



W.A.No. 45 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.11.2022	Delivered on 18.11.2022
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Writ Appeal No.45 of 2015
and MP No.1 of 2015

Arulmigu Kapaleeswarar Temple,

Rep. by the Executive Officer/Deputy Commissioner,

Mylapore, Chennai 600 004.

..Appellant/3rd Respondent

Vs.

1. Chennapuri Annadana Samajam

Rep. by its Honorary Secretary,

Mr.V.R.Udayasankar,

13/76 Nynjappa Naicker Street,

Park Town, Chennai 600 003.

2. State of Tamil Nadu,

Rep. by its Secretary,

Hindu Religious & Charitable Endowments Department,

Fort St. George, Chennai 600 009.

3. The Commissioner,

Hindu Religious and Charitable Endowments

Nungambakkam High Road,

Chennai 600 034.

.. Respondents/Petitioner and Respondents 1 & 2



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 25.07.2014 passed in W.P.No.7988 of 2013.

For Appellant : Mr.A.K.Sriram
for M/s.A.S.Kailasam and Associates

For Respondents : Mr. G.Masilamani, Senior Counsel
for Mr.T.Sathiyamorrthy, for R1

Mr.M.Bindran
Additional Government Pleader
for RR2 & 3

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Aggrieved by the judgment of the Writ Court allowing the Writ Petition in WP No.7988 of 2012, wherein the first respondent sought for a Writ of Certiorarified Mandamus to quash the decision of the Executive Officer of the appellant dated 08.06.2012 rejecting the request of the first respondent to renew the lease for a further period of 25 years with effect from 12.04.2011 and requiring the first respondent to surrender vacant



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possession of the land possessed by it under the indenture of Lease Deed dated 12.04.1961 entered into between the appellant Temple and the first respondent Trust the appellant Temple is before us.

2. The factual background is as follows:

2.1. The appellant is a Temple being administrated by trustees appointed by the Government of Tamil Nadu under the powers vested in it by the Tamilnadu Hindu Religious and Charitable Endowments Act. At times when there are vacancies in the office of the trustees, the Temple is administered by a fit person cum Executive Officer, who is an employee of the Hindu Religious and Charitable Endowments Department. An extent of about 104 grounds of land situate in Greenways Road, Adayar, Madras, was endowed to a Temple as an Inam and was in possession of the Temple.

2.2 The first respondent which is a Trust sought for lease of the said land to establish an Orphanage and a School for the benefit of the children belonging to the depressed class. Exercising the powers under Section 41 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as '*The Act*') Government of Tamilnadu



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passed a Government Order on 22.12.1960 in G.O.Ms.No.5273 sanctioning the lease of the said 104 grounds of land on a lease rental of Rs.1,250/- per annum, subject to certain conditions. Consequent upon the said sanction, a Lease document was entered between the then Trustees of the Temple and the Trustees of the first respondent Trust. It is not in dispute that the first respondent Trust is running a School and an Orphanage as required by the conditions set out by the Government.

2.3. While things stood thus, a major portion of the land measuring about 74 grounds was encroached upon and the Fit Person of the Temple passed a resolution on 14.09.1992, to resume the encroached portion from the Trust. A communication was addressed by the Executive Officer of the appellant Temple to the President of the first respondent Trust requiring surrender of 74 grounds and 2040 sq.ft. which has been encroached. There is no evidence of any further action having been taken in that regard either by the appellant Temple or by the first respondent Trust.

2.4. After about 12 years in 2004 a legal notice was issued to the Trust informing it that it had not taken proper steps to remove the



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encroachments and reminding the Trust that it shall surrender possession of the entire area upon expiry of the lease period. A reply was sent by the Trust, through its counsel, stating that the extent of 28 grounds and 360 sq.ft. which is in possession of the Trust has been completely secured and informing the Temple that it is the duty of the Temple to have removed the encroachment. It was also pointed out that on 30.12.1992, the Temple had made it clear that since the removal of encroachments would take a long time there cannot be any abatement of the rent payable by the Trust under the Lease Deed. The resolution dated 14.09.1992 was also invoked to contend that the temple is deemed to be in possession of the encroached land measuring about 74 grounds and 2040 sq. ft..

