IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.19690 of 2015 and
MP.Nos.1, 2 & 3 of 2015

Umapathy

… Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Nungambakkam, Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Villupuram, Villupuram District.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Cuddalore-607 001.
Cuddalore Taluk & District.

4.The Executive Officer,
A/M. Sivasubramaniaswami Temple,
Melpattambakkam, Panruti Taluk,
Cuddalore District.

5.The Managing Trustee,
A/M. Sivasubramaniaswami Temple,
Melpattambakkam, Panruti Taluk,
Cuddalore District.

6.Krishnamurthy … Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of 4th respondent and quash the auction notice dated 27.05.2015 of leasehold right in respect of shop No.6, belonging to the A/M. Sivasubramaniaswami Temple, Melpattambakkam, Panruti Taluk, Cuddalore District alleged to have taken place on 15.6.2015 and consequently directing respondents 1 to 5 to conduct auction for lease as per law.

For Petitioner : Mr.R.Gururaj

For Respondents : Mr.N.R.R.Arun Natarajan (for R1 to R3)
Government Advocate
Mr.K.A.Ravindran (for R5)
R4 - Notice returned as no such officer
R6 - Tapal Due

O R D E R

The petitioner claims to be a native of Melpattambakkam, Panruti Taluk, Cuddalore District and a devotee of Arulmigu Sivasubramaniaswami Temple located at Melpattambakkam (temple/temple in question). The temple is under the overall management of the Hindu Religious and Charitable Endowments Department (HR&CE) and is being administered under the Scheme settled by a Joint Commissioner, HR&CE Department in O.A.No.2 of 2011 as sought for by the members of the Senguthar community in that area.

2. The temple owns properties including land and 13 shops that abut the temple premises on the Cuddalore-Panruti Main Road. The challenge in this writ petition is to an auction notice dated 15.06.2015 in terms of which one of the shops that is, shop No.6 is being auctioned along with other shops owned by the temple. The challenge is multi-pronged.

3. According to the petitioner, a compulsory deposit of a sum of Rs.50,000/-, is being insisted upon in the guise of the a 'donation' and this requirement for 'donation' will prevent interested persons with paucity of resources, from participating in the auction. That apart, he would allege that the provisions of the applicable Rules governing the conduct of auction of immovable property of temples have not been adhered to and no proper procedure has been followed by the respondents in the conduct of the auction. No publication was made of the proposed auction, for the reason that the auction was itself, according to the petitioner only a farce, designed to favour the successful bidder, arrayed here as the 6th respondent.

4. Service is not complete upon the 6th respondent. However, in light of the order that I propose to pass and bearing in mind that the writ petition is of the year 2015, I am not inclined to keep this matter pending further awaiting completion of service. In any event, the order passed finally

directs the conduct of a fresh auction in which the 6th respondent is also at liberty to participate, if he is so eligible.

5. The allegation is that the 6th respondent is a relative of the Managing Trustee of the temple, arrayed as R5. In fine, the petitioner would allege that the auction is contrary to all concerned Rules and Regulations, as well as and the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act').

6. When this matter had come up on 08.07.2021, I had sought a clarification as to who the present occupant of the shop was, and learn from counsel for the temple that the successful bidder i.e. R6 still continues as licencee. A counter has been filed by R4 along with two compilations of documents, one dated 30.04.2021 and the other dated 12.07.2021.

7. According to the learned counsel for the temple, there is nothing untoward or irregular in the procedure adopted for the conduct of auction and all parameters as set out under the applicable Rules had been duly complied with. As regards the receipt of donation, while not in a position to dispute the same since the allegation is corroborated with receipts for donation, he only justifies the same stating that such donations augmented the revenue of the temple.

8. Heard learned counsel. The conduct of auction for the lease of immovable properties belonging to temples is governed by the Religious Institutions (Lease of Immovable Property) Rules, 1963 (‘rules’/’auction rules’). The Rules have been issued in terms of Section 116(3) of the Act and provide in detail, for the procedure to be followed in the conduct of public auction for the lease of temple properties. Rule 2 states that the lease shall be by public auction. Rule 3 stipulates the period and terms of lease and states that the trustees and those in management of the temple shall decide the period of the lease, and the terms and conditions of the lease.

9. The auction shall be conducted within one month from the date of the aforesaid decisions having been taken by the Board of Trustees/entity in management. Rule 4 provides for the issuance of auction notice that shall be published atleast 15 days before the date fixed for auction, by affixture in the locations stipulated under the Rule. The Executive Authority shall give due publicity to the notice in regional language and where the auction is conducted by the Executive Officer, a copy of the auction notice shall be sent to the trustees at least 3 days prior to the date fixed for auction.

