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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE M.SUNDAR

W.P.No.18758 of 2021

and

W.M.P.Nos.20047 & 20049 of 2021

P.S.Educational Society
Represented by its Secretary
Mr.K.V.S.Gopalakrishnan,
215, R.K. Mutt Road,
Mylapore, Chennai - 600 004.

... Petitioner

Vs.

1. The Joint Commissioner, (Chennai Zone-II)
Hindu Religious & Charitable Endowments,
No.130, R.K. Mutt Road,
Mylapore, Chennai - 600 004.
2. The Joint Commissioner / Executive Officer,
Arulmighu Kapaleeshwarar Temple,
Mylapore, Chennai - 600 004.
3. Assistant Commissioner
Hindu Religious & Charitable Endowments,
Padi, Chennai - 600 050.
4. The Commissioner,
Hindu Religious & Charitable Endowments
Chennai - 600 034.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the 1st respondent to conduct enquiry M.P.No.57 of 2013 strictly in accordance with law and in compliance with the principles of Natural Justice and further communicate any orders passed therein to the petitioner with sufficient time to the petitioner to comply or challenge the same in accordance with law.

For Petitioner	: Mr.K.Harishankar Assisted by Mr.B.Gopinath
For Respondents	: Mr.R.Shanmugasundaram Advocate General assisted by



Mr.NRR.Arun Natarajan
Government Advocate &
Mr.G.Sarath Babu

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ORDER

This consent order will dispose of Captioned main Writ Petition and the two 'Writ Miscellaneous Petitions' ('WMPs' in plural and 'WMP' in singular for the sake of convenience and clarity) i.e., captioned WMPs.

2. Mr.K.Harishankar, learned counsel assisted by Mr.B.Gopinath, learned counsel for writ petitioner and Mr.R.Shanmugasundaram, learned Advocate General instructed and assisted by Mr.NRR.Arun Natarajan, learned State Counsel and learned counsel Mr.G.Sarath Babu are before this Court.

3. As the captioned Writ Petition and WMPs are being disposed of by a consent order, it is not necessary to delve into facts in detail and it will suffice to set out bare minimum essential facts that are imperative for appreciating this order.

4. Bare minimum essential facts in a nutshell are that the writ petitioner is an Educational Society which runs several Educational Institutions inter alia in the City of Chennai and one of the Educational Institutions is 'P.S. Higher Secondary School at No.215, R.K. Mutt Road, Chennai - 600 004' (hereinafter 'said School' for the sake of convenience); that the said School is a 115 years old School; that the said School is a Government aided School; that said School is a lessee under 'Arulmigu Kapaleeshwarar Temple, Mylapore, Chennai' (hereinafter 'said Temple' for the sake of brevity) qua a vast parcel of vacant land which is used as playground for said School; that this playground ad-measures 46 grounds 886 sq.ft. and it shall hereinafter be referred to as 'demised playground' for the sake of convenience and clarity; that the original lease was for a much larger extent, but a part of that larger extent is now in the possession of said Temple and therefore, we are now concerned only with the demised playground; that said Temple terminated the lease on 29.01.1999 and filed a Civil Suit in O.S.No.2632 of 1999 on the file of the II Assistant Judge's Court, City Civil Court, Chennai; that the said suit was dismissed by trial Court vide judgment and decree dated 30.09.2005; that the matter was carried in appeal by way of a regular First Appeal filed under Section 96 of 'The Code of Civil Procedure, 1908' (hereinafter 'CPC' for the sake of brevity) by said Temple vide A.S.No.255 of 2006 on the file of the II Additional Judge's Court, City Civil Court, Chennai and the First Appellate Court also dismissed the Appeal vide



judgment and decree dated 25.07.2006; that said Temple has carried the matter to this Court by way of a Second Appeal being S.A.No.1252 of 2007 obviously under Section 100 CPC; that the Second Appeal is now pending; that in the interregnum, there was an amendment to the 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22/1959)' {hereinafter 'TN HR & CE Act' for brevity}; vide amendment which came into effect on and from 09.12.1996, Section 78 was brought into the Statute Books qua TN HR & CE Act; that under Section 78, a lessee whose lease period has elapsed or whose lease is terminated would also become an encroacher if the lessor continues to remain in the demised property and if the lessor is a Religious Institution or Endowment under TN HR & CE Act; that said Temple is a Religious Institution under TN HR & CE Act is not undisputed; that said Temple is under the management and control of 'Tamil Nadu Hindu Religious Department, Government of Tamil Nadu' (hereinafter 'TN HR & CE Department' for the sake of brevity); that said Temple commenced proceedings under Section 78 of TN HR & CE Act qua demised playground and the same is M.P.No.57 of 2013 on the file of the first respondent; that the jurisdictional Joint Commissioner (first respondent in this case) is the Statutory Authority vested with powers under Section 78 of TN HR & CE Act to exercise powers thereunder; that the first respondent reserved orders in M.P.No.57 of 2013 on 31.08.2021; that said School assailed these proceedings inter alia on the ground that there was no adjudication in accordance with Section 78 and orders were reserved based on written submissions submitted by said School; that the writ petition is now before this Court i.e., Captioned Writ Petition.

