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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18190 of 2021

and

W.M.P.No.19417 of 2021

K.Senthilkumar

...Petitioner

Vs

1.The Principal Secretary to Government of TamilNadu,
Tourism, Culture and Religious Department,
St.George Fort, Chennai - 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam, Chennai - 600 034.

3.The Joint Commissioner,
Hindu Religious & Charitable Endowment Department,
Nungambakkam, Chennai - 600 034.

4.The Assistant Commissioner,
Hindu Religious & Charitable Endowment Department,
Nungambakkam, Chennai - 600 034.

5.The Executive Officer,
Arulmigu Agatheeswara Swamy Thirukkoil,
Villivakkam, Chennai - 600 049.

6.D.Kumarasamy
No.181, M.T.H.Road,
Villivakkam, Chennai - 600 049.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the 1st respondent to pass order in petitioner's stay petition filed on 19.08.2021 after granting personal hearing to my counsel and atleast with period that may be stipulated by this Hon'ble Court.



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For Petitioner : M/s.G.Devi
For Mr.V.Raghupathi
For Respondents : Mr.N.R.R.Arun Natarajan
Government Advocate
[For R1 to R4]

Mr.Willson Topaz
For M/s.A.S.Kailasam and Associates
Government Advocate
[For R5]

O R D E R

The writ on hand has been instituted to direct the 1st respondent to pass orders in the petitioner's stay petition filed on 19.08.2021, after granting personal hearing to the counsel for the petitioner and for that purpose, the period also may be stipulated by this Court.

2. The petitioner states that land to an extent of 3227 sq.feet at No.181, M.T.H.Road, Villivakkam, Chennai - 600 049 belongs to the 4th respondent temple and the superstructure originally belonged to the father of the petitioner Mr.D.Kandasamy, who has developed the superstructure. The petitioner further states that on 22.11.1990, by a registered Sale Deed, his father had sold the superstructure along with the Lease Hold Rights to his brother namely Mr.D.Kumarasamy. After the death of the father of the petitioner, his brother Mr.D.Kumarasamy / 5th respondent has executed Settlement Deed in favour of the petitioner through his Power Agent in Document No.1015 of 2011, which was registered by the Sub-Registrar.

3. The petitioner states that pursuant to the said Settlement Deed, the petitioner is a permissible tenant and he is in continuous possession and enjoyment of the property till date by letting out to tenants. The petitioner claims that he pays the admitted rent regularly. He requested the 4th respondent for name transfer as he had done some minor repairs in the property. The temple authorities filed O.S.No.6587 of 2015 for permanent and mandatory injunction against Mr.D.Kumarasamy and the petitioner, not to put up any illegal construction in the temple property and the said suit is pending.

4. The petitioner states that the 4th respondent has been then and there arbitrarily increasing the rent and the said increased rent is also being paid by the petitioner. However, the receipts are given in the name of Mr.D.Kumarasamy. The petitioner has stated that the 4th respondent has terminated the



Lease Deed on 29.07.2008 and thereafter, the suit in O.S.No.6587 of 2015 is filed for injunction not to put up any illegal construction in the temple properties. Under these circumstances, the competent authorities initiated action under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as "HR & CE Act"] and passed the order of eviction and the 2nd respondent / Commissioner of Hindu Religious and Charitable Endowments Department passed an order of eviction under Section 78(4)-1 of the HR & CE Act, 1959 in proceedings dated 10.04.2018. The eviction order has been communicated to the petitioner and thereafter, the petitioner filed an appeal and the appeal is pending.

5. The petitioner earlier filed W.P.No.27951 of 2019 and this Court passed an order on 20.07.2019, directing the petitioner to deposit a sum of Rs.10,00,000/- before the third respondent temple and the petitioner paid the said amount and thereafter, this Court directed the 1st respondent to number the appeal and dispose of the appeal on merits and in accordance with law. Accordingly, the appeals are numbered and pending before the 1st respondent.

6. The grievance of the writ petitioner is that during the pendency of the appeal, the respondents are initiating steps to evict the petitioner as the 1st respondent has not granted any interim stay of the order of eviction. Therefore, the petitioner is constrained to move the present writ petition for a direction, to direct the 1st respondent to dispose of the Stay Petition.

7. The learned Government Advocate appearing on behalf of the respondents disputed the contentions raised on behalf of the petitioner by stating that the petitioner is an encroacher. At no point of time, he is recognized as a lessee by the temple authorities. He is not at all a lease holder. Further, the petitioner or the said Mr.D.Kumarasamy or his brother Mr.D.Kandasamy (father of the petitioner) are unable to produce any document to establish that the competent authorities have entered into a valid lease agreement with any of these persons. In the absence of any valid lease deed executed under the provisions of the HR & CE Act, the petitioner or his father or Mr.D.Kumarasamy shall be recognized as a tenant or leaseholder under the provisions of the HR & CE Act.

