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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.20237 and 20238 of 2021

G.Anbazhagan ... Petitioner
in W.P.No.20237 of 2021

N.Sakunthala ... Petitioner
in W.P.No.20238 of 2021

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam,
Chennai 34
2. The Joint Commissioner
Hindu Religious and Charitable Endowment Board
Siththarkadu
Mayiladuthurai - 609 003
Mayiladuthurai Taluk
Mayiladuthurai District
3. The Assistant Commissioner
Hindu Religious and Charitable Endowment Board
Ayikulam Road
Kumbakonam, Kumbakonam Taluk
Thanjavur District
4. The Executive Officer
A/M Rathinapureeswarar Temple
at Sivaloganathaswami Temple
Thirupunkur - 609 112
Sirkali Taluk
Mayiladuthurai District

... Respondents
in both writ petitions

Prayer in both WPs:Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to consider and pass orders on the representation dated 01.08.2021 made by the petitioner to split up the tenancy by accepting the petitioner as a tenant and pass such further or other orders as are deemed fit in the circumstances of this case.



For Petitioner : Mr.R.Gururaj

For Respondents : Mr. NRR Arun Natarajan
Government Advocate

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COMMON ORDER

Captioned writ petitions are in the Admission Board. Mr.R.Gururaj, learned counsel representing the counsel on record for writ petitioners in the two captioned main writ petitions are before me.

2. Mr.NRR.Arun Natarajan, learned State counsel accepted notice on behalf of all the four respondents in both captioned writ petitions and owing to the short point that arises and the narrow compass on which captioned writ petitions turn, with the consent of both sides, main writ petitions were taken up.

3. On first blush, prayers in the writ petitions (which are similar) come across as innocuous as the prayers only seek to mandamus the respondents to consider and pass orders on writ petitioners' representation dated 01.08.2021. To be noted, the writ petitioner in each of the captioned writ petitions have sent separate representations, both dated 01.08.2021, but with similar contents.

4. It is the case of the writ petitioners that their ancestors / predecessors became tenants under 'Arulmighu Rathinapureeswarar Swami Thirukoil, Thiruvalaputhur, now Mayiladuthurai District' (hereinafter 'said temple for the sake of convenience and clarity) almost a century ago vide what is styled as a 'Registered Rent Deed' dated 24.04.1926. The manner in which the writ petitioners came into possession of the demised land/properties of said temple is captured in Paragraphs 3 to 6 of the representation, which reads as follows:

' 3) The temple property is north of a channel and south and west of patta property. At a time when the temple was looked after by trustees and the H.R & C.E Act had not come into force, the property was rented out to Muthu Nadar, son of Sabapathi Nadar, under a registered rent deed dated 24.4.1926.

4) The property that is found in the north and east of temple property is patta property of Muthu Nadar. The temple property was given on rent to Muthu Nadar. The rent deed says specifically that Muthu Nadar was entitled to put up a tiled house and to enjoy fruits of trees, except Iluppai trees.

5) In fact, Muthu Nadar was doing a lot of service for the deity and he was known as "Mirasu"



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(or) Miras. That was also a reason the property was rented out to him. The annual rental was fixed at Rs.8/-.

6) Muthu Nadar had 3 sons. The eldest son Vellaisamy, died in 1994. The second son Kumaraswamy died in 1997. The last son Govindasamy, died in 1996. Vellaisamy had 4 sons. Among them Mani and Bhagavathi is alive. Mani is living somewhere near Tiruppur. Bhagavathi is here. Other two sons Rajarathinam and Asaithambi were dead. It is said that the wards of the dead are claiming their share of the said property. Govindasamy's only son Anbazhagan is No.2 of us. Kumarasamy had 3 sons and 5 daughters. No.1 of us is one of the daughters.'

5. The representation goes on to say that the writ petitioners are paying rent periodically and this Court is informed that rent is a mere Rs.1000/- per annum and the extents in occupation qua writ petitioners are 5180 sq.ft with regard to one individual (writ petitioner in W.P.No.20238 of 2021) and 6832 sq.ft with regard to another individual (writ petitioner in W.P.No.20237 of 2021).

6. Learned counsel for writ petitioner submitted that the prayer is innocuous and he only wants the representations dated 01.08.2021 to be disposed of.

7. Learned State counsel, who accepted notice on behalf of all the five respondents, based on records submitted that prior to the 'representation dated 01.08.2021' (hereinafter 'said representation' in singular and 'said representations' in plural for the sake of convenience and clarity), the said temple has issued a notice dated 12.06.2020 cancelling the century old lease and also making it clear that if possession of demised lands / properties are not handed over to said temple proceedings under Section 78 of the 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959)' [hereinafter 'TN HR & CE Act' for the sake of convenience] would be commenced.

