

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 33210 of 2012
and
M.P. No. 1 of 2012

G. Pachiappan ... Petitioner
Vs.

1. The Secretary
Govt. of Tamil Nadu
Department of Tamil Development
and Religious Endowments
Fort St. George
Chennai- 9.
2. The Commissioner
HR & CE Department
Nungambakkam
Chennai - 600 034.
3. The Joint Commissioner
HR & CE Department
Nungambakkam
Chennai - 600 034.
4. The Executive Officer
Arulmigu Thirukachi Nambigal
and Varadaraja Perumal Temple
Poonamallee
Tiruvallur District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the 1st respondent in G.O.Ms.No.338 Religious Endowments dated 09.10.2012 confirming the order of the 2nd respondent in R.P.53/ 2011/D2 dated 10.04.2012 and to set aside the same.

For Petitioner : Mr. V. Bhiman
For Respondents : Mr. R.P. Prathap Singh,
Govt. Advocate.

O R D E R

This writ petition has been filed praying to set aside the G.O.Ms. No.338 Religious Endowments dated 09.10.2012 issued by the 1st respondent, confirming the order of the 2nd respondent in R.P. 53/2011/D2 dated 10.04.2012.

2. Learned counsel for the petitioner submitted that 18 cents of vacant land in Survey No. 47/1, belonging to Arulmighu Thirukachi Nambigal and Varadarajaperumal Temple, Poonamallee Town and Taluk, Tiruvallur District, was let out by the 2nd respondent on lease to the petitioner in the year 1995. Out of which, the petitioner has constructed a superstructure for one shop on 3 cents and other shops were constructed by other tenants. However, the petitioner was collecting the rent for the all the shops and were paying to the 2nd respondent properly. Whiles, on 07.02.2011 the 3rd respondent issued notice under Section 78 of the HR & CE Act stating that the lease period had expired and that the petitioner is in occupation of the said shop as a trespasser, with effect from 01.11.2011. The petitioner was also directed to pay a sum of Rs.5,14,407/- towards arrears of rent for the period from 01.11.2011 to 31.05.2011. Hence, the petitioner filed a Revision Petition under Section 21 of the Act, against the order dated 12.07.2011 passed by the Joint Commissioner, H.R. & C.E., Vellore, the 3rd respondent herein, challenging the eviction from the land. But, the said revision was dismissed on 10.04.2012 and the Commissioner confirmed the order of the 3rd respondent. Thereafter, the petitioner filed a review before the Government, which was also dismissed. Aggrieved by the said order, the petitioner has preferred the present writ petition before this Court.

3. Per contra, learned Government Advocate submitted that the land was originally leased out to the petitioner in the year 1995, only for a period of three years. Thereafter, the lease agreement was neither extended nor cancelled by the respondents. Finally, it was found that the petitioner was in enjoyment of the property, without obtaining any orders from the respondents and so action was taken under Section 78 of the HR & CE Act. His revision and appeal, against the said order of eviction, have been dismissed by the Commissioner and the Government.

4. This Court in its order dated 21.12.2012, had observed that the petitioner has filed an affidavit dated 18.12.2012 stating that he has totally paid a sum of Rs.2,49,887/-, with an assurance to pay the balance within the time fixed by this Court and the same has also been received by

the 4th respondent. Recording the same and the assurance that the petitioner will submit an application to treat him as a fresh tenant within a period of one week thereof, granted an order of status-quo on 04.01.2013. Admittedly, the petitioner did not comply with the said order and he has paid the balance amount only in the year 2016, due to his own reasons. He has submitted his application on 16.11.2015, to treat him as a fresh tenant, in the said property. Subsequent thereto, the petitioner has filed an affidavit, seeking to direct the 4th respondent, to consider him as a new tenant in the property. Although the petitioner submitted his willingness, to pay the balance amount as well as submit the application to treat him as a new tenant, he has not approached the authorities concerned within the period fixed by this Court. The petitioner has also not chosen to give any bonafide reasons for his non-compliance of the order. He has paid the balance only in the year 2015, after a lapse of 3 years, without filing any application to extend the time for executing the order. Therefore, he cannot take advantage of that order and request to consider his application, which is now stated to be pending before the authority.

