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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.9328 of 2017

and

W.M.P.Nos.10300, 10301, 10302 of 2017
and 20652 of 2021

Mermaid Properties Private Limited
Rep.by its Director P.Ramachandran
1-C, JVL Towers, New No.51
Nelson Manickam Road
Chennai 600 029.

...Petitioner

-Vs-

1. The Secretary
Hindu Religious and Charitable Endowment Department
Fort St.George, Secretariat, Chennai -600 009
2. The Commissioner
HR & CE Department
No.119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.

3. The Executive Officer
Arulmighu Nithya Kalyana Perumal Temple
Thiruvidanthai, Kancheepuram District.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent vide R.C.No.45584/2016/V-2 dated 30.03.2017 and quash the same and issue directions to the 1st respondent to consider the request of the petitioner to grant lease by conducting an enquiry and pass orders in accordance with law relating to grant of lease for the property of an extent of 22 cents out of 31 cents comprised in Survey No.96/1, Thiruvidhanthai Village, Thirupporur Taluk, Kanchipuram District.

For Petitioner : Mr.P.Subba Reddy

For Respondent : Mr.S.Yashwanth,
Additional Government Pleader
- for Respondents 1 and 2
Mrs.V.Srimathi - for R3



O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent vide R.C.No.45584/2016/V-2 dated 30.03.2017 and quash the same and issue directions to the 1st respondent to consider the request of the petitioner to grant lease by conducting an enquiry and pass orders in accordance with law relating to grant of lease for the property of an extent of 22 cents out of 31 cents comprised in Survey No.96/1, Thiruvidhanthai Village, Thirupporur Taluk, Kanchipuram District.

2. The petitioner claims that it is owning lands in S.No.136/1B Part and 136/2, Thiruvidanthai Village, Thirupporur Taluk, Kanchipuram District. The lands in S.No.136/2 was originally purchased by the petitioner company from one Eswaramoorthy Nadar in the year 1992 to the extent of 19.50 Acres vide Document No.887/1992 dated 07.05.1992 and Document No.888/1992 dated 07.05.1992. The petitioner further purchased another piece of land in S.No.136/1B Part to an extent of 1.50 Acres from third parties. These lands are adjacent and next to the lands of Sri Nithya Kalyana Perumal Temple, ie., the third respondent temple to the extent of 0.31 Cents, which is in S.No.96/1. Since the temple land at S.No.96/1 falls between the petitioner's land and the East Coast Road (ECR) and since the petitioner has developed the said land of the petitioner as a gated community, in order to have direct access towards the ECR from the property of the petitioner, this adjacent temple land at S.No.96/1 was required. Therefore, in this regard the petitioner had approached the respondents ie., the temple as well as the HR & CE Department, where, pursuant to a recommendatory communication received in this regard by the HR & CE Department from the Joint Commissioner to the Special Commissioner, HR & CE Department, by proceedings dated 19.01.2007, the first respondent Commissioner had permitted to give the 22 cents out of 31 cents of the land belonging to the temple on lease to the petitioner by issuance of a Government Order in G.O.(D) No.177 dated 08.06.2007.

3. Thereafter, when the petitioner approached for renewal of the said lease, since there had been some issue, the petitioner approached this Court by filing a writ petition in W.P.No.16245 of 2016, where an order was passed by this Court on 28.04.2016, directing the respondents therein to consider the request of the petitioner by affording an opportunity of being heard. Thereafter, the Commissioner, HR & CE Department passed an order on 21.06.2016 for giving extension of lease by fixing a monthly rent of Rs.5000/-.

4. Further, the petitioner had also filed another writ



petition in W.P.Nos.38348 and 38349 of 2016, where the petitioner sought for grant of lease or extension of lease to the petitioner by taking into account the earlier Government Order in G.O.(D) No.177 dated 08.06.2007. Those writ petitions were disposed of by a learned Judge of this Court by an order dated 04.11.2016 dismissing the writ petitions filed by the petitioner. As against which, the petitioner preferred writ appeals in W.A.Nos.6 and 7 of 2017, where a Division Bench of this Court, passed the following interim order on 24.01.2017.

