

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.A.No.1174 of 2012

V.Angu Appellant/Petitioner

Vs.

1. The Commissioner
Hindu Religious & Charitable
Endowment Department,
Nungambakkam High Road,
Chennai - 600 034.
2. Desanatheswarar Temple
Rep. by its Executive Officer,
Hogenakkal,
Dharmapuri District. Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent,
against the order of this Court, dated 09.02.2012 made in
W.P.No.16904 of 2011.

Petition is filed Under Article 226 of the Constitution
of India, for the issuance of Writ of Mandamus for bearing the
respondents from interfering with petitioner possession of 7
acres of land in S.No.1099 Ootamalai Village, Hoigenekkal Taluk,
Dharmapuri District without recourse to the proceedings under
the TamilNadu Public Trusts (Regulation of Administration of
Agricultural Lands) Act (57 of 1961)

For Appellant : Mr.R.Subramanian

For Respondents : Mrs.Rita Chandrasekar

JUDGMENT

(Judgement of the Court was delivered by

P.KALAIYARASAN, J)

The instant writ appeal arises from the order, dated
09.02.2012 made in W.P.No.16904 of 2011.

2. The averments of the writ petitioner in nutshell leading to the filing of this intra court appeal are that the appellant / petitioner has been cultivating as tenant in respect of 7 acres of land in S.No.1099 of Ootamalai village, Hakanakel Taluk for the past 25 years. The land belongs to the second respondent temple. His name is recorded as a tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1965 (Act 10 of 1969) by the Record Officer, namely, Tahsildar, Pennagaram. The petitioner has paid the rent up to 29.02.2000. The subsequent rent tendered was refused by the second respondent, in view of the earlier writ petition. The appellant had to file earlier writ petition in W.P.No.4071 of 2001, challenging the auction conducted on 20.02.2001 by the second respondent and interim order was granted in that writ petition. The said writ petition was also disposed of by this Court on 24.03.2011 as infructuous.

3. Consequent to the disposal of the above writ petition, the second respondent temple issued another auction notice, fixing the date of auction on 19.07.2011. Challenging that auction notice, the appellant herein filed writ petition now under challenge in this appeal in W.P.No.16904 of 2011. The appellant being a cultivating tenant is protected under the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961. The respondents cannot evict the appellant or deprive him of his right as a cultivating tenant, except under the provisions of the Act. The action of the respondents in auctioning the lease hold right is illegal and in violation of the provisions of the Tamil Nadu Public Trust (Regulations of Administration of Agricultural Lands) Act, 1961.

4. The respondents in their counter filed in the writ petition contends that the second respondent temple is a listed temple published under Section 46 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 (herein after referred to as "TN HR & CE Act"). As per the Religious Institutions (Lease of Immovable Property) Rules, 1963, framed under Section 34 of the TN HR & CE Act, lease of immovable property belonging to any religious institutions shall be made by public auction. Apart from that rule 12 (4) says when a lease is granted for a period of exceeding five years shall be made in accordance with the provisions contained in Section 34 of TN HR & CE Act. Therefore, the writ petition is not at all maintainable.

5. The learned single Judge, after hearing the divergent contentions of both sides, dismissed the writ petition. Aggrieved by the order, the writ petitioner has come forward with this writ appeal.

6. The learned counsel appearing for the appellant contends that the Tamil Nadu Public Trusts Act have overriding effect on any other law, referring to the definition of tenant, as per Section 3 of the Act. He also referred to Section 19 of the said Act and contended that the tenant can only be evicted as per provisions contained in the Act.

7. The learned counsel appearing for the respondents per contra contends that there are specific provisions under TN HR & CE Act and the rules framed, as per Section 34 of the Act.

8. It is an admitted fact that the land in question belongs to the second respondent temple, which is a listed temple under Section 46 of the TN HR & CE Act, 1959. The factum remains that the appellant is a statutory tenant as his name is recorded as a tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1965. He has been cultivating the land in question for the past 25 years as a tenant.

9. The learned counsel appearing for the respondents brought to the notice of this Court Section 34 of TN HR & CE Act, 1959, in support of his contention that there is statutory bar against lease beyond 5 years. Section 34 reads as under :

"34. Alienation of immovable trust property :
(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by (the commissioner) as being necessary or beneficial to the institution :
Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by (the Commissioner)."

10. Here in this case on hand, the temple authorities, without making any attempt to bring the tenancy to an end, attempted to lease out the property through public auction. The appellant as petitioner filed writ petition, to quash the notice for public auction.

11. The learned counsel appearing for the appellants vehemently argued that the above provision is not applicable to lands coming under the purview of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961. Rule 16 of the Religious Institutions (Lease of Immovable Property) Rules, 1963 reads thus :

" Rule 16. Rules not to apply - (1) The provisions of these rules relating to lease by public auction and remissions shall not apply to lands coming under the purview of the Tamil Nadu Public Trusts (Regulation and Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57 of 1961).

