

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.2624 of 2018
and
C.M.P.No.21393 of 2018

1.Sambasivam
2.S.Mahadevan .. Petitioners/Appellants

vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai - 600 034.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Kancheepuram.

3.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Vellore - 9.

4.K.Chengalvaraya Gurukkal,
Hereditary Trustee,
Vyasa Santhaleeswarar Devasthanam,
Chinnakancheepuram,
Kancheepuram District.

..Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act
against the order dated 24.08.2018 passed in W.P.No.23989 of
2017.

W.P.No.23989 of 2017:-

Petition filed under Article 226 of the Constitution of
India, praying to issue Writ of Mandamus forbearing the
respondents and its officials from in any way letting out the

property of the Arulmigu Santhaleeswarar Thirukoil in S.No.277/2, Chinna Kancheepuram, Kancheepuram District to an extent of one acre without following the due process of law affecting the rights of petitioners as cultivating tenants

For Appellants : Mr.N.C.Ashok Kumar

For Respondents : Mr.M.Maharaja
Special Government Pleader
(For R1 to R3)
Mr.K.Chandramohan (For R4)

JUDGMENT

(Judgment of this Court made by T.S.Sivagnanam,J.)

The appellants were the writ petitioners in W.P.No.23989 of 2017. They filed the writ petition praying for issuance of Writ of Mandamus to forbear the respondents from in any way letting out the property owned by Arulmigu Santhaleeswarar Thirukoil in S.No.277/2, Chinna Kancheepuram, Kancheepuram District to an extent of one acre without following the due process of law, affecting the rights of petitioners/appellants as cultivating tenants.

2.We have heard Mr.N.C.Ashok Kumar, learned counsel for the appellants, Mr.M.Maharaja, learned Special Government Pleader for the respondents 1 to 3 and Mr.K.Chandramohan, learned counsel for the 4th respondent.

3.According to the appellants, they have been registered as cultivating tenants and to establish the same, the appellants have produced a copy of the reply furnished by the Information Officer, office of the Assistant Commissioner under the Right to Information Act dated 06.01.2019. Query No.5 in the said application pertain to the extent of lands owned by the temple which have been leased out, survey numbers and the name of the lessee. The Information Officer in his reply dated 06.01.2019 stated that the first appellant is a lessee to an extent of 1.00 acre. Further the appellants have produced a copy of the adangal extract to show that an extent of 40 cents has been recorded to be under the cultivation of the first appellant. This aspect of the matter has noted by the Division Bench when the appeal was heard on earlier date, viz., 29.11.2018. The Division Bench opined that a sum of Rs.1,000/- paid by the appellant as rent is very low and accordingly directed that the appellant should pay higher rent. The appellants agreed to pay a sum of Rs.5,000/- per year in addition to a sum of Rs.1,000/-

which they were already paying. The Division Bench also noted that the appellants are stated to have been recorded as a lessee only in respect of 40 cents and therefore directed the appellants to file an affidavit agreeing to pay an additional amount of Rs.5,000/- as lease rent for the extent of 40 cents and simultaneously surrender the remaining extent of 60 cents. Accordingly, affidavit has been filed and the same has been taken on record by the Division Bench in its order dated 10.01.2019. According to the appellants, the remaining extent of 60 cents has been surrendered to the second respondent, namely, the Assistant Commissioner, Hindu Religious and Charitable Endowment (H.R.&C.E) Department, Kancheepuram.

4.The learned Special Government Pleader appearing for the H.R.&C.E. Department submits that if the appellants have surrendered the said extent, the second respondent may be directed to secure the land in a proper manner.

5.So far as the lease deed which has been entered into by the 4th respondent with certain third parties on 17.08.2017 for a period of 99 years is void since in terms of the lease of property exceeding five years has to be treated as a transfer and without obtaining prior approval from the Commissioner under Section 34(1) of the Hindu Religious and Charitable Endowment Act, 1959 (H.R.&C.E. Act), there is no sanctity to the said transaction. Therefore, the official respondents rightly took action under Section 78 of the H.r.&C.E. Act. It appears that all the tenants have been evicted and the possession has been taken over by the second respondent and the land has now been restored to the temple. So far as the extent of 40 cents of land is concerned, since there is some records to show that the appellants have been recorded as a lessees, then if they have to be dispossessed, then undoubtedly, the official respondents have to initiate proper legal proceedings under the relevant statute. Without doing so, the appellants cannot be summarily evicted. So far as the registered lease deed dated 17.08.2017 for a period of 99 years in concerned, as we have already pointed out the same is illegal since no proper approval was obtained under Section 34(1) of the H.R.&C.E. Act. If the hereditary trustee of the temple has acted in such a fashion, then it goes without saying that the H.R.&C.E. Department has to initiate action against the trustee. Therefore restoring the land back to the trustee would amount to putting on premium on the entire transaction and hence, to secure the temple property in a perpetual manner, the second respondent should ensure that the property remains intact and stands in the name of the temple and none of the trustees should be permitted to deal with the property without proper approval of the Department.

