

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM :

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.18325 of 2004
and W.M.P.No.21828 of 2004

M.V.Ramu

.. Petitioner

-vs-

1.The Commissioner,
Hindu Religious and Charitable
Endowments Board, Chennai-34.

2.The Executive Officer,
Arulmigu Nantheeswar Temple,
Nantheevaram, Kuduvancheeri,
Kancheepuram District.

3.The District Collector,
Kancheepuram District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the 1st respondent to renew and extend the lease period of the land situate in S.F.No.366, 338 to an extent of 2 acres which belongs to Arulmigu Nandeeswarar Temple, Nandeevaram, Kuduvancherry in which the petitioner's theatre is situated, in terms of G.O.Ms.No.55, dated 3.2.99 and G.O.Ms.No.56, Tamil Development Culture and Religion Charitable Endowment Department dated 2.2.98, considering the application of the petitioner for renewal of lease dated 23.1.2004, 5.5.2004 and 17.06.2004 so as to enable the petitioner to renew the 'C' Form licence and run the Cinema Theatre of the petitioner continuously without any break under the provisions of Tamilnadu Cinema Regulations Acts and Rules.

For Petitioner : No appearance

For Respondents : Mr.M.Maharaja
Spl. Govt. Pleader for R-1
Assisted by Mr.M.Ganesan, G.A.
: Mr.G.Sugumaran for R-2
: No appearance for R-3

O R D E R

This writ petition arises under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), which is hereinafter referred to as 'TNHR&CE Act' for the sake of brevity.

2. Subject matter of the writ petition is 2 acres of land belonging to a temple, which goes by the name 'Arulmigu Nandeeswarar Temple, Nandeevaram, Guduvancherry, Kancheepuram District'. Arulmigu Nandeeswarar Temple, Nandeevaram, Guduvancherry, Kancheepuram District is hereinafter referred to as 'said temple', for the sake of brevity, convenience and clarity. Land, which is subject matter of this writ petition, belongs to the said temple, ad-measures 2 acres (1 acre out of a total extent of 2.52 acres in S.No.336 and another 1 acre out of a total extent of 2.45 acres in S.No.338, both in Nandeevaram Village). This 2 acres of land belonging to the said temple, is hereinafter referred to as 'demised land', for the sake of convenience and clarity.

3. It is the admitted case of the writ petitioner (as is evident from the writ affidavit) that the demised land belongs to the said temple. It is also the further admitted case of the writ petitioner that the said temple is under the control, management and administration of the Tamil Nadu Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu, which is hereinafter referred to as 'TNHR&CE Dept.', for brevity.

4. When the matter was called today, there was no representation for the writ petitioner. Mr. Maharaja, learned Special Government Pleader, TNHR&CE Dept, assisted by Mr. M. Ganesan, learned Government Advocate, and Mr. G. Sugumaran, learned counsel, are present on behalf of respondents 1 and 2 respectively. Second respondent has filed a counter-affidavit dated 04.12.2004 and the same has been adopted by the first respondent in and by an adoption counter affidavit dated 21.06.2005. As there was no representation for the writ petitioner and the third respondent, the matter was passed over and called again an hour later. In the second call also, there is no representation for the writ petitioner and the third respondent.

5. The writ petition is of the year 2004. It has been filed on 28.06.2004 to be precise. It is pending for more than 13 years in this Court. There is also an interim direction that was given to the third respondent, District Collector, in a miscellaneous petition, being W.M.P.No.21828 of 2004, on 29.06.2004. Furthermore, as alluded to supra, the demised land, which is subject matter of this writ petition, ad-measures an

extent of 2 acres and it belongs to the said temple. When the property belongs to a temple, particularly an institution, in the nature of said temple, law is well settled that property vests in the idol, which is the Presiding Deity. The law is also indisputably well settled that such idol is akin to a minor and therefore, the Courts are parentis locus qua the idol and custodia legis qua the properties of the idol, which is construed to be a minor. It has been repeatedly held by the Hon'ble Supreme Court and various High Courts that such properties vested in idols have to be protected and that Courts, being parentis locus, have a sanctus duty in this regard.

6.Owing to all the aforesaid aspects of the matter, I am inclined to take up and dispose of the writ petition on merits, on the basis of available records and the submissions made by the learned Special Government Pleader appearing for the TNHR&CE Dept./Respondent No. 1 and the learned counsel appearing for the said temple / Respondent No.2, in the instant case.

