



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.11267 of 2016

and

WMP.Nos.9771 & 9772 of 2016

1. Rajamanickam
2. Suriyandi Chellappan
3. Natesan
4. Rajendran
5. Suriyandi,
Chinnasamy.
6. Kolancha Sadaiyan.
7. Kolapandi Duraisamy.
8. K.V.Rangasamy.
9. Kuttamudaya Ponnusamy.
10. Valancha Sinnusamy.

... Petitioners

-Vs.-

1. The Joint Commissioner
Hindu Religious and Charitable Endowment Department,
Salem.
2. The Executive Officer
Arulmigu Arappaleeswarar Thirukoil,
Kollimalai, Namakkal District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the proceedings dated 17.02.2016 made in No.Nil passed by the 2nd respondent herein, quash the same.

For Petitioners : Ms.S.Senthilnathan

For Respondents : Mr.NRR.Arun Natarajan,
Government Advocate for R1
Mr.B.Jagannath for R2

O R D E R

Rs.100/- per annum per acre is the rent-this is not fiction or fairy tale, but this is the fact setting in the captioned writ petition. This, in my considered view, is a classic case that reminds us of the age old adage 'facts can be stranger than fiction'.



2. Be that as it may, the central theme of captioned writ petition is lease of vast extents of land belonging to 'Arulmigu Arapaleeswararswamy Thirukoil, Kollimalai Taluk, Namakkal District' (hereinafter 'said temple' for the sake of brevity) to various persons including the ten writ petitioners before me. Different parcels of land belonging to said temple have been given on lease to writ petitioners and this Court is informed that the rent is Rs.100/- per annum per acre. To have an idea of extents of demised parcels of lands a undisputed tabulation given in the counter affidavit of Executive Officer of said Temple (second respondent) can be usefully referred to and the same is as follows:

S.No .	LESSEE NAME ie.petitioner	SURVEY NO	LAND EXTENT acres	LEASE AGREEMENT DATE	PERIOD LEASE
1	RAJAMANICKAM (1 st petitioner	166	5.00	1.06.1987	5 Yrs
2	SURIYANDI SELLAPAN	181	2.75	1.06.1987	5 Yrs
3	NATESAN S/O.ARAPULI RAJENDRAN S/O.ARAPULI	181	11.00	1.06.1987	5 Yrs
4	SURIYANDI CHUNNUSAMI	177	5.30	1.06.1987	5 Yrs
5	KOLANCHA SADAIYAN	177	3.15	1.06.1987	5 Yrs
6	KOLAPANDI DUR AISAMY	166	1.20	1.06.1987	5 Yrs
7	K.V. RANGASAMY	181	4.00	1.06.1987	5 Yrs
8	SURIYANDI SELLAPAN	181	2.75	1.06.1987	5 Yrs

3. To be noted, above are 8 out of the 10 writ petitioners before this Court.

4. Captioned writ petition, going by the case file placed before me has been filed on 10.03.2016, more than half a decade ago and the trigger for captioned writ petition is an auction notice dated 17.02.2016 issued by second respondent proposing to auction various extents of land, which were given on lease to writ petitioners. Auction notice reads as follows:



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செயல் அலுவலர்/தக்கர்
அருள்மிகு அறப்பள்ளிஸ்வரகவாமி
திருக்கோயில், கொல்லிமலை
நாமக்கல் மாவட்டம்.

நாள்: 1-12-2016

பொருள்: குத்தகை நிலம் - பொது ஏலம் விடுவது - தகவல் அளித்தல் -
அருள்மிகு அறப்பள்ளிஸ்வர கவாமி திருக்கோயில் - வளப்பூர்நாடு -
கொல்லிமலை வட்டம் - நாமக்கல் மாவட்டம் - தொடர்பாக.

நாமக்கல் மாவட்டம் கொல்லிமலை வட்டம் வளப்பூர்நாடு அருள்மிகு
அறப்பள்ளிஸ்வர கவாமி திருக்கோயிலுக்கு சொந்தமான நிலங்கள் நீண்ட நாட்களாக ஏக்கர்
ஒன்றுக்கு ரூ.100/- என தொடர் குத்தகைக்கு விடப்பட்டுள்ளது. இது திருக்கோயிலுக்கு
மிகுந்த வருமான இழப்பை ஏற்படுத்துவதாக உள்ளது. எனவே கீழ்க்கண்ட நிலங்கள் பொது
ஏலத்தில் விட நடவடிக்கை எடுக்கப்பட்டு வருகிறது என இதன் மூலம்
தெரிவித்துக்கொள்ளப்படுகிறது.

