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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19851 of 2021

S.Ganesan

...Petitioner

Vs

1. The Secretary to Government,
Tourism Cultural and Religious
Endowments Department,
Government of Tamil Nadu,
Secretariat,
Fourth Floor,
Fort St George,
Chennai - 600 009.

2. The Commissioner,
Hindu Religious and
Charitable Endowments Board,
Nungambakkam,
Chennai - 600 034.

3. Arulmighu Vellapillaiyar Tirukovil,
Represented by its Executive Officer,
Attur Town,
Salem District.

4. S.Govindarajalu,

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the first respondent to dispose off the revision petition dated 20.12.2019, filed under section 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

For Petitioner : Mr.T.M.Mano

For Respondents : Mr.N.R.R.Arun Natarajan
Government Advocate
[For R1 to R3]



O R D E R

The Writ of Mandamus has been instituted to direct the first respondent to dispose off the Revision Petition dated 20.12.2019 filed under Section 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as "HR & CE Act"]

2. Though, it appears that the relief sought for is to dispose of the Statutory Revision Petition, this Court has to ascertain the rights of the petitioner for the purpose of considering the relief as it is the pre-condition for the purpose of entertaining a writ petition under Article 226 of the Constitution of India.

3. The petitioner states that during the year 1948, the land belongs to the temple was leased out to his father Mr.Sarangapani Naidu and the father of the writ petitioner had constructed a building and commenced a hotel under the name and style of "Hotel Gowrishankar". Until 1982, there was no dispute over any issue. After the death of the father of the petitioner, the brother of the petitioner Mr.Govindarajalu stealthily obtained a transfer of the lease in his name and later it was changed in the name of his wife.

4. The Petitioner states that the name transfer was illegal and void, in view of Section 34 of the HR & CE Act. The brother of the petitioner Mr.Govindarajalu is a defaulter in payment of rent. The lease agreement was not extended. Under these circumstances, the petitioner filed the writ petition for the purpose of disposing of the Revision Petition, said to have been filed before the first respondent under Section 114 of the HR & CE Act.

5. The learned Government Advocate appearing on behalf of the respondents contended that during earlier occasion, the very same petitioner filed a Revision Petition under Section 114 of the Act on 25.09.2014 and the Government elaborately considered the merits of the case and passed an order in G.O.Ms.No.109, Hindu Religious and Charitable Endowments Department dated 21.04.2017. The Government considered the facts as well as the issues raised by the petitioner in all respects and the findings are elaborate in respect of the rights of the petitioner for transfer of name in the lease deed. The said Government order dated 21.04.2017 reveals that the petitioner is going on litigating the issues and attempting to grab the land belongs to the temple. As of now, there is no lease granted in favour of the petitioner or in the name of his brother. Both of them are not recognized as a tenant in respect of the subject temple property. They are in illegal occupation and the petitioner attempts that he is not in occupation of premises and his



brother is in occupation of the temple property. In view of the family dispute between the petitioner and his brother, the petitioner is going on litigating the issues. However, on verification, the temple authorities found that the brother of the petitioner, Mr.Govindarajalu is also an encroacher and appropriate actions were initiated. Eviction order was already passed by following the procedures as contemplated under Section 78 of the HR & CE Act. However, in view of various litigations and petitions pending, the eviction order is yet to be executed. The subject property belongs to the temple is abused by the family of the petitioner for several years, which resulted huge financial loss to the temple. Even the rent is not being paid either by the petitioner or by his brother Mr.Govindarajalu. The Earlier writ petition filed by the writ petitioner to consider the Revision Petition was obtained by not elaborating the clear facts in these aspects. Further, the petitioner came forward to settle the arrears of rent, but the Government remains that till today, the arrears of rent have not been paid to the authorities.

6. Under these circumstances, this Court is of an opinion that the petitioner has not established that he is a lessee / tenant recognized by the temple authorities under the provisions of the HR & CE Act. The petitioner himself admitted that his brother also is not having any valid lease and in view of Section 34, the lease was allegedly granted in favour of his father and has expired and Commissioner has not granted any further permission required under Section 34 of the HR & CE Act.

7. The petitioner admitted the fact that he is not in possession of temple property. The petitioner further admitted that his brother Mr.Govindarajalu is in possession of the temple property. Thus, due to family dispute between the brothers, the petitioner is litigating one way or other to get lease from the temple authorities. Consistently, the temple authorities rejected the claim of the petitioner. However, the petitioner has approached the authorities repeatedly and filed writ petitions only for the purpose of disposing of such appeals or Revision petitions. Even the condition imposed by this Court for deposit of arrears of damages was not done by the petitioner so far. However, the petitioner states that the said amount has not been accepted. Whether it is accepted or not accepted, this Court is of the considered opinion the petitioner himself admits that he is not in possession of the temple property nor he is the holder of any valid lease agreement. Thus, the petitioner has not established any right to claim against the subject property belongs to the temple.

8. As far as the property is concerned one Mr.P.Selvarajan filed W.P.No.28499/2018, stating that there is an illegal occupation in respect of the temple properties and



sought for eviction of these illegal occupants and for adopting transparent procedure of public auction. This Court passed an order in said writ petition to remove the encroachments by following procedures as contemplated under Section 78 of the HR & CE Act and thereafter fix fair rent through contemplate committee and thereafter, the temple properties are to be dealt in a manner known to law. Pursuant to the orders passed by this Court, the temple authorities initiated action under Section 78 of the HR & CE Act and an eviction order was passed against the brother of the writ petitioner Mr.Govindarajalu.

9. Pursuant to the order, eviction proceedings are initiated and the brother of the petitioner is also a party in the eviction proceedings. Eviction order was passed against the brother of the writ petitioner. However, the brother of the writ petitioner Mr.Govindarajalu has not preferred any appeal against the eviction order so far. Thus, the brother of the writ petitioner is also an illegal occupant and eviction order has already passed against him.

10. This being the factum established, the relief as such sought for to consider the Revision Petition would not arise at all as the petitioner has not established even a semblance of legal right, so as to consider the relief. However, the fact remains that eviction order has already been passed against the brother of the writ petitioner and the brother of the writ petitioner has not filed any appeal against such order. Therefore, there is no impediment for the authorities to complete the eviction process and take possession of the temple property and deal with the property in accordance with the provisions of law. As far as the petitioner is concerned, he is not entitled for any relief as the petitioner himself admitted that the lease was not granted in his name nor he is in occupation of the temple property as of now.

11. It is needless to state that after evicting the illegal occupants, if a decision is taken by the temple authorities to conduct a open auction, then the petitioner is at liberty to participate in such open auction, if any application is made by the petitioner. In view of the fact that the petitioner has not established any right, the Revision Petition filed before the first respondent under Section 114 of the HR & CE Act lost its significance and no further deliberation or consideration is required to be exercised by the first respondent. Thus, the respondents 1 to 3 are directed to evict the fourth respondent from the temple premises immediately as the eviction order has been passed long back.



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12. With these directions, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The Secretary to Government,
Tourism Cultural and Religious
Endowments Department,
Government of Tamil Nadu,
Secretariat,
Fourth Floor,
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Chennai - 600 009.
2. The Commissioner,
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3. The Executive Officer,
Arulmighu Vellapillaiyar Tirukovil,
Attur Town,
Salem District.

+1CC to M/s.Govind Chandrasekhar, Advocate, SR.No. 49529

W.P.No.19851 of 2021

AK II(CO)
B.VC (06/10/2021)