8. In response to aforementioned 12.06.2021 notice, writ petitioners in both the writ petitions have given separate representations, both dated 23.06.2020. 1

9. Scanned reproduction of aforementioned 12.06.2021 notice and the separate representations given by the writ petitioners dated 23.06.2020 are as follows:



**அருள்மிகு ரெத்தினாபீஸ்வார் திருக்கோயில்,
திருவாளப்பத்தூர், மயிலாடுதுறை வட்டம்.**

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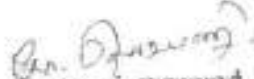
அறிவிப்பு

நாள் : 12.06.2020

மேற்படி திருக்கோயிலுக்குச் சொந்தமான மயிலாடுதுறை வட்டம், திருவாளப்பத்தூர் கிராமப் புல எண் 47-65ல் கமர் 16432 சதுர அடி திருவெள்ளைச்சாமி, ந/பெ என்பவருக்கு நிர்வாகத்தில் மூலம் மாணா குடியிருப்பு வசதிகளுக்கு விடப்பட்டிருந்தது மேற்படி மூலமும் ஆய்வு செய்யப்பட்டபோது மேற்படி நிலத்தில் குத்தகை விதிமுறைகளை மீறி செங்கல் வைத்து கட்டிடம் கட்டப்பட்டுள்ளதும் மூல குத்தகைதரன் காலவாதி இருப்பதும் தெரியவந்தது அவ்விடத்தில் ஒரு பகுதி 6120-சதுர அடி மனவைய திரு அன்பழகன் ந/பெகோமித்தளமி ஆகிய தீர்கள் ஆக்கியாய்வு செய்து அனுப்பித்து வருகிறீர்கள்.

இது அத்துமீறிய செயலாகும். எனவே இந்த தோட்டம் கிடைத்த ஒரு வார காலத்தில் இலாகா அலுவலர் இன்றி கட்டிட கட்டிடத்தை அப்பாற்படுத்தி அவ்வது தீர்க்கணம் கட்டப்பட்டுள்ள கட்டிடத்தை திருக்கோயில் வரம் எழுத்து பூர்வமாக ஒப்படைப்பு செய்து தரங்கள் மேற்படி இடத்தைவிட்டு வெளியே வேண்டுமென இதன் மூலம் உத்தரவு இடப்படுகிறது தவறும் மட்சத்தில் சென்னை உயர்நீதிமன்ற நீதிமேலாணை மனுக்கள் W.P.(M.D) No. 14428/2017 மற்றும் 16833/2017 நாள்.12.02.2018 உத்தரவின்படியும், சென்னை இந்து சமய அறநிலையத்துறை ஆணையர் அவர்களின் செய்தித்தாள் அறிவிப்பின்படியும் தீர்க்கண ஆக்கியாய்வுகளாக கருதி இந்து சமய அறநிலையத்துறை இலாண் ஆணையர் மற்றும் உதவி ஆணையர் அவர்கள் மூலம் சட்டப்பிரிவு 78-ன் கீழ் உரிய நடவடிக்கை மேற்கொண்டு திருக்கோயில் இடத்தில் இருந்து அப்பாற்படுத்தப்படுவீர்கள் என்பதை இதன்மூலம் அறிவிக்கப்படுகிறது.

இதனால் ஏற்படும் சகல நஷ்டத் தொகையினையும் வரும் செய்தி. நீதி மன்றம் மூலம் தீர்க்க இது சொந்த சொத்திலிருந்து எடு செய்க வேண்டும் என்பதை இதன் மூலம் தெரிவிக்கப்படுகிறது.


செயல் அலுவலர்
க/ச. வத்தவழிச்சு கமர் சித்தர்
திருவாளப்பத்தூர்
செங்கல்புரை (வட்டம்)

நகல் பணித்து அனுப்பப்படுகிறது.

1. இலாண் ஆணையர், இந்து சமய அறநிலையத்துறை, மயிலாடுதுறை.
2. உதவி ஆணையர், இந்து சமய அறநிலையத்துறை, கும்பகோணம்.

பதிவு அஞ்சல் மூலமாக அட்டைபடி.

அனுப்பதல்,

செயல் அலுவலர்,
அருள்மிகு ரெத்தினாபீஸ்வார் திருக்கோயில்,
திருவாளப்பத்தூர்.
இருப்பு.அருள்மிகு சிவகோகநாதகவாமி
திருக்கோயில், திருப்பங்குடி,
சீகாழி வட்டம். 609 112.

