



WP(MD)No.24047 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.03.2024
Pronounced on : .06.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.24047 of 2023
and
WMP(MD)Nos.20196 and 20197 of 2023**

Velladurai

... Petitioners

Vs

1.The Commissioner,
Hindu Religious and
Charitable Endowment Department,
Nungambakkam,
Chennai.

2.The Joint Commissioner
Hindu Religious and
Charitable Endowment Department,
West Car Street,
Thoothukudi.

3.The Executive Officer,
Arulmighu Kalugasalamoorthy Temple,
Kalugumalai,
Thoothukudi District.

4.Mohanram

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus call for the records



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relating to the impugned proceedings of the 2nd respondent bearing Na.Ka.No.4154/2023/E2/dated 11.08.2023 consequently direct the respondents to cancel the leasehold agreements with the third parties by violation of auction procedure and call for public auction of the properties under patta No.1 belongs to the Kalugasalamoorthy temple, Kalugumalai Thoothukudi District within a time frame that may be fixed by this Court

For Petitioners : Mr.S.Sivailayaraja

For Respondent : Mr.P.Subbaraj

Nos.1 & 2 Special Government Pleader

For Respondent : Mr.H.Arumugam

No.3

For Respondent : Mr.K.Udayakumar

No.4

ORDER

The petitioner a devotee of the Kalugasalamoorthy temple, Kalgumalai, Thoothukudi District has filed this writ petition challenging the order passed by the 2nd respondent / the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Thoothukudi dated 11.08.2023, in and by which the petitioner's representation for letting out the properties of the temple by way of public auction by fixing fair rent



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was rejected stating that there is no possibility for doing so and the 2nd respondent has legalised the encroachers of the temple as lessees of those properties.

2.The learned Counsel appearing for the petitioner submits that the subject temple is having around 48 acres of Nanja land and 244 acres of punja land in patta No.1. These lands are not all maintained by the respondents properly and these lands were leased out to the individuals selectively by them without following the due process of law and without conducting public auction. The 4th respondent is the hereditary trustee of the temple and he is misusing the temple properties and he acts according to his whims and fancies and not following the due process of law. The temple administration is not keen in augmenting the revenue for the temple from its properties by leasing out in public auction. If the properties are let out for rent by way of public auction it would get more revenue.

3.The learned counsel appearing for the 4th respondent filed a counter affidavit that the entire properties were originally owned by the



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Ettayapuram Samasthanam and the 4th respondent is the descendant of the Samasthanam. The properties were given for administration and maintenance of the deity and temple and these lands have been in possession and enjoyment of the service holder and cultivating tenants for more than 50 to 60 years. These lands are agriculture Nanja and Punja lands covered under the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Rules, 1962. The temple is under the control of the hereditary trustee. The Executive Officer was appointed on 30.06.2017 and he is discharging his duties perfectly and meticulously and all the income of the temple is deposited in the bank account. Fixed deposits are made periodically and every account has been audited by the HR and CE Department. The HR and CE Department has issued government orders and circulars to regularise the case of encroachment, if they agree for tenancy and make appropriate lease amount. Therefore regularising the long possession and enjoyment of the persons as sub-tenant cannot be decision taken adverse to the interest of the temple.



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4.He further submits that the fixation of fair rent committee shall act only in accordance with the provisions of the HR and CE Act. The hereditary trustee is one among the members in the Committee. The trustee has already made a request for fixation of fair rent in the year 2019 itself, but the officials have to convene the committee meeting and fix the fair rent. Therefore the allegations levelled as against this trustee are baseless and are not correct. This writ petition is filed at the instigation of some third parties in order to disrepute this trustee.

5.The Joint Commissioner / 2nd respondent has filed his report that the subject temple is being administered by the hereditary trustee and there is no Executive Officer to the temple. The hereditary trustee on his own resolution recognised the encroachers, who have been in possession of the temple properties more than few decades as tenants, which is against the provisions of the HR and CE Act. Section 34 of the Act mandates that all the tenancies shall be approved by the Commissioner, HR and CE and Rule 2 of the Religious Institutions (Lease of Immovable Properties) Rules, 1963 which mandates that lease of immovable property and rights belonging to a religious institution shall be made by



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public auction as well. A Committee to fix the lease rent for the temple properties was constituted in the year 2016 to fix the rent for the year 2016-2019 and rent was also fixed by the Committee. However due to COVID-19 pandemic the committee could not convene to fix the rent for the year 201-2022. In the meantime a new Joint Commissioner, Thoothukudi Region was formed by bifurcating Tirunelveli Region in the year 2020. Therefore the hereditary trustee of the temple has been advised to fix the rent for the year 2019-2022 and to collect the same. Further for the year 2022-2025 the Committee to fix the lease rent rent for the properties belonging to the temple comprising Thoothukudi Regional Joint Commissioner, Assistant Divisional Engineer, HR and CE Department Thoothukudi Region, Hereditary Trustee of Arulmigu Kalugasalamoorthi Temple and the District Registrar of Registration Department, Kovilpatti convened a meeting on 20.11.2023 and the committee has fixed the fair rent. The minutes of the meeting are also communicated to the hereditary trustee

6.This Court considered the rival submissions and perused the materials placed on record.



