
(2013) 03 MAD CK 0161

In the Madras High Court

Case No : Writ Petition No. 15217 of 2009 and M.P. No. 1 of 2009

G. Chellamuthu Padayachi

APPELLANT

Vs

Commissioner, HR and CE Department and Others

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 5 MLJ 281

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Srinivasan, for the Appellant; S. Kandasamy, Special Government Pleader and Arunmuzhi, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioner prays for issuance of a writ in the nature of certiorari to quash the order R.P. No. 264 of 2005 D2 dated 10.9.2007 passed by the Commissioner, HR & CE Department, Chennai rejecting the revision petition filed by the petitioner against the order of the Joint Commissioner, HR & CE Department, Tiruchirapalli. The petitioner was a tenant over the land bearing S.F. No. 44/1, measuring an extent of 4.5.0 acres of lands belonging to Arulmighu Jotheeswarar Temple, Thirumanthurai, Kunnam Taluk, Perambalur District. The petitioner is the tenant over the land for 40 years by paying lease regularly without any arrears.

2. The temple took a decision to sell the property to an Educational Trust.

3. The case of the petitioner is that on coming to know about the proposal of the temple, he filed a suit in O.S. No. 204 of 2002 in the learned District Munsif Court, Perambalur for a decree of permanent injunction restraining the Executive Officer of temple from evicting the petitioner from the land.

4. The suit was decreed and a decree for permanent injunction was passed in favour of the petitioner restraining the Executive Officer from evicting the petitioner except with due process of law.

5. The case of the petitioner is that one Thiru. P.V. Rangarajan filed a Writ petition No. 3724 of 2003 for directing the respondents to follow the procedure u/s 34 of the Act for the sale of the land. The petitioner has not impleaded Thiru. P.V. Rangarajan as party to the writ petition.

6. The Joint Commissioner, H.R. & C.E. Department accepted the termination of lease by the temple and ordered eviction of the petitioner.

7. The petitioner challenged the order of Joint Commissioner, H.R. & C.E. Department, wherein, one of the ground taken was that the impugned order of terminating the lease was not sustainable in law, as prior notice to terminate the lease was required, which was not issued. Therefore, order passed by learned Joint Commissioner, H.R. & C.E. Department was not sustainable in Law.

8. The learned counsel for the petitioner has referred to the alleged notice, issued by the temple authorities, vide which the petitioner was directed to vacate the premises on the ground that the temple had decided to sell the land to Educational Trust. The bare reading of this notice cannot be said to be a notice stipulated in Law for terminating the lease of a tenant. The wording of the notice are in the nature of final order, in evicting the petitioner.

9. The learned Commissioner, H.R. & C.E in the impugned order only reproduced the respective contention, and finally dismissed the revision petition by observing as under:

5. In view of the foregoing reasons all the contentions made in the Revision Petition about the non-issuance of prior notice etc., fade into insignificance. Hence, the Revision Petition be and is hereby dismissed as devoid of merits.

10. The learned counsel for the petitioner, is right in contending that the impugned order, on the face of it, is arbitrary and cannot be sustained in law, as it does not give any reason for coming to the conclusion as to why the contention raised by the petitioner in the revision petition were not to be accepted.

11. The learned counsel is further right in contending that the impugned order cannot be sustained as the Commissioner has not taken note of the statutory requirement of issuance of prior notice and has recorded that non issuance of notice was of no significance of record, thus admitting that no notice as required under Law was issued before terminating the tenancy.

12. The contentions raised by the learned counsel for the petitioner, deserve acceptance.

13. Consequently, the writ petition is allowed. The impugned order is set aside and the case is remitted back to The Commissioner, HR & CE Department, Uthamar Gandhi Road, Nungambakkam, Chennai-600 34 for fresh decision, by taking note of the contentions raised by the petitioner in the revision petition, and by recording reasons for accepting or not accepting the revision. Needless to mention that the petitioner shall be given an opportunity of personal hearing

before any final decision is taken.

No costs. Consequently, connected MP is closed.