2.5. After a brief lull, the first respondent Trust by its letter dated 18.06.2009 sought for renewal of the lease for a further period of 25 years as envisaged in Sub Clauses 1 and 2 of Clause 8 of the Lease Deed dated 12.04.1961. This was replied to on 10.08.2010, by the appellant Temple, stating that the Lease period can be extended only for 3 years that too subject to the condition that the first respondent Trust agrees to pay the current market rent. A detailed reply was sent by the Trust on 17.09.2010



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pointing out that under the Lease Deed dated 12.04.1961, the lessee viz. the first respondent Trust has an option to renew the lease for a further period of 25 years on the same terms and conditions. It was also pointed out that any further renewal beyond 75 years can only be on terms to be agreed between the parties. The first respondent Trust therefore reiterated its right to have one renewal for 25 years on the same terms and conditions.

2.6. This request met with a rejection under a legal notice issued by the counsel for the Temple on 25.04.2011. In the meantime, the Trust forwarded a Cheque for Rs.2,500/- being the rent payable for the years 2011 and 2012 which was returned. Thereafter, by the impugned communication dated 08.06.2012, the Assistant Commissioner cum Executive Officer of the appellant Temple rejected the request for renewal and sought for surrender of possession. This stand taken by the Temple impelled the Trust to approach this Court with the above Writ Petition seeking the prayer stated supra.

2.7. The first respondent Trust basically contended that the lease being one sanctioned by the Government under section 41 of *the Act*, is valid and the terms of the Lease Deed which provide for a renewal at the option of



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the lessee for a further period of 25 years on the same terms and conditions cannot be unilaterally varied or rescinded by the lessor. The Trust further contended that once the lessee exercises the option for renewal, the lessor, viz. the appellant Temple has no legal right to reject the request and claim possession. As per the contract between the parties, the lease has to be renewed for a further period of 25 years from the date of expiry of the first block of 50 years.

2.8. The appellant Temple resisted the said claim contending that the entire dispute is in the realm of contract between the parties and hence the Trust cannot invoke the constitutional remedy under Article 226 of the Constitution of India, merely because the appellant Temple is administered by an Executive Officer. It is the further contention of the Temple that the bargain that was struck in 1960 between the parties cannot hold good in view of changed circumstances and sharp raise in the prices of the land in the area. A further plea was taken to the effect that the very Lease Deed which provides perpetual lease of the debutter property is invalid.

2.9. The Writ Court, however, rejected all the contentions of the



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appellant Temple and held that once the Lease Deed provides for an extension at the option of the lessee and the lessee having exercised the option, the lessor, viz. the appellant Temple cannot reject the offer of the lessee and seek surrender of possession. The Writ Court also faulted the appellant Temple for inaction in even attempting to remove the encroachments. The Writ Court also found that though it is claimed that the area was declared as a slum area under the Tamilnadu Slum Areas Act 1971, no further action was taken either by the Tamilnadu Slum Clearance Board, now renamed as Tamilnadu Urban Habitat Development Board, in furtherance of the objectives of the said enactment. Having held so, the Writ Court allowed the Writ Petition directing renewal of the lease on the same terms and conditions for a further period of 25 years, hence this Appeal by the Temple.

3. We have heard Mr.A.K.Sriram, learned counsel appearing for M/s.A.S.Kailasam and Associates for the appellant Temple, Mr.G.Masilamani, learned Senior Counsel for Mr.T.Sathiyamoorthy, for the first respondent Trust and Mr.M.Bindran, learned Additional Government Pleader appearing for respondents 2 and 3.