8. Admittedly, the petitioners have not produced any document to establish that the petitioner or the said Mr.D.Kumarasamy is the leaseholder and holding a lease document to establish their case. In such circumstances, the lease presumably entered with the temple authorities with



Mr.D.Kumarasamy was terminated by the authorities on 29.07.2008 itself. After termination of the assumed lease, the authorities instituted a Civil Suit in O.S.No.6587 of 2015. The said suit is also pending. Therefore, the petitioner has not established even a semblance of right, so as to occupy the temple property. The petitioner is an encroacher and illegal occupant, who has sublet the premises in favour of some other third parties and collected huge amount of rent by abusing the temple properties and therefore, the petitioner has committed a serious offence of dealing with the temple properties in an illegal manner for his personal and unjust gains.

9. The learned Government Advocate appearing on behalf of the respondent / Department made a submission that the assumed lease was terminated on 29.07.2008 and the petitioner has not paid even the fair rent fixed and thereafter, actions were initiated against the petitioner and the petitioner being an encroacher / illegal occupant, who sublet the temple properties was declared as an encroacher and further, action under Section 78 of the Act was initiated to evict the petitioner. The competent authority passed an order of eviction on 10.04.2018 and an appeal was filed by the petitioner, which is now pending.

10. The learned Government Advocate appearing on behalf of the respondents reiterated that the petitioner has not established any right and further, he has not produced any document to establish his case that he is holding any lease document or any other evidences to establish that he is recognized as a tenant by the competent authorities. Thus, there is no reason whatsoever to consider the writ petition filed by the petitioner. It is brought to the notice of this Court that the petitioner has not submitted any application for name transfer or to grant a fresh lease or otherwise.

11. The learned Government Advocate appearing on behalf of the respondents brought to the notice of this Court that as per the fair rent fixation done by the competent authorities, the petitioner has to pay the arrears of Rs.50,40,000/- (Rupees Fifty Lakhs Forty Thousand only) and he has not paid the same. Under Section 34 of the HR & CE Act, alienation of temple property is impermissible and any such alienation in the absence of sanction by the Commissioner is null and void. Therefore, all the occupants in the temple properties in the present case are illegal occupants and the petitioner has abused the temple properties for his personal gains and earned huge sum of money by subletting the property in favour of other third parties. Such illegality is being continued for several years, despite the fact that the suit was instituted by the temple. Consistent action taken by the temple failed at the instance of the petitioner as the petitioner is adopting a tactics of prolonging



and protracting the issues one way or other by filing several petitions and litigations. Such tactics adopted is to be dealt with in an appropriate manner.

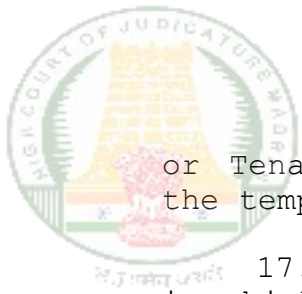
12. Considering the arguments and in order to consider the grievances advanced by the petitioner, a prima facie case is to be established and a right and its violation must be traced out. In the absence of establishing any right, the Courts would not consider the grant of any relief. Thus, for entertaining a writ petition, the right is to be established by the petitioner at the first instance.

13. Let us now look into the facts, so as to understand whether the petitioner has established any right for the purpose of considering his grievances.

14. The petitioner, in his own affidavit filed in support of the present writ petition, categorically admitted the fact that the land to an extent of 3,227 sq. ft., at Door No.181, M.T.H. Road, Villivakkam, Chennai-49, belongs to the fifth respondent-temple. The petitioner states that the superstructure belongs to his father late Mr.D.Kandasamy. His father executed a registered Sale Deed and sold the superstructure along with leasehold rights to the brother of his father Mr.D.Kumarasamy. The petitioner further states that the said Mr.D.Kumarasamy-sixth respondent further executed a Settlement Deed in favour of the petitioner through his Power Agent.

15. An analysis of the abovesaid statement made by the petitioner would reveal that the petitioner claims to be the authorised leaseholder of the subject temple, namely, Arulmigu Agatheeswara Swamy Thirukkoil, Villivakkam, Chennai-49. However, the petitioner has not produced any Lease Deed or documents to establish that his father late Mr.D.Kandasamy was a leaseholder recognised by the Temple Authorities. The father of the petitioner sold the superstructure in the temple property in favour of his brother Mr.D.Kumarasamy. The said Mr.D.Kumarasamy executed a Settlement Deed in favour of the petitioner. Even Mr.D.Kumarasamy, who is the sixth respondent, in the present writ petition or on his behalf, the petitioner has not filed any Lease Deed or permission from the Commissioner, HR&CE Department, recognising him as an authorised tenant or leaseholder.

