



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) Nos.10895 and 10896 of 2016

and

W.M.P. (MD) Nos.8438, 8439, 8441 and 8442 of 2016

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P.Ramasamy ... Petitioner in W.P.(MD) No.10895 of 2016

P.Krishnasamy ... Petitioner in W.P.(MD) No.10896 of 2016
/vs./

1.Arulmigu Thandayuthapani Swamy Temple,
Palani, represented through its
The Executive Officer/
Joint Commissioner,
Dindigul District.

2.The Tahsildar,
Tahsildar Office,
Palani,
Dindigul District.

... Respondents in both W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned orders passed by the 1st respondent dated 01.08.2015 in Na.Ka.No.864/15/C7 and the consequential order passed by the 1st respondent dated 19.02.2016 in Na.Ka.No.350/16/C7 and quash the same.

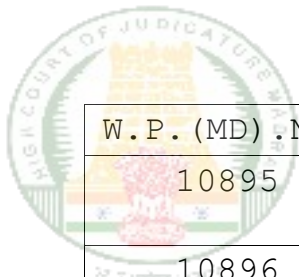
For Petitioner
in both W.Ps., : Mr.G.Mohan Kumar

For R1
in both W.Ps., : Mr.K.Govindarajan

For R2
in both W.Ps., : Mr.P.T.Thiraviam
Government Advocate

COMMON ORDER

The petitioners have challenged the impugned order enhancing the rent from Rs.1,750/- to Rs.33,620/- and Rs.1,750/- to Rs.21,405/-. The rent has been enhanced based on the report of the Village Administrative Officer, who appears to have stated that the rent can be collected at the rate of Rs.2,000/- per acre. The details of the extent of land under cultivation and in possession of the respective petitioners are as under:-



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W.P. (MD) .No.	Survey No.	Extent	Old Rent	New Rent
10895	312	16 acres 81 cents	Rs.1,750/-	Rs.33,620/-
10896	310 and 313	14 acres 27 cents	Rs.1,750/-	Rs.21,405/-

2.At the time of admission, this Court has passed a detailed order on 17.12.2021, which reads as under:

"In the captioned two writ petitions an interesting legal issue arises.

2. Mr.G.Mohan Kumar, learned counsel for the writ petitioners in both the captioned writ petitions, Mr.VR.Shanmuganathan, learned private counsel for the Executive Officer (in the cadre of Joint Commissioner of 'the Tamil Nadu Hindu Religious & Charitable Endowments Department' which shall hereinafter referred to as 'TNHR&CE Dept' for the sake of convenience and clarity) for the temple concerned and Mr.C.Satheesh, learned Government Advocate on behalf of second respondent are before me.

3. Before I advert to the interesting legal issue, short facts are that the two writ petitioners are admittedly lessees under 'Arulmigu Dhandayuthapani Swamy Temple, Palani, Dindigul District' (hereinafter 'said Temple' for the sake of convenience and clarity) in respect of two separate parcels of lands, one admeasuring 16.81 acres or thereabouts and other admeasuring 14.27 acres or thereabouts, both situate in Saplanaickenpatti, Thalaiyuthu Post, Palani and referred to as 'Thottam-I' and 'Thottam-II', respectively. The writ petitioners have been paying Rs.1,750/- each per annum for these two parcels of lands as rent to said Temple. Going by the submissions of learned Temple counsel (who put it with a sense of sarcasm) these are princely sums. I am unable to disagree.

4. Aforementioned rents were enhanced by said Temple by resorting to Section 34A captioned 'lease rent' i.e., Section 34-A of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereinafter 'TNHR&CE Act' for the sake of convenience and clarity], the proceedings enhancing the rent and subsequent communications demanding enhanced rents have been assailed in the captioned two writ petitions.

5. Learned State counsel submits that he is more in the nature of formal party.

6. Now I revert to the interesting legal issue. The bone of contention is the enhancement of the rent should only be under 'the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Act 57 of 1961)' [hereinafter 'Public Trust Act' for the sake of convenience and clarity] whereas the Temple counsel contends that it is governed by



TNHR&CE Act and therefore the enhancement is under Section 34-A of TNHR&CE Act.

7. TNHR&CE Act is clearly a prior Statute as the same came into force on and from 19.11.1959 whereas the Public Trust Act is a 1961 Act.

