



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

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Writ Petition (MD) No.6532 of 2013andM.P (MD) Nos.1 and 2 of 2013

M.Balasubramaniam

... Petitioner

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.Arulmigu Gopalkrishnaswamy Vagai Thirukovil,

Krishnapuram, Kadayanallur,
Tenkasi Taluk, Tirunelveli District,
represented by its Executive Officer, HR & CE.

4.V.Mahalingam

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in R.P.No.3 of 2012, dated 25.03.2013 and quash the same.

For Petitioner

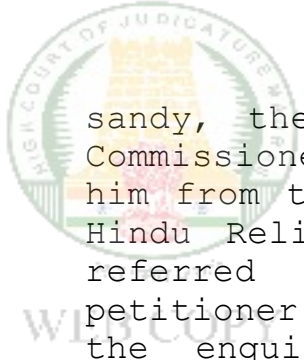
: Mr.T.S.R.Venkataramana

For Respondents 1&2

: Mr.V.Muruganandam,
Additional Government Pleader.For 3rd Respondent: Mr.T.R.Janarthanam,
Additional Government Pleader.ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 25.03.2013 setting aside the order passed by the second respondent and directing the third respondent to take necessary steps to lease out the property in dispute in public auction.

2.According to the petitioner, an extent of 10.52 acres of dry land in Survey Nos.179 and 180 of Krishnapuram Village, Tenkasi Taluk, Tirunelveli District belongs to the third respondent herein. The above said lands were leased out to the fourth respondent who is none other than the father of the writ petitioner. Since the fourth respondent committed some default in payment of rent and also attempted to convert the lands as cattle



sandy, the third respondent filed a petition before the Joint Commissioner, HR & CE, the second respondent herein for evicting him from the above said lands under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act'). In the eviction petition, the petitioner got himself impleaded as a party respondent and during the enquiry, he paid the entire arrears before the third respondent. Considering all these facts, the second respondent, by an order dated 02.11.2011, recognised the petitioner as a cultivating tenant of the land and based on the above said order, the petitioner entered into a lease agreement with the third respondent on 30.11.2011, and he has also made some improvement in the said lands.

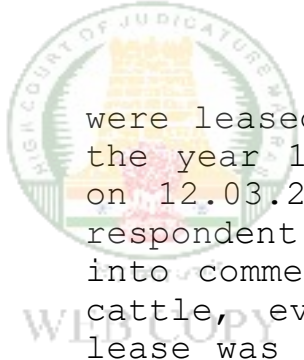
3. Aggrieved over the said order passed by the second respondent, the fourth respondent herein filed a revision petition in R.P.No.3 of 2012 before the first respondent. After filing revision petition, pursuant to a family conciliation, the fourth respondent did not pursue the revision petition. But the first respondent, without dismissing the above revision petition for default considered the case on merits and passed the impugned order, setting aside the order passed by the second respondent and also directed the third respondent to lease out the property in public auction.

4. Challenging the above said order, the petitioner has filed this writ petition inter alia contending that the very initiation of proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 itself is illegal and void, since the fourth respondent is a cultivating tenant and the third respondent is an religious institution, a public trust and the relationship between the third respondent and the fourth respondent is regulated by the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 (hereinafter called as Public Trust Act) and the respondents cannot initiate proceedings under the Act.

5. It is further contended that the fourth respondent being a cultivating tenant, the revenue authorities alone is empowered under the Tamil Nadu Cultivating Tenants Protection Act to evict the petitioner. Hence, the Commissioner, the first respondent herein has no jurisdiction to pass the impugned order.

6. It is further stated that the petitioner being the son of the lessee namely, the fourth respondent herein, he has stepped into his shoes and as per Section 43 of the Public Trust Act, he is entitled to the benefits of tenancy of the fourth respondent and therefore, the order passed by the first respondent which is impugned in this writ petition is against the provisions of the Public Trust Act.

7. The first respondent filed a vacate stay petition along with a counter affidavit, contending that originally, the lands

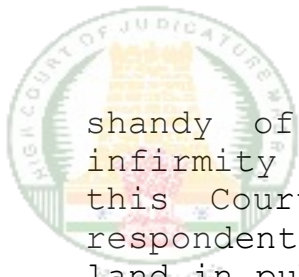


were leased out to the fourth respondent through public auction in the year 1988 and the said lease was extended for further period on 12.03.2003 which was expired on 30.06.2005. Since the fourth respondent converted the temple land from agricultural purpose into commercial purpose by starting a weekly 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 with a direction to the authorities 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 the son of the fourth respondent, he got himself impleaded in the eviction proceedings and he has 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.

8. 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.

9. 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.

10. It is further stated that the fourth respondent 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 neither of them ever 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. 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.

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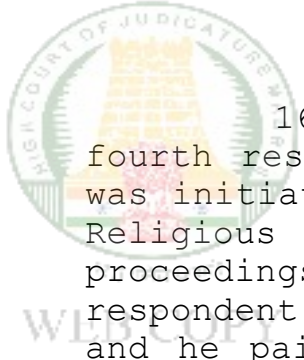
11. Heard Mr. T. S. R. Venkataramana, learned counsel for the petitioner and Mr. V. Muruganandam, learned Additional Government Pleader for the respondents 1 and 2 and Mr. T. R. Janarthanam, learned Additional Government Pleader for the third respondent.

