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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-11-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.25059 of 2021

And

WMP No.26399 of 2021

K.A.Sreedharan

..

Petitioner/Petitioner

vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Chennai - 600 034.

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

3.The Executive Officer,
M/s.Arulmigu Maagaliyamman Thirukovil,
Rangegowder Street,
Coimbatore - 641 001.

..Respondents/Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to furnish the order No.Na.Ka.2945/2017/A4 dated 20.04.2017 of the second respondent referred in the letter dated 28.07.2020 of the third respondent.

For Petitioner : Mr.A.Ashok Kumar

For Respondents : Mr.N.R.R.Arun Natarajan,
Special Government Pleader.



O R D E R

Right of a citizen and infringement of right or prima facie case must be established for the purpose of entertaining a writ petition under Article 226 of the Constitution of India. The High Court is bound to consider the entertainability of the writ petition and the person approaching the Court must be able to establish his right or its infringement or otherwise. In the absence of any semblance of right, entertaining a writ petition in a mechanical or routine manner would not only overburden the High Court, but also would cause prejudice to the rights of the opposite parties.

2. Admittedly, the subject property is a Temple property. The minor Deity is the owner of the property. The High Court, being the custodian of the minor, is bound to protect the interest of the minor Deity, more specifically in Religious Institutions. Thus, the High Court has to interfere in such circumstances even in the absence of initiation of action by the Hindu Religious and Charitable Endowments Department in certain circumstances or inaction by the Authorities due to the active or passive collusion with the Private Parties. Thus, the Court has to go to any extent to protect the minors in such circumstances, more specifically, in respect of Temple properties.

3. Great Souls donated their hard earned money to the Religious Institutions with a greater expectation that their donations will be utilised for the benefit of the temple and to the Devotees of the Temple. If their wishes are not honoured, no doubt, the Competent Authorities and the Trustees of the temple not only committing a sin, but also infringing the right of the minor Deity. Thus, the High Court cannot sit as a mere Spectator in respect of infringement of the right of the minor Deity in the Temple.

4. Coming to the case on hand, the learned counsel for the petitioner vociferously contended that the petitioner has got a right to continue his possession in the temple property. The petitioner is a leaseholder and in possession of the property right from the year 1960 onwards. The petitioner is now aged about 90 years and his son is assisting him to carry on the business in the temple property. When the Authorities are not acting in a fair manner, the petitioner is forced to file the present writ petition in order to get the copy of the communication.



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5. The relief sought for in the present writ petition is to direct the respondents to furnish the order dated 20.04.2017 of the second respondent referred in the letter dated 28.07.2020 issued by the third respondent.

6. The genesis of the litigation would purportedly commence in this fashion and it will be protracted one way or the other for unjust gains for the lease taken out by the leaseholders. The High Court, at no circumstance, encourage such practice of litigative possession of the Temple properties by the third parties. These litigative processes and practices are increasing one way or the other to prevent the Competent Authorities from exercising the powers conferred under the Hindu Religious and Charitable Endowments Act [hereinafter referred to as the 'Act', in short] and the Rules. Thus, the Competent Authorities are also expected to be vigilant in responding such litigative tactics being adopted by the litigants one way or the other by filing writ petitions without establishing their basic rights. Thus, at all circumstances, the Competent Authorities as well as the Courts are expected to ascertain the rights of a person at the first instance and thereafter entertain the writ petition for adjudication and if the right is not established, then they have no locus standi to enter into the process of adjudication and such vexatious or unsustainable petitions cannot be allowed to be overburdened either before the Department or before the Courts.

7. Under Section 34 of the Act, the Competent Authorities/ Trustees are empowered to grant lease of the Temple property for the maximum period of five years. Beyond the period of five years, the lease may be extended only with the prior approval of the Commissioner of HR&CE Department. Under Section 34A of the Act, the Authorities Competent has to fix the lease rent and such rent is to be periodically revised once in three years. The Competent Committee is to be constituted, who in turn fix the prevailing market rental value of the Temple property and recover the rent from the Lessees.

8. This being the principles contemplated under the provisions of the Act, in the present case, the petitioner was paying a meagre amount of Rs.4,000/- per month for long years and the revision of rent effected in the year 2016 by the Authorities are being questioned by the petitioner by stating that the said communication was not served on him.

9.



9. Let us now look into the proceedings of the Department. The notice dated 10.09.2020 issued by the Thakkar addressed to the petitioner reveals that as on June 2020, the arrears of rent to be paid by the petitioner was Rs.1,34,400/-. Four weeks time was granted to pay the arrears of rent. However, the subsequent receipt enclosed along with the writ petition shows that the petitioner paying the arrears of rent in piecemeal and the petitioner has not paid the entire arrears. Again the Thakkar issued notice on 14.12.2020, asking the petitioner to pay the revised rent of Rs.17,200/- and pertinently on 05.01.2021, the petitioner paid a sum of Rs.10,000/- and the receipts are available. Again on 07.01.2021, the petitioner paid a revised rent of Rs.17,200/- for one month. Thereafter on 22.01.2021, the petitioner has paid an amount of Rs.34,400/-. The learned Special Government Pleader, appearing on behalf of the respondents, made a submission that the arrears of rent are not cleared by the petitioner.

