



WEB COPY



W.P.No.14945 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.14945 of 2020
and
W.M.P.No.18580 of 2020

A.M.Rasool

... Petitioner

VS.

- 1.The Principal Secretary/Commissioner
H.R. & C.E. Admn. Department
Chennai 600 014
- 2.The Joint Commissioner
H.R. & C.E. Department
Tirunelveli
- 3.The Joint Commissioner/Executive Officer
Arulmigu Subramaniaswamy Temple
Tiruchendur 628 215
Thoothukudi District
- 4.N.Sankarapandiyan (Deceased)
- 5.N.Sudalaikannu
- 6.A.M.Siddique
- 7.A.M.Sheikh Mansoor



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8.Narayanan @ Kannan

9.Ramaiah @ Anand

10.Selvi

11.Ponraja

12.Maruthu

13.Karikalan

... Respondents

(R8 to R13 Substituted as LR's of Deceased Fourth Respondent vide order dated 03.03.2023 made in WMP.No.3837/2023 in WP.No.14945/2020)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in the order bearing No. D.Dis.R.P.No.40/2019 (D2) dated 26.06.2020 passed by respondent No.1 and quashing the same so far as it relates to the petitioner.

For Petitioner : Mr.M.Radhakrishnan

For R1 to R3 : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR and CE)

For R5 : M/s.M.S.Harsha Prabhu

For R4 : Expired

For R6 to R12 : No Appearance

For R13 : Not Ready in Notice



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ORDER

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The Writ Petition is filed challenging the order passed by the 1st respondent in No.D.Dis.R.P.No.40/2019 (D2), dated 26.06.2020.

2. It is not in dispute that the eviction proceedings was initiated against the petitioner and others under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, by the 2nd respondent and order of eviction was passed. In the said order, the 2nd respondent directed the petitioner and others to comply with certain directions, failing which, eviction order would follow. Aggrieved by the said order passed by the 2nd respondent, original tenants of the subject property namely N.Sankarapandiyan and N.Sudalaikannu filed a revision before the 1st respondent in R.P.No.40 of 2019. The said revision was came to be allowed by the 1st respondent by ordering eviction against the petitioner and others. Aggrieved by the same, the petitioner has come before this Court by way of filing this writ petition.



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3. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader (HR and CE) appearing for the respondents 1 to 3.

4. The learned counsel appearing for the petitioner submits that the revision filed by third parties was allowed against the petitioner by the 1st respondent even without service of notice. In this regard, the learned counsel relied on the preamble portion of the impugned order, wherein it was stated that notice taken to the petitioner was returned with an endorsement 'left'. Therefore, it is the case of the petitioner that the impugned order having been passed against the petitioner before service of notice is liable to be set aside.

5. The learned Special Government Pleader (HR and CE) appearing for the respondents 1 to 3 would submit that Joint Commissioner/2nd respondent herein passed an order in the eviction proceedings directing the petitioner and others to comply with certain conditions. Those conditions were not complied with by the petitioner and others. Therefore, the petitioner and others shall be treated as encroachers, even as per the order



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passed by the Joint Commissioner. The petitioner having failed to challenge the order passed by the Joint Commissioner is not entitled to rely on technicalities and assail the order passed by the 1st respondent.

6. The learned Special Government Pleader (HR and CE) further submitted that the impugned order was served on the petitioner on the very same address. Therefore, when notice was issued to the petitioner at the time of hearing of revision petition, it was wilfully evaded by the petitioner. Therefore, this Court can take notice of the fact that the petitioner wilfully evaded to receive notice and declare notice was properly served on the petitioner.

7. The mode of service of notice in the proceedings before the Authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is explained in Rule 9 of the Holding of Inquiries Rules, published in Tamil Nadu Gazette on 30th August, 1961, which reads as follows:-

“9. The summons, shall be sent by registered post acknowledgement due. If the appropriate authority is satisfied



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that the person to whom a summons is sent wilfully absents himself from his residence or refuses to receive the summons, he may order that the summons shall be affixed on the front door or other conspicuous place in his usual place of residence. If the person has changed his residence, the notice shall be sent to the changed address, if it is known or a copy of the notice shall be affixed on the front door or other conspicuous place of the last known residence. On such affixture, he may declare that there has been sufficient service.”

8. A perusal of the above rule would suggest that notice of enquiry shall be sent to the parties by registered post with acknowledgement due. If the Authority concerned conducting enquiry is satisfied that the addressee wilfully absents himself and evades receipt of notice, he may order that the summons shall be affixed on the front door or other conspicuous place in the usual place of residence of addressee. On such affixture, the appropriate authority may declare that there has been sufficient service on the petitioner/addressee.



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9. When the writ petition came up for hearing before this Court on 04.12.2024, the learned Special Government Pleader (HR and CE) appearing for the respondents 1 to 3 was directed to get instructions from the respondents 1 to 3 whether notice in this matter was effected by affixture in terms of Rule 9 mentioned above.

10. Today, when the matter is taken up for hearing, the learned Special Government Pleader (HR and CE) appearing for the respondents 1 to 3, on instructions, would submit that service of notice by affixture was not effected. Therefore, it is clear that Rule 9 of the Holding of Inquiries Rules, has not been complied with. Therefore, the impugned order was passed by the 1st respondent in D.Dis.R.P.No.40/2019 (D2) dated 26.06.2020 against the petitioner without properly serving notice on the petitioner.

11. Therefore, the impugned order which has been passed in violation of natural justice principles is liable to be set aside and accordingly, the Writ Petition is allowed by setting aside the impugned order passed by the 1st respondent in D.Dis.R.P.No.40/2019 (D2) dated 26.06.2020. The matter



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is remanded back to the file of 1st respondent and he shall take up the revision petition for hearing on 21.01.2025. The petitioner is directed to appear before the 1st respondent for enquiry on 21.01.2025 at 2.00 p.m., without waiting for formal notice from the 1st respondent. The 1st respondent shall dispose of the revision petition on its own merits and in accordance with law, within a period of twelve weeks from 21.01.2025. No costs. Consequently, the connected writ miscellaneous petition is closed.

18.12.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

Note: Issue copy of order on 06.01.2025.



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To

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S.SOUNTHAR, J.

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