6. Accordingly, the writ appeal stands disposed of by directing the second respondent to take over possession of 60 cents of land surrendered by the appellants, properly fence the property and ensure that the property is kept encroachment free. So far as the 40 cents of lands, since there are certain records to show that the first respondent has been recorded as the tenant and they are paying rent at Rs.1,000/- per year and in addition Rs.5,000/- as per the directions issued by this Court earlier, the appellants are entitled to remain in possession however subject to action that may be initiated by the respondents under the relevant statute for eviction, if need arises. As observed earlier, since we have found that the registered lease deed dated 17.08.2017 executed by the 4th respondent in favour of one L.Prabakaran does not have sanctity in law, necessary action required to be initiated under law against the 4th respondent and the second respondent shall ensure that the property is kept encroachment free and intact. It is well open to the respondent Department to augment the revenue for the temple by auctioning the property or in any manner. It goes without saying that if the transaction entered into between the 4th respondent and the private party would attract the provision of criminal law, it is open to the second respondent to initiate appropriate action in this regard. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Commissioner,
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Endowment Department,
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Chennai - 600 034.

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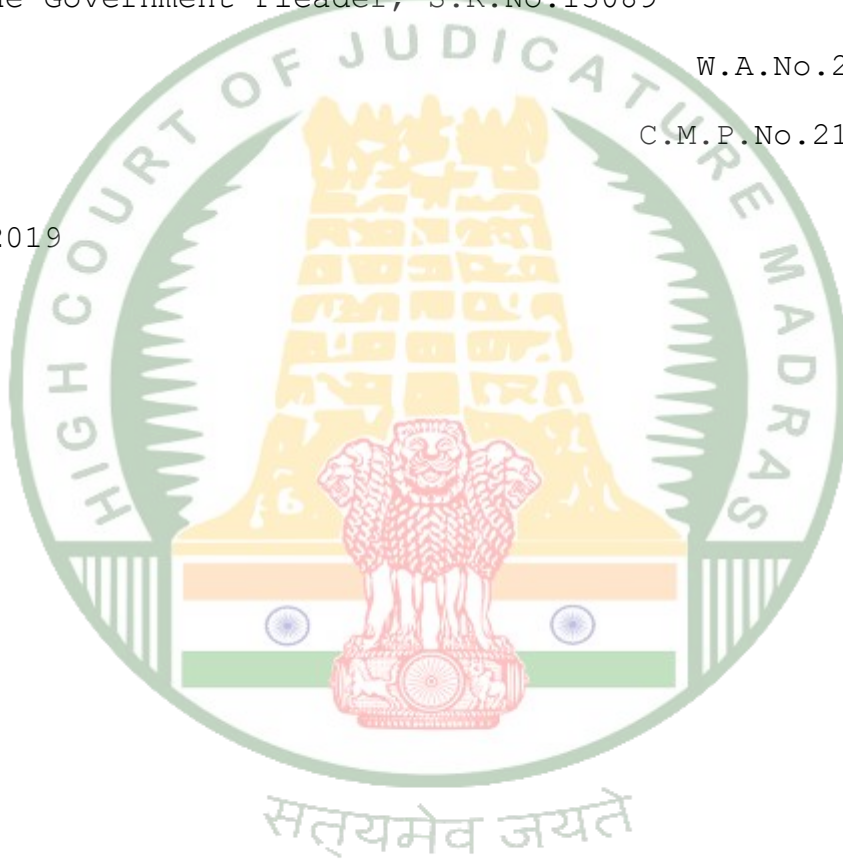
4. K.Chengalvaraya Gurukkal,
Hereditary Trustee,
Vyasa Santhaleeswarar Devasthanam,
Chinnakancheepuram,
Kancheepuram District.

+lcc to Mr.C.Jagadish, Advocate, S.R.No.12493

+lcc to the Government Pleader, S.R.No.13089

W.A.No.2624 of 2018
and
C.M.P.No.21393 of 2018

AD (Co)
CS/28/02/2019



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