



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2022

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

W.P(MD).No.12392 of 2016

and

W.M.P(MD).Nos.9402 and 9403 of 2016

S.Ganesan

... Petitioner

**Vs.**

1.The Commissioner,  
HR&CE Admin, Department,  
Chennai.

2.The Joint Commissioner,  
HR&CE Admn, Department,  
Tirunelveli.

3.Fit Person,  
Arulmigu Thenpalaniandavar Temple,  
Thenkasi,  
Tirunelveli District.

4.Jamuna

5.S.Velayutham

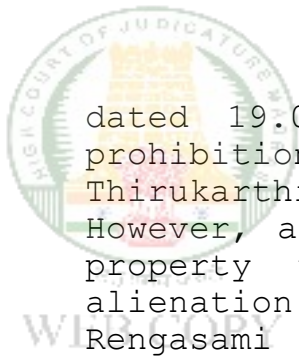
...Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to quash the order passed in A.P.No.16 of 2016 D2, dated 17.05.2016 on the file of the Commissioner, HR&CE Admn. Department, Chennai and to pass such other further orders as this Court may deem fit and proper under the circumstances of the case.

For Petitioner: Mr.J.Senthil Kumar  
For R1 & R2 : Mr.P.Subbaraj  
Special Government Pleader  
For R3 : Mr.M.Muthugeethayan  
For R4 & R5 : No Appearance

**ORDER**

The petitioner is fighting the proxy war on behalf of one Velayutham in this writ petition. The dispute pertains to the property which was dedicated to one Andiyapillai, by dedication,



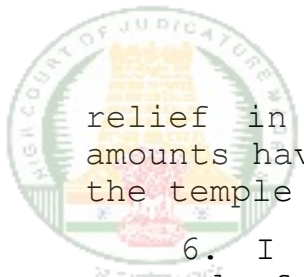
dated 19.02.1930. As per the aforesaid dedication, there is a prohibition for alienation of the property dedicated for the Thirukarthigai Katallai, attached to the third respondent temple. However, after the death of Andiyapillai, his legal heirs sold the property to one Subramania Pattar on 14.05.1964 and further alienation was made by the said Subramania Pattar in favour of Rengasami Naidu on 30.01.1986. Rengasami Naidu, in turn, made a further alienation of the property in favour of one Velayutham, fifth respondent, herein on 25.03.2018. The petitioner appears to be a tenant of the said Velayutham. Under these circumstances, the proceedings under Section 38 (1) read with Section 63 (d) and (g) of the Hindu Religious and Charitable Endowments Act, 1959 were initiated by the third respondent before the Joint Commissioner in M.P.No.7 of 2014.

2. The aforesaid proceedings initiated before the second respondent was allowed in favour of the third respondent. In the aforesaid proceedings, the wife of Rengasami Naidu, namely, Jamuna was arrayed as the first respondent, and the buyer, namely, Velayutham was arrayed as the second respondent and the petitioner as the third respondent. The said M.P.No.7 of 2014 was allowed on 18.11.2015. Aggrieved by the aforesaid order, the fifth respondent herein preferred an appeal before the first respondent under Section 38 (3) of the Hindu Religious and Charitable Endowments Act, 1959 in A.P.No.6 of 2016 D2. By the impugned order, dated 17.05.2016, the aforesaid appeal of said Velayutham was also dismissed. During the interregnum, the petitioner had ended up by paying 50% of the amount determined by the Joint Commissioner for the period from 1964 to 2013. The petitioner, however, continued to be in possession of the property of the temple, which was wrongly alienated by the legal heirs of the original donar, Andiyapillai, as mentioned above.

3. It is the case of the petitioner that the property does not belong to the temple and therefore, the respondents have no jurisdiction to demand amounts under Section 38 (1) of the Hindu Religious and Charitable Endowments Act, 1959 read with Section 63 (d) and (g) of the Hindu Religious and Charitable Endowments Act, 1959.

4. The learned counsel for the petitioner further submits that the petitioner has been in peaceful possession of the property since 2013 onwards and is depending on the said income for his livelihood. It is, therefore, submitted that the petitioner may be allowed to continue to remain in the property as he has got family to support and is depending on the income from the said property. The learned counsel for the petitioner, at this stage, submits that the petitioner is willing to pay the amount, however, the third respondent is unwilling to receive the same.

5. Opposing the prayer, the learned counsel for the third respondent submits that the writ petition is devoid of merits as the petitioner has no *locus standi* to file this writ petition for the



relief in this writ petition. It is submitted that no further amounts have been paid and though the petitioner continues to occupy the temple property.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 and 2 and the learned counsel for the third respondent.

7. The petitioner has no *locus standi* to challenge the impugned order as the petitioner is merely a tenant who remained unsuccessful both before the second respondent in M.P.No.7 of 2014 and before the first respondent in A.P.No.6 of 2016 D2. The temple cannot be deprived of the income for observing Katallai/dedication. The petitioner has not paid any amount after the year 2015.

8. Considering the same, I direct the petitioner to pay a sum of Rs.1,00,000/- within a period of thirty days from the date of receipt of copy of this order. The respondent temple may receive representation from the petitioner to regularise the occupation of the petitioner as a tenant subject to the petitioner's undertaking to pay the rent and the arrears on the fair rent that may be fixed by the Fair Rent Fixation Committee. This exercise shall be carried out by the official respondents along with the third respondent within a period of six weeks from the date of receipt of copy of this order. The payment of Rs.1,00,000/- as directed to pay now, shall be adjusted against the arrears to be determined pursuant to the fair rent to be fixed by the Fair Rent Fixation Committee. The first respondent shall conduct public auction for renting out the property. Liberty is given to the petitioner to participate in the same. The first respondent may give preference to the petitioner to be a tenant if the petitioner is willing to pay fair rent to be fixed by the Fair Rent Fixation Committee. Considering the fact that the petitioner is an occupation of the property since 2013. If however, the petitioner fails to succeed in the auction, the petitioner shall vacate the property.

9. The writ petition stands disposed of with the above observations. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Commissioner,  
HR&CE Admin, Department,  
Chennai.

2.The Joint Commissioner,  
HR&CE Admn, Department,  
Tirunelveli.

3.Fit Person,  
Arulmigu Thenpalaniandavar Temple,  
Thenkasi,  
Tirunelveli District.

+1 CC to M/s.SPL GP ( SR-15364[F] dated 30/03/2022 )

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate ( SR-15476[F] dated  
30/03/2022 )

W.P (MD) .No.12392 of 2016  
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RK(07/04/2022) 4P 6C