

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17/07/2018
Delivered on	30/07/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.Nos.9108 to 9124 of 2013 &
M.P.Nos.2 to 2 of 2013

K.SAMPATH PETITIONER in WP No.9108 of 2013
LOGIAH PETITIONER in WP No.9109 of 2013
B.AMUDHA PETITIONER in WP No.9110 of 2013
B.AMUDHA PETITIONER in WP No.9111 of 2013
M.KANNAN PETITIONER in WP No.9112 of 2013
G.SARAVANAN PETITIONER in WP No.9113 of 2013
M.KANNAN PETITIONER in WP No.9114 of 2013
C. NATRAJ PETITIONER in WP No.9115 of 2013
C.NATRAJ PETITIONER in WP No.9116 of 2013
L.KALAIARASAN PETITIONER in WP No.9117 of 2013
P.BABU PETITIONER in WP No.9118 of 2013
C.KUMAR PETITIONER in WP No.9119 of 2013
P.KUMAR PETITIONER in WP No.9120 of 2013
S.DHANAPAL PETITIONER in WP No.9121 of 2013
S.KANNAN PETITIONER in WP No.9122 of 2013
MADHU CHETTIYAR PETITIONER in WP No.9123 of 2013
M.ASHOK KUMAR PETITIONER in WP No.9124 of 2013

Vs.

1.THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS,
GOVERNMENT OF TAMIL NADU,
ADMINISTRATIVE DEPARTMENT,
CHENNAI - 600 034.

2.THE EXECUTIVE OFFICER,
ARULMIGU PASUPATHEESWARAR TEMPLE,
MECHERY VILLAGE,
METTUR TALUK, SALEM DISTRICT.

.. RESPONDENTS IN ALL WPS.

WP.NO.9108 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.35 of 2010 and the order dated 28.02.2013 in AP No.25 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9109 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.44 of 2010 and the order dated 28.02.2013 in AP No.26 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9110 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.56 of 2010 and the order dated 28.02.2013 in AP No.27 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9111 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.57 of 2010 and the order dated 28.02.2013 in AP No.28 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9112 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.42 of 2010 and the order dated 28.02.2013 in AP No.40 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9113 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.45 of 2010 and the order dated 28.02.2013 in AP No.30 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9114 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.38 of 2010 and the order dated 28.02.2013 in AP No.29 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9115 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.54 of 2010 and the order dated 28.02.2013 in AP No.32 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9116 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.41 of 2010 and the order dated 28.02.2013 in AP No.31 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9117 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first

respondent in RP No.36 of 2010 and the order dated 28.02.2013 in AP No.34 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9118 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.39 of 2010 and the order dated 28.02.2013 in AP No.35 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9119 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.37 of 2010 and the order dated 28.02.2013 in AP No.36 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9120 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.55 of 2010 and the order dated 28.02.2013 in AP No.37 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9121 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.43 of 2010 and the order dated 28.02.2013 in AP No.38 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9122 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.40 of 2010 and the order dated 28.02.2013 in AP No.39 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9123 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.46 of 2010 and the order dated 28.02.2013 in AP No.41 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

WP.NO.9124 OF 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 22.09.2011 of the first respondent in RP No.47 of 2010 and the order dated 28.02.2013 in AP No.42 of 2012 of the first respondent and the notice dated 22.03.2013 of the second respondent herein and quash the same.

For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
For M/s.A.L.Ganthimathi

For Respondents : Mr.M.Maharaja
Special Government Pleader (HR & CE)

Mr.S.Karthikai Balan for R2

C O M M O N O R D E R

Heard Mr.AR.L.Sundaresan, learned Senior Counsel, representing M/s.A.L.Ganthimathi, learned counsel for the petitioners; Mr.M.Maharaja, learned Special Government Pleader (HR & CE) for the first respondent; Mr.S.Karthikai Balan, learned counsel for the second respondent and perused the materials available on record.

2. Brief facts of the case are that indisputably land measuring an extent of 13 cents in Survey No.175/B in Mechery Village belongs to Arulmighu Pasupatheeswarar Temple, Mettur Taluk, Salem District. One Karkone encroached upon the lands and by constructing a tiled house therein had let out the property to the third parties. After the demise of the said Karkone, his son Sampath, petitioner in W.P.No.9108 of 2013 constructed a RCC building and leased out the shops in favour of the other petitioners. It seems that the said Sampath has retained one shop for his own use.

