

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19/2/2019
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD
W.P.No.9336 of 2018

J. Mohanraj ... Petitioner

Vs

The Commissioner
Hindu Religious Endowment Board
Nungambakkam High Road
Chennai 34. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondent to consider and act on the representation dated 21/3/2016, regarding legal opinion on illegally sold temple property of Lord Agatheshwarar Temple.

For Petitioner ... Mr.J.Mohanraj
Party-in-person
For respondent ... Mr.M.Maharaja
Special Government Pleader
(HR & CE)

O R D E R

(Order of the Court was delivered by Subramonium Prasad,J)

Petitioner, who is a retired Inspector of Police, has filed the instant writ petition, to direct the respondent, to consider and act on the representation, dated 21/3/2016, regarding the legal opinion, on illegally sold temple property of Lord Agastheeshwarar Temple.

2. According to the petitioner, substantial lands in Chennai belonging to Lord Agastheeshwarar Temple has been sold, under various Court decrees, in applications filed under Section 9 of the Madras City Tenants Protection Act, 1921, by various Small Causes Courts.

3. Petitioner would contend that he has given representation, stating that the substantial lands in Chennai,

belonging to religious institutions have been sold. He would further submit that representations given by him have not been acted upon. He further submitted that apart from the chart given in the typed set, many other lands, belonging to Lord Agastheeshwarar Temple have been sold, invoking the provisions of the Madras City Tenants Protection Act, 1921.

4. The learned counsel for the respondent would submit that the temple filed suits, for possession of the lands, belonging to the temple and when suits were filed, the tenants filed applications, under Section 9 of the Madras City Tenants Protection Act, for a direction to the temple to sell the land to the tenants. Courts allowed the applications filed by the tenants.

5. Heard Mr.J.Mohanraj, Party-in-Person and Mr.M.Maharaja, learned Special Government Pleader (HR & CE) and perused the materials available on record.

6. Section 34 of the Hindu Religious & Charitable Endowments Act, 1959, provides that any exchange, sale or mortgage of any immovable property given or endowed for the purpose of any religious institution unless it is sanctioned by the Commissioner has been necessary or beneficial institution. Section 34 of the said Act, reads as under:-

"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 purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

Provided that before such sanction is accorded, the particulars 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 considered by the Commissioner."

7. Section 1 of the Madras City Tenants Protection Act, 1921, reads as under:-

1. Short title and application - (1). This Act may be called the Madras City Tenants' Protection Act, 1921.

2 (a). It extends to

(i). the City of Madras

(ii). the townships of Kodaikanal, Avadi, Kathiwakkam, Ambattur, Madhavaam, Bhavanisagar,

Courtallam and Mettur.

(b). The State Government may, by notification in the Tamil Nadu Government Gazette, extend this Act with effect from such date as may be specified in the Notification to -

- (i). any other municipal town;
- (ii). any other township or
- (iii). any specified village within eight kilometres of the City of Madras, or of the townships referred to in sub-clause (ii) of clause 9a), or of such other municipal town referred to in sub-clause (i) or township referred to in sub-clause (ii) of clause (b).

3. This Act shall apply -

a. in the areas in which this Act is in force on the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette, only to tenancies of land created before that date; and

(b). in any other area, only to tenancies of land created before the date with effect from which this Act is extended to such area by notification under clause (b) of sub-Section (2):

Provided that nothing contained in this Act shall apply to tenancies of land owned -

a. in the City of Madras, by the Corporation of Madras

b. in any other municipal area, by the municipal council concerned,

(bb). In any township, by the township committee concerned,

(c). in any area in a district as defined in the Tamil Nadu District Boards Act, 1920 (Tamil Nadu Act XIV of 1920) which is comprised within the local limits of a Panchayat constituted under the Tamil Nadu Village Panchayats Act, 1950 (Tamil Nadu Act X of 1950, or of a Panchayat or Panchayat Union council constituted under the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958) by the Panchayat or by the Panchayat Union council concerned,

d. in the case of all areas in a district defined as aforesaid, which are not comprised within the local limits of such panchayat or panchayat union by the district board concerned and

e. by the Board of Trustees for the improvement of the City Madras constituted under the Madras City Improvement Trust Act, 1950 (Madras Act 37 of 1950)

Provided further that nothing contained in this

Act shall apply to tenancies of land vested or deemed to be vested in, or acquired by, the Board of Trustees of the Port of Madras under the Major Port Trusts Act, 163 (Central Act 38 of 1963).

f. by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion.

8. It is pertinent to note that Section 1 (3) (f) which exempts the applicability of the City Tenants Protection Act, to properties belonging to religious institutions was inserted into the Act by the Madras City Tenants' Protection Act (Amendment) Act, 1996, which came into force, on publication in the Gazette, on 11th January 1996. Lands belonging to the temple have been sold before the introduction of the amendment.