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3.1. Mr.A.K.Sriram, learned counsel appearing for the appellant Temple would primarily contend that the Writ Petition which in effect seeks specific performance of a contract is not maintainable. He would contend that though the Temple is managed by an Officer appointed by the Government, the idol which is the owner of the property cannot be termed as a State within the meaning of Article 12 in order to be subjected to the jurisdiction under Article 226 of the Constitution of India. It is his further contention that the lease granted under the Government Order dated 22.12.1960 is a lease in perpetuity and such grant that too of a property belonging to a Temple is not valid. The learned counsel would rely upon the judgment of the Privy Council in *Srimath Daivasikhamani Ponambala Desikar and Another v. Periyanan Chetti and another*, reported in *Vol LXIII Indian Appeals 261*, reliance is also placed on the judgment of the Hon'ble Supreme Court in *Sridhar Suar and another v. Shri Jagannath Temple and others*, reported in *(1976) 3 SCC 485*.

3.2. Contending contra, Mr.G.Masilamani, learned Senior Counsel appearing for the first respondent Trust would submit that the Writ



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jurisdiction of the High Court under Article 226 can also extend to private individuals who are discharging a statutory function. He would further contend that the Temple being under the Management of an Executive Officer appointed by the State, who discharges a statutory function bestowed upon him/her under the provisions of the Act, would be subject to the Writ jurisdiction of the High Court and the actions of such officer could be subjected to judicial review under Article 226 of the Constitution of India. He would also further contend that there is no prohibition in law preventing the Writ Court from exercising the jurisdiction under Article 226 even in cases where there is an effective alternative remedy, since it has been held that such restriction is a self-imposed restriction and is not a blanket prohibition.

3.3. The learned Senior Counsel would further argue that in appropriate cases it is open to the Writ Court to enter into the realm of contract and decide the rights of parties. Lastly the learned Senior Counsel would submit that once the Writ Court had exercised the power under Article 226, it will not be open to us sitting in Appeal to reject the Writ Petition on the ground of availability of alternative remedy. He would also point out that



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any alternative remedy that was available at the time when the writ petition came to be filed may not be available now.

3.4. In support of his submissions, the learned Senior Counsel would rely upon the following judgments of the Hon'ble Supreme Court, *Zonal Manager, Central Bank of India v. Devi Ispat Limited and others*, reported in 2010 (11) SCC 186; *Durga Enterprises (P) Ltd and another v. Principal Secretary, Government of Uttar Pradesh and others*, reported in 2004 (13) SCC 665; *Union of India and another v. Tania Construction Pvt Ltd. and others*, reported in 2011 (5) SCC 697; *Ram Barai Singh and Co. vs. State of Bihar and others*, reported in 2015 (13) SCC 592; and *Mahabir Auto Stores and others v. Indian Oil Corporation and others*, reported in 1990(3) SCC 752.

4. Mr.M.Bindran, learned Additional Government Pleader appearing for respondents 2 and 3, would adopt the arguments of the counsel for the appellant.

5. We have considered the rival submissions.

6. The following are the admitted facts:



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1. The Government permitted lease of 104 grounds of land belonging to the Temple to the first respondent Trust in exercise of its powers under Section 41 (1) of *the Act*, vide G.O.Ms.No.5273 dated 22.12.1960;
2. The said G.O. provided for a initial lease for a period of 50 years;
3. It also provided for a renewal on the same terms and conditions at the option of the lessee viz., the first respondent Trust for a further period of 25 years;
4. Any further renewal beyond the block period of 75 years was made subject to terms that may mutually be agreed between the parties, failing which the Commissioner of the Hindu Religious and Charitable Endowments Department was authorised to fix the rent payable by the first respondent Trust.
5. These terms were incorporated in a Registered Deed of Lease entered into on 12.04.1961;
6. A large portion of the land measuring about 74 grounds and 2040 sq. ft. was encroached upon and steps were taken by the Temple as well as the Trust to remove the encroachments periodically;
7. The Temple had passed a resolution to resume the 74 grounds of



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encroached land from the Trust.