10. Rule 5 sets out the details of particulars to be furnished in the auction notice, Rule 6 designates the proper authority to conduct the auction, and Rule 7 states that the executive authority shall, before allowing anybody to participate in the auction, collect the earnest money payable by him. A person who is in arrears to the religious institution shall not be permitted to bid at the auction. Rule 8 states that the lease shall be granted ordinarily to the highest bidder, but, an exception is provided for in special cases that is to be justified by reasons to be recorded in writing.

11. Rule 9 provides that the executive authority shall take reasonable security from the successful bidder, which in the case of lease of more than one year, shall be of a sum equal to at least one year's rental but, which may, in special cases, for reasons to be recorded in writing, permit the trustee to accept security of less than one year's rental in value.

12. Rule 10 is relevant, specifically in the facts and circumstances of this case, as it would state that no provision for extension of lease shall be made in the lease deed. In this case, the successful bidder, who was awarded the licence of shop No.6 in 2015, has been permitted to continue in the premises till date and there has been extension of the lease every two years upon escalation of the rent. This procedure is contrary to the specific stipulation in Rule 10 that places an embargo on extension of the lease.

13. Rule 11 provides for lease other than by public auction if the Commissioner were satisfied that the interests of the institution will not suffer by dispensing with the public auction. Rule 12 is, again, relevant to the facts involved in this case and states that when a lease is granted for a period of less than five years, any further extension of lease upto a period of five years from the date when it was originally granted, shall be made only with the prior sanction of the Commissioner, HR&CE and leases exceeding five years shall be made only in accordance with the provisions contained in Section 34 of the Act.

14. In the present case, the lease originally granted for two years has been extended in toto for a period of six years and till date, no prior sanction granted by the Commissioner has been placed on record. In any event, it is not the case of R4 that prior sanction of the Commissioner has even been obtained.

15. The lease period from 2015 to 2021 (till date) exceeds five years, which is impermissible as per the provisions of Section 34 without a sanction being accorded by the Commissioner to the effect that such extension is in the best interests of

the temple. In fact, learned counsel for the temple would argue the case of the lessee stating that the lessee has been regular in the remittance of rent and hence should not be disturbed. I find it strange and most inappropriate that the learned counsel for the temple should put the interests of the lessee ahead of the interests of the temple. Moreover, this submission is clearly contrary to the provisions of Rules 10 and 12 of the Auction Rules read with Section 34 of the Act.

16. Rule 13 deals with the power of the Commissioner to veto a lease for reasons to be recorded in writing after hearing the parties concerned and Rule 14 for a confirmation of the lease by the Commissioner if no such order exercising the powers of veto is received by the executive authority of the concerned religious Institution. Rule 15 provides for remission of rent and states that such remission of rent shall not, ordinarily, be granted, but only in circumstances, owing to adverse seasonal conditions and other factors beyond the control of the lessee.

17. Rule 16 states that the auction rules shall not apply to lands coming under the purview of the Tamil Nadu Public Trusts (Regulation and Administration of Agricultural Lands) Act, 1961, or to Maths and specific endowments attached to Maths. Rule 17 provides for fixation of fair rent in regard to buildings belonging to the religious institutions and states that such rent shall be revised periodically, at least once in three years by a Committee constituted specifically for that purpose. The constituents of the committee are set out in Rule 17 and the fair rent is to be fixed in accordance with the market value of the land and the cost of building worked out as per the Code of the Public Works Department.

18. The provisions of Section 34 of the Act read as follows:

> 34. Alienation of immovable trust property.—(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by 1[the Commissioner] as being necessary or beneficial to the institution:
>
> Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by 1[the Commissioner] :

2[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].

Explanation.—Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, 1[the Commissioner] may impose such conditions and give such direction, as 3[he] may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by 1[the Commissioner] under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of the publication of the order 4 [appeal to the Court] to modify the order or set it aside.

1[(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions].

(5) Nothing contained in this section shall apply to the inams referred to in section 41.'

19. Upon a combined reading of Section 34 as above, and the Auction Rules, it is very clear that the procedure provided for has not been followed in regard to the auction of the shop in question. The present writ petition might well have been rendered infructuous as the challenge is to an auction notice issued in 2015 and the period of licence would have expired as on date. However, it has been kept alive solely by virtue of the

blatant disregard to the applicable Rules, the temple having permitted the licencee to continue in occupation of the shop long after the period provided.

20. For the aforesaid reasons, I direct R5, in conjunction with the official respondents, to conduct auction afresh in line with the provisions of Section 34 and the relevant Auction Rules. Both the petitioner as well as R6 are entitled to participate in the auction, subject to they not being disqualified in any manner for the same. Let this exercise be conducted scrupulously in line with the relevant Rules and be concluded within a period of three months from today.

21. This writ petition is disposed as above. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

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srg 02/11/2021