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7.The subject Temple namely Arulmigu Kalugasalamoorthy

Temple situated at Kalugumalai, Thoothukudi District is an ancient temple and is also declared as an Archeological Monument by the Archeological Department. The said Temple is having properties to an extent of 164.16 acres of wet land (nanjai) and 1026.33 acres of dry land (punjai) and 41561 sq.ft of buildings and 166861 sq.ft of vacant site. The Temple Administration is getting revenue of Rs.1,02,752/- from Nanja lands, Rs.7,09,805/- from Punjai lands, Rs.8,39,640/- from the buildings and Rs.13,68,060/- from vacant site for the fasli year 1432. The Government in the year 1963 framed a Rule under Clause (xiii) of sub-section (2) of Section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, in the name of Religious Institutions (Lease of Immovable Property) Rules, 1963. Rule 2 of the said Rules mandates that any lease of immovable property belonging to a religious institution shall be made only by way of a public auction. However, the Executive Authority of the religious institution may permit the lease of any property otherwise than by a public auction, if he is satisfied that the interest of the Institution will not suffer by dispensing with the public auction. Thereafter, the Executive Authority of the religious institution



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shall make a proposal to the Commissioner of Hindu religious and Charitable Endowments Department and an order has to be passed as per Rule 11 of the said Rules. Rule 17 of the said Rules also prescribes a fixation of fair rent to the buildings belonging to the religious institutions and this fair rent shall be fixed in accordance with the market value of the land and the cost of the building worked out as per the Code of Public Works Department.

8. Section 34(A) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, prescribes the mode for fixation of lease rent and the lease rent for a vacant site belonging to the Temple has to be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees and the District Registrar of Registration Department. The Committee is expected to fix the rent once in three years depending upon the market rental value and the guidelines as may be prescribed. The market rental value means the amount of the rent paid for similar types of the property situated in the locality where immovable property of the Religious Institution is situated. As against the order of fixation of lease rent, an appeal remedy was also provided under the Act.



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9. With regard to Thoothukudi District, the second respondent, namely, Joint Commissioner of Hindu Religious and Charitable Endowments Department, Thoothukudi District, took a stand that the Committee has already been constituted as per Section 34(A) of the said Act and for the block year 2019-2022, it was not convened on account of COVID-19 pandemic and he is taking necessary action for convening the meeting and to fix the lease rent for the properties belonging to the Temple for the block year 2022-2025. However, it is reported that the Committee meeting was convened only in the year 2016 and, thereafter it has not been convened. The Committee consists of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees and the District Registrar of Registration Department. It is not known as to how COVID-19 pandemic which was prevailing from the month of March 2020 to 2022 is a ground for not revising the lease rent by constituting the Committee till October 2023. The order impugned in this writ petition is dated 11.08.2023, in and by which, the second respondent has permitted the Hereditary Trustee/fourth respondent to allow the encroachers to continue to occupy the properties without even revising the rent. The said order dated 11.08.2023 has been



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passed pursuant to the order passed by this Court in W.P(MD).No.13187 of 2020 dated 28.04.2022. The writ petitioner, namely, Velladurai, has submitted a representation on 03.10.2019, levelling allegations against the Hereditary Trustee/fourth respondent as he is misusing the Temple properties and requested the 2nd respondent to take action against the 4th respondent and to bring the Temple Properties into auction as contemplated under the Rules. The second respondent has not considered the representation of the petitioner dated 03.10.2019 and the petitioner / a devotee was driven to file a writ petition before this Court seeking mandamus to direct the respondents therein to take action as per the provisions available under the HR and CE Act, by considering his representation. This Court vide order dated 28.04.2022 has disposed of the writ petition by directing the 2nd respondent herein to pass appropriate orders on the representation of the petitioner, dated 03.10.2019, on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of the order. Even thereafter the 2nd respondent has not taken any action on the petitioner's representation and therefore, the petitioner has filed a Contempt Petition before this Court in Cont P(MD) No.1079 of 2023 in the month of May, 2023 and it was



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listed in the month of June, 2023. After taking notice in the Contempt Petition, the impugned order was passed by the 2nd respondent permitting the Hereditary Trustee/ 4th respondent to allow the encroachers to continue to occupy the properties without revising the rent. Challenging the same, the present Writ Petition is filed.

10. This Court, by order dated 04.10.2023, has passed the following order:

5. Mr. P. Subbraj, learned Special Government Pleader, who takes notice for the respondents 1 to 3 is directed to get instructions from the second respondent in the following aspects:-

- i. What is the total extent of temple land and the income accrued to the temple every year?*
- ii. Whether any committee has been constituted as contemplated under Section 34(A) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 for leasing out the temple land and whether any lease amount has been prescribed by the Committee.*
- iii. Reasons for not conducting any auction as per Religious Institutions (Lease of Immovable Property) Rules, 1963.*
- iv. Condition of lease awarded to the present*



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lessees /encroachers.

v. The steps taken by the second respondent for collecting the lease amount from the lessees.

