

(2014) 10 MAD CK 0184
In the Madras High Court
Case No : Writ Appeal No. 1349 of 2014

K. Rajendran

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 114, 78

Citation : (2014) 10 MAD CK 0184

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. The appellant, who is stated to be a sub lessee, has come up with this intra Court Appeal challenging the order dated 5.08.2013 in WP No. 1977 of 2010 dismissing the writ petition filed by him to quash the order of eviction and the related appellate order.

2. The property, which is the subject matter of this intra Court appeal, belongs to Arulmighu Apparsamy Thirukovil, Mylapore. The said property bearing D. No. 173, Royapettah High Road, Mylapore, was given on lease to Mrs. Sakunthala Ammal. The wife of the petitioner by name R. Selvi was the servant maid of Tmt. Sakunthala Ammal. It is the case of the appellant that the tenant treated his wife as a permissive occupier. The tenant Sakunthala Ammal died on 31.12.2008. The appellant and his wife continued to occupy the property.

3. While so, the third respondent initiated proceedings of eviction treating the appellant as encroacher. The joint Commissioner conducted a detailed enquiry with due opportunity to the petitioner and arrived at a factual conclusion that the appellant is an encroacher and as such, he is liable to be evicted from the premises. The said order was challenged before the Commissioner, HR&CE Department by invoking Section 114 of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959. The Appellate Authority by way of a detailed order negated the contentions taken by the appellant. The said order was challenged before the Government. The issue was once again considered and the

revision petition was dismissed by order dated 19.1.2010. The said order was challenged in W.P. No. 1977 of 2000.

4. The learned single Judge considered the factual matrix in detail and confirmed the order passed by the statutory authority. Feeling aggrieved, the appellant is before this Court.

5. The learned counsel for the appellant contended that the Government issued an order dated 02.12.2005 giving right to the sub lessees to apply for regularisation of tenancy. According to the learned counsel, the appellant has already filed an application invoking the Government Order in G.O. Ms. No. 277, Tamil Development Culture and Religious Department, dated 2.12.2005 and as such, the statutory authority erred in treating him as an encroacher without making any attempt to dispose of the application on merits.

6. There is no dispute that the property in question was not given on lease to the appellant or to his wife. The lease was given to one Mrs. Sakunthala Ammal. The tenant was not given permission to give the property on sub-lease. The so called permissive occupation would not bind the statutory authority. The land belongs to the Temple. The lease given to Tmt.Sakunthala Ammal has come to an end with her death. There are no records to show that the appellant has made an application invoking the Government Order in G.O. Ms. No. 277 Tamil Development Culture and Religious Department, dated 2.12.2005. Even if the appellant has given such application, the same would not operate as a permission to occupy the premises.

7. The statutory authority, having found that the appellant was an encroacher within the meaning of Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959, rightly passed the order of eviction. The order passed by the original authority was the subject matter of appeal before the Appellate Authority. The Appellate Authority also considered the issue in extenso and upheld the order passed by the original authority. Thereafter, the Government considered the issue independently and arrived at a finding that the appellant is an encroacher.

8. The property in question is a public property. The so called permissive occupation set up by the appellant to continue in possession of the property cannot be recognised by the Court. The appellant has no case that his tenancy was recognised by the Hindu Religious and Charitable Endowment Department at any point of time. Even the payment of rent would not recognise his possession as a tenant. This aspect was considered by the learned single Judge and the writ petition was rightly dismissed. We do not find any reason to take a different view in the matter.

9. In the upshot, we dismiss the writ appeal. Consequently, M.P. No. 1 of 2014 is dismissed. No costs.