8. The request of the Trust to reduce the rent upon resumption of 74 the grounds of land was rejected by the Temple;
9. The Trust has been paying the rent as fixed under the Lease Deed without fail; and
10. The Trust sought for renewal as provided under Clause 8 of the Lease Deed and the said request was rejected by the Temple.

7. The contention of the learned counsel for the appellant Temple is that the Lease Deed which provides for a perpetual lease that too of a debutter property is not valid. In support of his submission, the learned counsel would rely upon the judgment of the Privy Council in ***Srimath Daivasikhamani Ponambala Desikar and Another v. Periyanan Chetti and another***, reported in ***Vol LXIII Indian Appeals 261***, wherein the Privy Council had held that permanent lease or absolute alienation of debutter property is beyond ordinary powers of management, whether in the case of the head of a math, the seabait of a family idol, or the dharmakarta of a Temple; such alienations can be justified by proof of necessity for preservation of the endowment or institution.



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8. In *Sridhar Suar and another v. Shri Jagannath Temple and others*, reported in (1976) 3 SCC 485, the Hon'ble Supreme Court while examining the scope of a license granted to sell mahaprasad in the premises of the Temple of Lord of Shri Jagannath at Puri concluded that permanent alienation of Temple property is beyond the powers of the Trustee. There is no doubt about the legal proposition that permanent alienation of debutter property has to be justified in terms of necessity as pointed out by the Privy Council in *Srimath Daivasikhamani Ponambala Desikar and another v. Periyanan Chetti and another*. We must point out that that the said proposition will not apply to the case on hand, inasmuch as a legislation has intervened in the form of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, which while enacting and embargo on the powers of the trustees provides for long term leases with the sanction of the Government. Two provisions of the enactment, viz. Sections 34 and 41 have bearing on the situation. Section and 34 and 41 of *The Act* read as follows:

“34. Alienation of immovable trust property.—

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, 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:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such 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:

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, the Commissioner may impose such conditions and give such direction, as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a



reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the inams referred to in section 41.

41. Resumption and re-grant of inam granted for performance of any charity or service.—

(1) Any exchange, gift, sale or mortgage and any lease for a term exceeding five years of the whole or any portion of any inam granted for the support or maintenance of a religious institution or for the performance of a charity or service



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connected therewith or of any other religious charity and made, confirmed or recognized by the Government shall be null and void:

Provided that any transaction of the nature of aforesaid (not being a gift) may be sanctioned by the Government as being necessary or beneficial to the institution.

Explanation.—Nothing contained in this sub-section shall affect or derogate from the rights and obligations of the landholder and tenant in respect of any land which is ryoti land as defined in the Tamil Nadu Estates Land Act, 1908 (Tamil Nadu Act I of 1908).

(2)(a) The Collector may, on his own motion, or on the application of the trustee of the religious institution or of the Commissioner or of any person having interest in the institution who has obtained the consent of such trustee or the Commissioner, by order, resume the whole or any part of any such inam, on one or more of the following grounds, namely :

—
(i) that except in the case referred to in the proviso to sub-section (1), the holder of such inam or part or the trustee of the institution has made an exchange, gift, sale or mortgage of such inam or part or any portion thereof or has granted a lease of the same or any portion thereof for a term exceeding five years ; or



(ii) that the religious institution has ceased to exist or the charity or service in question has in any way become impossible of performance ; or

(iii) that the holder of such inam or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of the institution, the charity or service for performing which the inam had been made, confirmed or recognized as aforesaid, or any part of the said charity or service as the case may be.

When passing an order under this clause, the Collector shall determine whether such inam or the inam comprising such part as the case may be, is a grant of both the melvaram and the kudivaram or only of the melavaram :

Provided that, in the absence of evidence to the contrary the Collector shall presume that any minor inam is a grant of both the melvaram and the kudivaram.

(b) Before passing an order under clause (a), the Collector shall give notice to the trustee, to the Commissioner, to the inamdar concerned, to the person in possession of the inam where he is not the inamdar and to the alienee, if any, of the inam ; the Collector shall also publish a copy of such notice in such manner as may be prescribed and such publication shall be deemed to be sufficient notice to every other person likely to be affected by such order ; and the



Collector shall hear the objections, if any, of the persons to whom such notice is given or deemed to be given and hold such inquiry as may be prescribed.

