IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 436 to 438 of 2016
W.MP.Nos.289 to 292 of 2016

S.Baskaran ... Petitioner in all Wps.

Vs.

1. The Joint Commissioner,
Hindu Religious and Endowment Department,
Pattamangala Street, Mayiladurai,
Nagapattinam District.

2. Sri Mayuranatha Swamy Koil,
Rep by it Herditary Trustee,
Sri-La-Sri Ambalavana Desiga Paramacharya Swamigal,
Thiruvavaduturai Adhinam,
Thiruvavaduturai, Kuttalam Taluk,
Nagapattinam District.

3. The Superintendent,
Sri Mayuranatha Swamy Koil,
Mayiladuturai,
Nagapattinam District. ... Respondents in All WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records of 3rd respondent in his proceedings Na.Ka.No.Nil/- dated 12.11.2014 and quash the same the further direct the respondents to fix fair rent to the land in occupation of petitioner in T.S.Nos.475/2, 701, and 472,473,474,475,476, Peria Kannara Street, Mayiladuturai, Nagapattinam District after giving opportunity to the petitioner and orders.

For Petitioner : Mr.S.Sounthar
(in All Wps)

For Respondents: Mr.M.Maharaja, for R1
(in All WPs) Special Government Pleader,
(HR&CE)
Mr.K.V.Dhanapalan for R2 & R3

O R D E R

A notice was issued by the 3rd respondent in proceeding dated 12.11.2014, directing the writ petitioner to deposit the arrears of rent within 15 days from the date of receipt of the notice, failing which all further actions will be initiated to recover the rent and to evict the writ petitioner from the premises belonging to the second respondent Temple. Challenging the said Show Cause Notice, the petitioner preferred the present writ petition on the ground that his grandfather was the original lessee, and the lease deed was executed between the grand father of the writ petitioner and the respondent Temple during the year 1954. The period of lease was 5 years, and that the same was expired during the year 1959.

2. The learned counsel for the writ petitioner states that the petitioner is a lessee by holding over, and therefore, he is entitled to continue in the premise under the provision of the Transfer of Property Act. The learned counsel by referring to Section 116 of Transfer of Property Act contended that the effect of holding over has been enumerated in the T.P. Act as under :-

> " If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106."

3. In view of the said provision of law, the writ petitioner is continuing as lessee, and therefore, he cannot be construed as an encroacher under the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act,1959. The petitioner after the demise of his grand father and subsequently his father in the year 1992 is continuing as a lessee by holding over and paying the rent to the respondent Temple. Such being the factual possession, the petitioner has got the right to continue and fair rent has not been fixed in accordance with law and the procedures contemplated under the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959, and therefore, impugned notice is liable to be scrapped. Even in case of fixation of fair rent, the Authorities Competent are bound to follow the procedure and they have not followed the procedures, and therefore the impugned order is untenable. Under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, the petitioner has been granted joint patta in respect of the

portion of the building constructed in the land belonging to the Temple. On that ground also, the writ petitioner is entitled to continue in the building constructed by his grandfather, father and himself. The construction of buildings was developed periodically, and therefore, he is entitled to continue in the building as per the provisions of law.

4.The Learned Special Government Pleader appearing on behalf of the first respondent opposed the contention by stating that the writ petitioner is an encroacher. The original lease in favour of the grandfather of the writ petitioner expired in the year 1959, and that fact is not denied by the writ petitioner. The writ petitioner is not entitled to continue in the Temple property on the ground that he is a lessee by holding over under the provisions of the Transfer of Property Act, which is inapplicable in respect of the property belonging to the Temple, in view of the fact that the lease agreements are governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959, which is a special Act and the same will prevail over the Transfer of Property Act. Thus the provisions of the Transfer of Property Act cannot be considered for the purpose of dealing with the present writ petition. The Learned Special Government Pleader is of an opinion that, at the time of granting an interim order a condition was imposed by this Court, and accordingly, the writ petitioner has deposited 50% of arrears of rent. Thereafter, he had paid Rs.55,000/- towards the rental arrears. Even now there is rental arrears of more than 10 lakh rupees and the same has not been paid by the writ petitioner so far. This apart, the writ petitioner is continuing in such a huge property for a meager rental amount for years together. Now, the property is situated in the prime locality in Mayiladuturai Town, and he is paying Rs.17,000/- for the total area of 13,478 sq.ft., which is under his occupation. Thus, the writ petitioner has no case, and as per the impugned order, he is liable to deposit the arrears of rent and vacate the premises since he has to be construed as an encroacher and liable to be evicted by invoking section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act,1959.

