

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.15180 of 2018
and W.M.P.Nos.18030 to 18032 of 2018

- 1.E.Thangarasu
- 2.Pachaiammal
- 3.Sumathi
- 4.Dhanam
- 5.Kaathayee
- 6.Chellamuthu

..... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep.by Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009

- 2.The Secretary to Government,
Government of Tamil Nadu,
Hindu Religious and Endowment Department,
Fort St.George,
Chennai - 600 009

3. The District Collector,
Cuddalore,
Cuddalore District,
Pin Code 607 001

4. The Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai 600 034
5. The Executive Officer,
Arulmigu Viruthagireeswarar Temple,
Vridhachalam & Taluk,
Cuddalore District,
PIN 606 001

6. Kaliyaperumal

..... Respondents

PRAYER Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 5 to consider the representation of the petitioners dated 02.03.2018 and 20.04.2018 and grant lease to the petitioners for the area of the land in S.No.19/7, Thuraiyur Village, Thittakudi Taluk, Cuddalore District under their occupation as residential houses on ground rent basis that may be reasonably fixed by them for ninety nine years or in the alternative to allot alternative house sites to them and not to displace them from the present place of their residence in S.No.19/7 in the Thuriyur Village, Thittakudi Taluk, Cuddalore District.

For Petitioners : Mr.V.Vadivel
for M/s.S.Ayyathurai

For RR 1 & 3 : Mr.V.Jayaprakash Narayanan
Special Government Pleader

For RR 2, 4 & 5 : Mr.M.Maharaja,
Special Government Pleader

O R D E R

The relief sought for in this writ petition is for a direction to direct the the respondents 1 to 5 to consider the representation of the petitioners dated 02.03.2018 and 20.04.2018 and grant lease to the petitioners for the area of the land in S.No.19/7, Thuraiyur Village, Thittakudi Taluk, Cuddalore District under their occupation as residential houses on ground rent basis that may be reasonably fixed by them for ninety nine years or in the alternative to allot alternative house sites to them and not to displace them from the present place of their residence in S.No.19/7 in the Thuriyur Village, Thittakudi Taluk, Cuddalore District.

2. The petitioners state that they are in occupation of the land belongs to Arulmigu Viruthagireeswarar Temple, Vridhachalam Taluk, Cuddalore District. The sixth respondent claims that he is the lessee under the fifth respondent temple and filed a suit in OS.No.430 of 1979 on the file of the District Munsif Court, Vridhachalam against one, Ramalingam and one Thiagarajan Pillai for delivery of possession of land in Survey No.19/7, Thuraiyur Village, Tittakadu Taluk, Cuddalore District. Subsequently, many parties including the writ petitioners were impleaded as parties. The suit was transferred and renumbered as O.S.No.13 of 1996 before the District Munsif Cum Judicial Magistrate, Tittakudi. 13 defendants were added in the suit. However, the petitioners are only the defendant in the suit and claim that they are all agricultural labourers and had been living in the

thatched house in the poromboke land adjoining the State Highway between Tittakudi and Vridhachalam from 1982 onwards. The claim of the petitioners is that they are residing in the said area for long number of years and therefore, the fifth respondent temple should execute a lease deed in favour of the writ petitioners.

3. Though, the facts are narrated in detail, those factual details mostly are unconnected with the writ petitioners. The writ petitioners are constrained to file the present writ petition mainly on the ground that they are residing in the temple land for the past many years and therefore they should be granted lease by the fifth respondent. The basic question arises whether for the purpose of getting lease, the writ petition under Article 226 of the Constitution of India can be maintained or not? Admittedly, the property in occupation of the writ petitioners belongs to the fifth respondent temple. The deity is the owner of the property. Thus, the competent authorities are bound to consider the various aspects under the provisions of the Act and in the interest of the temple and take a decision whether such a property can be leased out or not. However, the writ petitioner cannot claim lease as a matter of legal right. It is not the choice of the writ petitioner to obtain the lease from temple authorities. It is the discretion of the temple authorities to assess the situation in the interest of the temple and take a decision in this regard. However, the writ petitioners have no right in respect of the property even as per their own affidavit. Admittedly, the writ petitioners are not the owner of the property and the fifth respondent temple is the owner of the property.

4. This being the factum of the case, the writ petitioners cannot claim as a matter of legal right and after all the writ petitioner can submit an application before the competent authorities and it is left open to the authorities to consider the same in accordance with the Act and Rules and by providing opportunity to all the eligible and similarly placed persons. The competent authorities also cannot act in favour of single person contrary to the procedures contemplated under the Rules and the procedures should be followed scrupulously by the authorities concerned.

5. This court has noticed that a large number of such temple properties are under illegal occupation of some persons and the Department is not taking action promptly and punctually and evict such illegal occupations. Though, Section 78 of the Act deals with removal of encroachments of land and building belong to temple, the authorities competent have not taken adequate steps to evict such encroachers and unauthorised occupants. Such unauthorised occupants are residing illegally for number of

years and the authorities competent have not initiated steps even to evict those unauthorised occupants. The state of affairs in the HR&CE Department in this regard are to be seriously looked into by the State and by the Commissioner. One cannot neglect that these illegal and unauthorised occupants are unnoticed by the executive officers of the temple. Such unauthorised occupations and encroachments are very much within the knowledge of the executive officers concerned. In spite of knowledge, actions are not taken either on extreneous consideration or on account of certain corrupt activities of these officials. All these aspects are to be probed by the Commissioner, HR&CE Department and serious actions are to be taken in respect of encroachments of land belongs to temple by the State without any leniency.

6. At this juncture, the learned Special Government Pleader brought to the notice of this Court that pursuant to the earlier direction of this Court, the Commissioner has constituted a committee for the purpose of identifying all the encroachments, unauthorised occupants in respect of the temple lands and actions are already commenced in this regard. It is needless to state that the action commenced must reach its logical conclusion and all such encroachments and illegal occupations in respect of temple properties are to be dealt with in accordance with the procedures contemplated under the Act and Rules.

7. This being the principles to followed, this Court is of an opinion that the writ petitioners being encroachers and in illegal occupation of the temple property have no legal right to approach this Court for the purpose of grant of lease from the fifth respondent.

8. In this view of the matter, the writ petitioners have not established even a semblance of legal right so as to consider the grounds raised in this writ petition. Accordingly, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Revenue Department,
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PIN 606 001.

+lcc to Mr.S.Ayyathurai, Advocate Sr.40341
+1 to the Government Pleader Sr.40362, 40522

सत्यमेव जयते

W.P.No.15180 of 2018

srg 09/07/2018

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