

(2012) 11 MAD CK 0161

In the Madras High Court

Case No : Writ Petition No. 20630 of 2010, M.P. No. 1 of 2010 and Contempt Petition No. 1381 of 2012

Cuddalore District Saravanabhava Consumer Co-operative
Whole Sale Stores Ltd.

APPELLANT

Vs

The Joint Commissioner, Hindu Religious and Charitable
Endowment, Villupuram and The Executive Officer, Arulmigu
Padaleswarar Thirukoil, Tirupathipuliyur, Cuddalore 607 002

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Citation : (2012) 11 MAD CK 0161

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. S. Palaniswamy, for the Appellant; R. Kannan, GA (HR and CE) for R1 in W.P. No. 20630/2010 and in Cont. P. No. 1381 of 2012 and Mr. K. Chandrasekar for R2 in W.P. No. 20630/2010, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K. Chandru

1. The petitioners in both writ petition and contempt petition is the Cooperative Society viz., Cuddalore District Saravanabhava Consumer Cooperative Wholesale Stores Limited, represented by its Special Officer, having office at 3, Beach Road, Cuddalore. In the writ petition, the petitioner challenges an order of the Joint Commissioner, HR & CE Department, Villupuram, dated 22.06.2010 and sought to set aside the said order. By the impugned order, the application filed by the second respondent Arulmigu Padaleswarar temple at Tirupathipuliyur, Cuddalore represented by its Executive Officer made in M.P. No. 44 of 2009 was allowed by the first respondent in terms of Section 78 of the Tamil Nadu HR & CE Act and a direction was given u/s 79 to the Revenue Department and Police Department to remove the encroachment and to secure the temple property and the process to be initiated by the Assistant Commissioner, HR & CE, Cuddalore.

2. It is the stand of the second respondent Temple that Town Survey Nos. 1587 to 1592 and 1515/1 to an extent of 940 Sq.ft was occupied by the petitioner Society and they are not paying the fair rent fixed by the State and are having huge arrears of rent and therefore, their rent agreement has to be cancelled and they should be declared as an encroacher in terms of Section 78. Notice was issued to the Assistant Commissioner, Cuddalore to make a spot enquiry and to submit a report. The Assistant Commissioner, HR & CE, Cuddalore informed that the petitioner Society has encroached the land and are not paying rent and therefore, proceedings can be initiated u/s 78 of the HR & CE Act. Pursuant to the same, a show cause notice was issued to the petitioner Society in M.P. No. 44 of 2009. They have not given any reply. But however, the staff of the society appeared to the enquiry on 16.06.2009, 18.08.2009, 01.09.2009 and 08.12.2009, but no documents were filed on behalf of the petitioner Society. Therefore, considering the report of the Executive Officer and the recommendation made by the Assistant Commissioner and after examining all other related documents, it was found that the land belonged to the Temple and the rental license was cancelled on 30.01.2007 and hence, it was found that the petitioner was an encroacher. The petitioner was directed to hand over possession within 30 days failing which coercive steps was directed to be taken by the Assistant Commissioner in terms of Section 79 with the help of Revenue and Police Authorities.

3. When the writ petition came up on 07.09.2010, this Court ordered notice of motion and granted interim stay on condition the petitioner should pay 50% of the amount fixed by the order dated 29.01.2007, failing to pay will automatically result in stay being cancelled without any notice.

4. It was stated by the second respondent Executive Officer that pursuant to the direction issued by this Court, the amount to be paid was Rs. 4,45,250/-. But so far the petitioner has paid only Rs. 3,85,310/- and balance amount of Rs. 59,940 has to be paid. Be that as it may, alleging that the interim order has been disobeyed, contempt petition came to be filed.

5. When Contempt Petition No. 1381 of 2012 came up on 25.09.2012, this Court directed the learned Special Government Pleader HR & CE to get instructions from the respondent. Accordingly, a counter affidavit dated Nil October 2012 was filed by the Assistant Commissioner HR & CE, Cuddalore together with typed set of documents.

6. It was stated by them that Arulmigu Padaleeswarar Temple situated at Tirupathipuliyur is a listed temple published under Section 46(iii) of the HR & CE Act. The temple is administered by an Executive Officer appointed u/s 45(1) of the Tamil Nadu HR & CE Act and fit person. The temple owns buildings at No. 3, Beach Road, Cuddalore and a building at Sannathi Street, Cuddalore which were leased out to the petitioner's Society in the year 1985 by private negotiation. As per Government Orders, rent was fixed for the above properties and the petitioner's society was informed that they should pay the fair rent. However,

they did not come forward to pay the fair rent. The fair rent fixed for the two properties which are in occupation of the petitioner during the year 2007 was Rs. 6850/- per month and Rs. 870/- per month respectively. The petitioner Trust surrendered two shops in Sannathi Street in the year 2007 for which fair rent was fixed as Rs. 870/- per month. It is under the above circumstances, temple administration terminated the lease and decided to evict the petitioner. Accordingly, the lease was terminated vide order dated 30.01.2007 and application to evict the petitioner was filed before the Joint Commissioner, HR & CE, Villupuram u/s 78 of the Tamil Nadu HR & CE Act. The first respondent after due notice and conducting enquiry passed the impugned order declaring the petitioner society as encroacher. As on date there is no valid lease in favour of the petitioner society and the order terminating lease is not under challenge. Admittedly, the petitioner was at default in not paying the due rent. Even the interim order directing 50% was not obeyed strictly and they are now paying only Rs. 1900/- per month without taking note of the fair rent fixed. Hence, there is not contempt made out.

7. The petitioner society has not questioned the fixation of rent in the manner known to law. Section 34-A(3) of the HR & CE Act provides an appeal to the Commissioner to challenge the fixation of rent, but the petitioner has not availed the remedy. The learned counsel placed reliance on the judgment of this Court in W.P.Nos. 8831 of 2003 and batch cases [M.V. Krishnan v. The Special Commissioner] dated 29.07.2008 for justifying the fixation of rent and the consequential remedy available for challenging the same. However, this Court is not inclined to go into the said issue. The contention that petitioner's tenancy is still subsisting and section 78 cannot be invoked cannot be accepted. Reliance placed upon the order passed by the Additional Sub-Court in O.S. No. 181 of 2001 dated 25.11.2004 holding that tenancy is subsisting also does not stand to reason in the light of the subsequent development that had taken place.

8. In view of the introduction of new provision into HR & CE Act, an encroacher can be removed by the order of the Joint Commissioner and only appeal is provided against the said order to the Commissioner. The provisions of Act have self contained provisions. Hence, the petitioner cannot file a writ petition challenging an eviction order. This Court do not find any case is made out to entertain the writ petition. Hence the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed. Contempt Petition No. 1381 of 2012 also stands dismissed as no contempt was made out. The petitioner themselves have not obeyed a self working interim order passed by this Court.