5.The learned counsel appearing on behalf of respondents 2 and 3 contended that, as per Section 106 of Transfer of Property Act the writ petitioner is not entitled to continue and his lease can be terminated at anytime by the authorities competent by issuing notice. The learned counsel for respondents 2 and 3 relied upon Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959 which enumerates the Alienation of immovable trust property and the provision reads as under:-

> " (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 purpose of, any religious

institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution"

Thus, a lease cannot be given beyond the period of 5 years and renewal of lease is mandatory even as per the said provision in the absence of renewal, a person in occupation, is to be treated as an encroacher and accordingly, the Temple Authorities are competent to evict the encroacher by invoking Section 78 of the Act.

6.Section 78 deals with encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers and the said provision reads as under:-

"—(1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment (hereinafter referred to as "the property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated."

Section 78(b) stipulates that, any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him. Thus, writ petitioner is liable to be evicted by invoking the said provision as the lease period has not been renewed by the Competent Authorities. Even in case of preferring an appeal before the Commissioner, the writ petitioner has to deposit the arrears of rent before the Commissioner. In the present case the writ petitioner has not preferred any appeal as contemplated under the provisions of the Act. Even on that ground, the writ petition is liable to be rejected. This apart, Rule 10 of the Religious Institutions (Lease of immovable property) Rule 1963, which deals with extension states that no provision for extension of lease shall be made in the deed. Therefore, every lease between a third party and the Temple Authorities must be for a period of 5 years and even therefore cannot be any Clause for an extension of lease period and every 5 years there must be a fresh lease deed for the purpose of extension of the lease to the same person and there cannot be any such Clause at all. When the provisions of law stipulates such a procedure, the writ petitioner is continuing in premises for long years without any authority and without any renewal of lease. Thus, the writ petitioner is to be construed as an encroacher under section 78 of the Act, and to be evicted by following the procedure contemplated under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959. The impugned notice also stipulates that the writ petitioner has to deposit the entire arrears of rent within a period of 15 days failing which all further actions would be initiated under the provisions of Act to recover arrears of rent as well as to evict the writ petitioner by following the procedures.

7.First of all, the writ petitioner has not preferred any appeal as contemplated under the provisions of the Act. Secondly, the writ petitioner has not paid the entire arrears of rent as per the demand made by the Temple Authorities. Thirdly, the writ petitioner has not renewed his lease agreement and continuing in unlawful occupation, and therefore, he is liable to be evicted under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

8.This Court is of an opinion that the respondents have not acted vigilantly in respect of dealing with the Temple properties when the lease period expired in the year 1959. It is a shocking administrative affair that no action was taken by the Competent Authorities for the past more than 58 years. The original lessee passed away long back, and thereafter, the father of the writ petitioner continued as a lessee by holding over and now, the writ petitioner is also continuing in the same Temple premises in his capacity as lessee by holding over. When there is no provision for such continuance under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959, the Authorities Competent have committed a grave illegality in not initiating action against such illegal occupation.

9.Chapter 8 of the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959 speaks about budgets, accounts and audit. Section 86 deals about the budgets of Religious Institutions. Section 87 stipulates accounts and audit.

> Section 87(1) enumerates that "The trustee of every religious institution shall keep regular accounts of all receipts and disbursement. Such accounts shall be kept for each fasli year separately and in such form and shall contain such particulars as may be specified by the Commissioner".
>
> Section 87(2) states that "The accounts of every religious institution shall be audited by auditors appointed in the prescribed manner

and such auditors shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code".

Section 87(3) states that, "The accounts of every religious institution, the annual income of which as calculated for the purposes of section 92 for the fasli year, immediately preceding is not less than five lakhs rupees shall be subject to concurrent audit, that is to say, the audit shall take place as and when the expenditure is incurred. The accounts of every other religious institution, the annual income of which calculated as aforesaid for the fasli year immediately preceding is not less than one thousand rupees, shall be audited annually, or if the Commissioner so directs in any case or class of cases at shorter intervals".

Section 88 stipulates "authority to whom audit report is to be submitted. The audit report is to be submitted to the Commissioner in respect of maths and specific endowments attached to maths. To the Joint Commissioner, Deputy Commissioner in respect of institutions included in the list published under section 46 and to the Assistant Commissioner in respect of their institutions."

Therefore, the Act provides procedures to maintain such properties and in respect of Religious Institutions including Mutts. When the provisions are very much inforce for controlling such Religious Institutions including Mutts and the income derived from the properties belonging to such religious institutions, are to be utilised for the welfare of such religious institutions, the authorities are bound to follow the same scrupulously and without any violation. In respect of the present writ petition on hand, even at the time of enhancing the rent, the authorities have not followed the procedures. The enhancement of rent must also be done not only by following the procedures, but the same must also be in commensuration with the prevailing market rate. This Court is unable to understand the rent fixed in respect of the prime property situated in Mayiladuturai Town and hardly 60 paise per sq.ft was paid by the writ petitioner for long years till the year 2014, and during the year 2014 the rent was enhanced to 75 paise per sq.ft with effect from 2002 onwards. Whether it is in commensurate with the prevailing of market rate or not has to be ascertained by the Assistant Commissioner, H & R.C.Department.