5. Learned Government Advocate also placed reliance on the Religious Institutions [Lease of Immovable Property] Rules, 1963, wherein Rule 2, clearly states that, lease of immovable property and rights belonging to a religious institution shall be made by public auction. The auction shall, ordinary be conducted in the place in which the property is situated or the right exists. He further submitted that in the light of the above said provisions, the petitioner is not entitled to get the renewal since it is not under auction nor the lease has been extended, as per the provisions of the above referred Act. Hence, the writ petition deserves to be dismissed.

6. Heard Mr. V. Bhiman, learned counsel for the petitioner, Mr. R.P. Prathap Singh learned Government Advocate for the respondents and perused the material available on record.

7. The lease has been granted to the petitioner in the year 1995, as a vacant land to an extent of 18 cents. The petitioner has constructed a shop in 7872 sq.ft., in the said land. But, subsequently, the petitioner has taken a contrary stand that he possess only 3 cents. Even in the Revision Petition he has categorically made a statement that he possess only 3 cents. It is not known then, how the petitioner was paying the rent for 18 cents of land. Further, the petitioner was unsuccessful before the Joint Commissioner, Commissioner and even before the Government on review. It has been categorically held by the authorities that the petitioner is not entitled to

get any relief. This Court also granted interim orders, accepting the undertaking given by the petitioner, that he will make the payment and submit a fresh application to the department. But, the said conditional order has not been complied by the petitioner, within the stipulated time and only during the year 2015 the petitioner has made an application, without following any proper procedure.

8. As per Rule 10 of the Religious Institutions [Lease of Immovable Property] Rules, 1963, no extension can be granted. Rule 11 of the said Act states about the lease otherwise by public auction. Rule 12(1) reads as follows :-

" 12 (1) When a lease is granted for a period of less than five years, any further extension of lease upto a period of five years from the date it was originally granted shall be made only with the previous sanction of the Commissioner. Leases exceeding five years shall be made in accordance with the provisions contained in Section 34.

Section 34 of the H.R. & C. E Act, reads as follows :-

(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 purpose 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 received from the trustee or other persons having interest shall be duly considered by the Commissioner.

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation -- Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years."

9. Therefore, this Court do not find any bonafide reasons to interfere with the orders passed by the 1st respondent in G.O.Ms.No.338 Religious Endowments dated 09.10.2012 confirming the order of the 2nd respondent in R.P.53/ 2011/D2 dated 10.04.2012. The petitioner has no legal right to extend or renew the lease agreement, by virtue of the aforesaid rules. However, liberty is granted to the petitioner, to approach the department, with a copy of this order and an application for granting of fresh lease, if it is permissible under law, and the same shall be considered by the respondents, on merits and in accordance with law.

10. The writ petition is disposed of, on the above terms. Consequently, the connected M.Ps are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

avr

To

1. The Secretary
Govt. of Tamil Nadu
Department of Tamil Development
and Religious Endowments
Fort St. George
Chennai- 9.

2. The Commissioner
HR & CE Department
Nungambakkam
Chennai - 600 034.

3. The Joint Commissioner
HR & CE Department
Nungambakkam
Chennai - 600 034.

WEB COPY

4. The Executive Officer
Arulmigu Thirukachi Nambigal
and Varadaraja Perumal Temple
Poonamallee, Tiruvallur District.

+1cc to Mr.V.Bhiman, Advocate Sr.4986
+1cc to the Government Pleader Sr.4889

W.P. No. 33210 of 2012
and
M.P. No. 1 of 2012

ev[co]
srg 18/04/2017



WEB COPY