

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.18306 of 2018 and
W.M.P. Nos.21617 & 21618 of 2018

A.Angandi

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Petitioner

-VS-

1.The Commissioner,
HR&CE (ADMN) Department,
Chennai-34.

2.The Joint Commissioner,
HR&CE Department,
Salem-1.

3.The Assistant Commissioner,
HR&CE Department,
Salem-1.

4.The Fit Person/Executive Officer,
A/m.Sidheswaraswamy Temple,
Kanjamalai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to auction notice dated 05.07.2018 published in the local Newspaper viz. Daily Thanthi (Salem Edition) issued by the fourth respondent and to quash the same.

For Petitioner :: Mr.T.L.Ram Mohan,
Senior Counsel for
Ms.G.sumitra

For Respondents:: Mr.M.Maharaja,
Special Government Pleader

ORDER

The petitioner has come to this Court challenging the auction notice dated 05.07.2018 published in the local Newspaper viz. Daily Thanthi (Salem Edition) issued by the fourth respondent.

2.Learned senior counsel for the petitioner would submit that the above said Angalamman Temple is situated in Andipatti, Salem Taluk and District and the same has been constructed by the ancestors of the petitioner. The administration of the said temple has been carrying on by his family members as Hereditary Trustees. While so, in the year 1995, the third respondent herein had appointed one non-hereditary trustee to the temple. Aggrieved over the same, the petitioner along with other hereditary trustees had filed O.A. No.18 of 1995 seeking declaration of the administration of the temple. Pending O.A., the third respondent had chosen to appoint the fourth respondent as Fit Person. The petitioner along with other trustees, aggrieved against the appointment of fourth respondent, have filed a Writ Petition in W.P. No.24569 of 2012 before this Court. This Court, by order dated 27.11.2012, directed the department to dispose of the above said O.A. No.18 of 1995 filed under Section 63(b) of the HR&CE Act within a period of four months. Learned senior counsel for the petitioner would further submit that when the said O.A. has not been till date decided, the respondents cannot take action to alienate or sell the property by holding public auction. It is also further stated that on earlier occasion, when similar auction was contemplated, a stay was granted with respect to the land covered in S.No.35/1 to an extent of 3.60 acres and the same stood vacated on 16.04.2018, but the O.A. has not been disposed of. The only apprehension raised by the petitioner is that in the event of his success before the pending O.A., if the auction is not cancelled, he would be compelled to fight against the third parties interest.

3.Learned Special Government Pleader appearing for the respondents submitted that the stay granted against the previous public auction in respect of the land in S.No.35/1 having extent of 3.60 acres belonging to the temple, has been vacated by the Commissioner, the first respondent herein, who has come to the conclusion that there is no merit in the petitioner's O.A. He would further submit that the property in question now is in possession of the department. Hence, the impugned order issued by the fourth respondent cannot be stayed and that a direction be given to the Joint Commissioner, Salem to dispose of the O.A., on merits and in accordance with law, within a specified time.

4.Considering the submissions made by both learned counsel, this Court is of the view that when the O.A. filed by the petitioner seeking declaration declaring that the petitioners therein and the respondents therein are the hereditary trustees is pending, in all fairness, the respondents ought not to have issued the auction notice and therefore, the auction notice is cancelled. The Joint Commissioner, second respondent is hereby

directed to dispose of the pending O.A., on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

5. Accordingly, this writ petition is disposed of. No costs. Consequently Connected Miscellaneous Petition are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Commissioner,
HR&CE (ADMN) Department,
Chennai-34.

2.The Joint Commissioner,
HR&CE Department,
Salem-1.

3.The Assistant Commissioner,
HR&CE Department,
Salem-1.

4.The Fit Person/Executive Officer,
A/m.Sidheswaraswamy Temple,
Kanjamalai.

+lcc to Ms.G.sumitra, Advocate sr.no.48695
+lcc to Government Pleader in sr.no.50039

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nr 07/08/2018

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