

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2019

DELIVERED ON : 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NOS.23541 & 23542 OF 2008

L.Varalakshmi

... Petitioner in both W.Ps.

vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment,
Nungambakkam High Road,
Chennai - 600 034.
 2. The Executive Officer,
A/m.Ekambareswarar Thirukoil,
Aminjikarai,
Chennai - 600 029.
 3. Collector of Chennai District,
Collector's Office,
Rajaji Salai,
Chennai - 600 001.
 4. The Tahsildar,
Egmore Nungambakkam Taluk,
Chetpet, Chennai - 600 031.
- ... Respondents in both W.Ps.

Prayer in W.P.No.23541 of 2008:

Writ petition filed under Article 226 of the Constitution of India for writ of certiorari calling for the records of the proceedings of the 1st & 2nd respondent culminating in the 2nd respondent's (The Executive Officer of Arulmighu Ekampareswarar Devasthanam, Aminjikarai, Chennai - 600 029) Notice cum Order dated 15.07.2008 relating to new increased fair rent for the premises bearing Block No.24, T.S.No.90, Door No.40, South Kasar Garden Street, Aminjikarai, Chennai - 600 029 quash the same.

Prayer in W.P.No.23542 of 2008:

Writ petition filed under Article 226 of the Constitution of India for writ of declaration to declare that the respondents 1 and 2 have no power and jurisdiction to treat the schedule mentioned land as Temple land by virtue of order of

the Settlement Tahsildar, Chengalpattu having office in Branch Settlement Office, Chengalpet in its proceedings S.R.55/70/TNMIA/ACT/30/63/MDS/ (Central) dated 31.03.1971 and also in view of Section 43 of Tamil Nadu Act 30 of 1960.

For Petitioner : Mr.V.Raghupathi

For Respondent 1 : Mr.M.Maharaja,
Special Government Pleader

For Respondent 2 : Mr.S.D.Ramalingam

For Respondents 3 & 4:Mr.K.Ravikumar,
Additional Government Pleader

COMMON ORDER

The subject matter of both the writ petitions are common and hence, both the writ petitions are disposed of by a common order.

2. W.P.No.23541 of 2008 has been filed challenging the notice cum order dated 15.07.2008 passed by the second respondent increasing the fair rent payable by the petitioner for the premises bearing Block No.24, T.S.No.90, Door No.40, South Kasar Garden Street, Aminjikarai, Chennai - 600 029.

3. W.P.No.23542 of 2008 has been filed to declare that the respondents 1 and 2 do not have power and jurisdiction to treat the land at Block No.24, T.S.No.90, Door No.40, South Kasar Garden Street, Aminjikarai, Chennai - 600 029 as Temple land by virtue of order of the Settlement Tahsildar, Chengalpattu in his proceedings S.R.55/70/TNMIA/ACT/30/63/MDS/ (Central) dated 31.03.1971 and also in view of Section 43 of Tamil Nadu Act 30 of 1963.

4. It is the case of the petitioner that she is the owner of the building as well as the land bearing New Door No.40, South Kesar Garden Street, Aminjikarai, Chennai -29 in Survey No.90, Block No.24, Aminjikarai Village, Egmore Nungambakkam Taluk, within the Corporation Division No.73 of Chennai City Municipal Corporation. According to her, originally the owner of the said property measuring about 1 ground and 1920 sq. ft was the petitioner's father Mr.Duraisamy Naidu son of Sanjeevee Naidu, who had applied for patta for the entire land and building under Tamil Nadu Minor Inams (Abolition and Conversion into Roytwari) Act, 1963, Tamil Nadu Act, 30 of 1963.

