

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.05.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

WP.Nos.2740 & 2741 of 2014
and MP.Nos.2 & 2 of 2014

A.Shahul Hameed ...Petitioner in WP.No.2740/14

A.Abdul KareemPetitioner in WP.No.2741/14

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai - 600 034

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli District

3.The Executive Officer,
Arulmigu Chockanadhar
Swamy Thirukoil (Kurichi),
Palayamkottai,
Tirunelveli

.... Respondents in both WP's

COMMON PRAYER

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent comprised in his impugned orders in R.P.46 & 47 / 2011 dated 08.05.2013, conforming the orders dated 04.08.2011 passed in M.P.Nos.10 & 9 of 2008 by the second respondent and quash the same.

For Petitioner : Mr.R.Parthasarathy
in both WP's
For R1 & R2 : Mr.M.Maharaja,
in both WP's Special Government Pleader
(HR&CE)
For R3 : Mr.T.Thiyagarajan
in both WP's

C O M M O N O R D E R

The orders impugned issued by the first respondent in RP.Nos.46 & 47 of 2011 dated 08.05.2013 confirming the orders dated 04.08.2011 passed in MP.Nos.10 & 9 of 2008 by the second respondent are under challenge in these writ petitions.

2.The learned counsel appearing on behalf of the writ petitioners made a submission that the temple land belongs to Arulmigu Chockanadhar Swamy Thirukoil (Kurichi), Palayamkottai, Tirunelveli District had been leased out in favour of Mr.Veerabathiran and Mr.Muthu. Mr.Veerabathiran and Mr.Muthu, as lease holders were in possession of the said temple lands ad-measuring a total extent of 4 cents in Survey No.980/3A, ad-measuring an extent of 2 acres and 1 cent in Survey No.980/3C and ad-measuring a total extent of 1 acre 14 cents in Survey No.980/1A in Kulavanikarpuram Village, Palayamkottai Taluk. The petitioners state that subsequently the leasehold rights were transferred by the original lessees, Mr.Veerabathiran and Mr.Muthu in favour of the writ petitioners by way of transfer of lease deeds dated 30.10.1989. The contention of the writ petitioners is that the said transfer was informed to the Executive Officer, Arulmigu Chockanadhar Swamy Thirukoil (Kurichi), Palayamkottai, Tirunelveli District by way of a letter. Thus, as per the deeds of transfer of lease, the leasehold rights of the said lands were absolutely transferred in the name of the writ petitioners for a valid consideration and said Mr.Veerabaithran and Mr.Muthu have relinquished their respective leasehold rights in respect of the lands belonging to Arulmigu Chockanadhar Swamy Thirukoil (Kurichi), Palayamkottai, Tirunelveli District.

3.The learned counsel appearing on behalf of the writ petitioners contended that the petitioners are in lawful possession of the lands by way of transfer of lease deeds executed by the original lessees, Mr.Veerabathiran and Mr.Muthu. Thus, there is no irregularity in respect of the possession of the lands belonging to the said temple. The contention of the petitioners is that the said transfer of leasehold rights were already informed to the Executive Officer and to the temple. When the transfer of lease deeds were continued pursuant to the consent of the temple authorities, now they cannot turn back and say that the petitioners are encroachers.

4.The learned Special Government Pleader appearing on behalf of the respondents 1 and 2 opposed the contention by stating that admittedly, the lands in question belong to the temple. Further, the petitioners are not the original lease holders. The petitioners themselves admitted the fact that the lease of

the temple properties was granted in favour of Mr.Veerabathiran and Mr.Muthu. Thus, the transfer of lease deeds executed in favour of the writ petitioners by Mr.Veerabathiran and Mr.Muthu is in violation of the terms and conditions stipulated in the lease deeds. The original lessees have no power to sub-lease the properties belonging to the temple without any written order or written agreement. In the absence of any such lease documents, the petitioners cannot claim that they possessed the rights from and out of the transfer deeds executed by the original lessees, Mr.Veerabathiran and Mr.Muthu. Thus, the writ petitioners have not established any legal right to continue in the temple properties as lease holders. Since there is no valid lease in favour of the writ petitioners, the respondents had initiated appropriate action under the provisions of HR&CE Act (hereinafter referred to as 'the Act'), treating the writ petitioners as encroachers.