8. The aforementioned bone of contention is predicated on definition of 'Public Trust' within the meaning of Section 2 (25) of Public Trust Act which reads as follows:

'2. Definitions. - In this Act, unless the context otherwise requires, -

"(25) public trust" means a trust for a public purpose of a religious or charitable, or of an educational nature, and includes -

(i) any temple, math, mosque, church or other place by whatever name known, which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship;

(ii) any charitable or educational institution of a public nature;'

The above should be read in conjunction with Section 4 of Public Trust Act is learned writ petitioners counsel's say.

9. It appears that Public Trust Act has been amended several times over but the amended Public Trust Act as obtaining today and more particularly, as obtaining in 2015 i.e., the year in which the impugned fixation of rent was done has not been placed before me.

10. To be noted, the above interesting legal issue is on a demurrer i.e., on a demurrer qua the ground that impugned enhancement of rent even if it be under Section 34A has been done without putting the writ petitioners on notice and therefore is in violation of ratio of Division Bench of this Court laid down in Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association v. State of Tamil Nadu, rep. by its Secretary to Government, Hindu Religious and Charitable Endowment Department, Chennai and others, reported in (2009) 4 MLJ 1223. However, even if I remit the matter back on this ground, the question as to which of the two Statutes would govern the admitted lessor lessee relationship between the said Temple and writ petitioners would certainly haunt the respondents. Therefore, it may be appropriate to decide this legal issue and then remit the matter even if that be so which would be subject to further arguments.

11. This Court is also informed that there appears to be conflicting views taken by different Benches of this Court on the above issue but in the hearing today, both learned counsel submit that it is hazy as of today and further time is required to plough into the matter and place all relevant material before this Court.



12. I also deem it appropriate to record here that the legal issue appears to turn broadly on conflict between two Statutes. TNHR&CE Act is clearly a special Statute and it has been repeatedly held by this Court in a long line of case laws that it is a selfcontained code but whether Public Trust Act is a special enactment is not clear as of today and learned counsel for writ petitioners requests for time to work on this issue and revert to this Court. Be that as it may, the issue qua conflict between two special enactments namely, the Commercial Courts Act, 2015 (Act No.4 of 2016) and the Arbitration and Conciliation of Act, 1996 (Act No.26 of 1996) came up before Hon'ble Supreme Court and that has been resolved by Hon'ble Supreme Court in the oft quoted Kandla Export Corporation vs. M/s.OCI Corporation judgment reported in (2018) 14 SCC 715, the equivalent is 2018 SCC Online 170.

13. To be noted, two other provisions are relevant and they are Section 3 of Public Trust Act captioned 'Act to override other laws, contracts, etc.,' and Section 24 captioned 'What is fair rent'. All these will be considered in the ensuing hearing/s.

14. Both the aforementioned learned counsel i.e., learned counsel for writ petitioners and learned Temple counsel request for time to plough into the matter, work on the above propositions and revert to this Court. Requests acceded to. It is also open to the respondents to file a counter-affidavit if it is considered necessary.

15. List three weeks hence.

16. List on 07.01.2022."

3.The learned counsel for the petitioners submits that the fixation of fair rent increasing multifold times is arbitrary and is liable to be interfered. That apart, it is submitted that it is open for the respondent temple to move before the tribunal under the provisions of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 for fixation of fair rent.

4.Opposing the prayer, the learned counsel for the official respondent and the learned counsel for the private respondent, namely the 2nd respondent submit that the rent has been enhanced under Section 34A of the Hindu Religious and Charitable Endowments Act, 1959 (herein after referred to as Act) and therefore, the writ petitions are liable to be dismissed. It is submitted that only Section 34A of the Act is applicable and the provisions of Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 are not applicable. It is further submitted that the fixation of fair rent is in accordance with Section 34A of the Act. It is submitted that the respective petitioners are in possession of the large extent of land and are paying a meagre rent and therefore, there is no merits in the present writ petition. That



apart, it is submitted in any event that the petitioners have an alternate remedy whether under the HR & CE Act, 1959 and/or under the provisions of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961. Therefore, on this count also, this writ petition is liable to be dismissed.

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5. The learned counsel for the respondents further submits that the petitioners are not the cultivating tenants within the meaning of Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961, inasmuch as the petitioners have not registered themselves as cultivating tenants with the authorities. It is further submitted that the amount that has been demanded is much lessor than the amount that would be payable by the petitioners as a cultivating tenant under the provisions of the aforesaid Act, even if the aforesaid provision was made applicable. In this connection a reference was made Section 24 of the aforesaid Act, which reads as under:-

24. What is fair rent. -

(1) Fair rent shall be 25% of the normal gross produce or its value in money.

(2) (Omitted by Act 18 of 1980)

(3) Where the contract of tenancy provides for payment of a rent lower than the fair rent payable under the above provisions, the contract rent alone shall be payable during the contract period.