5. According to the petitioner, the entire land in

R.S.No.70/2 part, Aminjikaiarai Village was Government Poramboke land which was occupied by the ancestors of several persons for more than 100 years and they had put up superstructures. It is the case of the petitioner that Arulmighu Ekabareswarar Thirukoil, represented by its Executive Officer did not have sufficient income for day to day maintenance of the temple. Hence, the then Hereditary Trustee had requested the previous occupants of the said land to pay contribution to the temple to meet out the expenses incurred for maintenance and daily poojas to the temple. According to the petitioner, the earlier occupants having agreed to the above request and contributed some amount which was used to buy oil, Pooja Articles apart from maintenance of the Temple. It is the case of the petitioner that due to difference of opinion between the previous occupants of the said land and the Hereditary Trustees of the Temple, the Hereditary Trustees handed over the temple to the Hindu Religious and Charitable Endowment Board in the year 1956. It is the case of the petitioner that even before the administration was taken over by the Hindu Religious & Charitable Endowment Department, her ancestors and other occupants of the land in R.S.No.70/2 were paying Property Tax and also were in peaceful and enjoyment of the said land and building for more than 100 years. According to the petitioner, the then Settlement Tahsildar - I having his office in branch settlement office at Chengalpet, objected to the entire land being treated as Minor Inam started suo motu enquiry to issue patta as per Act 30 of 1963.

6. According to the petitioner, the then Executive Officer of the said Ekambareswarar Devasthanam appeared in the enquiry and deposed that the schedule lands were Inam land given to the temple and the Executive Officer requested patta on the basis that the temple was owned by both Iruvarams. According to the petitioner, several witnesses including her father were examined by the then Settlement Tahsildar, who finally passed orders in S.R.55/70/TNMIA/ACT/30/63/MDS/(Central) dated 31.03.1971 which reads as follows:

"Most of the occupants have put up pucca building and are residing there. Therefore, in exercise of the powers delegated to me in G.O.P.No.401, Revenue dated 15.2.1965. I hereby allowed ground rent patta in favour of the temple and the occupants jointly under Sec. 13(1) of the Act. 30/63 appended to this order."

7. According to the petitioner, in the schedule to the aforesaid order the details of the occupants namely Duraiswami Naidu and other occupants have been mentioned with Survey Numbers and extent of the land.

8. According to the petitioner, the settlement Tahsildar

and the competent authority under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 recognized the ownership of the petitioner over the superstructure. It is her case that as soon as Inam tenure of the land was extinguished and the land stands transferred to Government automatically and vest with them under Section 3 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 with effect from 15.2.1965, the date of coming into force of the Tamil Nadu Minor Inams and Abolition Act and also since joint patta has been granted both to the petitioner's ancestor Duraiswamy Naidu and also to the said Temple, she and her ancestors were not at all bound to pay any rent to the temple from the date of the said order of the Settlement Tahsildar dated 31.03.1971. According to the petitioner, the order of the Settlement Tahsildar dated 31.03.1971 has attained finality as no appeal has been filed by either of the parties. It is the case of the petitioner that as pious and religious citizens of the locality surrounding the said temple, the petitioner's father and other occupants of the said Inam Lands were paying some money which was termed as rent to the said Ekambareswarar Temple for which the petitioner and the petitioner's ancestor and other occupants did not discontinue the said religious obligation out of reverence.

9. It is the case of the petitioner that despite being the owner of the land and building, the respondents 1 and 2 have been demanding rent from the petitioner as well as other occupants for superstructure for which the petitioner and other occupants are holding joint pattas along with the temple. It is the case of the petitioner that they are not liable to pay any rent to the second respondent, Temple. According to the petitioner, the second respondent as seen from the notice dated 15.07.2008 fixed the monthly rent as Rs.2,220/- from 01.07.2007 and demanded the petitioner to pay a sum of Rs.1,96,056/- which includes the arrears of rent from the year 1990 onwards. It is the case of the petitioner that the second respondent has also threatened the petitioner to pay the said arrears of rent within 15 days to the said temple or otherwise the petitioner and other occupants will be treated as encroachers/trespassers as per Sections 78 & 79 of the Hindu Religious and Charitable Endowment Act, 1959 as amended by Act, 39 of 1996. According to the petitioner, the respondents 1 and 2 did not have power and jurisdiction to treat the land as temple land.