9. A perusal of the above mentioned Section would show that the said Act does not apply to the lands owned by Religious Institutions or religious charity belonging to Hindu, Muslim, Christian or other religion. The extension includes temple or land which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof, as a place of public religious worship, from 1996.

10. According to the petitioner, lands in the present case, were owned by Sri Arulmighu Agastheshwarar Temple, Nungambakkam. It is also to be noted that Section 109 of the Hindu Religious & Charitable Endowments Act, 1959, specifically lays down that Limitation Act shall not apply to any suit for possession of immovable property belonging to any religious institution or possession of any interest in such property.

11. As per the annexure enclosed in the typed set of papers, the first ejectment suit has been filed, in the year 1925, Suit No.125/25, was disposed of, on 20/9/1927. Sale deed has been executed as Document No.1344, dated 28/4/1932. Suits have been filed between 1968 and 1983 and pursuant to the decrees, other documents have been executed between 30/12/1968 and 13/3/1985. Party-in-person has also contended that there were several others, who have purchased the temple property during contemporary period. It is the submission of the learned Special Government Pleader that suits filed for possession by the erstwhile transferees, against the tenants were dismissed and applications filed by the tenants under Section 9 of the Madras City Tenants Protection Act, 1921, were allowed and consequently, sale deeds were executed.

12. Perusal of Section 34 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, would show that sale of a land belonging to a temple is void abinitio. City

Tenants' Protection Act, does not apply to any land which is owned by a temple, from the year 1996. Lands of a temple, if sold, in violation of Section 34 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, can be recovered by the authorities, subject to the applicability of the City Tenants Protection Act, in particular Section 1 (3) (f), introduced in the year 1996, which came into force, the date of publication in the Gazette, on 11/1/1996, and that a duty is cast on the authorities to recover lands belonging to the temples. In fact, this Court, in W.P.(MD) No.16833 of 2017, dated 12/2/2018 {V.Muthusamy Vs. The Joint Commissioner, HR & CE Department, Palayamkotai, Tirunelveli District and 18 others}, has issued instructions to the authorities, for recovery of the properties belonging to the temples. Paragraph No.20 of the said order, reads as under:-

"Despite the directions of this Court as early as on 31/10/2014, no steps have been taken by the Commissioner of the HR & CE Department to constitute the committee and secure the interest of the temples in the State and its properties. Considering the facts and circumstances of the case and in the capacity as parens patriae, this Court issues the following directions to the respondents:

a. The first respondent shall conduct an enquiry under section 78 in so far as related the property in this writ petition, after affording opportunity to the respondents 3 to 17, petitioner and other interested parties, if any, and pass orders within a period of four weeks from today;

b. The 18th respondent shall issue a public notice within two weeks by employing all the methods like publication in news papers, notice board of the temples, publication in their official website and in any form of print or media, intimating that the persons in possession of the temple lands to voluntarily pay the arrears of rent within four weeks from the date of issuance of such notice and upon such failure, appropriate action must be initiated under 34B of the HR & CE Act and recover/retrieve the properties;

c. The 18th respondent shall also constitute appropriate committees as contemplated under Section 34A of the HR & CE Act, to fix the market rents for all the properties and then make an offer to the existing tenants, if not enhanced recently. In case, the tenants accept the rent so fixed, they can be permitted to continue in the premises and upon failure to accept the rent, then steps must be taken forthwith to conduct public auction as contemplated

under Rule 2 of the Religious Institutions (Lease of Immovable Property) Rules, 1963;

d. In case of service inams, clause (c) would not be applicable. However, the 18th respondent must ensure through his officers, that the property allotted as service inam is not parted to any third party and in any case, if any complaint is received from any party and found to be true, steps must be taken immediately to retrieve the property

irrespective of the capacity of the person whether he is under service or not.

e. The 18th respondent shall within six weeks, file a report before this Court disclosing the details of the agreement entered by him with tenants for leasing out the temple lands and the sanction granted by him beyond five years with the copy of the approval obtained from the government and the report of objections from the trustees or interested parties as contemplated under Section 34 of The Hindu Religious and Charitable Endowments Act, 1959;

f. The 18th respondent shall constitute a committee/committees for each territories/regions and direct the members to visit all the temples in Tamil Nadu, identify the lands belonging to and in the custody of the temple and in the hands of the third parties/encroachers whose possession has not been legally recognized and submit a report before this Court within six weeks from the date of receipt of a copy of this order,

g. Such committee shall also look into the period of arrears and the action taken by the Executive Officers/Joint Commissioners/Assistant Commissioners to recover the arrears and the properties from such defaulters. In cases, the officers have failed to collect the rent or initiate any action for recovery of the rent or to take steps to retrieve the properties belong to various temples in Tamil Nadu for a period of more than two months from the date of such default, action must be initiated against such erring officers;

h. Whenever the properties belonging to the temple are leased out, the 18th respondent must ensure that the sentiment of the donors and the object of such endowment is not defeated.

