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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2019

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 26136 of 2019
and
W.M.P. No. 25508 of 2019

R.Vivekanandan

... Petitioner

Vs.

1. The Secretary to Government,
Tamil Nadu Tourism Culture and
Hindu Religious Charitable Endowment Department,
Secretariat, Chennai.
2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Secretariat, Chennai.
3. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Coimbatore.
4. The Assistant Commissioner/ Executive Officer,
Arulmirugu Patteswaraswamy Thirukoil,
Perur, Coimbatore District.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorari calling for the records leading to pass impugned order of the First Respondent dated 27.06.2019 in G.O.Ms.No.88 Tamil Nadu Tourism, Culture and Hindu Religious Charitable Endowment (m ep 5-2) Department and quash the same.

For Petitioner : Mr. N.C. Ashok Kumar

For Respondents: Mr. M. Maharaja (For R1 to R3)
Special Government Pleader (HR & CE)
Mr. R. Rajesh Vivekananthan (For R4)



O R D E R

Heard Mr. N.C. Ashok Kumar, Learned Counsel for the Petitioner and Mr. M. Maharaja, Learned Special Government Pleader appearing for the First to Third Respondents and Mr. R. Rajesh Vivekananthan, Learned Counsel appearing for the Fourth Respondent.

2. This Court during the earlier hearing on 24.09.2019 had passed the following self-explanatory order:-

"At the behest of the Fourth Respondent, proceedings in M.P. No. 112 of 2014 under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, were taken against the Petitioner before the Third Respondent for eviction from the agricultural lands occupied by him in Survey No. 124/2 to an extent of 0.52 hectare, Survey No. 124/3 to an extent of 0.80 hectare and Survey No. 132/3 to an extent of 1.08 hectare in Perur Village, Coimbatore District. It was disposed by order dated 24.05.2016 holding that the Petitioner was an encroacher of the agricultural lands and he was directed to vacate and hand over the possession of the agricultural lands by 30.06.2016, failing which the Fourth Respondent was permitted to take steps to enforce the order with police assistance. Aggrieved by that order, the Petitioner filed Revision Petition in R.P. No. 219 of 2016 D2 before the Second Respondent, who held that the counter filed by the Petitioner had not been taken note by the Third Respondent while passing that order and accordingly, set aside the same and remanded the matter for re-consideration on the following terms:-

"As the Petitioner is enjoying the property without making any payment to the temple, he should pay the damages for use and occupation of the property. The petitioner is directed to pay damages for use and occupation of the property to the temple at the rate of Rs.5000/- per acre per fasli for the entire period for which possession is due to the temple. The arrears for the previous faslis should be paid within 15 days from the date of receipt of this order. The petitioner is directed to file a memo before the Joint Commissioner along with the proof of deposit of entire arrears as directed above. Thereafter, the Joint Commissioner is directed to dispose the petition within 3 months from the date of receipt of the order after affording an opportunity of being heard to the petitioner. The petitioner should cooperate with the Joint Commissioner to dispose the



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petition within the stipulated period. If the petitioner fails to comply with the above directions, the impugned order shall be given effect. The Revision Petition is hereby disposed of with the above direction."

The Petitioner thereafter filed Review Petition in R.P. No. 22 of 2017 against the said order under Section 114 of the Tamil Nadu Hindu Religious Charitable and Endowments Act, 1959, insofar as it relates to the condition imposed to deposit a sum of Rs.5,000/- per acre per fasli from the date on which possession was due from him to the Fourth Respondent. The First Respondent by order dated 27.06.2019 came to the conclusion that the Petitioner who was in occupation of the agricultural lands without any valid lease executed in his favour was an encroacher and that he had to be evicted from the agricultural lands, which would fetch more revenue if it is leased in public auction. The present Writ Petition has been preferred against that order passed by the First Respondent.

2. Mr. V. Ayyadurai, Learned Senior Counsel appearing for the Petitioner submits that the matter in issue in the Review Petition filed by the Petitioner before the First Respondent was only in respect of the conditions imposed by the Second Respondent for remanding the matter to the Third Respondent and instead of confining to the said question, the First Respondent has proceeded to uphold the order of the Third Respondent ignoring the fact that the same had been set aside by the Second Respondent, which was not challenged by the Fourth Respondent. He further contends that the Petitioner has remitted a sum of Rs.1,92,487/- claimed by the Fourth Respondent in the notice Na. Ka. No. 433/2018-23 dated 26.09.2018 and such payment made shall be treated as compliance of the condition imposed by the Second Respondent for remanding the matter for fresh consideration by the Third Respondent. In such circumstances, he strenuously urges that the order passed by the First Respondent would have to be set aside and on revival of the order passed by the Second Respondent, the matter be heard afresh by the Third Respondent.

