

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019

CORAM

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

W.P. No. 27939 of 2019

Ramaiyan

... Petitioner

Vs.

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Mayiladudhurai,
Nagapattinam District.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Kumbakonam.
3. The Executive Officer,
Arulmighu Parimalarenganatha Swamy Thirukovil,
Thiruindharur, Mayiladudhurai,
Nagapattinam District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents to consider the Petitioner's representation dated 12.09.2019.

For Petitioner : M/s. Greetha Senthilkumar

For Respondents : Mr. M. Maharaja,

Special Government Pleader (HR & CE)

ORDER

Heard Mrs. Greetha Senthilkumar, Learned Counsel for the Petitioner and Mr. M. Maharaja, Learned Special Government Pleader, who takes notice for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was in illegal occupation of the land measuring an extent of 1 acre and 50 cents in Survey No. 1472, Thiruindhalur, Mayiladuthurai Taluk, Nagapattinam District belonging to the Temple of the Third Respondent without paying any rents, which necessitated the third Respondent to initiate proceedings in M.P. No. 142 of 2015 before the Joint Commissioner, Mayiladuthurai under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in which the

Petitioner has suffered an order of eviction on 01.03.2017. In pursuance thereof, the Petitioner was removed from that premises, which had been used as brick kiln, on 12.09.2019 and 13.09.2019 in the presence of the Village Administrative Officer and the possession of the entire land has been restored to the Temple of the Third Respondent. At that stage, the Petitioner claims to have made a representation dated 12.09.2019 to the Respondents to grant lease of the said land to him for agricultural purpose and has filed this Writ Petition seeking its disposal by the Third Respondent.

3. It is pointed out by the Learned Special Government Pleader appearing for the Respondents that in terms of Rule 2 of the Religious Institutions (Lease of Immovable Property) Rules, 1963, lease of immovable property and rights belonging to a religious institution has to be made only by way of public auction and it would not be possible to grant the same to the Petitioner without following the aforesaid procedure.

4. In this context, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is

sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

Applying the aforesaid principles to the facts of this case, viz-a-viz the cogent reasons assigned by the Respondents in refusing to accede to the claim made by the Petitioner, there does not appear to be any justification for this Court to direct the Respondents to dispose the representation dated 12.09.2019 made by the Petitioner as sought by the Petitioner in the Writ Petition. However, it is hastened to clarify here that in the event it is decided by the Respondents to lease the said land in the public auction, it would be open to the Petitioner to participate in the same, if he is otherwise eligible and satisfies the conditions that are prescribed in that regard.

5. In the result, the Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Mayiladudhurai, Nagapattinam District.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Kumbakonam.
3. The Executive Officer,
Arulmighu Parimalarenganatha Swamy Thirukovil,
Thiruindharur, Mayiladudhurai, Nagapattinam District.

+1 cc to M/s.Greetha Senthil Kumar, Advocate Sr.No. 81357

+1 cc to The Government Pleader Sr.No. 82471

AKM/09.12.19/3P-6C /

W.P. No. 27939 of 2019