2013.

For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.V.Manohar

For Respondents : Mr.R.Ragavendran for R1 to R3
Government Advocate
: Mr.S.Manohar for R4

: no appearance for R5

ORDER

Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for HR & CE Department and the learned standing counsel appearing for the 4th respondent temple.

2. The 5th respondent was originally a tenant under the 4th respondent in respect of the petition mentioned property. It appears that



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the 5th respondent had unauthorisedly attorned the tenancy in favour of the petitioner. The lease that stood in favour of the 5th respondent had also expired and it was not subsequently renewed or extended. As per the statutory definition found in Section 78 of the Tamil Nadu HR & CE Act, the petitioner was treated as an encroacher. The order under the said provision was passed for evicting the petitioner by the 2nd respondent. The petitioner filed revision under Section 21 of the Act before the 1st respondent. The first respondent vide order dated 03.10.2013 confirmed the eviction order passed by the second respondent. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. I am not swayed by the submission of the learned counsel appearing for the petitioner. The order passed by the authorities is in consonance with the statutory scheme. It does not warrant interference.



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At the same time, there are few aspects which have to be necessarily taken note of by this Court. The petitioner herein is running a sweet stall in the petition mentioned property. Even if the petitioner is evicted, some other person will have to be inducted in the place of the petitioner. According to the 4th respondent, a substantial sum is due and payable by the petitioner and that the petitioner has so far paid only a sum of Rs.8,00,000/- The petitioner must pay a further sum of Rs.3,36,266/- as per the calculation of the 4th respondent. If the petitioner is called upon to vacate the property, obviously it would be very difficult for the 4th respondent to recover the same. If on the other hand the petitioner can take lease in his own name subject to clearing the arrears, that would certainly benefit the interests of the temple also. The petitioner also gives an undertaking that the temple can execute lease in his name subject to usual terms and conditions as set out in the statute. In other words, the petitioner is prepared to pay the market rent.

5. In view of the aforesaid undertaking given by the writ petitioner, the writ petition is disposed of in the following terms:-



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(I) The order impugned in the writ petition is sustained. But it shall not be enforced for a period of twelve more weeks from today.

(II) If the petitioner clears arrears within ten weeks from today, the impugned order will not be enforced.

(III) If the petitioner clears the arrears, the 4th respondent is directed to execute lease in favour of the petitioner in respect of the petition mentioned property upon the petitioner undertaking to abide by the statutory terms and conditions. Since the first respondent is a party to the writ petition and execution of the lease by the temple is pursuant to the direction of this Court, the 4th respondent himself can execute lease without getting any ratification from the higher authorities.

6. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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