10. In such circumstances, these writ petitions have been filed (a) challenging the notice cum order dated 15.07.2008 passed by the second respondent increasing the fair rent payable by the petitioner for the premises bearing Block No.24, T.S.No.90, Door No.40, South Kasar Garden Street, Aminjikarai, Chennai - 600 029 and (b) to declare that the respondents 1 and

2 have no power and jurisdiction to treat the aforementioned land as Temple land by virtue of order of the Settlement Tahsildar, Chengalpattu having office in Branch Settlement Office, Chengalpet in its proceedings S.R.55/70/TNMIA/ACT/30/63/MDS/(Central) dated 31.03.1971 and also in view of Section 43 of Tamil Nadu Act 30 of 1960.

11. The second respondent temple alone have filed their counter. According to them, the writ petitions are not maintainable, since they have already filed a suit O.S.No.7349 of 2008 which is pending on the file of the City Civil Court, Chennai seeking recovery of possession of the property from the petitioner.

12. It is their case that as per several Government Orders fair rent has been fixed for the properties belonging to the temple from 01.11.2001 onwards. According to them, fixation of fair rent cannot be challenged by way of filing a writ petition. According the second respondent, any order fixing fair rent by the temple under Section 34-A(2), 34-A(3) and 34-D of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 cannot be challenged by way of filing a writ petition as there is adequate efficacious statutory remedy of appeal to the commissioner. According to the second respondent, instead of filing the statutory appeal, the petitioner has filed these writ petitions which are not maintainable.

13. It is the case of the second respondent that Devasthanam is the owner of the land bearing Old No.40, New No.8, South Kazar Garden Street, Aminjikarai, Chennai - 600 029, comprised in Block No.24, T.S.No.90, measuring about 4,280 square feet and the same was originally let out to one Duraisamy Naidu on a monthly rent of Rs.100/- payable according to English Calendar month. According to the second respondent, after the death of Duraisamy Naidu, the petitioner and her mother applied to the commissioner and got tenancy transferred to the petitioner's name in the year 1982. According to them, the petitioner was paying the monthly rent for the land for several years to the second respondent temple and the last payment of land rent was made by the petitioner in June 2007 for which receipt has also been issued by Devasthanam and the petitioner has also signed in the said receipt.

14. It is the case of the second respondent that since the petitioner failed to pay the rent, the second respondent temple terminated her tenancy by notice dated 26.09.2008 and subsequently, filed the suit for recovery of possession for the land, arrears of rent of Rs.1,550/- from 01.07.2007 to 15.10.2008, past damages of Rs.296/- at the rate of Rs.74/- per day from 16.10.2008 to 19.10.2008 and for future damages from

the date of plaint till the date of delivery of possession at the rate of Rs.2,220/- per month.

15. The second respondent denies the allegations of the petitioner that the lands are Government Poramboke lands and the people who occupied the lands have made contributions to the temple to meet out the expenses incurred for maintenance and daily pooja to the temple. According to them, the said contention is against the earlier contention that Duraiswamy Naidu, the father of the petitioner has applied for patta for the entire land and building under Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963, Tamil Nadu Act 30 of 1963.

16. It is the case of the second respondent that the petitioner is only a tenant of the second respondent temple in respect of the land and she was paying rent to the temple. According to them, they have been collecting the rents from the petitioner and other tenants even after the said alleged order dated 31.03.1971 passed by the Settlement Tahsildar for about 40 years without any objection. According to them, by payment of rent, the petitioner has accepted the landlord and tenant relationship between herself and the temple. While that being so, the petitioner is only a tenant in respect of the property and cannot now dispute the title of the landlord while she is in possession of the land and is hit by the Doctrine of estoppel as per Section 116 of the Indian Evidence Act.