6. The learned counsel for the respondents further submits that since the petitioners are not a cultivating tenants within the meaning of aforesaid Act, the petitioner as also the respondent temple would be governed by the provisions of Section 34 of the Act r/w Religious Institutions (Lease of Immovable Property) Rules, 1963. It is therefore submitted that the amount that has been paid by the petitioners was meagre.

7. By way of rejoinder, the learned counsel for the petitioners submits that during the pendency of the present writ petitions the respective petitioners have paid a sum of Rs.10,500/- on adhoc basis. The learned counsel for the petitioners further submits that in terms of Rule 16 of the Religious Institutions (Lease of Immovable Property) Rules, 1963, it is clear that the provisions of the Rules cannot apply to the land coming under the purview of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57/1961).

8. I have considered the arguments of the learned counsel for the petitioner, learned counsel for the 1st respondent and the learned Government Advocate for the official respondent.

9. There is no doubt that the petitioners are the cultivating tenants within the meaning of Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961, inasmuch as the



definition of cultivating tenant is wide enough to cover the petitioners. The definition under the said Act reads as under:-

"(5) Cultivating Tenant-

(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii) includes-

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land;

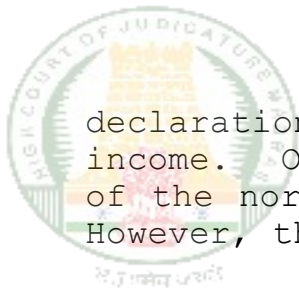
(iii) does not include a mere intermediary or his heir.

Explanation: For purposes of Chapter III and IV, a co-operative farming society shall be deemed to be a cultivating tenant ; "

10.As a cultivating tenant, the petitioners required to pay the fair rent. As per Section 2(8) of the aforesaid Act, fair rent means the rent payable under Chapter-IV. As per Chapter IV, every cultivating tenant under any public trust should be bound to pay to the public trust and every public trust shall be entitled to collect from the cultivating tenant fair rent payable under this Chapter. Section 24 defines what is fair rent, which is extracted above.

11.A reading of the above provision, a cultivating tenant is bound to pay 25% of the normal gross produce or its value in money. Thus the rent is payable in the form of either by 25% of the normal gross produce or its value in money, which the respective petitioners have not complied with. The other alternative is where the contract of tenancy provides for payment of a rent lower than the fair rent payable under the above provisions, the contract rent alone shall be payable during the contract period. This is not the case here.

12.Section 25 of the Act also makes it clear that the fair rent may be paid in cash or in kind. The amount that has been paid by the petitioners when the impugned notices were issued clearly indicates that the petitioners have not been paying the fair rent all along. The respondent temple has also been negligent in not collecting the rent that is due from the respective petitioners. The amount that has been demanded from the respective petitioners appears to be far below the rent that is to be paid. The income that would be generated from the respective lands of the respective petitioners measuring 16 acres and 81 cents and 14 acres and 21 cents would have been much higher. The petitioners were required to file proper



declaration with the temple authorities regarding the yield and the income. Option was available to the petitioners either to pay 25% of the normal gross produce or its value in money as stated above. However, this has not been done by the petitioners.

13. Considering the same, I am inclined to dispose of these writ petitions by directing the respective petitioners to continue to pay the fair rent as demanded in the impugned notices. The amount that is to be paid by the petitioners will be treated as advance/deposits. The 1st respondent shall call upon the respective petitioners to furnish documents disclosing the yield for the past. In case, the petitioners fail to produce any records to substantiate the same, the 1st respondent shall determine the fair rent to be paid by the petitioners by best Judgment method for the past and recover by adjusting the deposit and refund in case of excess.

14. For the ensuing period, the petitioner is directed to maintain proper records and to pay the fair rent in terms of Section 24 of the Act. It is made clear that every yield and every harvest shall be informed to the temple authorities, so that the fair rent can be determined then and there. It is needless to state that in case the petitioners are aggrieved by such determination, it is open to them to workout their remedy in a manner known to law.

15. The writ petitions stand disposed of, in terms of the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Tahsildar,
Tahsildar Office,
Palani, Dindigul District.

+1 CC to M/s.SPL.GP (SR-18971[F] dated 18/04/2022)

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-19030[F] dated 18/04/2022)

+2 CC to M/s.G. MOHAN KUMAR, Advocate (SR-19246, 19247[F] dated 19/04/2022)

W.P. (MD) Nos.10895 and 10896 of 2016

13.04.2022

SS/25.05.2022 : 7P/5C