5.The respondents have followed the procedures contemplated under the Act for the purpose of evicting the writ petitioners in view of the fact that the writ petitioners are encroachers and not in possession of valid lease or license contemplated under the Act. The Executive Officer, Arulmigu Chockanadhar Swamy Thirukoil (Kurichi), Palayamkottai, Tirunelveli District filed two miscellaneous petitions in MP.Nos.9 and 10 of 2008. The said applications were filed under Section 78 of the Act for eviction of the encroachers from the temple lands. The Joint Commissioner of HR&CE Department, Tirunelveli District conducted an enquiry by issuing notice and opportunity to the writ petitioners also and passed an order on 4th August, 2011, declaring that the writ petitioners are encroachers and accordingly directed the writ petitioners to vacate the temple land premises and hand over the same to the Executive Officer, failing which further action would be initiated for eviction under the provisions of the Act. Subsequently, the writ petitioners preferred RP.Nos.46 and 47 of 2011, challenging the orders passed by the Joint Commissioner of HR&CE Department, Tirunelveli District under Section 21 of the Act. The Commissioner of HR&CE Department, Chennai adjudicated the matters by providing opportunity to the parties concerned and confirmed the orders passed by the Joint Commissioner of HR&CE Department, Tirunelveli District holding that the writ petitioners are encroachers and not in possession of a valid lease in accordance with the Act. Accordingly, the orders passed by the Joint Commissioner of HR&CE Department, Tirunelveli District in MP.Nos.9 and 10 of 2008 on 04.08.2011 have been confirmed by the Commissioner of HR&CE Department in the revision petitions filed by the writ petitioners. Challenging the above two orders, the present writ petitions are filed.

6.Considering the arguments as advanced by the learned

counsel appearing on behalf of the writ petitioners and the learned Special Government Pleader appearing on behalf of the respondents 1 and 2, this Court is of an opinion that the parties have admitted the fact that the lands belong to Arulmigu Chockanadhar Swamy Thirukoil (Kurichi), Palayamkottai, Tirunelveli District, there is no dispute in respect of the title and ownership of the lands which belong to the temple. Further, it is admitted by the writ petitioners that the original lessees were Mr.Veerabathiran and Mr.Muthu. The said two persons acquired the leasehold rights by way of deeds executed by the temple Authorities during the relevant point of time. However, the writ petitioners are claiming leasehold rights only on the basis of the transfer of lease deeds executed by the original lessees, namely Mr.Veerabathiran and Mr.Muthu. Thus, the writ petitioners themselves admitted the fact that they are not the direct leaseholders by the temple Authorities. There are no lease deeds executed by the temple Authorities in favour of the writ petitioners. Only on the basis of the transfer of lease deeds executed by the original lessees, the writ petitioners are claiming leasehold rights. Thus, the question arises whether such sub-lease granted by the original lessees are valid or not. The learned counsel for the writ petitioners is unable to establish that there is a provision for such sub-leasing under the original lease deed. It was not even adjudicated before the respondents, namely the Joint Commissioner and the Commissioner of HR&CE Department that transfer of lease is permissible under the terms and conditions stipulated in the original lease deed. In the absence of any such provision for subleasing of the temple lands, the very execution of the transfer of lease deeds is void ab initio. When a lease is granted to a lessee, he cannot sublease the property in the absence of any specific condition or permission in the lease deed. Thus, the very execution of the transfer of lease deeds by original lessees, Mr.Veerabathiran and Mr.Muthu is void and in violation of the lease conditions stipulated in the original lease deed.

7.This apart, the very object and purpose of the Hindu Religious and Charitable Endowment Act is to ensure that every lease and license granted in respect of the temple properties must be direct and the Authorities competent alone have to execute such lease deeds or grant permission or license. In the absence of any such valid document, all persons who are in occupation of the temple lands are to be treated as encroachers. Thus, a valid lease-hold right has to be established only through acceptable legal documents and mere execution of transfer of lease deeds by the original lessees cannot constitute or provide any lease-hold right to the writ petitioners.

8.The learned Special Government Pleader during the earlier hearing of the writ petitions made a submission that the lands in question are the sole property in respect of Arulmigu Chockanadhar Swamy Thirukoil (Kurichi), Palayamkottai, Tirunelveli District and the temple is unable to meet out even the day to day pooja expenses. Further, it is brought to the notice of the Court that the writ petitioners who were in occupation of the temple lands had not even paid the rent to the temple regularly.