17. According to the second respondent, the petitioner is estopped from questioning the title of the second respondent temple as landlord of the property by producing the order of the Settlement Tahsildar of the year 1971. According to the second respondent, the order of the settlement Tahsildar of the year 1971 is not a document of title or a valid order. According to them, the settlement officer in the year 1971 in his order has made it clear that a joint patta has been issued under Section 13(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 because buildings are put up by the tenants. It is their case that the effect of order of the Settlement Tahsildar in the year 1971 is not to make a statutory transfer of the land to the owner of the building. According to them, the object of enquiry by the Settlement Tahsildar is the grant of ryotwari patta as a revenue settlement and the grant of a patta cannot be equated with an adjudication of title to the lands in question.

18. According to the second respondent, in the suit filed by them against the petitioner in O.S.No.7349 of 2008 which is pending on the file of the City Civil Court, Chennai, the

petitioner's husband who had deposed as DW1 has admitted about the payment of rent to the temple and the rent receipts signed by them were also marked as documents during the cross examination.

19. According to the second respondent, only after the notice dated 15.07.2008 and after filing the writ petitions, the petitioner stopped paying the rent to the temple. According to the second respondent, the last payment of rent by the petitioner was on 21.06.2006 which will clearly prove that the petitioner paid the rent accepting the title of the land without any objection for well over 40 years. The second respondent also denies the statement made by the petitioner that she came to know about the settlement Tahsildar's order dated 31.03.2017 only in August 2008. According to the second respondent, only to avoid payment of the rent to the temple, the petitioner has made these false allegations.

20. According to the second respondent, the petitioner's husband during cross examination in the suit has admitted that he knows about the joint patta which was issued by the Settlement Tahsildar when they obtained the plan on 19.01.1996 itself.

21. According to the second respondent, no proceedings under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 has been initiated against the petitioner. According to the second respondent, on the contrary, the second respondent filed a suit O.S.No.7349 of 2008 before the City Civil Court, Chennai against the petitioner for recovery of possession, and for past and future damages. According to the second respondent, when the matter was posted for arguments in the said suit, the petitioner filed an application under Section 10 of CPC and got the suit stayed pending disposal of these writ petitions.

22. According to the second respondent, only in the suit after elaborate trial, the issue raised by the petitioner regarding joint patta can be adjudicated and hence, according to them, the writ petitions are not maintainable and liable to be dismissed.

23. According to the second respondent, the subject property is situated at Door No.40, South Kesar Garden Street, Aminjikarai, Chennai which is few yards away from the Poonamallee High Road. According to them, fair rent fixed for the land at Door No.40, South Kesar Garden Street, Aminjikarai is very much low when compared with the market rent. According to them, the petitioner is occupying an area of 4,280 square feet and despite that, she is not paying any rent and squatting

on the property. According to the second respondent, the rental arrears as on 18.07.2018 payable by the petitioner comes to Rs.3,58,548/-. According to the second respondent, in these circumstances, if these writ petitions are entertained, the idol of the temple which is in the nature of a minor will be put to irreparable loss and damage.

24. Heard Mr.V.Raghupathi, learned counsel for the petitioner, Mr.M.Maharaja, learned Special Government Pleader for the first respondent, Mr.S.D.Ramalingam, learned counsel for the second respondent and Mr.K.Ravikumar, learned Additional Government Pleader for the third and fourth respondents.

25. The learned counsel for the petitioner drew the attention of this Court to the order of the Settlement Tahsildar dated 31.03.1971. According to him, the Settlement Tahsildar by his order dated 31.03.1971 has directed the issuance of joint patta in favour of the temple as well as the occupants under Section 13(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. He also drew the attention of this Court to Section 13(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 and submitted that as per the said provision, "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto. According to him, the petitioner who is in occupation of the building constructed by her father is entitled to be treated as the owner of the land and building as per the provisions of Section 13(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963.

26. The learned counsel for the petitioner also drew the attention of this Court to an order dated 16.10.1973 passed by the Settlement Officer, Salem declaring that no compensation is payable to the occupants of the subject lands where the petitioner has put up a building under Section 23(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. According to the learned counsel for the petitioner, since compensation is not payable to the temple after the vesting of the lands with the Government, the second respondent is not entitled to demand rent for the land from the building owners.