Explanation.—Where only a part of the inam is affected, notice shall be given under this clause to the holder of such part as well as to the holder or holders of the other part or parts, to the person in possession of every such part where he is not the holder thereof, and to the alienee, if any, of every such part; and the objections of all such persons shall be heard by the Collector.

(c) A copy of every order passed under clause (a) shall be communicated to each of the persons mentioned in clause (b), and shall also be published in the manner prescribed.

(d) (i) Any party aggrieved by an order of the Collector under clause (a) may appeal to the District Collector within such time as may be prescribed, and on such appeal, the District Collector may, after giving notice to the Commissioner and each of the persons mentioned in clause (b) and after holding such enquiry as may be prescribed, pass an order confirming, modifying or canceling the order of the Collector.

(ii) The order of the District Collector on such appeal, or the order of the Collector under clause (a) where no appeal is preferred under sub-clause (i) to the District Collector within



the time prescribed, shall be final :

Provided that where there has been an appeal under sub-clause (i) and it has been decided by the District Collector or where there has been no appeal to the District Collector and the time for preferring an appeal has expired, any party aggrieved by the final order of the District Collector or the Collector, as the case may be, may file a suit in a Civil Court for determining whether the inam comprises both the melvaram and the kudivaram or only the melvaram. Such a suit shall be instituted within six months from the date of the order of the District Collector on appeal where there has been an appeal under subclause (i), or from the date of the expiry of the period prescribed under subclause (i) for an appeal to the District Collector where there has been no such appeal.

(e) Except as otherwise provided in clause (d), an order of resumption passed under this section shall not be liable to be questioned in any Court of law.

(f) Where any inam or part of any inam is resumed under this section, the Collector or the District Collector, as the case may be, shall by order, re-grant such inam or part—

*(i) as an endowment to the religious institution concerned,
or*

(ii) in case of resumption on the ground that the religious institution has ceased to exist or that the charity or service in



question has in any way become impossible of performance, as an endowment for such religious, educational or charitable institution as the Commissioner may recommend.

(g) The order of re-grant made under clause (f) shall, on application made to the Collector within the time prescribed, be executed by him in the manner prescribed.

(h) Nothing in this section shall affect the operation of section 40.”

9. These two provisions deal with alienation of immovable property of religious institutions. While Section 34 deals with ordinary property of the idol of the Temple, Section 41 deals with property endowed to the Temple as Inam for performance of a charity or service. While both the provisions deny the power to the trustees to alienate or encumber the properties belonging to religious institution except to lease for a period below 5 years, they enable the Commissioner in cases falling under Section 34 and the Government in cases falling under Section 41 to sanction either alienation or lease for a period above 5 years. Therefore the statute in our considered opinion carves out an exception to the Rule that permanent alienation of debutter property is not valid.



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10. A close reading of the observations of the Privy Council and the Hon'ble Supreme Court in the decisions relied upon by the learned counsel for the appellant would show that neither the Privy Council nor the Hon'ble Supreme Court had concluded that, on the face of it, such alienation is altogether void. The Hon'ble Privy Council refused to accept the conclusion of the High Court that a permanent lease granted is altogether bad and adverse possession runs from the date of the lease and qualified the same by saying that though it is beyond ordinary powers of management, such alienations can be justified by proof of necessity for preservation of the endowment or institution.

