



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.9820 of 2010

and

M.P.[MD]Nos.1 & 2 of 2010

WEB COPY

Bhagavathiyappan

... Petitioner

Vs.

1.The Joint Commissioner / Executive Officer,
Kanyakumari District Temples,
Susindram,
Agastheeswaram Taluk,
Kanyakumari District.

2.The Manager,
Arulmigu Bhagavathi Amman Thiru Kovil,
Kanyakumari.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in Na.Ka.No.2282/2010/B.1 dated 26.06.2010 and quash the same and consequently direct the first respondent to treat the petitioner in terms of G.O.No.456 Tamil Development Religious Endowments and Information Department dated 09.11.2007.

For Petitioner : Mr.R.Murali

For Respondent No.1 : Mr.M.Vivek Kumar

for Mr.H.Thayumanaswamy

For Respondent No.2 : No appearance

O R D E R

Read this in conjunction with and in continuation of separate common proceedings made in the captioned writ petition along with W.P.[MD]No.17042 of 2014 today (07.12.2021) which reads as follows:

'W.P.[MD]No.9820 of 2010 shall be referred to as senior W.P. and W.P.[MD]No.17042 of 2014 shall be referred to as junior W.P. for the sake of convenience and clarity.

2.A shop admeasuring 28.75 sq.ft or thereabouts belonging to Arulmigu Bhagavathi Amman Temple in Kanyakumari District is the subject matter of captioned two writ petitions. The land shall be referred to as 'said land' and the aforementioned



temple shall be referred to as 'said temple' for the sake of convenience and clarity.

3. Case of the writ petitioner is that he is a land lessee under said temple qua aforementioned shop [hereinafter 'demised shop' for the sake of convenience and clarity].

4. The shop was put up for auction and that prompted the senior W.P. To be noted it was put up for auction vide proceedings dated 26.06.2010 made by the Joint Commissioner bearing Reference No.ந.க.எண்.2282/2010/பி.1. In this writ petition interim orders were made, no bidders in the auction, writ petitioner was given lease but thereafter in 2012, the shop along with several other adjacent shops were gutted. This resulted in proceedings of the Joint Commissioner dated 20.04.2012 bearing Reference No.ந.க.எண்.1248/2012/பி.2 permitting the lessees to put up construction on a specific condition that the superstructure should be conveyed to the said temple by way of Gift Deed.

5. This Court is informed that thereafter a new shop (superstructure) was put up and the writ petitioner was permitted to occupy the same.

6. When things stood as above, the jurisdictional Assistant Commissioner made proceedings dated 14.12.2013 bearing Reference No.ந.க.எண்.5142/13/அ.1 which appears to have triggered proceedings under Section 78 of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' {hereinafter 'TN HR & CE Act' for brevity} which comes to light from communication dated 06.09.2014 bearing Reference No.ந.க.எண்.2695/2010/பி.3. The Joint Commissioner has communicated to the writ petitioner about the Section 78 proceedings, These two proceedings made by the jurisdictional Assistant Commissioner and Joint Commissioner have been assailed in the junior W.P.

7. Learned Counsel for writ petitioner very fairly submitted that nothing really survives in the senior W.P. at this point of time. Therefore, the senior W.P. will be disposed of as closed (without expressing any view or opinion on the merits of the matter) by way of separate order.



8.Be that as it may, learned Counsel for writ petitioner submits that in junior W.P., there are about 24 shops, all the shops were gutted in fire and a common construction was put up but the writ petitioner discriminated and disparingly targetted. This argument will be considered in the ensuing hearing but clarity on the following factual points is required:

a) The period of lease / license qua demised shop.

b) Whether the period of lease has elapsed / expired, terminated or cancelled.

c) The particulars such as case number, Joint Commissioner on whose file it is pending etc., regarding the Section 78 proceedings and the present status of Section 78 proceedings.

d) Whether there are defaulters in payment of rent with regard to the other 23 shops and whether any proceedings have been initiated against them. To be noted this becomes necessary in the light of the discrimination argument raised by learned Counsel for petitioner.

9.List W.P.[MD]No.17042 of 2014 alone after one [1] week.

10.List on 15.12.2021. '

2.In the light of the aforementioned common proceedings, captioned W.P.[MD]No.9820 of 2010 and captioned M.P.[MD]Nos.1 & 2 of 2010 are disposed of as closed. Though obvious it is made clear that I have not expressed any view or opinion on the merits of the matter in this order. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Joint Commissioner / Executive Officer,
Kanyakumari District Temples,
Susindram,
Agastheeswaram Taluk,
Kanyakumari District.

W.P. [MD]No.9820 of 2010
07.12.2021

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