27. The learned counsel for the petitioner also submitted that the petitioner came to know about the order of the Settlement Tahsildar dated 31.03.1971 granting joint patta in the name of the petitioner as well as the temple only in August 2008. According to him, immediately after coming to know about the said order, the petitioner has filed these writ petitions and hence, there is no laches on the part of the petitioner.

28. The learned counsel for the petitioner then drew the

attention of this Court to the proceedings in Na.Ka.No.40651/2008/N3 dated 18.07.2008 wherein the Government laid down guidelines for determination of lease rent and also directed the executive officer to inform the lessee that the lease rent is determined as per Section 34-A(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. According to the learned counsel for the petitioner, the aforesaid guidelines issued by the Government has not been followed by the committee before fixation of fair rent on the petitioner's property and he further submitted that no opportunity was granted to the petitioner before fixation of fair rent and hence, according to him, the second respondent has violated the principles of natural justice.

29. The learned counsel for the petitioner also drew the attention of this Court to a Division Bench Judgment of this Court dated 06.02.2009 in an unreported matter in the case of Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association vs. State of Tamil Nadu passed in W.A.No.8 of 2008. According to him, in the said Division Bench Judgment, since the circular (guidelines) dated 02.02.2019 referred to supra was not followed, the issue regarding fixation of fair rent was remanded back to the temple for fresh consideration after giving adequate opportunity to the respective tenants. According to him, even in the case on hand, no opportunity has been given by the temple before fixation of fair rent.

30. Per contra learned counsel for the second respondent temple would submit that originally the subject property was let out to one Duraisami Naidu, the petitioner's father on a monthly rent of Rs.100/- payable according to English calendar month. According to the learned counsel for the second respondent, after the death of petitioner's father, the petitioner and her mother applied to the Commissioner, Hindu Religious and Charitable Endowments Board and got the tenancy transferred to the petitioner's name in the year 1982. According to the learned Counsel for the second respondent, it is an undisputed fact that the petitioner has been paying the rent for the land to the second respondent temple for several years and the last payment of lease rent was made by the petitioner in June 2007 for which receipt has also been issued.

31. According to the learned counsel for the second respondent, only when the petitioner failed to pay the rent, the second respondent temple terminated her tenancy by notice dated 26.09.2008 and subsequently, filed a suit for recovery of possession of the land as well as for arrears of rent and damages. According to the learned counsel for the second respondent, joint patta has been issued by the order of the

Settlement Tahsildar 31.03.1971 only due to the fact that the land belongs to the second respondent, temple and the building belongs to the petitioner.

32. According to him, as per Section 13(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, the effect of the joint patta is not to make a statutory transfer of the land to the owner of the building as admittedly the land belongs to the second respondent temple. According to him, the objection enquiry by the Settlement Tahsildar is a grant of Ryotwari patta as a revenue settlement and the grant of a patta cannot be equated with an adjudication of title to the lands in question. According to him, as per Section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, the property is not vested with a person if it was not vested with him earlier to the appointed day under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. According to him, having paid the rent to the temple for more than four decades, the petitioner is estopped from denying the ownership of the land by the temple.

33. The learned counsel for the second respondent further submitted that in the suit filed by the temple against the petitioner in O.S.No.7349 of 2008 before the City Civil Court, Chennai, the petitioner's husband who had deposed as DW1 has admitted the payment of rent to the temple and the rent receipts issued by the temple. According to him, only to avoid legitimate payment of rent to the second respondent, the petitioner has filed these writ petitions after issuance of the notice dated 15.07.2008 by the second respondent.

34. The learned counsel for the second respondent also submitted that the town survey land register for the subject land also stands in the name of the second respondent temple. The learned counsel for the second respondent also drew the attention of this Court to the deposition of the petitioner's husband in the suit O.S.No.7349 of 2008 and submitted that issuance of joint patta by the Settlement Tahsildar was known to the petitioner on 19.01.1995 itself. Hence, according to them, these writ petitions have to be dismissed on the ground of laches also.

