

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.2285 of 2018
and C.M.P.Nos.18250, 18252 and 18255 of 2018

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

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Appellants

-vs-

1. The State of Tamil Nadu
rep.by the 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: 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

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Respondents

Appeal filed under Clause 15 of the Letters Patent, against
the order passed by this Court in W.P.No.15180 of 2018 dated

25.06.2018.

W.P.No.15180 of 2018:-

Writ Petition filed against 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 petitioner dated 2.3.2018 and 20.4.2018 and grant lease to the petitioner for the area of the lands 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 from the present place of their residence in S.No.19/7 in the Thuraiyur Village, Thittakudi Taluk, Cuddalore District.

For Appellants :: Mr.S.Ayyathurai

For Respondents:: Mr.P.S.Sivashanmugasundaram,
Spl.GP for R1 and R3

Mr.Maharajan,
Spl.GP (HR&CE) for R2, R4 & R5

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellants herein filed a writ petition before this Court in W.P.No.15180 of 2018 praying for issuance of a Writ of Mandamus directing the respondents 1 to 5 to consider the representations of the appellants dated 02.03.2018 and 20.04.2018 and grant lease to them 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, which may be reasonably fixed for ninety nine years or in the alternative to allot alternative house sites to them and also not to displace them from the present place of their residence.

2.The case of the appellants is that they are in occupation of the above said land belonging to Arulmigu Viruthagireeswarar Temple, Vridhachalam Taluk, Cuddalore District; the sixth respondent claims that he is the lessee under the fifth respondent and filed a suit in O.S.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 the above said land. Subsequently many parties including the

appellants have been impleaded in the said suit and the same was transferred and renumbered as O.S.No.13 of 1996 before District Munsif cum Judicial Magistrate, Thittakudi. Thereafter, 13 defendants have been added in the suit. The appellants are the defendants in the suit. Their claim is that they are all agricultural labourers and had been living in the thatched house in the poramboke land adjoining the State Highway between Thittakudi and Vridhachalam from 1982 onwards. The appellants filed the writ petition mainly on the ground that they are residing in the temple land for the past many years and therefore, they should not be disturbed and they should be granted lease by the fifth respondent.

3.The learned single Judge, considering the facts and circumstances of the case, passed an order on 25.06.2018 holding that since the property belongs to the temple, the competent authorities are bound to consider the various aspects under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 ("Act" in short) and in the interest of the temple, take a decision as to whether such a property can be leased out or not; that the appellants cannot claim lease as a matter of legal right; it is not the choice of the appellants to obtain lease from the temple authorities; that the appellants 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 the Rules framed therein, and by providing opportunity to all the eligible and similarly placed persons. Finally, the learned single Judge held that the appellants, being encroachers and are 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, and accordingly dismissed the writ petition.

4.Challenging the order passed in the writ petition, the present writ appeal has been filed.

5.The learned counsel for the appellants has submitted that the appellants have put up houses in the land belonging to the temple which has been given to them under lease, and residing in the said land for more than 30 years. He further submitted that the learned single Judge has erred in holding that the appellants have not established even a semblance of legal right to be considered by the authorities. Stating so, he prayed for a direction to the respondents to consider the representation of the appellants dated 02.03.2018 for granting lease to the appellants for the area of the land in S.No.19/7, Thuraiyur Village, Thittakudi Taluk, Cuddalore District.

6.The learned Special Government Pleaders appearing for the respondents 1 to 5 have submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order, which does not require any interference in the hands of this Court, since the appellants have no legal right in respect of the property in question, for the purpose of grant of lease. It has also been submitted that based on the order passed by the learned single Judge, action has been initiated by the authorities for evicting the encroachers.

7.Heard the learned counsel on either side and perused the materials available on record.

8.It appears that the appellants are in occupation of the lands belonging to the fifth respondent temple from 1982 onwards. It is the stand of the appellants that they are agricultural labourers and are residing for a long number of years and hence the fifth respondent temple has to execute a lease deed in favour of the appellants. It is the submission of the learned Special Government Pleaders that it is the discretion of the temple authorities to assess the situation in the interest of the temple to take a decision. The learned single Judge has observed 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 for evicting such illegal occupants. It has also been observed that though Section 78 of the Act deals with removal of encroachments of land and building belonging to the temple, the authorities competent have not taken adequate steps to evict such encroachers and unauthorised occupants.

9.It appears that already action has been initiated against the encroachers of the temple property, based on the order passed by the learned single Judge. Considering the facts and circumstances of the case, we are of the view that the appellants have to approach the competent authority and submit a representation, so that the same can be considered by the authorities as per law. It appears that in the year 2017, the appellants have submitted a representation to the authorities and the same is pending consideration before the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Chennai. Be that as it may, the appellants are directed to submit a fresh representation to the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, within a period of two weeks from the date of receipt of a copy of this judgment. On such representation

being made, the Joint Commissioner is directed to consider the same and pass appropriate orders on merits and in accordance with law, after affording opportunity to the appellants and all the parties concerned to have a say in the matter, as expeditiously as possible.

10.The writ appeal is disposed of accordingly. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.S.Ayyathurai, Advocate, S.R.No.71645
+1cc to the Government Pleader, S.R.No.72039
+1cc to the Special Government Pleader(HR & CE),S.R.No.72628
+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.71684 (28/11/2018)

W.A.No.2285 of 2018
and C.M.P.Nos.18250, 18252
and 18255 of 2018

KAN(CO)
CS/12/11/2018