



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]Nos.4173 of 2015 & 23614 of 2016

and

M.P.[MD]No.2 of 2015

and W.M.P.[MD]No.16977 of 2016

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A.Meera Mohideen

: Petitioner in both Writ Petitions

Vs.

1.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Trichy.

2.The Assistant Commissioner /
Executive Officer,
Arulmigu Jambugeswarar Agilandeswari Temple,
Thiruvanaikaval,
Trichy - 620 005.

: Respondents in both Writ Petitions

PRAYER in W.P.[MD]No.4173 of 2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings Se.Mu.Pa.Mu.No.15392/2013/E1 dated 01.04.2014 and quash the same in respect of the fair rent fixed for item No.10 in the impugned order namely the land and building in Survey No.2072/6 to an extent of 2024 Sq.ft, Thiruvanaikaval, Srirangam Taluk, Trichy District as arbitrary and in violation of principles of natural justice.

PRAYER in W.P.[MD]No.23614 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent in his proceedings Se.Mu.Na.Ka.No.02/1426/A7 dated 01.07.2016 and quash the same as illegal and arbitrary and in violation of principles of natural justice.

For Petitioner : Mr.S.Karthick Ramkumar
for Mr.B.Saravanan

For Respondent No.1 : Mr.M.Ramesh
Government Advocate

For Respondent No.2 : Mr.S.Anwar Sameem



COMMON ORDER

This common order will dispose of the captioned two Writ Petitions, captioned Miscellaneous Petition [MP] and captioned Writ Miscellaneous Petition [WMP].

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2. In this order, for the sake of convenience and clarity 'W.P. [MD]No.4173 of 2015' shall be referred to as 'senior W.P.' and 'W.P. [MD]No.23614 of 2016' shall be referred to as 'junior W.P.'

3. Two successive communications / orders both pertaining to lease rent have been assailed in the captioned two writ petitions, the factual matrix is the same and the writ petitioner is the same.

4. Mr.S.Karthick Ramkumar, learned Counsel representing the Counsel on record for writ petitioner in both writ petitions, Mr.M.Ramesh, learned Government Advocate on behalf of first respondent [jurisdictional Joint Commissioner] and Mr.S.Anwar Sameem, learned Private Counsel on behalf of Executive Officer of the temple concerned [Executive officer in the cadre of Assistant Commissioner] are before me. The respondents have filed counter affidavits and pleadings are complete.

5. Land admeasuring 2024 sq.ft. or thereabouts situate in Survey No.2072/6, Door No.95/A-1 in Gandhi Road, Thiruvarangam Taluk, Trichy District [hereinafter 'said land' for the sake of convenience and clarity] belongs to Arulmigu Jambugeswarar Agilandeswari Temple situate in Thiruvanaikaval, Srirangam Taluk, Trichy District [hereinafter 'said temple' for the sake of convenience and clarity]. The said temple is a public temple and is governed by 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' {hereinafter 'TN HR & CE Act' for the sake of brevity} and the same is under the control and administration of 'Tamil Nadu Hindu Religious and Charitable Endowments Department' [hereinafter 'TN HR & CE Dept.,' for the sake of convenience and clarity].

6. Short but undisputed facts that are imperative for appreciation of this common order are that said land was originally given on lease by said temple to one R.Rajagopal; that it is claimed by the writ petitioner that R.Rajagopal who had put up a superstructure in the said land had sold the superstructure to him; that thereafter R.Rajagopal passed away; that the writ petitioner is thereafter in possession and occupation of said land; that according to writ petitioner some time in 1998 the superstructure qua said land was destroyed in a fire and the writ petitioner put up a new superstructure; that steps were taken by said temple to evict the writ petitioner; that writ petitioner on the teeth of such steps to evict him approached this Court vide W.P.[MD]No.3865 of 2004 with W.M.P.[MD]No.3907 of 2004 thereat and this Writ Petition came to be

disposed of by a Hon'ble Single Judge of this Court in and by order dated 02.12.2004 saying that the writ petitioner shall not be evicted except by due process of law; that post disposal of this writ petition, said temple issued a notice through lawyer dated 15.10.2012 wherein tenancy was terminated; that thereafter notwithstanding the termination of tenancy when lease rent was fixed for about 23 parcels of lands, lease rent was fixed for said land also in and by proceedings of jurisdictional Joint Commissioner dated 05.04.2010 bearing Reference குடிசே.மு.ப.மு.எண்.14830/2009/இ1, further proceedings of jurisdictional Joint Commissioner dated 01.04.2014 bearing Reference குடிசே.மு.ப.மு.எண்.15392/2013/இ1 and another proceedings of jurisdictional Joint Commissioner dated 01.04.2014 bearing Reference குடிசே.மு.ப.மு.எண்.15392/2013/இ1 that assailing the second of the 01.04.2014 proceedings of the jurisdictional Joint Commissioner senior W.P. has been filed; that another communication thereafter (dated 01.07.2016) from the Executive Officer of said temple bearing Reference குடிசே.மு.ந.க.எண்.02/1426/அ7 calling upon the writ petitioner to pay the lease rent and arrears has been assailed in the junior writ petition.

