



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2018

CORAM:

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal (MD)No.342 of 2015
and
M.P(MD)No.1 of 2015

The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai 34. ... Appellant

Vs.

1. Muthupandian @ Moses
2. Power Agent Sri Vanamamalai Mutt,
Nanguneri, Tirunelveli District.
3. The General Manager,
rep by M/s.Tamil Nadu Industrial
Development Corporation Ltd.,
19-A,Rukumani Lakshimipathy Road,
Egmore, Chennai.
(R-3 impleaded vide order
made in C.M.P(MD)No.2118 of 2018
dated 08.03.2018)
4. AMRL Hi Tech City Ltd.,
Rep by its Executive Officer,
Nanguneri Taluk,
Tirunelveli District.
(R-4 impleaded vide order
made in C.M.P(MD)No.7798 of 2018
dated 26.10.2018)

... Respondents

Writ Appeal filed under clause 15 of the Letters Patent
against the order dated 04.09.2014 in W.P(MD)No.13370 of 2013.

Prayer in WP(MD)No. 13370/ 2013 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a writ of
mandamus to call for the records connected with the impugned order
of the 1st Respondent in Na.Ka.No.5177/13 dated 2.5.2013 and



consequential impugned order of the 2nd Respondent dated 27.06.2013 in Ka.No.386/1066/11/13 and quash the same and consequently to forbear the Respondents from in any manner demolishing the construction made by the writ petitioner in A.B.S. No.7/1 in Puliyurkurichi village and thus render justice.

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For Appellant	: Mr.V.R.Shanmuganathan Special Government Pleader.
For 1 st Respondent	: Mr.N.Dilipkumar
For 2 nd Respondent	: Mr.V.Ramakrishnan
For 3 rd Respondent	: Mr.Vijayan
For 4 th Respondent	: Mr.Veera.Kathiravan, Senior Counsel, for M/s.Veera Associates.

JUDGMENT

PUSHPA SATHYANARAYANA, J

The above writ appeal is directed against the order passed in W.P.(MD)No.13370 of 2013, dated 04.09.2014 wherein the proceedings of the first and second respondents were quashed. The writ petitioner claims to be the lessee of the second respondent mutt, having taken possession by virtue of the proceedings, dated 20.05.1997 giving him permission to put up a house in 5 cents in S.No.A.P.S.No.7/1 measuring to an extent of 1 acre 37 cents for the rent that is fixed. The remaining area in the said survey number was also leased out to him. There was a renewal of the lease again on 25.09.2007 by the second respondent mutt. Accordingly, the first respondent has been in possession of the property. It is his claim that though he was permitted to put up construction in an extent of 5 cents, he had spent more than 20 lakhs for the purpose of putting up a house to accommodate and feed the poor and needy people in the villages. In the meanwhile, the second respondent had sold the property in S.No.7/1, for a valuable consideration to the Tamil Nadu Industrial Development Corporation Limited (TIDCO) who is impleaded as third respondent in the writ appeal. It was sold to the third respondent to set up a special economic zone and the Corporation is sponsored by the Government of Tamil Nadu. While so, the appellant herein who is the Commissioner, HR & CE, had vide proceedings dated 02.05.2013 passed an order cancelling the lease of the first respondent on the ground that the lease granted to him is in violation of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for brevity, 'the Act') and when the lease is sanctioned without the consent of the Commissioner and the Government, the same is liable to be cancelled as void. Therefore, the lease given to the first respondent by the mutt was



2.As a consequence, the second respondent mutt has also in its proceedings in Ka.No.386/1066/11/13, dated 27.06.2013 cancelled the lease given in favour of the first respondent and called upon him to demolish the construction and hand over the vacant possession.

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3.These two orders were challenged in the writ petition. The learned single Judge had allowed the writ petition on the ground that the appellant did not have jurisdiction to take any action against the writ petitioner as the mutt itself has ceased to be the owner of the property after the same was sold to the TIDCO for forming the Special economic zone. The second respondent mutt also filed counter by a registered sale dated 19.12.2007 and based on the same, the impugned orders were set aside and the writ petition was allowed by the learned single Judge holding that after the sale, the mutt has ceased to have any right over the property and thereafter, the Commissioner will not have any power over the same. Aggrieved by the above order, the writ appeal is filed by the Commissioner, HR & CE.

4.The learned Special Government Pleader submitted that originally 1.37 acres of land in S.No.7/1, in Alangulam Village belong to the second respondent, Sri Vanamamalai Mutt, Nanguneri. The mutt had permitted the first respondent, Muthupandian @ Moses to occupy 5 cents of land on lease and to use the balance lands in the said survey number. According to the learned Special Government Pleader, the lease was for a period beyond five years given to the first respondent without the consent of the Commissioner is void as per Section 34 of the Act. The said Muthupandian @ Moses has seemed to have handed over the lands to one Vettum Perumal who had put up an unauthorised construction for church. As the same was challenged by one N.Lakshmanan before this Court in W.P(MD)No.3219 of 2013, the Commissioner had passed the impugned orders. Consequently, the second respondent mutt had cancelled the lease calling upon the petitioner to vacate and hand over the possession.

5.It is further stated that the extent of 165.88.5 hectares of land in Alangulam Village and Veppankulam Village belong to Sree Vanamamalai Mutt, Nanguneri along with the lands in South Nanguneri village were required by the fourth respondent for establishing Tidel Park. The proceedings under Section 34 of the Act were initiated and the Government had given its accord to proceed with the sale in G.O.Ms.No.261, Tamil Development and HR & CE Department, dated 21.06.2007. The above proceedings enable the Commissioner to accord appropriate sanction after receiving the sale consideration of Rs.1,63,60,000/-. There was yet another Government Order in G.O.Ms.No.312, dated 30.07.2007 passed with a
<https://hccourtsonline.in/services/> the amount for buildings, trees and miscellaneous items must be paid by the requisitioning body to the mutt apart from the sale consideration mentioned above. Accordingly, orders



were granted under Section 34 of the Act.

