



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON:11.11.2016
PRONOUNCED ON:25.11.2016
CORAM

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.(MD) No.1404 of 2016
and
W.P(MD).No.6532 of 2013

M.Balasubramanian ... Appellant/Respondent

Vs

- 1.The Commissioner,
Hindu Religious and Charitable Endowment,
Uthamar Gandhi Salai,
Chennai 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Palayamkottai, Tirunelveli District.
- 3.Arulmighu Gopalakrishnaswamy Vagai Thirukoil,
Krishnapuram, Kadayanallur,
Tenkasi Taluk, Tirunelveli District,
rep.by its Executive Officer HR&CE

4.V.Mahalingam (died) ... Respondent

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 27.09.2016 made in W.P.(MD).No.6532 of 2013.

Prayer in WP(MD)No.6532 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to TO issue a Writ of Certiorari, calling for records of the 1st Respondent in R.P.No.3/2012 dated 25.03.2013 and quash the same.

For Appellant :Mr.T.S.R.Venkatramana
For R.3 :Mr.S.Manohar
For R1 and R2 : Mr.A.K.Baskara Pandian,
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by J.NISHA BANU, J.]

By consent, this Writ Appeal is taken up for final disposal. The parties are referred to as per the rank in the Writ Petition.



2. Aggrieved over the order, dated 27.09.2016, made in W.P(MD).No.6532 of 2013, in and by which, the learned single Judge has dismissed the claim of the petitioner by confirming the order of the first respondent, dated 25.03.2013, and setting aside the order passed by the second respondent, dated 02.11.2011 and directed him to take necessary steps to lease out the property in question in open auction, the petitioner is before this Court.

3. The petitioner would aver among other things in the affidavit that the lands referred to in the Writ Petition belong to the third respondent herein. Originally, the property was leased out by the temple to the fourth respondent therein, who is none other than the father of the petitioner. It is stated that the father of the petitioner committed default in payment of rent to the temple and also attempted to convert the land which was really intended to, which resulted in filing petition before the second respondent under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 for eviction of the father of the petitioner. As a result, the petitioner filed I.A.No.1/2010, to implead himself as party to the above proceedings. According to him, he paid the entire arrears of rent due by his father to the Temple. It is the claim of the petitioner that the second respondent by his order dated 02.11.2011 recognized the petitioner as a cultivating tenant of the third respondent temple and on the basis of that order, on 30.11.2011, the third respondent temple entered into an agricultural lease. According to the lease, there shall be 10% increase of the lease amount at the end of every 3rd year. Aggrieved by the said order, the father of the petitioner, who is the fourth respondent in the present Writ Appeal, preferred R.P.No.3/2012 before the first respondent / Commissioner and since the fourth respondent did not appear either in person or through his counsel, he was set *exparte* and the first respondent instead of dismissing R.P.No.3/2012 passed the impugned order setting aside the order of the Joint Commissioner order, dated 02.11.2011 recognising the petitioner as lessee and directed the second respondent therein to lease out the property in question through public auction and challenging the legality of the same, the petitioner is before this Court.

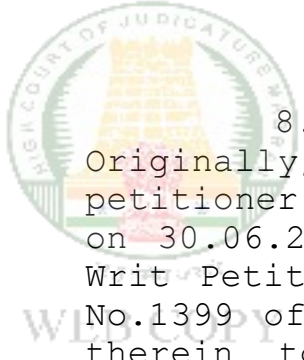
4. The main points urged by the learned Counsel appearing for the appellant is that the very initiation of the proceedings under Section 78 of the Act is illegal, when the fourth respondent is the cultivating tenant under the third respondent. It is his further submission only the Revenue Authorities alone are empowered to evict the petitioner and the first respondent has no jurisdiction to evict the petitioner. Further, petitioner contends, being the son of the fourth respondent, has stepped into his father's shoes and claimed the benefits of the tenancy of his father, that too, after recognising him as a tenant, the respondents cannot go back to their words and therefore, the order

passed by the first respondent is against law and prays for the interference of this Court.

5. The counter affidavit filed on behalf of the first respondent, it is contended that originally, the lands were leased out to the fourth respondent through public auction in the year 1988 and the said lease was extended for further period on 12.03.2003 which was expired on 30.06.2005. Since the fourth respondent converted the temple land from agricultural purpose into commercial purpose by starting a weekly *santhai* for sale of cattle, eviction proceedings was initiated against him and the lease was also terminated. As against the order of termination of lease, the fourth respondent filed a writ petition before this Court in W.P(MD)No.1380 of 2005 and the said writ petition was disposed of by this Court with a direction to the authorities concerned to give sufficient time to the fourth respondent to vacate the land in question. Thereafter, a notice was issued to the fourth respondent to surrender the portion of the said land to the temple. Since the fourth respondent did not vacate from the said land, eviction proceedings were initiated under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The writ petitioner, being the son of the fourth respondent, got himself impleaded in the eviction proceedings and also paid the entire amount of lease arrears before the third respondent. Considering the above said fact, the second respondent passed an order dated 02.11.2011 directing the third respondent to recognise the petitioner as a lessee subject to rules and regulations.