வ.எண்.	ச.எண்/ விஸ்தீரணம்	தற்போதைய குத்தகைதாரர்
1.	ச.எண்.186 பரப்பு-7 ஏக்கர்	திரு.அனுமாணிக்கம் த/பெ சக்கரவர்த்தி பிடாரன், பெரிய கோவிலூர்.
2.	ச.எண்.181 பரப்பு-2.75ஏக்கர்	திரு.சூரியசாண்டி செல்லப்பன் பெரியகோவிலூர்.
3.	ச.எண்.181 பரப்பு-11 ஏக்கர்	1.திரு. நடேசன், த/பெ அறுப்புளி 2.திரு.ராஜேந்திரன் த/பெ அறுப்புளி, கொல்லிமலை.
4.	ச.எண்.166 பரப்புஏக்கர்.5.30	திரு.சூரியசாண்டி சின்னசாமி பெரியகோவிலூர்.
5.	ச.எண்.177 பரப்பு-3.15 ஏக்கர்	திரு.கொளஞ்ச சடையன், பெரியகோவிலூர்.
6.	ச.எண்.166 பரப்பு-1.20ஏக்கர்	1.திரு.கொளபாண்டி குணசாமி கொல்லிமலை பெரியகோவிலூர்.
6.	ச.எண்.181 பரப்பு-4ஏக்கர்	திரு.கே.விபாங்கசாமி சின்னகோவிலூர்
7.	ச.எண்.166 பரப்பு 1.20ஏக்கர்	திரு.குட்டமுடைய பொன்னுசாமி பெரியகோவிலூர்.
8.	ச.எண்.166 பரப்பு.5.25ஏக்கர்	திரு.வனஞ்ச சின்னசாமி பெரியகோவிலூர்.



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பெறுதல்,

1. திரு.ராஜமாணிக்கம்,
த/பெ.சக்கரவர்த்திபிடாரன்,
பெரியகோவிலூர்.
2. திரு.சூரியாண்டி செல்லப்பன்
பெரியகோவிலூர்.
3. திரு.நடேசன்
த/பெ. அறப்புளி
கொல்லிமலை.
4. திரு.ராஜேந்திரன்,
த/பெ. அறப்புளி
கொல்லிமலை.
5. திரு.சூரிய ஆண்டி சின்னுசாமி
பெரியகோவிலூர்.
6. திரு.கொளஞ்ச சடையன்
பெரியகோவிலூர்.
7. திரு.கொளபாண்டி துரைசாமி
பெரியகோவிலூர்.
8. திரு.கே.வி.ரங்கசாமி
சின்னகோவிலூர்.
9. திரு.குட்டமுடைய பொன்னுசாமி
பெரியகோவிலூர்.
10. திரு.வளஞ்ச சின்னுசாமி
பெரியகோவிலூர்.

நகல் பணிந்தனுப்பப்படுகிறது.

1. இணை ஆணையர்,
இந்து சமய அறநிலையத்துறை,
சேலம்.



5. Writ petitioners want the aforementioned auction notice to be quashed and that is the prayer in the writ petition.

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6. From the typed set of papers filed along with the counter affidavit of second respondent, it comes to light that there were lease agreements with the writ petitioners, but the same have elapsed by efflux of time i.e., period of a lease is over. Therefore, writ petitioners continue to remain in the demised properties after the expiry of lease and there is no dispute or disagreement about this.

7. Though verbose pleadings have been made, the matter turns on a short point and the question is as to how the said temple has put up the lands for auction i.e., Public Auction without taking possession from the writ petitioners. Learned counsel for second respondent Mr.B.Jagannath attempted to explain this by placing reliance on 'the Religious Institutions (lease of Immovable property) Rules, 1963' (hereinafter 'said Rules' for the sake of convenience and clarity). To be noted, these are a set of Rules made by the State Government in exercise of Rule making power under Section 116 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' which shall hereinafter be referred to as 'TN HR & CE Act'. To be noted, specific reference qua said Rules is to Rule 4. Rule 4 only talks about the mode of auction and that cannot be led to mean that lands which are in possession and occupation of erstwhile lessees can be put up for auction.

8. As this is writ jurisdiction, the aforementioned facts having come to the notice of this Court, I take the residuary limb of prayer to be of significance i.e., that limb of prayer which requests for further or other orders that are deemed fit and proper in the circumstances of the case. In this regard, before proceeding further, this Court deems it appropriate to refer to the lead case in this regard i.e., A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Ors., reported in (2007) 7 SCC 482, wherein Hon'ble Supreme Court held that it is the duty of the Courts to protect and safeguard the properties of religious and charitable institutions. This principle has been repeatedly followed by several Courts in very many cases. There can be no dispute or disagreement that the idol in a temple (idol in said temple is no exception) is a minor and this Court is parens patriae. This Court is also Custodia legis qua the properties of the minor. Therefore, this Court has no hesitation in taking the view that this is a fit case to take recourse to the residuary limb of prayer in the captioned writ petition and make a comprehensive order.