6. According to the learned Special Government Pleader, the mutt had executed the registered sale deed dated 19.12.2007 without proper sanction under Section 34 of the Act, as the accord was only from the Government and the Commissioner had not given any sanction.

7. While so, the writ petitioner who is a tenant contended that once the property is sold to the fourth respondent, the Commissioner has got no jurisdiction and therefore, the order impugned in the writ petition cannot stand.

8. The learned single Judge also allowed the writ petition accepted the said contention.

9. The stand of the appellant is that the writ petition was allowed only based on the counter affidavit filed by the second respondent mutt wherein it was stated that it had sold the property to the fourth respondent and it has got no objection in passing any order and alleged that the writ petitioner had colluded with the second respondent.

10. Be that as it may. The first respondent/writ petitioner contended that once the property is sold by the mutt as early as in the year 2007, it has got no locus to issue the impugned order. Secondly, there are several lessees and tenants occupying the lands which were sold to TIDCO and no action has been taken against them. Thirdly, once the mutt ceased to be the owner, the first respondent will not have the governance over the same. It is only the subsequent purchaser, namely, the fourth respondent who can take action if any against the writ petitioner for vacating from the premises.

11. Learned counsel for the fourth respondent brought to the notice of this Court that W.P(MD)No.6693 of 2008 has been filed challenging G.O.Ms.No.261 referred supra. The said writ petition was dismissed and it was taken up on appeal in W.A.(MD) No.557 of 2014. The Division Bench considered the applicability of Section 34 (1) of the Act and held that Section 34 of the Act has been complied with while selling the property by the mutt to the fourth respondent.

12. As the sale has already been upheld by this Court holding that it is only in compliance of Section 34 of the Act, the TIDCO, becomes the owner of the property. The second respondent mutt ought to have cancelled the lease of the writ petitioner before the property was sold to the fourth respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

13. Now the fact remains whether the writ petitioner/the first respondent can be vacated from the premises or not.



14. It is pointed out by the other respondents that the writ petitioner is putting up building for the purpose of church on the mutt land which is not permissible.

15. Learned counsel for the lessee contended that as the sale has happened even as early as in 2007 neither the Commissioner nor the mutt has got any locus to issue notice for cancelling his lease.

16. It is curious to note that even in the typed set of papers provided by the appellant there is a document of lease in favour of the writ petitioner Muthupandian @ Moses in respect of the disputed land which was executed by the mutt/the second respondent on 12.09.2011. When it is the specific case that the mutt ceased to be the owner of the property, after the sale, the said Muthupandi @ Moses, had treated the mutt as the owner and had taken the lease in the year 2011. The lease deed has been cancelled by the power of attorney of the second respondent mutt. Therefore, it is clear that the possession of the first respondent is only pursuant to the lease deed executed by the mutt which fact is not disputed or denied by the first respondent.

17. The learned Special Government Pleader also contended that without the sanction of the Commissioner, the sale is not proper and it is void. However, in view of the order passed in the earlier writ appeal holding that Section 34 of the Act had been strictly complied with and therefore, the said ground is not available to the appellant.

18. So far as the lease dated 12.09.2011 is concerned, though it is for a period of four years, the first respondent is continuing in possession of the same.

19. Learned Special Government Pleader for the appellant would contend that the lease is not valid in view of Section 34 of the Act.

20. It would be appropriate to refer Section 34 of the Act which reads as follows:

34. Alienation of immovable trust property.-(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 1[the Commissioner] as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the
provisions relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all



objections and suggestions received from the trustee or other persons having interest shall be duly consider by 1 [the Commissioner] :

2[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, 1[the Commissioner] may impose such conditions and give such direction, as 3 [he] may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3)A copy of the order made by 1[the Commissioner] under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order 4[appeal to the Court] to modify the order or set it aside.

1[(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions].

(5) Nothing contained in this section shall apply to the imams referred to in section 41.

21.The explanation to Section 34 (1) contemplates that the lease period though not exceeding five years shall if it contains a provision for renewal for a further term, (so as to exceed five years in the aggregate), then the sanction of the Commissioner is mandatory.

22.The cursory look at the lease deed dated 12.09.2011, it is clear that the lease is for a period of four years and there is also a renewal clause. Hence, when there is a provision for renewal clause and when the writ petitioner/the first respondent is in possession of the property only pursuant to lease de hors the fact that the property has changed the hands, the impugned ~~sanction of the Commissioner~~ the Commissioner is well within his jurisdiction. The contention of the first respondent that he can only be evicted by the subsequent owner namely, TIDCO in the manner known to law



is unacceptable.

23.It is also to be noted Section 34 of the Act, prescribes procedure to be followed by the Commissioner for terminating the lease. In the light of the above, the order passed by the learned single Judge holding that the Commissioner did not have jurisdiction to pass the impugned order is set aside.

24.In the result, the writ appeal is allowed. The first respondent is directed to vacate the property after removing the superstructure forthwith. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai 34.

- + 1 CC TO Mr.A.ARUMUGAM, ADVOCATE IN SR No. 92482
- + 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 93172
- + 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 92221
- + 1 CC TO M/s.KING AND PARTRIDGE, IN SR No. 92071
- + 1 CC TO Mr.V.RAMAKRISHNAN, ADVOCATE IN SR No. 92402

SMS

TE/PM/SAR-4 : 16/11/2018 : 7P/7C

Judgment made in
Writ Appeal (MD)No.342 of 2015 and
M.P(MD)No.1 of 2015
26.10.2018