" 3. Accordingly, preserving liberty to the appellant to approach the Commissioner, HR&CE, as expeditiously as possible, offering a minimum donation of Rs.5,00,000/- (Rupees Five Lakhs Only) for securing renewal of leasehold rights / licence for every period of three years and also offering the arrears of lease amount, together with a proposal enhancing by it by a minimum of 15% for every period of three years, we are confident that the same will be considered suitably by the Commissioner.

5. Subsequently, the writ appeals came up for final hearing and were disposed of finally by an order dated 09.03.2017 by the Division Bench, where the following orders have been passed.

" 6. The appellant company was granted lease on 03.08.2007 for a period of three years and the lease period expired on 31.07.2010. As per the learned counsel for the appellant, renewal application submitted by the appellant is pending before the respondent/authorities.

7. During the course of arguments, the learned counsel for the appellant is agreeable to offer donation of Rs.5,00,000/- for securing renewal of leasehold rights for every period of three years and also offering the arrears of lease amount together with a proposal enhancing it by a minimum of 15% for every period of three years.

8. In view of the said submission, the appellant is granted liberty to make the offer before the authority concerned and it is left to the discretion of the authority concerned to decide the claim of the appellant on merits and in accordance with law within a period of three months from the date of the offer so made.

9. The appeals are disposed of and the order of the learned Single Judge made in W.P.Nos.38348 & 38349 of 2016, dated 04.11.2016 is modified to the extent indicated above. No costs. Consequently,



C.M.P.Nos.2631 & 2632 of 2017 are closed.”

6. Thereafter, the petitioner has made applications and representations to consider their request for grant of lease of 22 cents of land. However, after having considered the said request, the Commissioner, HR & CE Department ie., the second respondent, vide his proceedings dated 30.03.2017, having taken note of the objections raised by the third respondent temple, has permitted to execute the lease in favour of the petitioner only in respect of 400 Sq.ft for the purpose of or use of approach road to their land by fixing the rent at Rs.7,000/- per month for a period of three years with various other conditions. Felt aggrieved over the said proceedings dated 30.03.2017, the present writ petition has been filed with the aforesaid prayer.

7. Heard Mr.P.Subba Reddy, learned counsel for the petitioner, who would submit that, whatever the donation which the third respondent temple wants for the purpose of development of the temple that has been since indicated by the earlier orders passed by this Court, even double the amount the petitioner is ready and willing to deposit. Moreover, the long stretch of the land of more than 22 cents running through all along abutting or adjacent to the land belongs to the petitioner, which is the land located in between the land of the petitioner as well as the ECR road, is a barren vacant land, where, there has been no utility for the temple and it has been kept as barren vacant land for time immemorial. When that being so, because the petitioner has taken the said land on lease for several years, it has been developed aesthetically and it has been maintained by the petitioner, by thus, the petitioner prevented or avoided unwarranted encroachment by any unscrupulous persons in the said temple land as it is abutting the ECR Road. Therefore, the third respondent temple can fetch a reasonable money by allotting the said land in entirety ie., 22 cents to the petitioner for a long term lease and for this purpose, if the law does not permit to give long term lease, three years lease given already in the year 2007 extended subsequently, can be further extended from time to time at the expiry of three years, wherein, every three years if they want to enhance the rent, that is also agreeable to the petitioner.

8. Learned counsel for the petitioner further submits that, insofar as the said land is concerned, if it is meant for any other utility for the temple, that too for fetching any revenue, there must be some justification for the H.R.&C.E., Department as well as the temple concerned to refuse to give it to the petitioner by way of lease. Instead, the land since has been kept as a barren vacant land for several decades and continue to be maintained in the same nature, therefore it can be best utilized only to keep it as a land not exploiting the same by



the petitioner except using it only for a small ingress and egress towards ECR Road so that it will be more beneficial to the temple. Hence, the present order which is impugned herein passed by the second respondent Commissioner restricting the land only for 400 Sq.ft instead of 22 cents is totally unwarranted and unjustifiable. Therefore, the impugned order is liable to be interfered with and a consequential direction can be issued to the respondents especially the Commissioner, H.R.&C.E., Department to execute the lease or renew the lease in favour of the petitioner for the entire stretch of 22 cents at least for three years and in respect of the long lease or outright purchase or for exchange of land, the petitioner is ready and willing to give any land as exchange, and the petitioner is also ready to approach the H.R.&C.E., Department as well as the Government and in this regard both authorities may be directed to consider such request, if any, to be made by the petitioner, to be decided on merits under Section 34 of the H.R. & C.E., Act , he contended.