9. Section 78 of TN HR & CE Act is of significance and <https://hcservices.ecourts.gov.in/hcservices/> section 78, which deals with encroachments, creates a legal



fiction, that legal fiction is ingrained in Section 78(1)(b) vide which a lessee qua a temple property becomes an encroacher, if the lessee continues to remain in the property after (i) expiry (ii) termination or (iii) cancellation of the lease. In this case, it is first of the three. As already alluded to supra, there is no disputation or disagreement that the lease in favour of the writ petitioners has expired and therefore, by operation of Section 78(1)(b), writ petitioners are clearly encroachers. This is a clear departure from the Transfer of Property Act, 1882, wherein under such circumstances a lessee becomes a lessee holding over. It is not necessary to dilate much on this aspect of the matter as the law in this regard is well settled. Therefore, the proper course available to said Temple is to initiate proceedings under Section 78 of TN HR & CE Act against the writ petitioners. Section 78 is a legal mechanism by itself and jurisdictional Joint Commissioner is statutorily vested with powers to deal with cases under Section 78 of TN HR & CE Act. It is a quasi judicial adjudicatory process with inbuilt mechanisms. It is rather surprising that this course has not been taken for more than half a decade now, even if the date of auction notice and the filing of captioned writ petition is taken as the reckoning date.

10. In this regard, this Court deems it appropriate to notice the submission of Mr.S.Senthilnathan, learned counsel for writ petitioners that writ petitioners are lessees qua said lands under said Temple from 'time immemorial'. There is no disputation that said Temple itself is an ancient temple, may be time immemorial. If one goes back on a time machine Rs.100/- may have been a princely sum at some point of time, but it became insignificant in terms of annual rent long ago. This sum ceasing to be a princely sum and a sum of any significance in terms of annual rent itself is now a vintage event and this is the reason that prompted this Court to make the opening remark that this is not fiction or fairy tale, but a reminder (sordid reminder though) of the age old adage that 'facts can be stranger than fiction'. For abundant clarity, this Court deems it appropriate to set out that Rs.100/- annual rent means Rs.8.33/- monthly rent. Monthly rent of Rs.8/- per acre itself is unthinkable and puts one back by more than a century in the time machine. Therefore, this Court is of the considered view that this insignificant sum having been paid upto date is no argument.

11. In the light of the narrative thus far, following A.A.Gopalakrishnan principle, this Court deems it appropriate to dispose of captioned writ petition in the following manner:

a) Impugned auction notice dated 17.02.2016 is set aside without expressing any opinion on the merits of the matter and this is on the sole ground that said Temple will have to be in possession to auction said lands;

b) said Temple, more particularly second respondent shall initiate proceedings under Section 78



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of TN HR & CE Act forthwith i.e., without any further delay and in any event within three(3) weeks from today i.e., on or before 08.10.2021;

c) First respondent, who is the jurisdictional Joint Commissioner [to be noted first respondent is represented by State counsel Mr.NRR.Arun Natarajan] shall take on file the section 78 proceedings, adjudicate upon the same on its own merits, in accordance with law and conclude the same as expeditiously as his business would permit and in any event, within twelve(12) weeks from 08.10.2021 i.e., on or before 31.12.2021;

d) Subject to the outcome of Section 78 proceedings if the said Temple succeeds in the same and takes possession, it is open to the said Temple to reissue the aforementioned auction notice;

e) Though obvious aforementioned auction will be governed by said Rules and other provisions of TN HR & CE Act.

12. Captioned writ petition is disposed of with above directives owing to the reasons articulated supra elsewhere in this order. There shall be no order as to costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

kmi

To

1. The Joint Commissioner
Hindu Religious and Charitable Endowment Department,
Salem.

2. The Executive Officer
Arulmigu Arappaleeswarar Thirukoil,
Kollimalai, Namakkal District.

+1cc to Mr.S.Senthilnathan, Advocate SR.No.48197

+3ccs to Mr.B.Jagannath, Advocate SR.No.47435

W.P.No.11267 of 2016

and

WMP.Nos.9771 & 9772 of 2016

PCH(CO)

<https://hcservices.ecourts.gov.in/hcservices/>

GM (18/10/2021)