12. Reiterating the averments contained in the affidavit filed in support of this writ petition, learned counsel appearing for the petitioner vehemently contended that the fourth respondent was a cultivating tenant, now expired, the petitioner, being the son of the fourth respondent, entitled to continue as a cultivating tenant and pursuant to the order passed by the second respondent, a lease deed was also executed by the third respondent in favour of the petitioner and apart from that, he is also paid the entire arrears of lease amount and he is in possession and enjoyment of the property.

13. Learned Additional Government Pleader appearing for the respondents would contend that the writ petitioner cannot claim as a cultivating tenant, as the application filed by his father, viz., the fourth respondent to recognise him as cultivating tenant was rejected by the Tahsildar, Tenkasi which became final. Since the lease period was over, the fourth respondent was treated as an encroacher, therefore, eviction proceedings were initiated under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The order of the second respondent, dated 02.11.2011, directing the third respondent to recognise the petitioner as a cultivating tenant is highly illegal. In the above circumstances, the first respondent passed the impugned order which is perfectly valid and in accordance with law. Hence, he prayed for the dismissal of the writ petition.

14. I have carefully considered rival submissions.

15. It is an admitted case that only the fourth respondent is a lessee under the third respondent. Originally, the lease was granted in favour of the fourth respondent in the year 1988 and the lease period also came to an end on 30.06.2005. Thereafter, the fourth respondent without handing over the land after expiry of the lease period to the third respondent, he converted the land for commercial purpose. Hence, eviction proceedings were initiated and the lease was also terminated. Against the order of termination of lease, the fourth respondent filed a writ petition before this Court in W.P(MD) No. 1399 of 2005 which was disposed of with a direction to the authorities concerned to give sufficient time to the fourth respondent to vacate the land in question, even thereafter, the fourth respondent did not hand over the possession to the third respondent.



16. In the above circumstances, the occupation of the fourth respondent was treated as an encroacher and a proceedings was initiated against him under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. In the above proceedings, the writ petitioner being a son of the fourth respondent got himself impleaded as a party respondent on his own and he paid the entire arrears of lease amount. Thereafter, the second respondent passed an order dated 02.11.2011, directing the third respondent to recognise the petitioner as lessee. Pursuant to the order passed by the second respondent, the third respondent also entered into lease agreement with the writ petitioner. Aggrieved over the said order passed by the second respondent, the fourth respondent filed a revision petition before the first respondent. Even though, the fourth respondent who is the revision petitioner remained absent during the enquiry, the Commissioner, the first respondent herein, considering the materials available on record, passed the impugned order setting aside the order passed by the second respondent and directed the third respondent to bring the property for public auction.

17. So far as the first contention of the petitioner that when the fourth respondent revision petitioner remained absent, the first respondent ought to have dismissed the revision petition and he has no power to pass orders on merits. The above contention of the petitioner cannot be accepted for the reason that as per Section 21 of the Act, the Commissioner, HR & CE has a suo motu power of revision even in the absence of any revision by an aggrieved party, the Commissioner can initiate suo motu proceedings against order passed by the Joint Commissioner.

18. It is useful to refer 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 proceeding 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."

19. Therefore, the first respondent, Commissioner can exercise his suo motu power even in the absence of the fourth respondent and the Commissioner examined the records and passed orders. Hence, there is no infirmity in the order passed by the first respondent, Commissioner.

20. So far as the second contention of the petitioner that the fourth respondent being a cultivating tenant and the petitioner being the son of the fourth respondent, he is entitled to step into the shoes of the fourth respondent, the said contention also without any merit. The petition filed by the fourth respondent to recognise him as a cultivating tenant before the Tahsildar, Tenkasi was rejected by the Tahsildar, Tenkasi which has become final and the petitioner cannot raise such a claim now. In the above circumstances, the contention of the petitioner that provisions of the Public Trust Act are applicable to the case of the petitioner cannot be countenanced.

21. Perusal of records shows that neither the petitioner nor the fourth respondent are cultivating the land. Above all, the petitioner all along contested against the fourth respondent in the present dispute, now cannot come and plea that he had stepped into the shoes of the fourth respondent. The fourth respondent always opposed the writ petitioner and he has filed the revision petition challenging the order passed by the second respondent recognising the petitioner as a tenant. Admittedly, the lease granted in favour of the fourth respondent expired on 30.06.2005. This Court has already passed an order in W.P(MD)No.1380 of 2005 to evict the fourth respondent after giving him sufficient time. Even the suit filed by the fourth respondent for injunction was also dismissed which was also affirmed by the appellate Court in Appeal. In the above circumstances, the second respondent initiated proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. and the first respondent rightly held that the second respondent cannot pass an order to recognise the petitioner as a lessee in the temple lands and the first respondent has correctly come to the conclusion that the order passed by the second respondent is not in accordance with law and set aside the order and consequently directed him to bring the property for public auction. Hence, I find no infirmity or irregularity in the orders passed by the first respondent.



22. For the foregoing reasons, the writ petition fails and the same is dismissed. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2013 are closed.

Sd/-
Assistant Registrar

/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,
Palayamkottai,
Tirunelveli District.
3. The Executive Officer, HR & CE
Arulmigu Gopalkrishnaswamy Vagai Thirukovil,
Krishnapuram, Kadayanallur,
Tenkasi Taluk, Tirunelveli District,

+One cc to Mr.T.S.R.Venkataramana, Advocate, SR.No.56139

sms
RL/5C/7P/AAL/MPA/5.10.2016

Pre-delivery order passed in
Writ Petition (MD) No.6532 of 2013
and
M.P(MD)Nos.1 and 2 of 2013