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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.05.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.13117 OF 2022

AND

W.M.P.NOS.12480 & 12481 OF 2022

C.Venkatesh

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment,
Administration Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai.

2. The Inspector/Thakkar,
A/m.Venugopalaswamy Temple,
Edayanallur Village,
Hosur Taluk,
Krishnagiri District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the 2nd respondent auction notice in Ref. No. Nil, dated -nil- and quash the same as void and illegal.

For Petitioner : Mr.R.Rajaramani

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR&CE)

ORDER

The writ on hand has been instituted questioning the validity of the auction notice undated insofar as Survey Nos. 344 and 342 measuring an extent of 6 acres situated at Edayanallur Village, Nagondapaali Panchayat, Hosur Taluk is concerned.



2. The petitioner states that the larger extent of agricultural land comprised in S.Nos. 344 and 342 measuring an extent of 6 acres situated at Edayanallur Village, Nagondapalli Panchayat, Hosur Taluk, Krishnagiri District belongs to Arulmigu Venugopalaswamy Temple. The said temple is owning larger extent of agricultural lands in various survey numbers. The temple was administered and managed by the Trustees originally, and thereafter it was taken over by the Hindu Religious & Charitable Endowments Department.

3. The petitioner states that his father, Chinnappa, was the lease holder in respect of S.Nos. 344 and 342 measuring an extent of 6 acres situated at Edyanallur Village, Nagondapalli Panchayat. The lease was executed on 25.09.1986 for a period from fasli 1395 to 1397 and the lease amount was fixed at Rs. 75/- per acre. Admittedly, the father of the writ petitioner died during the year 2004. Thereafter, the petitioner being a legal heir is in possession of the temple property and cultivating the land.

4. The learned counsel for the petitioner made a submission that the petitioner is a cultivating tenant and under the definition of the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961, he is entitled to continue the cultivation in the subject property and the respondents have no authority to dispossess the petitioner from the property.

5. The learned counsel for the petitioner reiterated that the father of the petitioner was the original lease holder and he was cultivating the land and after his death in the year 2004, the petitioner continues to cultivate the land and therefore, the action taken by the respondents to conduct public auction in respect of the property is not in consonance with the provisions of Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961.

6. It is brought to the notice of this court that one of the cultivating tenants, namely Muniappa has filed a civil suit in O.S.No. 15 of 2003 and a decree was also passed in favour of the plaintiff.

7. The learned counsel for the petitioner referred the judgment of the Hon'ble Division Bench of this court, in W.A.No. 1174 of 2012, V. Angu vs The Commissioner, Hindu Religious & Charitable Endowment Department and Others dated 20.07.2016, in the said judgment, the appellant therein was considered as cultivating tenant and a similar benefit is to be extended to the petitioner also.



8. The learned Special Government Pleader appearing on behalf of the HR & CE objected the said contention by stating that even as per the Division Bench Judgment relied on by the petitioner, he is not entitled to be considered as cultivating tenant. The facts decided by the Hon'ble Division Bench are not similar to that of the case of the writ petitioner.

9. The Hon'ble Division Bench in the said case identified the appellant therein, who was recorded as a cultivating tenant under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the HR & CE Act') and therefore considered the case. However, in the present case, the petitioner at no circumstances is declared as a cultivating tenant nor there is any record to establish that his father or the petitioner is considered as a cultivating tenant by the department or by the temple authorities. The father of the writ petitioner was a lease holder and after his death, the lease was not extended by the department under Section 34 of the HR & CE Act. The temple authorities are empowered to grant lease for a maximum period of five years and beyond that they have to obtain prior permission from the Commissioner of Hindu Religious and Charitable Endowments Department. However, no such permission was granted in favour of the petitioner to continue the lease and therefore he is an unauthorised occupier under the provisions of the HR & CE Act.

10. This Court is of the considered opinion that admittedly the property belongs to the temple which is listed under Section 49 of the HR & CE Act. While so, the properties of the temple are to be dealt with in accordance with the provisions of the HR & CE Act and the Rules thereof. When the subject property belongs to the temple, and the authorities competent are empowered to lease the property under Section 34 of the HR & CE Act, the said provisions would apply and the provisions of the Central Act cannot override the provisions of the Special Act. In such circumstances, the Special Act would prevail over the Central Act and in the present case, the petitioner is unable to establish that his father's name was recorded as a cultivating tenant in the temple records or his father was recognized as a cultivating tenant either by the temple authorities or by the HR & CE department. Therefore, the said judgment of the Hon'ble Division Bench is of no avail to the petitioner.

11. The Hon'ble Division Bench in paragraph 8 of the said judgment held as follows:

'8. It is an admitted fact that the land in question belongs to the Second Respondent-Temple, which is a listed Temple



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under Section 46 of the TN HR & CE Act, 1959. The factum remains that the Appellant is a Statutory Tenant as his name is recorded as a Tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1965. He has been cultivating the land in question for the past 25 years as a Tenant.'

12. In view of the fact that the petitioner has not established that he is a cultivating tenant nor the name of the father of the writ petitioner was recorded as a cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1965, the petitioner cannot be construed as a cultivating tenant and further after the death of the father of the writ petitioner, the lease was not extended in favour of the petitioner by the competent authorities.

13. This being the factum established, the petitioner is not entitled to claim any benefit as cultivating tenant and the authorities competent are empowered to conduct public auction in respect of the temple properties by following the procedures as contemplated under the Statute and the Rules in force. The petitioner is also at liberty to participate in the public auction if he is otherwise eligible in accordance with law. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

14. It is brought to the notice of this court that the period of lease even as per the department expires on 30.06.2022 and the petitioner shall be allowed to continue in the subject property till 30.06.2022. It is made clear that the fresh lease is to be executed with effect from 01.07.2022 onwards after completing the process of auction in the manner known to law.

Sd/-

Assistant Registrar/Vacation Officer

//True Copy//

Sub Assistant Registrar

mrn/jd

To

1. The Commissioner,
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Administration Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai.



2. The Inspector/Thakkar,
A/m.Venugopalaswamy Temple,
Edayanallur Village,
Hosur Taluk,
Krishnagiri District.

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+1cc to Mr.V.R.Anna Gandhi, Advocate, S.R.No.31621

+1cc to the Special Government Pleader(HR & CE), S.R.No.31686

W.P.No.13117 of 2022

and

W.M.P.Nos.12480 & 12481 of 2022

KV(CO)

RLP(26/05/2022)