16. At the outset, when a question is asked by this Court, the learned counsel for the petitioner is unable to submit that any of these persons are having any valid lease documents properly executed by the Temple Authorities at any point of time. Thus, for all purposes, this Court has to consider the fact that none of the parties, are holding any valid Lease Deed



or Tenancy Agreement executed by the Competent Authorities of the temple or the HR&CE Department.

17. In this backdrop, this Court has to consider the manner in which the temple property has been dealt with for many years by the said late Mr.D.Kandasamy, Mr.D.Kumarasamy and the petitioner herein.

18. Paragraph-3 of the affidavit filed by the petitioner in support of this writ petition, reveals that the petitioner claims as a permissible tenant, however, the petitioner has not filed any documents to establish that he is the permissible tenant by the Competent Authorities of the temple in respect of the property. The petitioner, in paragraph-3 of the affidavit, categorically admitted that he has let out the temple properties to other third parties/tenants. Further, says that he is paying the admitted rent, but which Authority admitted the rent is not established.

19. Though the petitioner states that he requested the fourth respondent for name transfer, the same has not been done. However, the respondents in their counter states that no such application for name transfer is submitted by the petitioner. However, the question of name transfer would not arise in the present case, as there is no valid Lease Deed either in favour of the petitioner or in the name of Mr.D.Kumarasamy.

20. The petitioner raised a grievance that the fourth respondent-temple arbitrarily increasing the rent. Contrarily, it is pleaded by the respondents that a fair rent is fixed by following the provisions of the Hindu Religious and Charitable Endowments Act [hereinafter referred to as the 'Act', in short] under Section 34-A. The fair rent is to be fixed in accordance with Section 34-A of the Act. Further, it is admitted by the petitioner that the Lease Deed was terminated on 29.07.2008 in respect of the sixth respondent-Mr.D.Kumarasamy. But neither the Lease Deed or any other evidence has been produced to that effect.

21. Admittedly, the Authorities filed O.S.No.6587 of 2015 for an injunction restraining the petitioner and the said Mr.D.Kumarasamy from putting up any illegal constructions. The said suit is pending. Under these circumstances, the Competent Authorities invoked Section 78 of the Act, by treating the petitioner as an encroacher and passed an order of eviction on 10.04.2018. The said order has been taken by way of an appeal before the first respondent and the said appeal is pending.

22. This Court is of the considered opinion that the manner in which the temple properties were dealt with by the



petitioner, sixth respondent and the father of the petitioner are absolutely in violation of the provisions of the Act and they are not only encroachers and illegal occupants, but utilised the property of the temple in an unlawful manner for their personal and unjust gains. Even as per the own statement of the petitioner, he sublet the premises of the temple. Thus, it is shocking that the temple properties are dealt with by these illegal occupants in an illegal manner and the Authorities though initiated action, this Court has to record that such actions initiated are not only insufficient, but raises a doubt about the active or passive collusion on the part of such Competent Authorities of the temple.

23. Section 34 of the Act, enumerates 'alienation of immovable Trust property'. Sub section (1) of Section 34 stipulates that "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 purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution".

24. The learned counsel for the petitioner filed additional typed set of papers to establish that a 99 years Lease Deed was executed in April, 1936 in favour of one Mr.V.Chinnathambi Mudaliyar. Another Settlement Deed dated 15.07.1964 is also filed by the petitioner, wherein one Mr.Sundara Vadivelu Mudaliyar, S/o. Late V.Chinnathambi Mudaliyar, executed the Settlement Deed in favour of Tmt.S.Maragatham, W/o.C.Sundara Vadivelu Mudaliyar. The said Tmt.S.Maragatham executed a Sale Deed on 13.10.1967 in favour of late Mr.D.Kandasamy, who is none other than the father of the petitioner. Therefore, as per the petitioner, the subject temple property was purchased by the father of the writ petitioner from one Tmt.S.Maragatham in the year 1967.

25. All such documents executed are directly hit by Section 34 of the Act. The petitioner has not produced any order granting sanction by the Commissioner. Thus, any such exchange, sale or mortgage or any lease for a term not exceeding five years without the sanctioning of the Commissioner is null and void.

26. In the present case, the 99 years Lease Deed executed by one Dharmakartha Govinda Reddiyar itself is null and void. There are further Settlement Deeds or the Sale Deeds also cannot be held as valid. The temple property, which is meant for the benefit of the temple, can never be allowed to be encumbered in a different manner and in such circumstances, the Courts are bound to step in and deal with the issues properly.