10.The grievances of the writ petitioner is that the procedures for fixing of fair rent has not been followed by the Competent Authorities. This Court is of an opinion that the fixation of fair rent or enhancement of rent is certainly not in commensurate with the market rate prevailing in Mayiladuturai Town. However, the doubt arises in respect of collusion between the respondent's authorities and the writ petitioner. There is a growing trend among the third parties and the Competent Authorities of the Temple properties with the fixation of rent and allowing these lessees to continue in the Temple premises beyond the expiry period and many such irregularities are frequently noticed by the Courts as well as by the public at large. The Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department is bound to initiate suitable actions against all such persons vigilantly. There must not be any leniency in respect of dealing with such matters, wherein the Temple properties are misused or exploited either by the authorities or by the persons, who are in occupation of such properties belonging to the Religious Institutions. All such persons are to be dealt in accordance with law, and if necessary prosecute those persons and initiate appropriate disciplinary actions against the officials concerned. The Learned Special Government Pleader informed this Court, already a consolidated circular/instruction has been issued to the Executive Officers and other Officers concerned to initiate appropriate action against all such Officers and encroachers, who all are in occupation of the properties belonging to the Temples. Further it is informed to the hereditary Trustees also to initiate appropriate actions against all encroachers and unauthorized occupants in respect of Temple properties. Thus in respect of the present writ petitioner also, the Commissioner has to issue suitable orders to the Competent Authorities to initiate appropriate action in respect of the properties belonging to the 2nd and 3rd respondent Temple and appropriate suitable actions ought to be initiated to bring the property back to the Temple Authorities, and thereafter go for public auction in the manner known to law for the purpose welfare of the temple.

11.As far as the present writ petition is concerned, the notice issued to the writ petitioner is under challenge. No writ petition can be entertained against a notice in a routine manner. The writ petitioner has not exhausted the remedy of appeal provided under the statute. This apart, the writ against a Show Cause Notice can be entertained if the same has been issued by an incompetent authority having no jurisdiction or allegation of mala fide or bias or if the same is in violation of the statutory rules in force. Even in case of raising of allegations of malafide, the authority should be impleaded as a party in personal capacity. In the absence of the same, no writ petition can be entertained against the notice and the writ petitioner shall approach the authorities by submitting his explanation/objections in respect of the contents in the notice. Contrarily, the writ petition is moved by the writ petitioner to quash the very notice itself. However, this Court is of an opinion that the writ petitioner is not having any lease agreement in his favour and continuing as an unlawful occupant. Therefore, appropriate actions are to be initiated to evict the writ petitioner from the premises and thereafter the Temple Authorities are bound to conduct the open public auction and the writ petitioner, if he is otherwise eligible, can also participate in the auction and offer his bid.

12.In respect of the ground raised by the writ petitioner that his occupation is protected under Section 116 of the Transfer of Property Act, the same cannot be considered in view of the fact that the property belongs to the Temple and it is governed under the provisions of the Tamil Nadu Hindu Religious and Endowment Act and the Act provides comprehensive provisions governing the properties belonging to the Temple and the Mutts. The procedures to be followed are also enumerated in the provisions of the Act. Therefore, the general provisions may not have any implication for the purpose of substantiating the case projected by the writ petitioner. This being the legal principles to be followed, the writ petitioner has not established his right so as to consider the relief as such sought for in this writ petition.

13. In view of the fact that properties belonging to the 2nd and 3rd respondent are under illegal occupation of many other persons, the Commissioner of Tamil Nadu Hindu Religious and Charitable Endowments Department is directed to issue appropriate orders to all the subordinate Officers to initiate appropriate action without any further delay and evict all those encroachers and unlawful occupants and recover the arrears of rent wherever due within a period of 3 months from the date of receipt of the copy of this order, and thereafter, utilize the property for the welfare of the Temple and to generate more income for Temple and its welfare activities.

14.Accordingly, these writ petitions stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

27.08.2018

To

1. The Joint Commissioner,
   Hindu Religious and Endowment Department,
   Pattamangala Street, Mayiladurai,
   Nagapattinam District.

2. Sri Mayuranatha Swamy Koil,
   Rep by it Herditary Trustee,
   Sri-La-Sri Ambalavana Desiga Paramacharya Swamigal,
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   Nagapattinam District.

3. The Superintendent,
   Sri Mayuranatha Swamy Koil,
   Mayiladuturai,
   Nagapattinam District.

4. The Commissioner,
   H.R & C.E. Department,
   Nungambakkam,
   Chennai-34.

+3 Ccs to Mr.S. Sounthar, Advocate sr 58278 to 58280.
+2 ccs to Mr.K.V. Dhanapalan, Advocate sr 58871.
+1 CC to Spl. Govt. Pleader(HR & CE) sr 58523.

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W.MP.Nos.289 to 292 of 2016

SVN(CO)
SP(11/09/2018)