



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2019

CORAM:

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THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

W.P. (MD).Nos.14265 & 13403 of 2019

and

W.M.P. (MD).Nos.9973 and 10713 of 2019

1.Murugammal
2.Prammanayagam
3.Thangam
4.Kaliammal
5.Chokkalingam
6.Sudalaiyandi
7.Kumaresan
8.Raman Pillai
9.Raja
10.Iyyappan
11.Subbulakshmi .. Petitioners in W.P.(MD).No.14265 of 2019

Thiraviam Pillai .. Petitioner in W.P.(MD).No.13403 of 2019

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil.
2.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Susindram,
Kanyakumari District. .. Respondents in both petitions

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari calling for the record pertaining to the impugned notices in Na.Ka.No.500/2018/G3, dated 07.03.2019 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.M.Ramu

For Respondents : Mrs.J.Padmavathidevi for R1
Special Government Pleader

Mr.K.Sathiyasingh for R2
Standing Counsel
(in both petitions)



COMMON ORDER

These writ petitions have been filed against the impugned notices in Na.Ka.No.500/2018/G3, dated 07.03.2019 issued by the 2nd respondent.

2.The petitioners are residents of S.No.677/1 having an extent of 4 acres 15 cents. Almost 62 families are residing there from 1970 onwards, by paying panchayat tax and availing electricity connection. The land according to the petitioner is classified as Government Poramboke and each resident is in possession of 2 cents or 3 cents of land. Suddenly, the second respondent vide impugned notices, dated 07.03.2019, stating that the petitioners are encroachers, directed to pay rental arrears from 1998 till 2013. Insofar as the land is concerned, it is not a temple land and since it is a Government poramboke land, the second respondent has no authority to demand rent. Aggrieved over the demand of rent, the petitioners before this Court.

3.Per contra, the second respondent filed a counter stating that the temple originally belonged to Tiruvancore Devaswom Board. After bifurcation of States, Kaniyakumari and Sengottah were allocated to Tamilnadu State and thereby the lands belonging to the temple at Susindram, came under their control. All these lands originally stood under old S.No.3084 and corresponding new S.No.677, belonged to the temple and revenue records also show that there are three temples situated. Therefore they have every right to demand rent. Even though the land sites are situated in National Highway, the respondents claimed only reasonable fair rent. Further according to the learned counsel for the respondent, the petitioners have given their consent for payment of fair rent. Therefore, they cannot now turn around and state that the land belongs to the Government.

4.Heard the submissions on either side.

5.On perusal of the records produced by the second respondent, it is seen that by way of bifurcation Kaniyakumari and Sengottah were given to Tamil Nadu State and the properties which are classified under Revenue records as Devaswomvaga or Devaswom Poramboke and such other Pandaravaga lands are in possession and enjoyment of the Devaswoms after 12th April 1922 shall be dealt with as Devaswom properties. The relevant provision is Section 97 D of Hindu Religious and Charitable Endowment Act, 1959, which reads as follows.

"97D Devaswom Properties - *Immovable properties entered or classed in the revenue records as Devaswom Vaga or Devaswom Poramboke and such other Pandaravaka lands as are in the possession or enjoyment*



incorporated Devoswoms, after the 30th Meenam 1097, corresponding to the 12th April 1922 shall be dealt with as Devaswom properties. The provisions of the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905), shall be applicable to Devaswom lands as in the case of Government lands."

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6.The further proceedings of the second respondent shows that the said Krishnan temple is annexed under the control of Susindram Executive Officer and as per the land register, S.Nos.3084, 3019 belong to the said temple. Further, the encroachers of those temple lands were also entered in the land register of the temple. The revenue records show that it is a Arasu Poramboke Koil. Therefore, it can be inferred that temple is having right over the properties. In that view of the matter, they have issued notices and fixed fair rent. On the other hand, the petitioners are claiming that they are in continuous possession of the property from 1970 by paying panchayat tax and as well as getting electricity connection. But, they do not show any independent right over the land. If at all, they claim any title it can be only for the superstructure and not for land. The petitioners formed a Welfare association and made a representation to the first respondent / District Collector for assignment. Obviously, the land is under the control of the temple and even assuming that the land belongs to the Government, the property has to be resumed first from the second respondent and then only it can be assigned. Therefore, I do not find any legal right in favour of the petitioners when they themselves submit that they are encroachers under the Government. Few of the records go to show petitioner has given an undertaking that they will pay the rent as fixed by the fair rent committee. The impugned proceedings also show that the fair rent is fixed only for the land and not for the building. In such circumstances, the notice issued by the second respondent has to be dealt with by the petitioner in accordance with the provisions of Hindu Religious and Charitable Endowment Act. Hence, the writ petition is not maintainable.

7.However, considering the plight of the petitioners and also their grievance that principles of natural justice was not adhered to, a direction is given to the second respondent to issue a fresh notice in respect of the fixation of fair rent by a duly constituted fair rent committee. On such notice being issued by the fair rent committee following the issued by the Commissioner of Hindu Religious and Charitable Endowment Department, opportunity should be given to the petitioners and proper fair rent shall be fixed under intimation to them. If they are aggrieved, they will be entitled to file appeal against the same.

8.In fine the second respondent is directed to issue a fresh notice through a duly constituted fair rent committee within a period of one month from the date of receipt of a copy of this order and proceed further in accordance with law.



9. With these observations these petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

TM

To

1. The District Collector,
Kanyakumari District,
Nagercoil.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Susindram,
Kanyakumari District.

+1 CC to Mr.M. RAMU, Advocate (SR-97540[F] dated 12/11/2019)

+2 CC to Mr.K. SATHIYA SINGH, Advocate (SR-97915,97918[F] dated 13/11/2019)

+1 CC to SPL GP (SR-98085,97759[F] dated 13/11/2019)

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