3. Learned Counsel appearing for the Fourth Respondent contends that the order passed by the First Respondent does not call for any interference as the Petitioner has not paid the entire amount due in terms of the conditions imposed by the Second Respondent for remanding the matter for fresh consideration by the



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Third Respondent. In this regard, he submits that a sum of Rs.29,640/- per annum is due for 19 years from 01.07.1999 to 30.06.2018 which works out to a sum of Rs.5,63,160/- and after adjusting the payments made by the Petitioner on 19.12.2009, 28.05.2017, 31.03.2018 and 04.04.2019 aggregating to a sum of Rs. 2,31,192/-, there is still a balance of Rs.3,31,968/- that remains outstanding to be paid by the Petitioner. It is further explained by him that the sum of Rs.1,92,487/- demanded from the Petitioner by notice dated 26.09.2018 was not in terms of the order passed by the Second Respondent, but that amount had been computed in pursuance of the orders dated 12.08.2018 in W.P. (MD) No. 14428 of 2017 and W.P. (MD) No. 16833 of 2017 passed by the Madurai Bench of this Court, which cannot be treated as full satisfaction of the condition imposed by the Second Respondent. In this backdrop, it is contended that the order passed by the First Respondent does not call for any interference and the Fourth Respondent may proceed to take further action to recover possession of the agricultural lands from the Petitioner in accordance with law.

4. Having regard to the aforesaid rival contentions, it requires to be pointed out that though the Second Respondent has stated that a sum of Rs.5,000/- per acre per fasli would have to be paid from the date on which possession was due to the Fourth Respondent, neither the Petitioner nor the Fourth Respondent are in a position to produce materials before this Court today showing the exact date from which the possession is due by the Petitioner to the Fourth Respondent. This is a substantial question which would fall for determination under Section 78(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, in the proceedings before the Third Respondent and it would not be appropriate to delve upon that aspect of the matter at this stage by this Court.

5. In such circumstances, in order to balance equities between the parties and ensure that the ends of justice are secured, the Petitioner shall remit the differential sum of Rs.3,31,968/- claimed by the Fourth Respondent as payable in terms of the order passed by the Second Respondent in an interest fetching fixed deposit in any Nationalized Bank in the name of the Registrar-General of this Court without prejudice to the rival contentions of the parties, initially for a period of six months and renewable automatically thereafter for the same period until further orders of this Court and the original copy of the fixed deposit receipt shall be handed over to the



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Registrar-General of this Court under written acknowledgment.

6. Learned Senior Counsel appearing for the Petitioner states that the Petitioner would comply with the aforesaid requirement within a period of 6 weeks from today.

Post the matter for passing further orders on 08.11.2019."

3. When the matter is taken up for hearing today, it is informed by the Learned Counsel for the Petitioner that in compliance of the aforesaid order passed by this Court, the Petitioner has remitted the aforesaid sum of Rs. 3,31,968/- in fixed deposit on 31.10.2019 in Indian Bank Madras High Court Branch, Chennai in the name of the Registrar General of this Court and has handed over the original receipt to the Registry under written acknowledgment and has produced proof for the same. In view of such compliance made, the impugned order dated 27.06.2019 in G.O. Ms. No. 88 Tamil Nadu Tourism, Culture and Hindu Religious Charitable Endowment (A.Ni 5-2) Department passed by the First Respondent is set aside and the order dated 09.09.2016 in R.P. No. 219 of 2016 passed by the Second Respondent stands revived for the reasons stated therein.

4. It is informed by the Learned Special Government Pleader appearing for the Respondents that the hearing for the proceeding in M.P. No. 112 of 2014 before the Third Respondent, which has been restored to file, has been fixed for next hearing on 27.11.2019 and that notice would be issued to all parties concerned for their appearance on the said date.

5. Accordingly, the Petitioner and the Fourth Respondent shall appear before the Third Respondent on the said date and on such subsequent dates when the matter may be adjourned from time to time and the Third Respondent shall ensure that there is atleast one effective hearing every week showing progress of the case. After hearing all parties concerned, the Third Respondent shall consider each of the contentions raised by the respective parties and pass reasoned orders on merits in accordance with law and communicate the decision taken to them under written acknowledgment, uninhabited and uninfluenced by the order dated 24.05.2016 in M.P. No. 112 of 2014 passed by the Third Respondent and the order dated 27.06.2019 in G.O. Ms. No. 88 Tamil Nadu Tourism, Culture and Hindu Religious Charitable Endowment (A.Ni 5-2) Department passed by the First Respondent, which have been set aside. Depending upon the ultimate outcome of order to be passed by the Third Respondent, it is open to the concerned parties to make necessary application for payment out for the aforesaid Fixed Deposit in the name of the Registrar General of this Court.



6. Accordingly, the Writ Petition is allowed on the aforesaid terms. No costs.

Sd/-

Assistant Registrar(CS)

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//True Copy//

Sub Assistant Registrar

may a

To

1. The Secretary to Government,
Tamil Nadu Tourism Culture and
Hindu Religious Charitable Endowment Department,
Secretariat, Chennai.
2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Secretariat, Chennai.
3. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Coimbatore.
4. The Assistant Commissioner/ Executive Officer,
Arulmirugu Patteswaraswamy Thirukoil,
Perur, Coimbatore District.

Copy To

- 1.The Registrar General,
High Court, Madras-104.
- 2.The Section Officer,
Account Section,
High Court, Madras-104.

+1cc to Mr.C.Jagadish , Advocate SR.No. 93238

W.P. No. 26136 of 2019
and

W.M.P. No. 25508 of 2019

A.SK(26/11/2019)