11. The test whether the alienation is for preservation of the endowment or the institution is dispensed with by the statutory provisions contained in the Act which vest a power to decide the reasonableness or the requirement of the alienation with the Commissioner and the Government. Therefore, in our considered opinion once a long term lease or alienation is sanctioned by the Commissioner under Section 34 of the Act or by the Government under Section 41 of the Act, it will not be open to the parties to such alienation or long term lease to contend that the same is bad for it is in



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perpetuity

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12. Even otherwise on facts we do not find that the lease on hand could be said to be a lease in perpetuity. It is definitely for a fixed period, the first block is for a fixed period of 50 years and it allows one renewal at the option of the lessee on the said terms and conditions and for another block period of 25 years. Therefore, the obligation cast upon the Temple, namely the owner of the property is only a lease for a maximum period of 75 years. Further renewals which are contemplated or at the option of both the parties failing agreement between the parties the power is vested in the Commissioner or any Government Authority to fix the rent. Therefore, we are unable to accept the contention of the learned counsel for the appellant that the lease is in perpetuity.

13. The next contention of the learned counsel for the appellant is that the Writ Petition is not maintainable. The Writ Court has concluded that the Writ Petition is maintainable in view of the bar created to filing of suits by the proviso to Section 79 of the Act. The learned counsel appearing for the appellant Temple would vehemently and rightly contend that the



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reliance placed upon the Writ Court on the proviso to Section 79 is out of context and the provisions contained in Sections 78 and 79 of *The Act*, as amended by Act 39 of 1996, deal with only eviction of encroachages and does not create a bar for filing a suit to enforce other contractual obligations. On the prohibition against suits contained in Section 108 of *The Act*, the learned counsel for the appellant would submit that the said prohibition would apply only in respect of matters or disputes for determining or deciding which a provision is made under the Act. In essence, it is the contention of the learned counsel for the appellant that there is no prohibition for institution of a suit to enforce a contract against the Temple, if the contract does not relate to a dispute or an issue for resolution of which a machinery is provided under *The Act*.

14. Contending contra, Mr.G.Masilamani, learned Senior Counsel appearing for the first respondent Trust would submit that *dehors* the reasoning of the Writ Court, the conclusion that the Writ Petition is maintainable can be sustained on other grounds. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Zonal Manager, Central Bank of India v. Devi Ispat Limited and others,***



reported in 2010 (11) SCC 186, wherein the Hon'ble Supreme Court held that if there is a legal right and a corresponding legal duty on the part of the State or the instrumentality of the State and if any action on the part of the State or instrumentality of the State is wholly unfair or arbitrary, the Writ Courts can exercise their power even in contractual matters. While doing so, the Hon'ble Supreme Court in para 28 of the said judgment has observed as follows:

“28. It is clear that (a) in the contract if there is a clause for arbitration, normally, a writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power. In the light of the legal position, writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier



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paragraphs.”

15. In *Union of India and others v. Tania Construction Pvt Ltd.*

and others, reported in 2011 (5) SCC 697, the Hon’ble Supreme Court while concluding that existence/availability of an alternative remedy by way of arbitration does not act as a bar for the exercise of the jurisdiction under Article 226 of the Constitution of India has observed as follows in paragraphs 33 and 34 of the said judgment:

“33. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.



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34. *We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the Writ Petition and also on its merits.”*

16. A similar view was expressed by the Hon’ble Supreme Court in ***Ram Barai Singh and Co. vs. State of Bihar and others, reported in 2015(13) SCC 592.*** In the said judgment, the Hon’ble Supreme Court again reiterated the established position of law that availability of alternative remedy is not an absolute bar for a Constitutional Court to exercise its jurisdiction under Article 226, at best it could be a self-imposed restriction. In ***Mahabir Auto Stores and others v. Indian Oil Corporation and others,*** the Hon’ble Supreme Court justified interference in contractual matters citing the responsibility of an instrumentality of a State to act fairly. From the above catena of cases, it could be seen that the following two principles emerge.

1. The discretion to refuse the exercise the



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constitutional power vests in the High Court and it is a matter of judicial discipline or a self-imposed restriction and it had never been treated as an absolute bar; and

2. Such self-imposed restriction can be waived or breached when the Court comes to the conclusion that the Authority or the individual which is vested with a statutory duty acts unfairly.