9. Heard the submissions made by Mr.Subba Reddy, learned counsel for the petitioner, Mr.S.Yashwanth, learned Additional Government Pleader appearing for respondents 1 and 2 and Mrs.V.Srimathi learned counsel appearing for the third respondent temple.

10. It is the vehement contention on the part of the learned counsel for the third respondent right from the beginning that, the third respondent temple has been objecting for giving the temple land by way of lease in favour of the petitioner since the land is located strategically abutting the ECR, it may be utilized for any useful purpose at a later point of time by the temple to fetch more income. Despite those objections having been raised by the third respondent temple, the H.R.&C.E., Department, through the second respondent Commissioner has come forward to execute the lease or renew the lease in favour of the petitioner, however restricting the area only to 400 Sq.ft instead of 22 cents.

11. Be that as it may. Even an inch of land of the third respondent temple need not be given to the petitioner by way of lease. The reason being that, if at all the petitioner wants that temple land to be leased out to the petitioner for the purpose of approach road towards ECR since a big development has been made in the land belonging to the petitioner, such kind of approach road is not a temporary phenomena as it can be a permanent affair. Therefore, if at all lease is granted for three years, the petitioner would definitely require the lease to be extended for a longer period as it can be a perennial requirement on the part of the petitioner.



12. Taking into consideration all these consequences only the temple has raised an objection. Despite the said objection, now through the impugned order since the second respondent has come forward to give 400 Sq.ft of the land belongs to the temple to the petitioner for the purpose of approach road, even that was objected. However, since the H.R.&C.E., Department headed by the Commissioner has passed the order, the temple authorities cannot object to it at present. Therefore, the stand already taken by the temple since has been made known to the H.R.&C.E., Department, beyond which the authorities who are maintaining the temple ie., the Executive Officer, or Managing Committee or Fit Person, if any, cannot do anything. Therefore, the present order does not require any interference from this Court, they contended.

13. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

14. Though the temple land is a vacant land and it has been kept as vacant land for decades together, that does not mean that the land could not be made use for any useful purpose in future. If we look at the map produced in this regard by the petitioner's side, the temple land is located strategically in between the ECR Road and the petitioner's property running for a long distance. Therefore, that kind of long stretch (frontage) would not be available for those who are having the property, like the petitioner, inside i.e., beyond the property of the temple, unless they acquire the temple land.

15. Having this strategic location in their mind, the petitioner probably might have approached the H.R.&C.E., Department to take the entire stretch of land consisting of 22 cents. Though objection was raised in this regard by the third respondent temple, the H.R.&C.E., Department, for the reasons best known to them, had come forward to lease out the land for a period of three years of course knowing well that, the three years period is to be extended as the said land was given on lease only for approach road purpose.

16. If it is for the approach road purpose, that is perennial or permanent in nature. Therefore, the three years restricted lease period provided in the lease is only to circumvent the prohibition contemplated under Section 34 of the H.R.&C.E., Act.

17. In this context, Section 34 of the H.R. & C.E., Act is to be taken note of, which reads thus,

"34...

Any exchange, sale or mortgage and any lease for a



Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such a manner as may be prescribed inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

18. According to Section 34, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, trust belonging to, or given or endowed for the purposes of any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

20. Here in the case in hand, in order to overcome this prohibition under Section 34, probably the second respondent Commissioner restricted the lease period for three years knowing well that after three years period, again the petitioner will knock the doors of the Commissioner to give further extension of the lease.

22. If at all the petitioner wants to get a piece of land only for the purpose of approach road or ingress and egress from



their property to ECR road, it is open to the petitioner to make such request to the Government through the H.R.&C.E., Department and in this regard, the Government must hear the views of the temple who is the owner of the property and if any objection comes, that should be objectively taken into account by the Government and the Government must be very slow in exploiting the temple property even for good reasons by giving such relaxation as provided under Section 34 of the H.R.&C.E., Act.