7.Before I proceed further, I deem it appropriate to extract and reproduce a photograph forming part of the case file which shows the superstructure put up on said land which is now in occupation of writ petitioner and the same is as follows:



8.Learned Counsel for writ petitioner assails the two impugned orders [notwithstanding very many grounds raised in the writ affidavit and notwithstanding very many averments in the writ



affidavits] on three grounds and they are as follows:

a) The impugned proceedings *qua* senior W.P. were not served on writ petitioner and the writ petitioner obtained it only by way of a query under Right to Information Act, 2005 [hereinafter 'RTI Act' for the sake of convenience and clarity].

b) There is violation of 'Natural Justice Principles' [hereinafter 'NJP' for brevity] as the writ petitioner was not given an opportunity before fixation of lease rent.

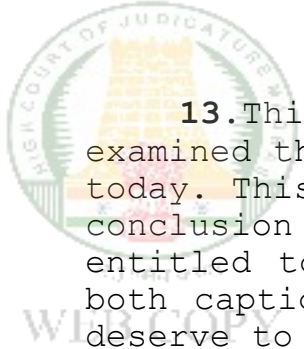
c) The parameters and determinants adumbrated under Section 34-A of TN HR & CE Act have been given a go-by.

9. In response to the above, learned State Government submitted that the first respondent being the jurisdictional Joint Commissioner of TN HR & CE Dept., is more in the nature of a formal party and in the light of the stated position of the second respondent Executive Officer that proceedings under Section 78 of the Act are to be kick started, notwithstanding the counter affidavit filed before this Court if Section 78 proceedings are commenced, the first respondent has to deal with the same on its own merits and in accordance with law.

10. The private Counsel for second respondent i.e., Executive Officer of said temple [Executive Officer in the cadre of Assistant Commissioner] notwithstanding very many averments in the counter affidavit submits that after order dated 02.12.2004 in the earlier writ petition i.e., W.P.[Md]No.3865 of 2004, wherein this Court observed that the writ petitioner shall not be evicted *dehors* due process of law, a legal notice dated 15.10.2012 was issued terminating the tenancy of the writ petitioner.

11. However, post such termination while lease rent was fixed for 23 similar land lessees, the said land of writ petitioner was also included and lease rent was fixed. Be that as it may, after such exercise, in and by proceedings made in August of 2014 bearing Reference No. **செ.மு.ந.க.எண்.405/142/217**, [signed on 18.10.2014] made by the second respondent i.e., Executive Officer of said temple in the cadre of Assistant Commissioner, it was made clear that there is huge arrears of rent *qua* said land and that steps would be taken under Section 78 of TN HR & CE Act.

12. In response to the above submissions, learned Counsel for writ petitioner by way of reply reiterated his submissions made in the opening arguments and emphasized on the point that the parameters adumbrated in Section 34-A of TN HR & CE Act have been given a go-by.



13. This Court carefully considered the rival submissions and examined the case file in the light of the arguments made at the Bar today. This exercise leads this Court to one conclusion and that one conclusion is the writ petitioner in the case on hand is not entitled to relief in the hands of this Court and both prayers in both captioned writ petitions (senior W.P. and junior W.P.) do not deserve to be acceded to. The reasons are as follows:

a) The first point urged is dovetailed with the second point ie., notice regarding lease rent fixation not being served on writ petitioner and violation of NJP are dovetailed. Therefore, I will deal with both the points together. Both these points will arise only in the case of a land lessee under said temple when the lease is subsisting. In this case, as already alluded to supra when steps were taken to evict the writ petitioner, writ petitioner came to this Court, this Court said the writ petitioner shall not be evicted dehors the due process of law. Thereafter, the tenancy was terminated in and by a legal notice dated 15.10.2012 saying that Section 78 proceedings were to be initiated. On termination of tenancy, by legal fiction ie., by operation of clause (b) of explanation to Section 78 of the TN HR & CE Act, the land lessee also becomes an encroacher. In the instant case, a careful perusal of the writ affidavit in both the captioned writ petitions also makes it clear that the writ petitioner more particularly in paragraphs 4 and 8 of the affidavit filed in support of senior W.P. claims that he is the owner of the superstructure. If this be the case, it is only appropriate that the contemplated Section 78 proceedings go on.

