



W.P.(MD).Nos.6015 and 6022 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.6015 and 6022 of 2020

and

W.M.P.(MD)Nos.5194, 5195, 5197 and 5198 of 2020

Paramasivan

... Petitioner in
W.P.(MD)No.6015 of 2020

Kuthalingam

... Petitioner in
W.P.(MD)No.6022 of 2020

Vs.

1.The Commissioner,
The Hindu Religious Charitable
Endowment Department,
Nungambakkam, Chennai.

2.The Joint Commissioner,
The Hindu Religious Charitable
Endowment Department,
Tirunelveli.

3.The Executive Officer,
Arulmigu Kutralathar Temple,
Courtallam, Tenkasi District.

... Respondents in
both cases



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PRAYER in W.P.(MD)No.6015 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records pertaining to the impugned order passed by the 1st respondent R.P.No.198 of 2018 D2, dated 13.02.2020, confirming the order of the 2nd respondent in M.P.No.18 of 2018, dated 05.10.2018 and to quash the same.

PRAYER in W.P.(MD)No.6022 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records pertaining to the impugned order passed by the 1st respondent R.P.No.197 of 2018 D2, dated 13.02.2020, confirming the order of the 2nd respondent in M.P.No.2 of 2018, dated 05.10.2018 and to quash the same.

In both cases:

For Petitioner : Mr.G.Karthik
for Mr.N.Ganagasapapathy

For R1 and 2 : Mr.R.Ragavendran
Government Advocate

For R3 : Mr.S.Manohar



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COMMON ORDER

The writ petition in W.P.(MD)No.6015 of 2020 is filed by Paramasivan for ***Writ of Certiorari***, to quash the impugned order dated 13.02.2020 passed by the 1st respondent in R.P.No.198 of 2018 D2 by confirming the order dated 05.10.2018 of the 2nd respondent in M.P.No.18 of 2018. The writ petition in W.P.(MD)No.6022 of 2020 is filed by Kuthalingam for ***Writ of Certiorari***, to quash the impugned order dated 13.02.2020 passed by the 1st respondent in R.P.No.197 of 2018 D2 by confirming the order dated 05.10.2018 of the 2nd respondent in M.P.No.2 of 2018.

2. Admittedly the petitioner in W.P.(MD)No.6015 of 2020 is having lease right to the shop No.118 and the petitioner in W.P.(MD)No.6022 of 2020 is having lease right to the shop No.117 belonging to Arulmigu Kutralanathar Temple. The petitioners are running the shop under the brand of 'Sun Chips.' The contention of the petitioner is that before the expiry of the lease period, the Executive Officer has tried to vacate the petitioner from the shop stating that the petitioner was granted license to run the shop and not



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lease. Aggrieved over the same, the petitioner had filed O.S.No.245 of 2016 on the file of Principal District Munsif Court, Tenkasi. During the pendency of the suit, the petitioner had deposited the monthly rent before the Trial Court in I.A.No.1287 of 2016, thereafter, the petitioner was properly depositing the rent of Rs.1,150/- per month. During the pendency of the suit the 3rd respondent has filed a petition in M.P.No.18 of 2018 and M.P.No.2 of 2018 under Section 78 of HR and CE Act, alleging that the petitioners have defaulted in paying the rent. Hence, the said suit was dismissed as infructuous. Aggrieved over the same the petitioner, preferred first appeal in A.S.No.43 of 2019 before the Principal Sub Court, Tenkasi. The second respondent without conducting proper enquiry allowed the M.P.No.18 of 2018 and M.P.No.2 of 2018, in favour of the 3rd respondent on 05.10.2018 wherein it was held that the petitioner has committed wilful default and declared as an encroacher. The petitioner has preferred revision in R.P.No.198 of 2018 and R.P.No.197 of 2018. The first respondent without appreciating any evidence has passed the impugned order on 13.02.2020 confirming the order passed in M.P.No.18 of 2018 and M.P.No.2 of 2018. Aggrieved over the same, the present writ petition is filed.



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3. Pending writ petition, the first appeal A.S.No.43 of 2019 was dismissed. Aggrieved over the same, the petitioner has preferred a second appeal before this Court and the same is pending before this Court wherein notice was issued to the respondents.

4. The contention of the petitioners in both the writ petitions is that the respondents have increased the rent without intimating the petitioners and there was no proper opportunity before increasing the rent. This contention was refuted by the respondents and they submitted that for pasali 1425, the rent was Rs.1150/-, for the next pasali, i.e., 1426, the rent was increased to Rs.2500/-. After 3 years, in the pasali 1429, the rent was increased to Rs.2900/-. Thereafter, after a lapse of 3 years again there was an increase in pasali 1432 to Rs.3500/-. The respondents submitted that the increase is as per the Act and petitioners have not paid the increased rent and hence, they are defaulters, hence the petitioners cannot be shown equity. Any lessee is entitled to hold the shop for 3 years and if it is more than 3 years, there will be an increase in rent. After a lapse of 9 years, the respondents are bound to lease out the property by



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conducting fresh auction. Therefore, the petitioners cannot be shown any indulgence. Hence, the respondents prayed to dismiss the writ petitions.

5. In a similar case another Learned Single Judge of this Court by considering the case of one V.Murugan, in W.P.(MD)No.19778 of 2017, vide order, dated 21.04.2022, directed the respondents to collect the arears in instalment. Therefore, this Court is of the considered opinion that the petitioners are entitled to be considered. It is submitted that the petitioners had defaulted to the tune of **Rs.1,94,550/- each** as on 19.07.2023. The petitioners are directed to pay the entire amount in 3 instalments. If the petitioners are defaulting any amount, the respondents are at liberty to take action as per law. With the above said direction, both the writ petitions are allowed in above terms. No costs. Consequently, connected miscellaneous petitions are closed.

6. As far as the extension of lease period is concerned, the petitioner is at liberty to submit an application before the authority. The respondents are at liberty to consider to extend the lease as per the applicable



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G.O.s.

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

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To

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The Hindu Religious Charitable
Endowment Department,
Nungambakkam, Chennai.
- 2.The Joint Commissioner,
The Hindu Religious Charitable
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Tirunelveli.



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S.SRIMATHY, J.

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