i. The 18th respondent shall send a communication to the trustees for various temples and collect the details of the properties under their custody and in illegal occupation of third parties, the properties leased by them with or

without sanction and the list of cases pending in various courts and submit a report within four weeks from the date of receipt of a copy of this order; and

j. The income from the properties of the temples under the control of the H.R & CE department must be utilized only for the betterment of the temples as provided under Section 66 of the Act and scrupulously follow the same for the recitation of Divya Prabhandam and Thevaram, propagation of the religious tenants of the institution and establishment and maintenance of a University or college or other institution, in which, the main features shall be the provision for the study of religion, philosophy etc. and the excess income shall be utilized for maintaining other temples in the State which yield less or no income and ensure that those temples are also maintained properly and the object of the donors to protect the temples are always adhered to.

13. Authorities are therefore, bound to act in accordance with the provisions of the Hindu Religious & Charitable Endowments Act, 1959 and Madras City Tenants Protection Act, and in the light of the directions passed by this Court. In the light of the above, it is the duty of the respondent to consider the representation of the petitioner and if the contentions of the petitioner are true, keeping in mind the provisions of the above statutes, decisions rendered in the suits filed for possession by the erstwhile trustees, decide the steps to be taken to recover the properties belonging to Agastheeswarar Temple, which have been sold in violation of Section 34 of the said Act. Representation of the petitioner, dated 21/3/2016, must be positively considered, within a period of two weeks, from today, and accordingly, if permissible in law, take action, within a period of four weeks, from the date of the decision on the representation.

14. With the above directions, the instant writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mvs.

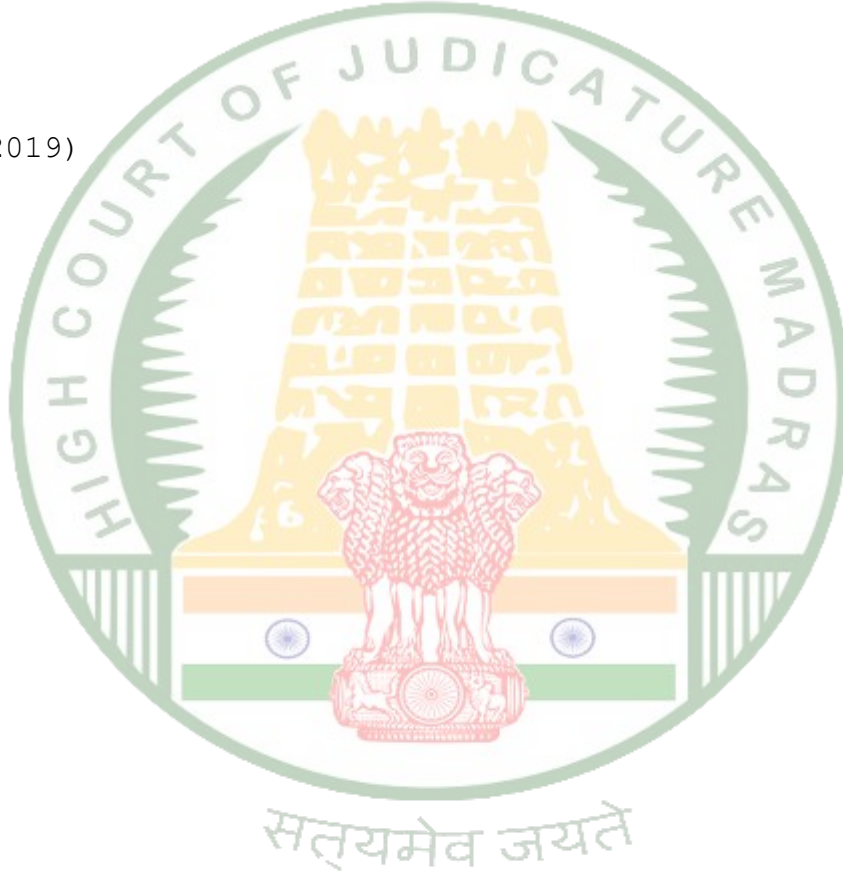
To

The Commissioner
Hindu Religious Endowment Board
Nungambakkam High Road
Chennai 34.

+1cc to the Government Pleader, S.R.No. 15688

W.P.No.9336 of 2018

PPA (CO)
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