b) Be that as it may, as the lease has been terminated, the lease rent fixation itself is erroneous and therefore, both these points ie., writ petitioner not being put on notice and the NJP violation do not survive. To be noted, if on the facts and circumstances on another case, if the lease had been subsisting or if the writ petitioner does not claim ownership of the superstructure that too not like the case on hand where writ petitioner being a purchaser of the superstructure from original tenant under the said temple (wherein there is nothing to show that said temple granted permission to original lessee to sell the superstructure) the scenario may have been different and *Angala Parameswari* ratio of this Court ie., ratio in *Arulmigu Angala Parameswari and Kasivishwanathaswami Temple, Adimanaiveal House Owners Association v. The State of Tamil Nadu, 2009-3-L.W.728* would operate.

c) In this case, for the reasons alluded to supra



the writ petitioner will not be entitled to benefit of any of these principles. In other words the *Angala Parameswari* ratio does not enure to the benefit of the writ petitioner in the case on hand. That douses the NJP and notice not being served point argued as points 2 & 3.

d) This takes me through the third point turning on Section 34-A of the TN HR & CE Act. The question of or the issue touching upon following the parameters of Section 34-A of lease rent arises only when there is a formal structured lease and when the lease is subsisting or atleast where lease has not been terminated. In the case on hand as the lease has been terminated, the writ petitioner has become an encroacher by operation of clause (b) of Section 78 of the Act and therefore, the writ petitioner is not entitled to any of the benefits under Section 34-A. This by itself douses the argument predicated on Section 34-A.

e) In any event, assuming for a moment ie., on a demurrer even if these points are to be considered it is a matter for alternate remedy as fixation of lease rent can be assailed by way of a statutory appeal before the appellate authority namely the Commissioner, TN HR & CE Dept., sitting at 119, Uthamar Gandhi Salai, Nungampakkam, Chennai - 600 034, under Section 34-A of TN HR & CE Act albeit subject to limitation and pre-deposit condition therein. However, in the case on hand this does not arise though the counter affidavit of State ie., first respondent raises this alternate remedy point.

f) One other point which in the considered opinion of this Court is an argument in desperation was the Rules captioned 'Religious Institutions (Lease of Immovable Property) Rules, 1963' [hereinafter 'said Rules' for the sake of convenience and clarity] have not been adhered to. To be noted said Rules is a piece of subordinate legislation made by the Government in exercise of its rule making power under Section 116 of TN HR & CE Act, more particularly, under Section 116 (2)(xxiii). This last desperate argument was made by predicating the submission particularly *qua* Rule 17 of said Rules which talks about the fixation of lease rent to buildings belonging to religious institutions. This in effect is only another facet of the third point namely parameters and determinants *qua* Section 34-A of TN HR & CE Act.

g) There is yet another point for consideration and that is writ petitioner not being original lessee



under said temple. It is not even a case of an original lessee becoming an encroacher by operation of legal fiction *qua* clause (b) of Section 78. The writ petitioner claims to be purchaser of superstructure from original lessee and there is nothing to demonstrate that such purchase has been done with the permission of said temple, more importantly when the writ petitioner is claiming title saying superstructure belongs to him. This itself douses the whole argument of the writ petitioner being entitled to any benefit under Section 34-A. Therefore, the writ petitioner is an encroacher in every sense of the term.

14. This Court exercising its powers as *parens patriae* of temple property is of the considered view that the second respondent will do well to kick start the contemplated proceedings under Section 78 as expeditiously as his business would permit and in any event within three [3] months from today. Though this is a Certiorari by the writ petitioner such a directive is given by drawing inspiration from the **A.A.Gopalakrishnan's** case [**A.A.Gopalakrishnan v. Cochin Devaswom Board and Ors.**,] reported in **(2007) 7 SCC 482** rendered by the Hon'ble Supreme Court, wherein the principle that this Court has a duty to protect temple properties has been highlighted.

15. As already alluded to supra, this Court is not inclined to accede to the prayers in the captioned writ petitions and the reasons have been adumbrated / set out supra by way of discussion and dispositive reasoning. The inevitable sequitur is captioned writ petitions fail and the same are dismissed. Consequently, captioned Writ Miscellaneous Petition and Miscellaneous Petition are also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

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



To

The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Trichy.

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+1 CC to M/S.SPL GP, SR-40242, dated 23/12/2021

+1 CC to M/S.T.ANTONY ARULRAJ, SR-40299, dated 23/12/2021

+2 CC to M/S.B.SARAVANAN, SR-40394,40395, dated 23/12/2021

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RK(07/01/2021) 8P 6C