(2) These rules shall not apply to maths and specific endowments attached to maths."

12. Section 2 (25) of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961, defines "public trust" as :

"public trust means a trust for a public purpose of a religious or charitable, or of an educational nature and includes any temple, math, mosque, church or other place by whatever name known, which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship; any charitable or educational institution of a public nature."

Section 3 is the provision to override other laws, which reads thus :

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage or contract or decree or order of a Court or other authority."

13. Though the temple is listed under Section 46 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the land in question does not fall under the Act. As per the provisions of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961, the land will come only under the purview of the said Act. The Religious Institutions (Lease of Immovable Property) Rules, 1963, prohibits its applicability to the lands coming under the

purview of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961. Therefore, issuance of notice for public auction, invoking the provisions of TN HR & CE Act and The Religious Institutions (Lease of Immovable Property) Rules, 1963 by the temple authorities is contrary to the provisions of law.

14. It is well settled that even a trespasser cannot be dispossessed, except under due process of law. The appellant being statutory tenant has been cultivating the lands in question for the past 25 years. There is provision to evict a tenant under Tamil Nadu Public Trusts Act. Section 19 of the said Act provides the procedure to evict cultivating tenant in certain cases. Without resorting to any procedure known to law, to evict the appellant from the land, issuance of the notification for public auction to lease out the land is a gross violation and is liable to be quashed.

15. The learned single Judge is not correct in holding that the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act cannot have a overriding effect and the same is to be read in consonance with the TN HR & CE Act, 1959.

16. For the aforesaid reasons, this writ appeal is allowed and the order, dated 09.02.2012 made in W.P.No.16904 of 2011 of the learned single Judge is set aside. Consequently, the notice for public auction issued by the second respondent is quashed. No costs.

Sd/-
Assistant Registrar (CS-IV)

/True Copy/
सत्यमेव जयते

Sub Assistant Registrar

tsvn
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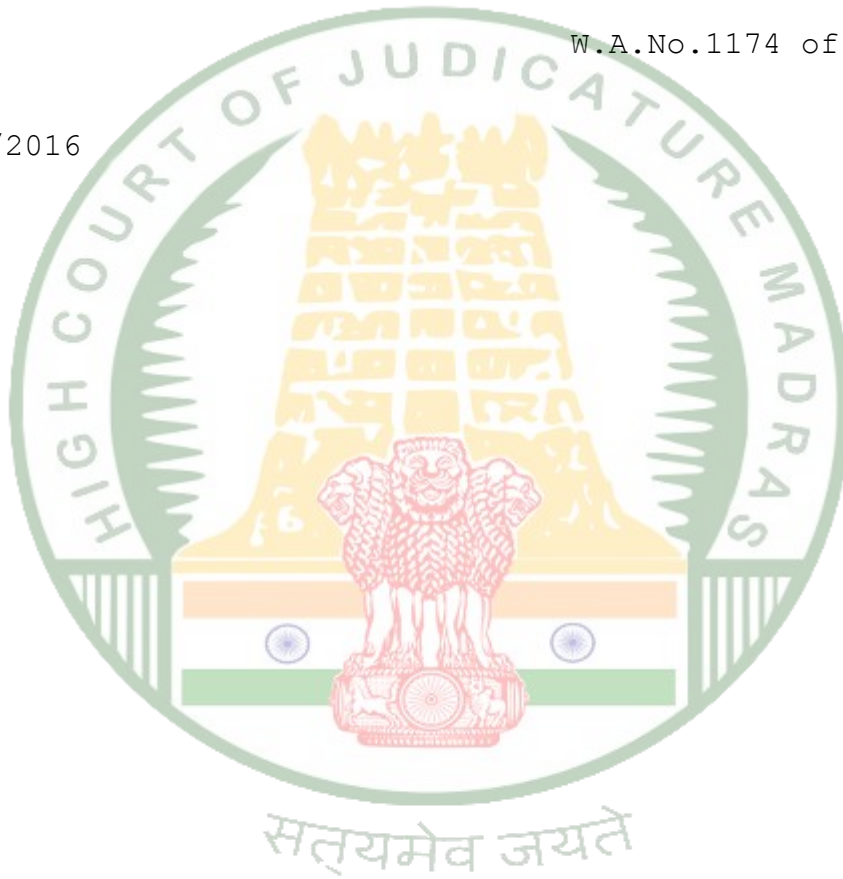
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+1cc to M/S.R.Subramanian, Advocate Sr.41358
+1cc to the Government Pleader Sr.41614

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srg 03/08/2016



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