7.It is not in dispute that the writ petitioner is a lessee under the said temple in respect of the demised land. Lease was originally granted for a period of 25 years in 1970. As it is a lease exceeding a period of 5 years, such sanction was accorded by the Commissioner, TNHR&CE Dept., in a manner adumbrated in Section 34 of the TNHR&CE Act. It is not in dispute that the rent fixed at that point of time was Rs.1600/- per annum with a provision for a 10% increase once in five years. The sanction accorded under Section 34 of the TNHR&CE Act also has a rider that a sum of Rs.1,000/- can be deducted by the lessee from the annual rent, towards a superstructure which the lessee then intended to put up thereon and in lieu of the same, on completion of the lease period of 25 years, lessee shall handover the demised land to the said temple together with the superstructure constructed thereon without claiming any compensation whatsoever for the same, i.e., for the superstructure. Admittedly, the lease period expired in 1995.

8.It is not in dispute that the writ petitioner had put up a superstructure in the demised land and is/was running a cinema theatre therein. It is also not in dispute that after the expiry of lease period of 25 years, the writ petitioner did not hand over the demised land together with the superstructure thereon, as per the conditions on which sanction under Section 34 of the TNHR&CE Act was accorded by the first respondent. Therefore, the said temple was constrained to issue a legal notice dated 25.05.1995. Post serving the legal notice, the said temple filed a suit in Sub Court, Chengalpattu, being O.S.No.439 of 1996 with a prayer for recovery of possession of the demised land together with the superstructure thereon. However, pending suit, the writ petitioner made several representations to the Executive Officer of the said temple

(second respondent before me) with prayers to extend his lease for a further period of 50 years. There was also a request to withdraw the suit filed by the said temple against the writ petitioner. The writ petitioner had offered to pay a rent of Rs.5,000/- for a further period of 25 years, if the lease was extended.

9.The writ petitioner persisted with his request to renew the lease by sending a representation dated 18.07.2001. The writ petitioner filed a writ petition being W.P.No.14060 of 2001 seeking to mandamus TNHR&CE Dept. to dispose of his representation dated 18.07.2001. This Court, by order dated 03.08.2001, directed the TNHR&CE Dept. to dispose of the representation dated 18.07.2001. Mr.Maharaja, learned Special Government Pleader, would submit that the case of the writ petitioner was considered along with the recommendations made by the jurisdictional Joint Commissioner of TNHR&CE Dept. and the first respondent before me, namely, the Commissioner, passed orders in his proceedings being Na.Ka.3976/2001/D4 dated 24.08.2001 granting lease for a further period of 3 years from 01.07.2001 to 30.06.2004 inter alia, on condition that the writ petitioner should pay a fair rent of Rs.5,640/- per month. From the averments in the counter-affidavit of the second respondent dated 04.12.2004, it appears that the lease rent for the demised land has been arrived at in accordance with the parameters and determinants set out in the TNHR&CE Act, Rules and the prescribed/applicable Government Orders. There was also a condition to the effect that the writ petitioner lessee should pay fair rent as set out in the said order (less rent paid) for the holding over period post 1995 (upto 30.06.2001).

10.To be noted, the above said suit filed by the said temple was withdrawn after the aforesaid order of the first respondent dated 24.08.2001.

11.However, not satisfied with the fixation of lease rent of Rs.5,640/-, the writ petitioner appears to have filed a writ petition in this Court in W.P.No.16525 of 2001. It is also seen from the counter-affidavit that in a miscellaneous petition being W.M.P.No.24064 of 2001 therein, this Court had directed the writ petitioner to pay 50% of the aggregate amount fixed for the holding over period from 1995-96 to 2000-01 and also to pay Rs.4,300/- as against Rs.5,640/-. It is seen from the records that this writ petition is pending and obviously, on the representation of the writ petitioner, this Court has directed the said writ petition, i.e., W.P.No.16525 of 2001, to be posted along with this writ petition vide order dated 05.09.2000.

12.However, today the instant writ petition along with the petition for direction therein alone have been listed.

Considering the facts and circumstances of the case and the order I propose to pass, I am of the view that this writ petition can be disposed of independent of W.P.No.16525 of 2001.