3. The Joint Commissioner, HR & CE, Salem initiated proceedings against the petitioners under Section 78(1) of Hindu Religious and Charitable Endowments Act, (in short "HR & CE Act"). Some of the petitioners filed a batch of Writ Petitions in W.P.No.13906 of 2008 etc. and they came to be dismissed on 25.08.2009. Some of the petitioners filed reply statements and participated during the enquiry, but many did not choose to contest the proceeding. The stand of the petitioners was that the property had been under occupation of the said Sampath and his predecessors for more than 70 years and hence, the Temple lost its right over the property.

4. The Joint Commissioner called for a report from the Assistant Commissioner, Salem and on the basis of the materials, produced by the parties ordered eviction, treating the petitioners as encroachers. Aggrieved over the order of the Joint Commissioner, Revision Petitions in R.P.Nos.35 to 48 of 2010 and R.P.Nos.54 to 57 of 2010 have been preferred before the Commissioner, HR & CE, Chennai.

5. Before the Commissioner, the petitioners had admitted that the land belongs to the Temple, however, claimed title over the superstructure. The petitioners had also expressed their willingness to pay rent fixed by the Fair Rent Committee. Based on the above statements, the Commissioner directed the Executive Officer of the Temple to fix Fair Rent for the property in question. The Executive Officer produced working sheets fixing Fair Rent of the shops under the occupation of the petitioners and on the basis of the working sheet, the Commissioner directed the petitioners to pay the Fair Rent together with arrears and get themselves regularised as tenants under the Temple. It has been explicitly stated that failure on the part of the petitioners to pay Fair Rent will entail eviction proceedings. The Revision Petitions were disposed of only on the assurance given by the petitioners to accept the title of the Temple over the property and their agreement to pay the Fair Rent.

6. In pursuance of the order of the Commissioner, the Executive Officer of Arulmighu Pasupatheeswarar Temple issued individual notices, directing the petitioners to pay the arrears amount. Again, the notice was challenged before the Commissioner, HR & CE in A.P.Nos.25 to 42 of 2012. The Revision Petitions were dismissed on 28.02.2013 observing that the petitioners had agreed to pay the Fair Rent in the earlier Revisions and the Fair Rent Committee has fixed the Fair Rent taking into consideration the guidelines issued by the Government. The Executive Officer, Arulmighu Pasupatheeswarar Temple was directed to take appropriate action to implement the

order of the Joint Commissioner, HR & CE, Salem, dated 23.04.2010, if the petitioners fail to pay the Fair Rent together with arrears within a period of 15 days.

7. Admittedly, the orders of the Commissioner, dated 22.09.2011 and 28.02.2013 have reached finality as no further challenge was made by the petitioners. The impugned notices dated 22.03.2013 were issued to implement the order of Commissioner, dated 28.02.2013.

8. Mr.AR.L.Sundaresan, learned Senior Counsel, representing M/s.A.L.Ganthimathi, learned counsel for the petitioners would urge that the petitioners admit that the land belongs to the second respondent-Temple, and there is no dispute that the superstructures were put up by one of the petitioners viz., K.Sampath, but the value of the buildings has not been excluded and that the petitioners were not afforded an opportunity of hearing, before fixing Fair Rent, which is against the principles of natural justice.

9. On the other hand, Mr.M.Maharaja, learned Special Government Pleader (HR & CE) for the first respondent and Mr.S.Karthikai Balan, learned counsel for the second respondent submitted that the petitioners have been squatting on the property without paying the rent and the rental arrears comes to about Rs.40 Lakhs. It is further contended that the petitioners had accepted before the Commissioner, HR & CE that the property belongs to the Temple and agreed to pay the rent as per the working sheet produced by the second respondent and hence, they are now estopped from questioning the Fair Rent fixed by the Committee.

10. In the instant case, though the petitioners contended before the Joint Commissioner, Salem that the second respondent Temple lost its title due to the reason that Sampath's family had been in enjoyment of the property for more than 70 years, however, they accepted the right of the Temple before the Commissioner in the first round of litigation.