5. It is to be noticed that when the above proceedings were underway, respondents embarked upon the exercise of demanding a sum of Rs.12,99,88,864/- towards arrears of rent for the period from 01.11.2001 to date by saying that the same is the difference between contractual rent of Rs.1250/- per month and what according to the respondents is fair rent for various periods.

6. As already alluded to supra, captioned Wit Petition and WMPs are being disposed of by a consent order and therefore, it is not necessary to capture the grounds on which the writ petition is predicated and the counter submissions on which the grounds are resisted.

7. However, it is imperative to capture the submission of learned Advocate General, on instructions, as that is also essential to appreciate this order. Learned Advocate General submitted that demised playground will continue to be maintained as a playground and that it will not be put to any other use



without leave of this Court. It was also elaborated by learned Advocate General that this is a policy decision which the Government has taken, taking into account the location of the demised playground and the need for a playground for the local populace, particularly children studying in various Schools in that area/locality and more particularly Government Schools and Chennai Schools, which do not have a playground. This makes the task of disposing of captioned Writ Petition by a consent order fairly simple.

8. In the light of the aforementioned stated position of State, learned counsel for writ petitioner submitted that it would only be appropriate that the writ petitioner surrenders possession of demised playground to the said Temple forthwith as it would serve larger public utility and larger public interest. Regarding the balance of the larger extent qua demised playground, possession of which is already with said Temple, all questions are left open.

9. In the light of the narrative thus far, captioned Writ Petition and WMPs are disposed of on following terms:

(a) Writ Petitioner i.e., said School shall surrender possession of said demised playground admeasuring 46 grounds 886 sq.ft. to said Temple forthwith and in any event, before close of working hours on 09.09.2021.

(b) The claim of Rs.12,99,88,864/- or in other words little over Rs.12.99 Crores towards difference between contractual rent and rent fixed is set at naught i.e., set aside as there will be a directive infra to fix lease rent for demised playground, strictly in accordance with Section 34-A of TN HR & CE Act and arrears claim will be on this basis. Therefore, proceedings of said Temple dated 08.03.2019 made in Na.Ka.722/1989/A4 is set aside without expressing any opinion on the merits of the matter merely to facilitate fixation of lease rent for demised playground strictly in accordance with Section 34-A.

(c) Respondents shall fix lease rent for demised playground strictly in accordance with Section 34-A of TN HR & CE Act (which kicked in on and from 10.05.2003) as expeditiously as possible and in any event within eight weeks from today i.e., on or before 02.11.2021.



(e) To show the bona fides, writ petitioner will pay a sum of Rs.50,00,000/- (Rupees Fifty lakhs only) to said Temple and this will be on account towards rental arrears subject to fixation of lease rent in accordance with Section 34-A of TN HR & CE Act.

(g) It is open to said Temple/respondents to let out demised playground to other Schools/Educational Institutions on daily rent qua terms that are deemed appropriate. This will include giving it free of charges to Chennai Schools or any other School at the discretion of the State.

(h) The above option will be available to the writ petitioner also and priority shall be given to said School to the extent it is practicable regarding Sports day, Annual day or any other recurring Annual function that the said School has been conducting hitherto.

(i) If there is any request or representation from the writ petitioner qua demised playground, it is open to the State to consider the same on its own merits and in accordance with law without this order coming in the way. In other words, this order will neither impede nor serve as an impetus if such representation is made. This limb of the operative portion is made as it is a consent order and therefore, it will not serve as a precedent in cases of similar nature.

(j) The Second Appeal being S.A.No.1252 of 2007 will either be withdrawn or closed as infructuous and State which is the Appellant undertakes to do the needful in this regard.



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(k) On possession being handed over by writ petitioner / said School to said Temple on or before 09.09.2021 aforementioned M.P.No.57 of 2013 on the file of first respondent will be closed as infructuous.

10. Captioned Writ Petition is disposed of by this consent order on above terms. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)
//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Joint Commissioner, (Chennai Zone-II)
Hindu Religious & Charitable Endowments,
No.130, R.K. Mutt Road,
Mylapore, Chennai - 600 004.
2. The Joint Commissioner / Executive Officer,
Arulmighu Kapaleeshwarar Temple,
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Padi, Chennai - 600 050.
4. The Commissioner,
Hindu Religious & Charitable Endowments
Chennai - 600 034.

+2CCs Mr.K.Harishankar, Advocate, Sr.No.45363
+1CC to Government Pleader, Sr.No.45988

W.P.No.18758 of 2021

KSM (CO)
K.RK. (24.09.2021)