13.A perusal of the prayer in the instant writ petition would reveal that the writ petitioner is seeking issue of a writ of mandamus to the first respondent, i.e., Commissioner, TNHR&CE Dept., to renew and extend the lease period for the demised land by acceding to his request in his representations dated 23.01.2004, 05.05.2004 and 17.06.2004. It is also seen that the prayer of the writ petitioner is to the effect that his prayer for renewal of lease should be acceded to in terms of G.O.Ms.55, dated 03.02.1999 and G.O.Ms.No.56, dated 02.02.1998, both issued by the Tamil Development Culture and Charitable Endowments Department, Government of Tamil Nadu.

14.There is another limb of the prayer, which says that this mandamus is being sought so as to enable the writ petitioner to renew his 'C' Form licence for running the cinema theatre without a break. That limb of the prayer is only consequential.

15.What we are concerned with is whether the writ petitioner is entitled to seek a mandamus to direct the first respondent, i.e., Commissioner, TNHR&CE Dept., to renew a lease, which was given wayback in 1970 and also subsequently, extended for a further period of three years (after a 5 years break and holding over in between), the details of which have been set out supra.

16.With regard to lease of properties belonging to temples, which are under the control, management and administration of TNHR&CE Dept., there can be no dispute or doubt that the same are governed by Section 34 of the TNHR&CE Act. Under Section 34 of the TNHR&CE Act, the first respondent, Commissioner, TNHR&CE Act, is a named authority, who is vested with the power inter alia to grant lease exceeding a period of five years in consultation with the Government and it may be necessary to extract Section 34 of TNHR&CE Act, usefully. The same 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 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:

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.

(2) When according such sanction, the Commissioner may impose such conditions and give such direction, as he may deem necessary regarding the utilisation of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of copy of the order, and any person having interest may, within three months from the date of the publication of the order, appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the inams referred to in Section 41.

(underlining made by me to supply emphasis)

17. An authority named under a statute, to exercise discretion and pass orders in accordance with the parameters and determinants set out therein, shall do so taking into account the necessary or the beneficial effect of such exercise of

discretion qua the religious institution, i.e., the said temple in the instant case. This is obviously to be construed as a prima facie view of the first respondent.

18. From the counter-affidavit dated 04.12.2004 sworn to by the second respondent, i.e., Executive Officer of the said temple, and adopted by the first respondent, Commissioner, TNHR&CE Dept., vide adoption affidavit dated 21.06.2005, it is clear that the Commissioner, TNHR&CE Dept., who is the named authority, is of the prima facie view that the writ petitioner should not continue to be in possession of the demised land. In other words, the first respondent has clearly stated that the continuance of the writ petitioner in the demised land, is not in the beneficial interest of the said temple.

19. Furthermore, as alluded to supra, it is seen that even the fixation of monthly rent of Rs.5,640/- has been assailed by the writ petitioner.

20. It is submitted by Mr. Maharaja, learned Special Government Pleader, that the demised land is now very valuable land and the extent is 2 acres. It is in Guduvancherry, which was well beyond the outskirts of Chennai city in 1970, but with the sprawling expansion of the city, it is virtually a peripheral area of the city and is even becoming part of the city now.

21. On such submissions, learned Special Government Pleader would contend that it is not in the interest of institution, much less beneficial interest of the institution, namely, the said temple, to extend the lease endlessly in favour of the writ petitioner, particularly when the original lease in 1970 was granted with an explicit condition that the writ petitioner shall hand over the demised land together with the superstructure thereon on expiry of 25 years lease period, coupled with the fact that there was a further 3 years extension after a 5 years holding over. The rent fixed for the said five years holding over and three years extension also is assailed. The writ petitioner is/was running a cinema theatre therein. Therefore, the said land has been put to commercial use and is being exploited commercially by the writ petitioner.

22. I also notice from the counter-affidavit of the second respondent, as adopted by the first respondent, Commissioner, TNHR&CE Dept., that there is an averment that there is no provision for extension of lease. The learned Special Government Pleader would contend that this may not be happily worded, as what the TNHR&CE Dept. intends to say is that there is no provision to compel the first respondent to extend the lease.

23.As stated supra, no doubt, Section 34 of the TNHR&CE Act is a provision which vests the Commissioner with the power to grant lease exceeding a period of five years. I agree with the submission of the learned Special Government Pleader that the Commissioner cannot be compelled to extend the lease. Compelling the Commissioner to extend the lease, in other words, would tantamount to compelling the authority named in a statute to exercise the discretion in a particular manner. This is clearly impermissible and I have no hesitation in agreeing with the submission of the learned Special Government Pleader in this regard.