10. The Final Notice dated 24.09.2021 was issued by the Temple Authority shows that the rent revised from 01.07.2016 was not being paid by the petitioner punctually on monthly basis and till today, the arrears of rent to be paid amounts to a sum of Rs.1,44,200/-, which is yet to be paid by the petitioner. Thus, the Authority asked the petitioner to pay the said amount within 15 days, failing which actions under Section 78 of the Act, will be initiated. On receipt of the said notice, the petitioner moved the present writ petition for a direction to serve the copy of the order passed by the Authorities revising the rent. But purportedly the idea will be to establish that the petitioner was not aware of the revised fixation of rent made by the Competent Authorities. However, such a plea cannot be entertained as even in proceedings dated 14.12.2020 itself, the revised rent of Rs.17,200/- per month was communicated to the petitioner.

11. At that point of time, the petitioner has not taken any steps to get the copy of the order passing the revised rent. May that it be and the said act of the petitioner would show no difference and he has not paid the arrears of rent so far and continuing his possession in the Temple property without holding any valid lease.

12. Perusal of the records would reveal that the petitioner is not holding any valid lease and the lease granted in the year 1960 got expired on completion of five years of period and there is no documents available to establish that the Commissioner of HR&CE Department allowed the petitioner to



continue beyond the period of five years as contemplated under Section 34 of the Act. Thus, the petitioner cannot be considered as a valid leaseholder and he should be construed as an unauthorised occupant for all purposes.

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13. The Authorities of the Temple has clearly stated that the arrears of rent were being collected without prejudice to the actions to be initiated under the provisions of the Act.

14. This Court is of the considered opinion that it is needless to state that once it is established that a person is in unauthorised occupation, mere payment of arrears of rent would not confer any right to claim leasehold rights, which is otherwise to be conferred or extended in accordance with the provisions of the Act. Thus, mere collection of arrears of rent would not provide any right to the petitioner in respect of occupation of the Temple premises.

15. This apart, frequently, this Court has noticed on account of the inactions on the part of the officials of the HR&CE Department for several years. In many such cases, the Temple property is bound to be maintained by the Temple Authorities, which is to be controlled by the Competent Authorities of the HR&CE Department. The HR&CE Department exercise the control over the Temple activities under the provisions of the Act. Thus, any irregularity, non collection of rent, extension of lease, fixation of fair rent, all must be done scrupulously as per the provisions of the Act.

16. Contrarily, this Court is witnessing day in and day out that the said illegal occupants are many and numerous. In respect of Temple properties and in many such cases, the Lessees are in possession without any authority and actions taken by the Authorities are absolutely not satisfactory. Thus, the Courts are bound to draw factual inference that some Authorities are colluding with such Private Parties on various reasons and on extraneous considerations.

17. This Court would not hesitate to record that corrupt activities are rampant in respect of dealing with Temple properties either at the instance of the Trustees or the Competent Authorities. All these activities are to be brought down and persons responsible and accountable must be prosecuted to protect the interest of the minor Deity in the Temple.

18. These offenders, who all are indulging in such illegal activities are forgetting that they are attempting to



abuse the properties belongs to the minor Deity. Thus, the seriousness must be understood and to be sensitised by the Department and the actions on such illegalities are imminent.

19. This being the facts and circumstances, this Court has no hesitation in arriving a conclusion that the petitioner has not established even a semblance of legal right, so as to entertain the writ petition. The petitioner is not a leaseholder as of now and further the petitioner continued his possession in the Temple properties for about 61 years and an attempt is being made to extend the possession of the property to the son of the petitioner, which can never be allowed and the Temple property must be utilised for the purpose of temple related activities or it is to be leasedout through Open Public Auction for the benefit of the Temple and its activities. Thus, the respondent-Temple Authorities and the HR&CE Department are bound to initiate proceedings under Section 78 of the Act and conclude the same within a period of three months from the date of receipt of a copy of this order. The petitioner is at liberty to submit all the documents before the Authorities Competent if he has got any right for such continuance in the Temple Properties.

20. With the abovesaid directions, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1.The Commissioner,
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Chennai - 600 034.

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M/s.Arulmigu Maagaliyamman Thirukovil,
Rangegowder Street,
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+1cc to Mr.S.Sivalingakesavan, Advocate SR.No.60999
+1cc to the Government Pleader, SR.No.61417

WP 25059 of 2021

KSM(CO)
CB(03/12/2021)