17. In the case on hand, the Executive Officer of the appellant Temple has breached the terms of the contract which is approved by the Government under the powers vested in it by Section 41 of *The Act*, which in our opinion would amount to an unfair or arbitrary act or breach of a statutory duty. Therefore, we are unable to fault the Writ Court for having exercised the jurisdiction under Article 226 of the Constitution of India. Even otherwise as pointed out by the Hon'ble Court in ***Durga Enterprises (P) Ltd and another v. Principal Secretary, Government of Uttar Pradesh and others, reported in 2004 (13) SCC 665***, to throw out the Writ Petition at the final hearing after having entertained it on the ground of maintainability or on the ground of availability of alternative remedy is not



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proper. Therefore, we sitting in Appeal against the order of the Writ Court find that it won't be proper on our part to dismiss the Writ Petition on the ground of availability of alternative remedy or maintainable. As rightly pointed out by the learned Senior Counsel the alternative remedy by way of a suit will be time barred now. We therefore over rule the second contention of the learned counsel for the appellant.

18. The Government Order in G.O.Ms.5273 dated 22.12.1960 sets out the conditions subject to which the lease shall be entered into. We have already adverted to Section 41 which invests in the Government the power to sanction leases exceeding five years, subject to conditions. The condition relating to renewal of the lease reads as follows:

“(i) The Samajam to have lease of the land for a period of 50 years with an option to renew the lease for a further period of 25 years on the same terms and conditions as in the lease which is renewed.”

This very same clause is incorporated as Clause 8 in the Lease Deed dated 12.04.1961 entered into between the appellant Temple and the first



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respondent Trust and the same reads as follows:

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“8. At the expiry of the Fifty Years of lease hereby granted unto it, the Lessee shall have the option to renew the lease for another period of twenty-five years on the same terms and conditions as herein set out.”

19. The necessity for further renewals contemplated under Clause 9 of the Lease Deed do not arise at this juncture. From the terms of the lease document it is crystal clear that the first respondent Trust has a vested right to have the lease renewed on the same terms and conditions for a further period of twenty five years. Therefore, the contention of the Temple that it would amount to a perpetual lease cannot be countenanced. Once we acknowledge the right of the Trust to seek one renewal for a period of 25 years at its option, we cannot fault the Writ Court for allowing the Writ Petition and granting the prayers sought for by the first respondent. It may be that the spiralling increase in the land value in the area and the commercial situation as of today or the commercial situation that prevailed in the year 2010 and 2011, when the first respondent Trust sought for renewal would make it appear that the decision taken in the year 1960 to



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grant a lease of a very valuable property of the Temple is an unwise economic decision. As Courts of Law we have to respect the contract between the parties and we cannot substitute our financial wisdom in the place of the contractual obligations of the parties. The claim of the first respondent will have to be tested on the circumstances that prevailed when the parties entered into a contract in the years 1960 and 1961. We cannot doubt the wisdom of the parties based on the subsequent happenings.

20. We are therefore unable to persuade ourselves to interfere with the judgment of the Writ Court, though we are not in agreement with some of the reasoning of the Writ Court particularly on the maintainability of the suit. Hence the Writ Appeal fails and it is accordingly **dismissed**. In the circumstance, the parties are directed to bear their own costs. Consequently the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (K.KUMARESH BABU, J.)

18.11.2022

jv



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Index: Yes
Internet: Yes
Speaking Order

To

1. The Honorary Secretary,
Chennapuri Annadana Samajam
Mr.V.R.Udayasankar,
13/76 Nynjappa Naicker Street,
Park Town, Chennai 600 003.
2. The Secretary,
Government of Tamil Nadu,
Hindu Religious & Charitable Endowments Department,
Fort St. George, Chennai 600 009.
3. The Commissioner,
Hindu Religious and Charitable Endowments
Nungambakkam High Road,
Chennai 600 034.



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R.SUBRAMANIAN, J.

and

K.KUMARESH BABU, J.

(jv)

Writ Appeal No.45 of 2015
and MP No.1 of 2015

18.11.2022