6. Aggrieved over the said order, the fourth respondent filed a revision petition before the first respondent and it is further stated that the fourth respondent has already filed a civil suit in O.S.No.597 of 2005 on the file of the District Munsif Court, Tenkasi for permanent injunction not to evict him from the leased hold lands and the above suit was dismissed by judgment and decree dated 11.01.2008. As against the said judgment and decree, the fourth respondent filed an appeal in A.S.No.37 of 2008 on the file of the Principal Sub Court, Tenkasi which was also dismissed on 13.02.2008. The first respondent further contended that the second respondent has no authority to direct the third respondent to recognise the petitioner as a lessee subject to rules and regulations which is contrary to the Tamil Nadu Religious Institutions (Lease of Immovable Property) Rules 1963 and the second respondent cannot give any such direction contrary to Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Therefore, it is prayed that there is no infirmity in the order passed by the first respondent warranting this Court to interfere with the order passed by the first respondent directing the second respondent to lease out the temple land in public auction.

<https://hcservices.ecourts.gov.in/Hcservices> 7. We have considered the submissions made on either side and perused the materials available on record.



8. The present litigation has got a chequered history. Originally, the property was leased out to the father of the petitioner and admittedly, his period came to an end as early as on 30.06.2005. It is pertinent to point out that in one of the Writ Petitions filed by the father of the petitioner in W.P(MD) No.1399 of 2005, this Court gave a direction to the authorities therein to give sufficient time to the the father of the petitioner to vacate the land in question. But, he did not do so, instead, he filed civil suit in O.S.No.597 of 2005 on the file of the District Munsif Court, Tenkasi for permanent injunction seeking not to evict him from the leased hold lands and the said suit was dismissed by judgment and decree dated 11.01.2008. As against the said judgment and decree, the fourth respondent filed an appeal in A.S.No.37 of 2008 on the file of the Principal Sub Court, Tenkasi which also got dismissed on 13.02.2008. Therefore, the claim of the appellant was already negatived by the competent civil forum and in other words, the points now the appellant wanted to consider is nothing but *res judicata*. All those material facts have not been stated in the affidavit. The affidavit is totally bereft of earlier proceedings. He neither mentions about the dismissal of the suit nor earlier Writ Petitions filed by his father. The petitioner has not come with clean hands to this Court. Further, the father of the petitioner has also filed a petition before the Tahsildar, Tenkasi to register him as cultivating tenant of the land in dispute, which was rejected by the Tahsildar, Tenkasi, in and by his proceedings, dated 25.02.2008. According to the first respondent, the petitioner and his father never cultivated the lands in question and both of them never contributed their physical labour and the said land remains uncultivated for years together, but the same was used only for the commercial purposes for running a weekly shandy of cattle. In such circumstances, the contention of the petitioner that he and his father are cultivating tenant has no basis at all. Apart from that this Court is at a loss to understand that as to how such vast extent of lands belonging to the temple is leased out to the petitioner / his father for a paltry sum.

9. The next contention of the learned Counsel for the appellant is that the first respondent does not have power to pass the impugned order. It is useful to extract Section 21 (1) and (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 which reads as follows:-

"21.Power of Commissioner to call for records and pass orders:- (1)The Commissioner may call for and examine the record of [any Joint or Deputy or Assistant Commissioner] or of any trustee of a religious institution other than a math or a specific endowment attached to a math in respect of any proceeding under this Act [not being a suit or an appeal in respect of which a suit or an appeal to a Court is provided by this Act [or in respect of which an application for revision has been preferred under Section



21-A to the Joint Commissioner or Deputy Commissioner and is pending disposal by him to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein.

(2) If any such decision or order has been passed by [any Joint or Deputy or Assistant Commissioner], or by the trustee of any religious institution other than a math or a specific endowment attached to a math and other than one included in the list published under Section 46, and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly."

Therefore, the contention of the appellant that the first respondent has no power to pass the impugned order is unfounded and the same is liable to be rejected. Accordingly, it is rightly rejected by the learned Single Judge. We affirm the views expressed by the learned single Judge.

10. Even after this Court entertained the Writ Petition filed by the father of the petitioner and gave sufficient time to vacate the property in question and even after dismissal of the civil suits filed by the father of the petitioner, the petitioner managed to stay back in the property without any authority of law, for more than one decade and drag on the proceedings in one way or the other. Therefore, we have no hesitation to hold that the order of the first respondent as well as the order impugned do not require any interference at the hands of this Court.

11. Accordingly, this Writ Appeal is dismissed by confirming the order of the first respondent dated 25.03.2013 as well as the order dated 27.09.2016 made in W.P.(MD).No.6532 of 2013. Consequently, the first respondent is directed to go for public auction in respect of property in question within a period of eight weeks from the date of receipt of the copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Commissioner,
Hindu Religious and Charitable Endowment,
Uthamar Gandhi Salai,
Chennai 600 034.



2.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
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3.The Executive Officer HR&CE
Arulmighu Gopalakrishnaswamy Vagai Thirukoil,
Krishnapuram, Kadayanallur,
Tenkasi Taluk, Tirunelveli District.

+One cc to Mr.T.S.R.Venkat Ramana, Advocate, SR.No.72646

+One cc to The Special Government Pleader, SR.No.73252

ssm

RL/6C/6P/SKS/RR/23.12.2016

Order made in
W.A. (MD) No.1404 of 2016

25.11.2016