27. The "Deity " in the temple is a "minor" and the Court should be astute to protect the interests of an idol in any litigation. Therefore, when the trustee or the Executive Officer or the custodian of the idol, temple and its properties, leave the same in lurch, any person interested in respect of such temple or worshipping the 'Deity' can certainly be clothed with an adhoc power of representation to protect its interest. Where the persons in management of a temple failed to protect the interest of the temple diligently, the Court is empowered to take notice of such facts and deal with the issues in an appropriate manner. The Court is bound to take notice of the fact that the Executive Officers appointed in the temples are being changed periodically and in many a case, they do not get fully acquainted with the history or affairs of the temple. If there is lapses, slackness or negligence on the part of the Executive Officer and the trustees of the temple, "it is the duty of the Court to ensure that the 'Deity' does not suffer thereby. The Courts should be astute to protect the interests of an idol in any litigation."

28. Fraudulent and illegal encroachments of temple properties is a crime against the society at large. Misappropriation of the funds of the temple is undoubtedly an offence and all such offences are to be registered and the offenders are liable to be prosecuted by the State as the State is the controller of these temples and the offences are also committed against the State. Temple properties are allowed to be looted by few greedy men and by few professional criminals and land grabbers. Active or passive contribution and collusion by the officials of the HR & CE Department cannot be overruled. These lapses, negligence, dereliction of duty on the part of such public officials are also to be viewed seriously and all appropriate actions in this regard are highly warranted.

29. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/ Sebaitis/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.



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30. Therefore, beyond the private right, a public right is involved in such matters. When a public right is involved and the allegations are far more serious, then the Courts are expected to step-in and deal with such matters sternly and in an appropriate manner, failing which, the High Court is failing in its duty to exercise its Constitutional obligations.

31. In the present case, the petitioner is not only an encroacher, but abused the property of the temple for his personal gains. The petitioner, admittedly, sublet the temple properties to several third parties and earned huge amount from and out of the temple properties. The period of illegality and the quantum of amounts collected from and out of the temple properties by the petitioner, are also to be looked into by the Competent Authorities of the HR&CE Department by conducting an elaborate enquiry. Any such abuse is established and if the Authorities Competent are also in collusion for such abuse, then all further actions are highly warranted.

32. As per the counter filed by the fifth respondent, the petitioner has not paid the fair rent and further not submitted any application for transfer of tenant or the grant of lease in his favour. The petitioner was never recognised as a tenant under the fifth respondent-temple. Thus, the petitioner was treated as an encroacher and proceedings under Section 78 of the Act, was initiated. The petitioner has sublet the premises of the temple, viz., in the ground floor four shops and one Party Hall is functioning. In the first floor, Gym is functioning and in the second floor, one Rest Room and Godown are functioning. So far the petitioner has not only enjoying the temple properties in an illegal manner, but derived profit from the temple properties and the profit gained is running to several lakhs.

33. The High Court is not expected to close its eyes in respect of such patent illegalities in dealing with the temple properties. The High Court has its constitutional obligation in such circumstances to step-in and protect the interest of the minor idol and issue appropriate orders.

34. Though the relief, as such, sought for in the present writ petition, is to direct the first respondent to dispose of the stay petition, considering the nature of the illegality and perusal of the documents, this Court is of an opinion that while dealing with the temple properties, Courts at no circumstances be unnecessarily protect the illegal occupants, who are abusing the properties of the temple for their personal and unjust gains. In view of such facts and circumstances, this Court is inclined to pass the following orders:-



(1) The relief, as such, sought for in the present writ petition, stands rejected;

(2) Respondents 1 to 5 are directed to complete the eviction in all aspects and take over possession of the temple properties and deal with the same in accordance with the provisions of the Act and more specifically for the benefit of the temple administration;

(3) Respondents 1 to 5 are directed to conduct an enquiry and assess the financial loss occurred to the subject temple and initiate all appropriate actions against all the persons concerned for the recovery of the financial loss caused to the temple;

(4) Respondents 1 to 5 are directed to look into the active or passive collusion on the part of the Authorities in dealing with the temple properties in such a manner and initiate appropriate action against all those Authorities, who have contributed for the maladministration of the temple properties;

(5) The abovesaid exercises are directed to be done as expeditiously as possible.

35. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government of TamilNadu,
Tourism, Culture and Religious Department,
St.George Fort, Chennai - 600 009.
- 2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam, Chennai - 600 034.
- 3.The Joint Commissioner,
Hindu Religious & Charitable Endowment Department,
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4.The Assistant Commissioner,
Hindu Religious & Charitable Endowment Department,
Nungambakkam, Chennai - 600 034.

5.The Executive Officer,
Arulmigu Agatheeswara Swamy Thirukkoil,
Villivakkam, Chennai - 600 049.

+lcc to the Special Government Pleader (HR & CE) Sr No.47673
+lcc to Mr.V.Raghupathi, Advocate Sr No.46757

W.P.No.18190 of 2021

SRA (CO)
PR (12/10/2021)