வெறுதல்,

திரு.கோ அன்பழகன்,
ந/பெகோமித்தளமி,
மெயின்ரோடு,
அறன்மேலப்பு திருவாளப்பத்தூர்,
மயிலாடுதுறை வட்டம். 609 205



திகதி : 12.06.2020



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RPAD

Vaithiyampattai
25.6.2020

From

G. Anbazhagan
S/o M. Govindasamy Nadar
Main Road, Vaithiyampattai
Thiruvalluvar - 609205
Mayiladuthurai - Taluk.

To

The Executive Officer
A.M. Basheerappaswami Thirukoil, Thiruvalluvar
Camp at
A.M. Sivaloganaswami Temple
Thirupangur-606112, Sirkali Taluk.

Sir,

Ref: Your Notice dated 12.6.2020 signed by you on 15.6.2020

1) My late grand father Mullu Nadar originally had been in enjoyment of land situated in S.NO.479B on Pagarthy lease arrangement with Devasthanam. The lease arrangement of the land was for residential purpose. After becoming a lessee of the site under Devasthanam, he erected a residential house thereon in the year about 1920 and the land had been in enjoyment till his death by paying Pagarthy rent to the land. After his death, the house property was partitioned among his sons - namely Vellaisamy Nadar, Kumarasamy Nadar (Mrs. Sahanthala's father) and Govindasamy Nadar (My father). Besides, they have been in enjoyment of their respective share of the land by paying pagarthy rent in respect of site to the temple. The leasehold right was transferred to the name of Vellaisamy Nadar in the temple records, as he was the eldest among sons.

2) The transfer of leasehold right into the name of Vellaisamy was done only on behalf of family in his capacity as senior member. My father Govindasamy Nadar and another paternal uncle Kumarasamy Nadar (Mrs. Sahanthala's father) continued to pay the lease rent to temple.

3) After death of my father, I continue to enjoy his share of the land by paying rent to temple in respect of site. Thus the brick structure mentioned in your notice has been in possession and enjoyment of our family for many years. We have been paying pagarthy rent for the site to the temple and we are ready to pay reasonable fair rent in respect of the site to the temple, whenever it is fixed in accordance with law. The description given in your notice as if I am trespasser is not correct and the same is hereby denied. Till recent from year I paid rent to the temple and obtained receipts.

4) It is also brought to your kind notice that, taking into account of COVID-19 pandemic, the Hon'ble High court by order dated 26-3-2020, 15-4-2020 and 1-5-2020 in Suo Motu Writ Petition No 7413/2020 passed an order staying all eviction proceedings in pursuance of any order passed by High court. Hence you are requested not to take any coercive steps when the above said High court stay order is in force.



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5) I also reiterate that I paid rent up to last fiscal year and I am ready and willing to continue payment of fair rent in respect of site to the temple as and when it is fixed in accordance with law.

Yours Faithfully,

N. Sekunthala
[N. Sekunthala] 23.6.2020

1) The Joint Commissioner
Hindu Religious and Charitable Endowment Office
Meyyandhurai - 605 003.

2) The Assistant Commissioner
Hindu Religious and Charitable Endowment Office
Kumbakonam

10. Faced with the above situation, learned counsel for writ petitioners submitted that he does not have instructions regarding the 12.06.2021 notice or the earlier representation dated 23.06.2020 given by the writ petitioners. To be noted, 23.06.2020 representations from the two writ petitioners clearly refers to 12.06.2021 notice issued by said temple, more particularly by the Executive Officer of the said temple.

11. In the light of the narrative thus far, I am not inclined to accede to the prayer in the main writ petitions and the reasons are as follows:

a) to seek mandamus, a writ petitioner should have a legal right and this principle was laid down by Hon'ble Supreme Court way back in 1969 in the oft-quoted Praga Tools case law [Praga Tools Corporation Vs. Imanuel and others reported in AIR 1969 SC 1306]. Hon'ble Supreme Court held that condition precedent for issue of mandamus is that one claiming a mandamus should have a legal right to the performance of a legal duty against whom mandamus is sought. This principle has stood the test of time. Relevant paragraph in Praga Tools is paragraph No.6 and the same reads as follows:

6. In our view the High Court was correct in holding that the writ petition filed under Article 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not be, but the company who sought to implement the impugned agreement. No



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High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See *Sohan Lal v. Union of India*), [1957 SCR 738] In *Regina v. Industrial court* [(1965) 1 QB 377] mandamus was refused against the Industrial court though set up under the Industrial courts Act, 1919 on the ground that the reference for arbitration made to it by a minister was not one under the Act but a private reference. "This Court has never exercised a general power" said Bruce, J. in *R. v. Lawisham Union* [(1897) 1 QB 498, 501] "to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties". Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the Statute under or by which the society