23. Such kind of prohibition as has been contemplated under Section 34 has been made by the legislature with an intention to protect and preserve the temple properties. That is the reason why even though the temple is the owner of the property and the administrative department is headed by the Commissioner, H.R.&C.E., final nod is to be given only by the Government. That is why the second proviso to Section 34 was inserted which has come into effect from 22.01.1999.

24. If that legislative intent is taken into account, this Court has no hesitation to hold that, the present move made by the Commissioner, H.R.&C.E., Department as reflected in the impugned order for giving lease of even 400 Sq.ft to the petitioner for three years period is not strictly in consonance with the spirit of Section 34 of the Act, even though such kind of short term lease for three years is permissible without getting approval from the Government as contemplated under the second proviso to Section 34 of the Act.

25. Be that as it may. Now the petitioner has challenged the impugned order as if the petitioner is entitled for the lease or outright purchase or otherwise to utilize the entire stretch of 22 cents of land belongs to the third respondent temple and therefore, the present lease of 400 Sq.ft for three years is not acceptable to the petitioner. Therefore, it has come forward to challenge the impugned order. Absolutely there has been no plausible reasons available for the petitioner to challenge such order. In fact, this Court is of the considered view that, the Commissioner ought not to have passed the impugned order giving on lease even 400 Sq.ft of land despite the objections strictly made by the third respondent temple, who is none other than the owner of the land concerned.

26. In these kind of cases, an approach in strict sense, having in mind the legislative intent which brought the second proviso to Section 34 in the Statute Book, is needed and therefore, accordingly a conscious decision shall be taken by the Government before exploiting the temple land towards the third parties' interest.

27. In this context, this Court wants to remind the



Government that, already the issue as to how the temple properties have to be protected, had engaged this Court, where a special Division Bench in Suo Motu W.P.No.574 of 2015 etc., batch, by order, dated 07.06.2021, has given an exhaustive Judgment, where, in Direction No.33, the following direction has been given :

"(33) The state Government or the Commissioner of the HR&CE department, who are the Trustee/administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor. The lands shall always remain with the temples. The public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests."

28. The Division Bench has made it clear that, even for public purpose, the temple lands cannot be exploited, as the land belongs to temples comes under the purview of HR & CE Department will have larger interest of the community people of the religious denomination, for which those temples have been dedicated. If this mandate of the Division Bench is taken into account by the Government, while deciding any application being made by any third party like the petitioner, to seek for any right over the temple property by way of lease, sale or exchange, the Government even for public interest or for any private interest or industrial or economic or commercial growth, shall not exploit the temple property. By reminding these legal position, as has been enunciated by the said decision of the Division Bench of this Court, the following observations and directions are made.

29. Therefore, this Court feels that, the impugned order, even though is passed by the second respondent Commissioner paving the way for the lease of 400 Sq.ft in favour of the petitioner, the said order need not be given effect to further. Instead, it is open to the petitioner to make an application to the State Government through the H.R.&C.E., Department seeking for lease of any small portion of the land of the third respondent temple for the purpose of ingress and egress and in that case, it can be decided by the Government after elucidating the views and objections of the temple concerned and in this regard, the State Government must be slow in taking any decision to exploit the temple properties towards the progress of any individual, company, firm or industrial houses etc., as the economic progress of the State, though is important, however not at the cost of the properties of the God. Therefore, this Court



is of the firm view that, the impugned order need not be given effect to. Instead, the petitioner can be relegated to approach the State Government to redress their grievance as has been indicated above.

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30. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Secretary
Hindu Religious and Charitable Endowment Department
Fort St.George, Secretariat, Chennai -600 009
2. The Commissioner
HR & CE Department
No.119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.
3. The Executive Officer
Arulmighu Nithya Kalyana Perumal Temple
Thiruvidanthai, Kancheepuram District.

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.62819

+1cc to Mr.P.Subba Reddy, Advocate, S.R.No.63185

+1cc to the Government Pleader, S.R.No.63224

W.P.No.9328 of 2017

GSM(CO)
RGA(10/12/2021)