

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8185 of 2019

J.Mohanraj

.. Petitioner

Vs.

1.The Principal Secretary / Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam High Road,
Chennai - 600 014.

2.The Joint Commissioner / Executive Officer,
Arulmighu Kabalieeswarar Temple,
Mylapore,
Chennai - 600 004

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondent to consider and act on petitioner's representation dated 13.10.2018.

For Petitioner : Mr.J.Mohan Raj
Party-in-Person

For Respondents: Mr.M.Maharaja,
Special Government Pleader (HR&CE)
for R1 and R2

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Contending inter alia that property belonging to Arulmighu Kabalieeswarar Temple, initially leased out to one Shir Soundararaja Iyengar and subsequently constructions have been made later by 3rd parties, and that temple has not taken any steps to resume the land, to collect the rent, petitioner has made representations dated 04.08.2018 and 13.10.2018, to the temple authorities and further contending that the same remains unanswered instant writ petition has been filed for issuance of a mandamus, directing the respondent to consider and act on his representation dated 13.10.2018.

2. On instructions, Mr.M.Maharaja, learned Special Government Pleader (HR&CE) submitted that property in S.No.3333, Luz Church Road to an extent of 24 grounds, on 06.01.1898 has been leased out to one Mr.Soundararaja Iyengar for 99 years for Rs.100/-. Lease expired on 05.01.1997. Out of 24 grounds, around 3321 sq.ft was leased out by Sounderaraja Iyengar to Mr.Sampath and Mr.Ramalingam. Property inturn was leased out to Central Bank of India and Red Fashions by Mr.Sampath and Mr.Ramalingam, without the consent of the temple. Therefore, treating the bank and Red Fashions as encroachers, notice under Section 78 of the Hindu Religious & Charitable Endowment Act, 1959 was sent. Subsequently, on 26.09.2012 show cause notices were also sent to the encroachers intimating the fixation of fair rent, and damages for use and occupation. Further notice dated 12.11.2012 was also sent to the Bank and Red Fashions.

3. Learned Special Government Pleader (HR&CE) further submitted that challenging the termination notice, Mr.Ramalingam and Mr.Sampath has filed WP No.4294 of 2013. Writ Court disposed of the same and directed the petitioner to approach the appellate authority. Thereafter, Mr.Ramalingam filed an appeal before the Commissioner, with a delay of 1100 days. Delay was condoned, and appeal was numbered as AP No.35 of 2017. Vide order dated 09.09.2017, appellate authority, set aside the termination notice and directed the authorities to place the matter before the Fair Rent Fixation Committee in terms of Section 34 of the Hindu Religious & Charitable Endowment Act, 1959. Thereafter, notices have been sent. But they have not responded.

4. Learned Special Government Pleader (HR&CE) further submitted that there are huge arrears to be collected from the Bank and Red Fashions.

5. From the above, it could be seen that HR&CE Department has taken action on the representations of the writ petitioner. At this juncture, it is relevant to extract Section 34 of the HR&CE Act.

"34. (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 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.

Explanation.-Any lease of the property above mentioned though 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, the Commissioner may impose such conditions and give such directions as 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 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, appeal to the Government to modify the order or set it aside.

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

6. Process has already commenced and that therefore it should come to a logical end. Fair Rent Fixation Committee is directed to finalise the process initiated within a period of two months from the date of receipt of a copy of this order.

7. Writ petition is disposed of, accordingly. No Costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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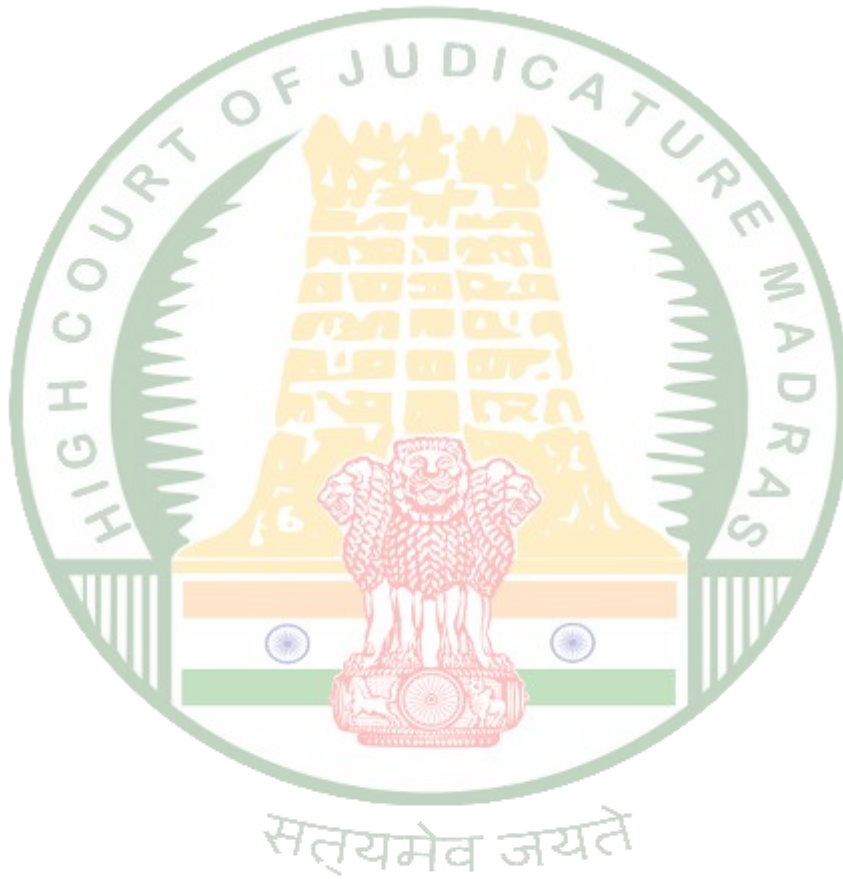
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+1 CC to Mr.J.Mohan Raj, Advocate sr 29264.
+1 CC to The Govt. Pleader sr 29360.

W.P.No.8185 of 2019

GJII (CO)
SP (30/04/2019)



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