35. According to the learned counsel for the second respondent, the petitioner is in unlawful use and occupation of the subject land and hence, she is liable to pay damages for the same. Further, he submitted that when a comprehensive suit has been filed by the second respondent before the City Civil Court, Chennai against the petitioner and when there is an alternative efficacious appeal remedy available under the Act and without exhausting the said remedy, these writ petitions are not

maintainable.

36. The learned counsel for the second respondent drew the attention of this Court to the following authorities:

(a) Sri Kumarakattalai Subrahmanya Swami Devasthanam vs. K.S.Sundararajulu Chettiyar reported in I L.R. 1 Mad 501

(b) R.Manicka Naicker vs. Elumalai Naicker reported in AIR 1995 SC 1613

(c) Arulmighu Meenakshi Sundareswarar Koil Kadaikarargal Sangam, Madurai vs. State of Tamil Nadu reported in 2000 (1) CTC 471

(d) S.P.Dhakashinamoorthy (died) and 2 others vs. Sri Kamakshi Amman Temple reported in 1996-1-L.W. 502

Referring to the aforesaid decisions, the learned counsel for the second respondent would submit that (a) the owner of the building does not become the owner of the site by virtue of Section 13(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (b) the effect of Section 13 (2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him (c) Inamdar (here the Temple) who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. Joint patta has been granted by the Settlement Tahsildar in the year 1971, since the petitioner is the owner of the building and the second respondent is the owner of the land. (d) The second respondent has fixed the fair rent only in accordance with the market value of the land. According to him, hence, the writ petitions filed without invoking the alternative remedy of appeal under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act are not maintainable.

Discussion:

37. Admittedly, the petitioner has been paying the monthly rent for the subject land to the second respondent temple for the past several years. In fact, the petitioner's father Duraisamy Naidu who was the original tenant was also paying monthly rent to the second respondent temple even prior to the order of the Settlement Tahsildar dated 31.03.1971, issuing joint patta in the name of the petitioner as well as the second respondent Temple. Admittedly, the second respondent temple has been collecting rent from the petitioner and other tenants even after the order of the Settlement Tahsildar in the year 1971 for 40 years without any objection.

38. By payment of rent, the petitioner has accepted that

there exists landlord and tenant relationship in respect of the land. Applying the Doctrine of estoppel under Section 116 of the Indian Evidence Act, the petitioner is now estopped from denying the title of the second respondent temple over the land.

39. Section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 reads as follows:

"13. (1) Every building situated within the limits of an inam land shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day; but the Government shall be entitled for each fasli year commencing with the fasli year in which the appointed day falls, to levy the appropriate assessment thereon.

(2) In this Section, 'building' includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto."

40. The owner of the building does not become the owner of the site by virtue of Section 13(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act as there is no vesting of the site as part of the superstructure and that, in the absence of the Government asserting any title under Section 3(b) of the Act, an inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. In other words, the section will apply only when the person who owns the superstructure happens to be the owner of the site as well. If the person who claims title happens to be the owner of the superstructure alone and the site belongs to another, the section will have no application. In the case on hand, the inamdar is the second respondent temple who is in constructive possession of the land.

41. The decision relied upon by the learned counsel for the second respondent viz., I LR 1 MAD 501 referred to supra supports the case of the second respondent. This Court is also in agreement with the aforesaid decision of the Madras High Court.

42. The Settlement Tahsildar by its order dated 31.03.1971 has issued a joint patta in the name of the petitioner as well as the second respondent Temple. Admittedly, before the enactment of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, the petitioner was the owner of the superstructure and the second respondent Temple was the owner of the land. Even after coming into force of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, the second respondent Temple has been in constructive possession of the land as tenants have continued to pay the rent

for the land only to the second respondent Temple. A patta is not a document of title. The issuance of joint patta by the Settlement Tahsildar in the year 1971 will not entitle the petitioner to claim ownership of the land which belongs to the second respondent temple who is also in constructive possession. Till date, the Government has also not asserted its title over the land.