24.As stated supra, the prayer in the writ petition is not just to mandamus the first respondent to consider his application under Section 34, but it is to mandamus the first respondent to renew and extend the lease. This is clearly impermissible. For the sake of convenience and clarity, I extract the prayer in the writ petition infra:

"Issue of Writ of Mandamus to direct the 1st respondent to renew and extend the lease period of the land situate in S.F.No.366, 338 to an extent of 2 acres which belongs to Arulmigu Nandeeswarar Temple, Nandeevaram, Kuduvancherry in which the petitioner's theatre is situated, in terms of G.O.Ms.No.55, dated 3.2.99 and G.O.Ms.No.56, Tamil Development Culture and Religion Charitable Endowment Department dated 2.2.98, considering the application of the petitioner for renewal of lease dated 23.1.2004, 5.5.2004 and 17.06.2004 so as to enable the petitioner to renew the 'C' Form licence and run the Cinema Theatre of the petitioner continuously without any break under the provisions of Tamilnadu Cinema Regulations Acts and Rules."

25.On the teeth of Section 34 of the TNHR&CE Act, this Court, exercising jurisdiction under Article 226 of the Constitution of India, would certainly not direct the first respondent to exercise his discretion/statutory powers in a particular manner and renew the lease of the writ petitioner.

26.Before parting with the case, it is made clear that in the interregnum, if the request of the writ petitioner vide representations dated 23.01.2004, 05.05.2004 and 17.06.2004, has already been acceded to by the Commissioner, by exercise of his powers under Section 34 of the TNHR&CE Act, this order will not preclude the writ petitioner from getting the benefit of the same.

27.Owing to all that have been stated supra, the writ petition fails and the same is dismissed. No costs.

Consequently, W.M.P.No.21828 of 2004 is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Commissioner,
Hindu Religious and Charitable
Endowments Board, Chennai-34.

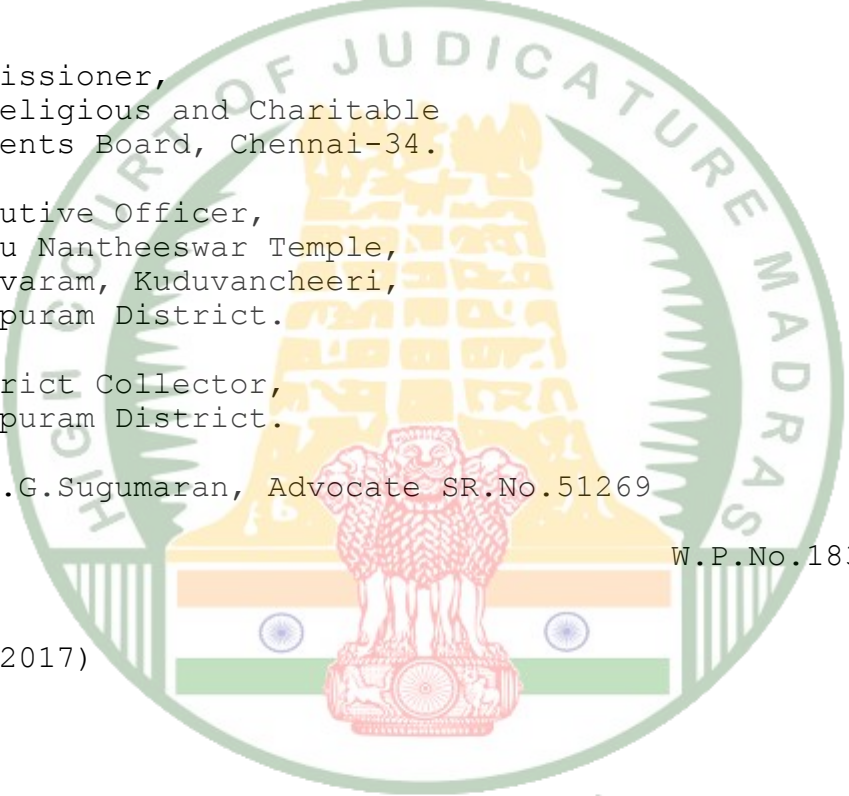
2.The Executive Officer,
Arulmigu Nantheeswar Temple,
Nantheevaram, Kuduvancheeri,
Kancheepuram District.

3.The District Collector,
Kancheepuram District.

+1cc to Mr.G.Sugumaran, Advocate SR.No.51269

W.P.No.18325 of 2004

EV(CO)
GN(17/08/2017)



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