11.Pursuant to the order passed by this Court on 04.10.2023, the 2nd respondent, namely, the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Thoothukudi, has passed further order on 04.10.2023, modifying the impugned order passed by him on 11.08.2023. The subsequent order dated 04.10.2023 would disclose that the impugned order has been passed without complying with the procedures contemplated under the Rules and the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is relevant to mention that the 2nd respondent is a Law Graduate and he is appointed as Joint Commissioner to administer the Temple properties and the affairs of the Temple within his division in accordance with the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The Joint Commissioner has not taken any steps to convene the Committee constituted as per Section 34(A) of the said Act. A representation was also made by the petitioner on 03.10.2019 and even thereafter, he has not realized his responsibilities and duties as per the Act and Rules in



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administering the Temple properties and has simply neglected the representation of the petitioner. Therefore a devotee was constrained to file a writ petition to protect the interest of the Temple properties. This Court has also passed an order directing the 2nd respondent herein to consider the representation of the petitioner in the light of the said Rules and take a decision within a time stipulated by this Court. However, the Joint Commissioner has not taken any decision and only after filing the Contempt Petition in the month of June 2023, the impugned order has been passed on 11.08.2023, that too, without complying with the requirements as prescribed under the Act and Rules.

12. Now it is reported that fair rent has been fixed and approved by the committee as follows:

“1. இதில் குறிப்பிட்ட விவரப்படியான நியாய வாடகை நிர்ணயத்தை 01.07.2019 முதல் அமுல்படுத்த வேண்டும்.

2. அதே தேதி முதல் நியாய வாடகை நிர்ணயத்தை பலவகை கேட்பு பதிவேட்டில் பதிய வேண்டும்.

3. இதன்படி நியாய வாடகையை வசூலிக்க பரம்பரை அறங்காவலர் நடவடிக்கை எடுக்க வேண்டும்.



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4.சட்டப்பிரிவு 34A ன்படி தற்போது நிர்ணயம் செய்யப்பட்ட நியாய வாடகை மூன்றாடுகளுக்கு ஒருமுறை மறு நிர்ணயம் செய்ய வேண்டும்

5.செயல் அலுவலரால் அளிக்கப்பட்ட வாடகைதாரர்கள் விவரப்பட்டியலில் தவறான பெயர் விவரங்கள், தவறான அளவீடுகள் தவறான வகைப்பாடு (மனை/ கட்டிடம்/குடியிருப்பு/ வணிகம்) போன்ற விவரங்கள் அளிக்கப்பட்டிருப்பின் அதற்கு சம்பந்தப்பட்ட திருக்கோயில் பரம்பரை அறங்காவலரே பொறுப்பேற்க வேண்டும்.

6.தவறான தகவல் மூலம் நியாய வாடகை நிர்ணயம் செய்ததில் திருக்கோயிலுக்கு இழப்பு ஏதம் ஏற்பட்டால் திருக்கோயில் பரம்பரை அறங்காவலரே தனது சொந்தப் பொறுப்பில் இழப்பினை ஈடு செய்ய வேண்டும்.

7.மேலும் தற்போது திருத்தப்பட்ட சட்டம் 25/2003ன் படி சட்டப்பிரிவு 34(A), 34(D) ல் உள்ள இந்து சமயம் மற்றும் அறக்கொடைகள் சட்டம் மற்றும் விதிகளின் படி திருக்கோயில் பரம்பரை அறங்காவலரால் வாடகைதாரர்களுக்கு சொத்தின் விவரம், அளவீடு, பழைய வாடகை திருத்தியமைக்கப்பட்ட நியாய வாடகை, நியாய வாடகை கணக்கீடு செய்யப்பட்ட விவரங்கள் உள்ளிட்ட முழு விவரங்களையும் தகவலுக்காக அளிக்க வேண்டும்.

8.Know Your Tenant (TYT) ஐ உரிய படிவத்தில் விபரங்களை பூர்த்தி செய்து திருக்கோயில்



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அலுவலகத்தில் வைத்திருக்க வேண்டும். பொறுப்புப்
பட்டியலில் இதையும் ஒரு இனமாக சேர்க்க
வேண்டும்.”

13.Since an order has been passed fixing the fair rent for the properties of the temple revising the impugned order and the grievance of the petitioner is redressed, this writ petition is disposed with a direction to the Joint Commissioner to ensure that the above minutes of the Committee are followed scrupulously and the temple properties are protected and ensure that the revised rent is collected. The Committee shall convene its meeting as per the provisions and the rules and proceed further. The interest of the temple should be the paramount importance and the revenue to the temple should at any cost be not lost. The noble object for which the lands have been donated to the temple by the donors would be achieved only when those lands and the temple are protected. The Joint Commissioner shall take action against anyone, who acts against the interest of the temple. No costs. Consequently connected miscellaneous petitions are closed.

06.2024

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To

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- 1.The Commissioner,
Hindu Religious and
Charitable Endowment Department,
Nungambakkam,
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- 2.The Joint Commissioner
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