43. No iota of evidence is available on record to show that the petitioner or her father was the owner of both the land and building. When the petitioner has miserably failed to establish that she is the owner of the land in which the building belonging to the petitioner exists, the issuance of joint patta will not entitle the petitioner not to pay the rent for the land to the second respondent temple. The joint patta has been granted in the names of both the petitioner as well as the second respondent temple only due to the fact that the land belongs to the second respondent temple and the building belongs to the petitioner.

44. The Judgment of the Hon'ble Supreme Court reported in AIR 1985 SC 1613 cited by the learned counsel for the second respondent temple supports the case of the second respondent. As seen from the aforesaid decision, the effect of Section 13(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. The Hon'ble Supreme Court held that an inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. Therefore, this Court is of the considered view that the order of the Settlement Tahsildar dated 31.03.1971 will not entitle the petitioner to avoid payment of the rent for the land to the second respondent temple.

45. Admittedly, there is a statutory right of appeal as against the fixation of fair rent by the Commissioner of Hindu Religious and Charitable Endowments Department under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Without exhausting the said statutory remedy, the petitioner has directly filed these writ petitions.

46. It is the case of the second respondent temple that only in accordance with market value of the land, fair rent was fixed under the impugned order. No evidence is available on record to show that there is arbitrary fixation of fair rent by the second respondent temple. This being the case, the only remedy available to the petitioner is to file a statutory appeal against the impugned order under Section 21 of the Tamil Nadu

Hindu Religious and Charitable Endowments Act, 1959.

47. The rent has been demanded only by the second respondent temple. To remove encroachments by persons on land and building, Section 78 of the Tamil Nadu Religious and Charitable Endowments Act, 1959 can be exercised only by the Assistant Commissioner, Joint or Deputy Commissioner appointed under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The impugned notice has been issued only by the second respondent temple. Therefore, the apprehension of the petitioner that she will be evicted in accordance with Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is misconceived.

48. Admittedly, the suit O.S.No.7349 of 2008 has been filed by the second respondent temple against the petitioner seeking recovery of possession and for arrears of rent and damages before the City Civil Court, Chennai. When a suit for recovery of possession is pending, the question of eviction of the petitioner under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 will not arise. Therefore, apprehension of the petitioner that she will be immediately thrown out is absolutely unwarranted.

49. The Division Bench Judgment of the Madras High Court dated 06.02.2009 in W.A.No.8 of 2008 relied upon by the learned counsel for the petitioner is not applicable for the facts of the instant case. That was a case where there was evidence available on record that the temple had arbitrarily fixed the rent. In the case on hand, there is no material available on record to show that there was arbitrary fixation of rent by the second respondent temple. Further, since the suit has already been filed by the second respondent temple against the petitioner for recovery of possession as well as for arrears of rent and damages, the petitioner's remedy is either to file a statutory appeal under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 or defend her case before the City Civil Court, Chennai in the suit filed by the second respondent. In the said suit, she can if she so desires make a counter claim for damage that she is not liable to pay the rent for the land to the second respondent temple and that she has suffered damages on account of the past collection of rents by the second respondent temple from her as well as from her father Duraisamy Naidu.

Conclusion:

50. For the foregoing reasons, this Court is of the considered view that there is no merit in these writ petitions. Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nl

To

1. The Commissioner,
Hindu Religious and Charitable Endowment,
Nungambakkam High Road,
Chennai - 600 034.
2. The Executive Officer,
A/m. Ekambareswarar Thirukoil,
Aminjikarai, Chennai - 600 029.
3. Collector of Chennai District,
Collector's Office,
Rajaji Salai, Chennai - 600 001.
4. The Tahsildar,
Egmore Nungambakkam Taluk,
Chetpet, Chennai - 600 031.

+1cc to Mr.S.D.Ramalingam, Advocate, S.R.No.588

+2cc to Mr.V.Raghupathi, Advocate, S.R.No.55

+1cc to the Government Pleader, S.R.No.941

+1cc to the Special Government Pleader (HR & CE), S.R.No.1031

W.P.Nos.23541 & 23542 of 2008

GMR(CO)
CS/30/01/2020

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