11. The perusal of the order shows that the petitioners have accepted the right of the Temple over the property and the Working Sheet was prepared by the second respondent calculating the value of the land and buildings. As observed above, the orders of the Commissioner have become final. Hence, I do not find force in the arguments of the learned Senior counsel for the petitioners that the petitioners can pay Fair Rent only for

the land. Further, the petitioners cannot claim as a matter of right of participation for the fixation of the Fair Rent, especially, when there is no such right is available under the HR & CE Act.

12. It is represented by the learned Senior Counsel for the petitioners that the petitioners have paid the entire arrears amount upto 30.06.2016 i.e., Rs.8,33,324/-; and that the second respondent has issued a notice dated 19.07.2018, directing the petitioners to pay the arrears fixing Fair Rent from 01.07.2016. According to the learned Senior Counsel, the petitioners feel the present Fair Rent is on higher side and they have an option to prefer appeals before the Commissioner under HR & CE Act or pay the amount till 18.10.2018 and that if the amount is not paid, the respondents can take action as per law.

13. In the light of the submissions made by the learned counsel on either side, these Writ Petitions are disposed of. It is made clear that if the petitioners fail to make payment of arrears on or before 18.10.2018, the respondents shall proceed against the petitioners in accordance with law. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Salem.

2.The Assistant Commissioner,
Salem.

3.The Commissioner,
Hindu Religious and Charitable Endowments,
Government of Tamil Nadu,
Administrative Department,
Chennai - 600 034.

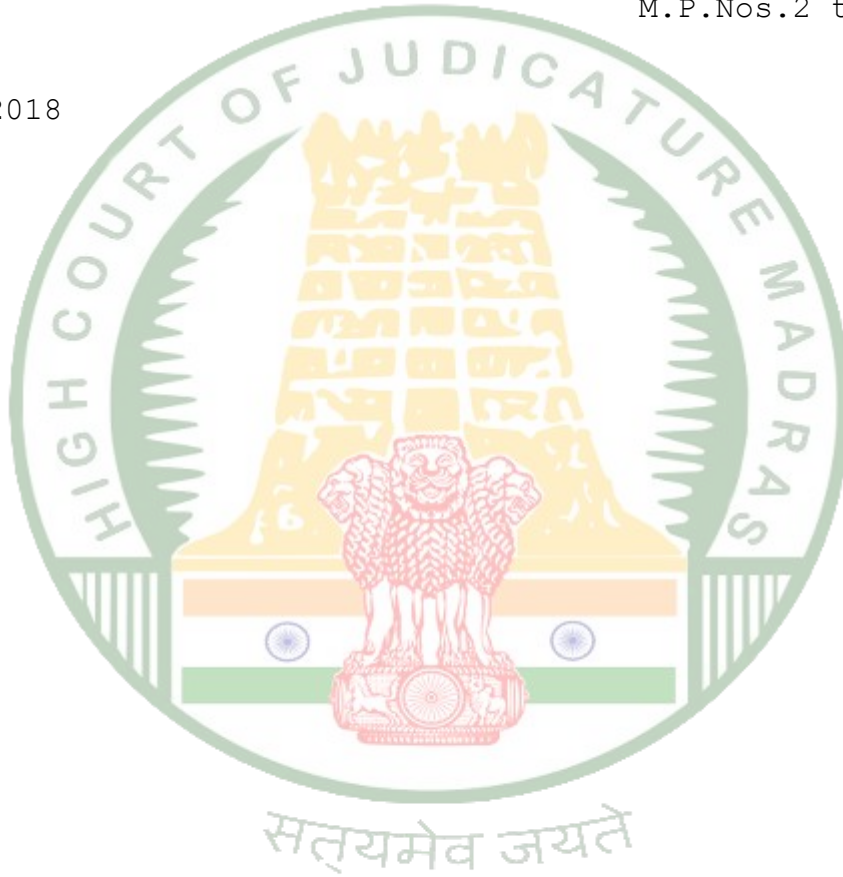
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4.The Executive Officer,
Arulmigu Pasupatheeswarar Temple,
Mechery Village,
Mettur Taluk, Salem District.

+1cc to Mr.S.Karthikai Balan, Advocate sr.no.52496
+1cc to Government Pleader sr.no.52540

W.P.Nos.9108 to 9124 of 2013 &
M.P.Nos.2 to 2 of 2013

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