

(2016) 01 MAD CK 0178

In the Madras High Court

Case No : W.P. No. 40706 and 40707 of 2015 and M.P. Nos. 1 of 2015.

Dr. Raja Saravanan

APPELLANT

Vs

Deputy Commissioner/Executive Officer, Arulmigu
Parthasarathy Swamy Thirukkoil Triplicane, Chennai and
Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 34-A(3), 78, 79

Citation : (2016) 161 AIC 897

Hon'ble Judges : M.M. Sundresh, J.

Bench : Single Bench

Advocate : R. Loganathan, Advocate, for the Appellant; K.V. Dhanapalan, Addl. Govt. Pleader, for the Respondent

Final Decision : Disposed off

Judgement

M.M. Sundresh, J. - The petitioner has been informed by the 1st respondent in the Order dated 12.8.2015 that the tenancy of the petitioner would be terminated on his failure to pay the rent and action would be taken under Sections 78 and 79 of the Hindu religious and Charitable Endowments Act, 1959 (in short, "H.R. and C.E.Act"). The said order was challenged by the petitioner in W.P.No.26663 of 2015, wherein, this Court, after hearing the parties, passed the following order in the said writ petition on 26.8.2015:

"5. Admittedly, the petitioner has filed an appeal before the respondent no.2. The said appeal is a statutory appeal. If the appeal is not in order, the respondent no.2 will have to return the same within two weeks from the date of receipt of a copy of this order. Thereafter, the petitioner can rectify the defects pointed out and represent the same within a further period of two weeks. After the receipt of the same, the respondent no.2 will have to consider the stay petition and pass appropriate orders. As the impugned order mainly says that appropriate action

will be taken under Sections 78 and 79 of the Hindu Religious and Charitable Endowments Act, which would admittedly take sufficient time, this Court is not inclined to stay the same at this stage as the said order says only proposes to take action under the above said provisions. However, it is made clear that if the stay petition is filed, the respondent no.2 will have to pass appropriate orders at the earliest within two weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner will have to co-operate with the disposal of the stay petition."

2. The appeal filed by the petitioner was returned by the proceedings of the 2nd respondent dated 8.10.2015 stating that under Section 34A(3) of the H.R. and C.E.Act, it would lie only before the 3rd respondent. Similarly, the appeal filed against the consequential order was also returned.

3. The petitioner has come forward to file these writ petitions alleging that the back papers pertaining to the appeal petition filed before the 2nd respondent against the Order dated 12.3.2015 made in Na.Ka.No.715/2012/A6 on the file of 1st respondent, have not been returned to the petitioner, though the proceedings dated 8.10.2015 of the 2nd respondent states that they have been returned. Learned counsel also submitted that the 2nd respondent will have to be directed to dispose of the stay petition submitted to the 2nd respondent on 31.7.2015 against the Order dated 13.7.2015 made in Na.Ka.No.715/2012-A4 on the file of the 1st respondent.

4. As rightly submitted by the learned Additional Government Pleader appearing for respondents, the appeal filed on 31.7.2015 is only consequential. As against the fixation of fair rent, an appeal would only be maintainable to the 3rd respondent ? Commissioner for Hindu Religious and Charitable Endowments Act under Section 34A(3) of the H.R. and C.E.Act. Such appeal mandates a pre-deposit. Therefore, the consequential prayer sought for in W.P.No.40707 of 2015 is also not maintainable.

5. Considering the facts and circumstances of the case, the petitioner is given a further period of four weeks time from the date of receipt of copy of this order to file appeal before the the 3rd respondent under H.R. and C.E.Act under Section 34A(3) of the Hindu Religious and charitable Endowments Act, 1959 against the Order dated 12.3.2015 in Na.Ka.No.715/2012/A6 on the file of 1st respondent. While presenting such an appeal the petitioner is at liberty to file the same without the original order, which is stated to be still with the 2nd respondent. However, it is made clear that the appeal can only be entertained, subject to the condition the petitioner satisfies the condition of pre-deposit, as mandated by law. However, till such time, status quo as on today shall be maintained. It is made clear that if the petitioner does not comply with the condition of pre-deposit by filing appeal as indicated above, it is open to the respondents to proceed as per law.

6. The writ petitions stand disposed of accordingly. No costs. Consequently, the

connected miscellaneous petitions are closed.