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is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. [Cf. Halsbury's Laws of England, (3rd ed.), Vol. II, p. 52 and onwards].

b) In the instant case, I am unable to persuade myself to believe that a person whose predecessors became a tenant under said temple more than a century ago, has any legal right qua said temple particularly when the lease has been cancelled on 12.06.2020 and writ petitioners became encroachers qua temple property on such cancellation by operation of Statute i.e., Section 78 of TN HR & CE Act;

c) Equities are also clearly against answering in the affirmative the prayers in the writ petitions as rent of Rs.1000/- per annum for extents of lands admeasuring 5180 sq.ft (with regard to writ petitioner in W.P.No.20238 of 2021) and 6832 sq.ft (with regard to writ petitioner in W.P.No.20237 of 2021) is clearly not just a song but is a throw away in every sense of the term. It comes across as a fairy tale. It appears to be fiction and it is a classic case that reminds us of the age old adage 'facts can be stranger than fiction'. However, the Executive Officer has now woken up and issued a notice and has also made it clear that proceedings under Section 78 of TNHR & CE Act will be initiated. To be noted, Rs.1000/- per annum is less than Rs.100/- per month (it is around Rs.83/- per month) and I wonder if any property is available for rent at Rs.83/- per month today even in remotest of hamlets. Therefore, any directive/mandamus at this stage will clearly impede the process which the Executive Officer has now right earnest intends to commence. The earlier notice dated 12.06.2020 and earlier representations dated 23.06.2020 given by both writ petitioners have neither been annexed as part of the typed-set nor is there any mention about the same in the writ affidavit. Though I do not want to go as far as saying this is suppression, I am definitely inclined to say that it is only fair that this should have been brought to the notice of this Court by way of necessary averments in the writ affidavit and made part of the typed-set of papers. To be noted, scanned reproduction supra make it clear that writ petitioners themselves have referred to 12.06.2020



notice in their earlier representation.

d) The temple lands vest in the idol, idol being of minor status in law, this Court is guardian. In other words, this Court is parens patriae and this principle was reiterated by Hon'ble Supreme Court in A.A.Gopalakrishnan case [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. Therefore, in my parens patriae capacity i.e., parens patriae capacity of this Court and custodia legis qua temple properties that vest in idol in minor status, I deem it appropriate to say that the prayer which on first blush came across as innocuous, cannot be acceded to.

e) It is well open to the writ petitioners to surrender possession of the demised lands/properties and participate in a fresh public auction if fresh public auction is held or if lease rent under Section 34-A of TN HR & CE Act is fixed. If the said temple needs the lands for some other purpose, this observation will not come in the way of said temple looking into any other avenues. It is made clear that this observation is only if said temple desires to let out the demised property on lease again and it is at the discretion of the said temple depending on needs/requirements i.e., ground situation,

f) The above discussion is made only to make it clear that though the non-disclosure of 12.06.2020 notice and 23.06.2020 earlier representations may tantamount to disqualifying the writ petitioners, considering the century old tenancy of the predecessors, this leeway / window is given to writ petitioners making it clear that this will not serve as a precedent in the days to come.

g) All the rights available to a noticee qua section 78 proceedings including questions raised in the captioned writ petitions and in the representations are available to the writ petitioners also. Exercising my parens patriae jurisdiction (A.A.Gopalakrishnan principle, set out supra), I have resorted to the residuary limb of the prayer i.e., 'pass such further or other orders as are deemed fit in the circumstances of this case' and observations. On the same basis I also hold that it would be appropriate for the fourth respondent Executive Officer to kick start the proceedings under Section 78 of TN HR & CE Act



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before the jurisdictional Joint Commissioner and for the jurisdictional Joint Commissioner to conclude the same in accordance with law as expeditiously as possible and in any event on or before 31.12.2021.

Owing to the reasons set out supra, captioned writ petitions are dismissed albeit making the aforesaid observations which will ennure to the benefit of the writ petitioners if that be so in the days to come. There shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Gpa

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam,
Chennai 34
2. The Joint Commissioner
Hindu Religious and Charitable Endowment Board
Siththarkadu
Mayiladuthurai - 609 003
Mayiladuthurai Taluk
Mayiladuthurai District
3. The Assistant Commissioner
Hindu Religious and Charitable Endowment Board
Ayikulam Road
Kumbakonam, Kumbakonam Taluk
Thanjavur District

+1cc to the Government Pleader, S.R.No.18715

W.P.Nos.20237 and 20238 of 2021

NR(CO)
GN(20/10/2021)