9.The learned counsel appearing on behalf of the writ petitioners opposed the contention by stating that initially, the writ petitioners were paying the rent and after initiation of action by the Authorities for eviction, rent has not been accepted by the temple Authorities from the year 2003 onwards.

10.However, the learned Special Government Pleader appearing on behalf of the respondents 1 and 2 contended that the original lessees namely Mr.Veerabathiran and Mr.Muthu colluded with the writ petitioners and transferred their lease-hold rights in favour of the writ petitioners, which is in violation of the provisions of the Acts and Rules.

11.The learned counsel for the writ petitioners further contended that the transfer of lease deeds executed by the original lessees were adjudicated by the Temple Authorities during the year 1991. However, the petitioners are unable to establish that valid lease deeds were registered specifying the period of lease or otherwise, in any of the documents. In the absence of any such valid execution of the lease deed, this Court cannot trust upon such deeds executed by the parties without the authorization of the Executive Officer / competent authority concerned after taking over the temple by the HR&CE Department. It is informed that the Executive Officer was appointed during the year 2001. However, there is no period of lease prescribed even by the petitioners in the said execution of transfer of lease deeds. Thus, this Court has to construe that all these transactions between the original lessees and the writ petitioners were certainly collusive in nature and the original lessees along with the writ petitioners had taken an attempt to grab the properties belonging to the temple.

12.It is to be further recorded that the temple Authorities were also not vigilant during the relevant point of time in protecting the temple properties. Thus, the Authorities, namely, the Executive Officer, who was in-charge of the temple during the relevant point of time, has acted unbecoming of a

public servant and further conducted himself against the interest of the temple itself. In this regard, the Commissioner of HR&CE Department has to oversee all such activities of the Executive Officers in all temples and suitable directions are to be issued to protect the temple properties in all respects, across the State and if the properties falls in any other part of the country.

13. In respect of the present writ petitions on hand, this Court is of an opinion that pursuant to the orders of this Court on 26.04.2018, Smt.G.Devi, the Executive Officer, Arulmigu Chockanadhar Swamy Thirukoil (Kurichi), Palayamkottai, Tirunelveli promptly evicted all the encroachers and took a swift action and taken possession of the temple lands which is to be appreciated and this appreciation is to be recorded in her service records by the Appointing Authority concerned. Now, the land belongs to the temple is in possession of the temple Authorities and the same is to be utilized for the welfare of the temple activities and for the welfare of the devotees and public at large. Hereafter, the Executive Officer must be vigilant in protecting the properties since the properties belonging to the said temple is vast in nature and adequate steps are to be taken to protect the said properties in all respects and the same are to be used for the welfare of the temple in all respects by obtaining necessary permission from the competent Authorities under the provisions of the Act and Rules.

14. In this view of the matter, this Court is of an opinion that the writ petitioners are not the original lessees. They claim rights only based on the transfer of lease deeds executed contrary to the terms and conditions of the Act and Rules. Further, even the lease period has not been mentioned in the transaction. This apart, even under Section 34 of the Act, the period of lease is to be mentioned and if the lease period exceeds five years, then necessary permission has to be obtained from the Commissioner of HR&CE Department as well as from the Government. In the absence of any such valid lease deed, the persons who are in occupation of the temple properties are to be treated as encroachers.

15. Thus, actions initiated under Section 78 of the Act for eviction of the illegal occupants / petitioners are in order and in accordance with the procedures contemplated under the Act and there is no infirmity as such. Thus, the orders passed by the Joint Commissioner of HR&CE Department, Tirunelveli District and the Commissioner of HR&CE Department, Chennai are confirmed.

16. Accordingly, the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gsa/lok

To

- 1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai - 600 034
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli District
- 3.The Executive Officer,
Arulmigu Chockanadhar
Swamy Thirukoil (Kurichi),
Palayamkottai,
Tirunelveli

+lcc to the Government Pleader, sr.no.33151

WP.Nos.2740 & 2741 of 2014
and MP.Nos.2 & 2 of 2014

EV(CO)

RRK(30/05/18)

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