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W.P(MD).No.26258 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.26258 of 2022

and

W.M.P(MD)No.20433 of 2022

1.P.Vasudevan

2.A.Sureshkumar

... Petitioners

Vs.

The Joint Commissioner Cum Executive Officer,
Srirangam Arulmigu Aranganathar

Swamy Thirukkivil,
Srirangam, Trichy,
Trichy District.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notice issued by the Respondent in his proceedings in Na.Ka.5393/1431/C3, dated 15.11.2022 with an enclosure whereby a public auction notice was alleged to have been issued by the Respondent in Na.Ka.5393/1431/C3, dated 08.11.2022, whereby it was notified that the Respondent is going to conduct public auction for the shops under his control including shop Nos.4 and 12 also on 22.11.2022 at 05.00 p.m and quash the same and consequently direct the Respondent to allow the Petitioners to continue their business as usual on existing terms of lease.

For Petitioners : Mr.B.Jameel Arasu



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For Respondent : Mr.M.Saravanan

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ORDER

This Writ Petition has been filed to quash the impugned notice issued by the Respondent, dated 15.11.2022 along with public auction notice, dated 08.11.2022, whereby, it is notified that the Respondent is going to conduct public auction of shops including Shop Nos.4 and 12 on 22.11.2022 at 05.00 p.m and consequently, to direct the Respondent to allow the Petitioners to continue their business as usual on existing terms of lease.

2. It is submitted by the learned counsel for the Petitioners that Respondent had issued a tender notification calling for tenders pertaining to allotment of various shops constructed at the Commercial Complex at Aswarthanakula Karai Gandhi Road, Srirangam. The Petitioners have participated in the earlier tender process and turned out to be the successful bidders and they are in possession and enjoyment of Shop Nos.4 and 12. The rent was originally fixed at Rs.1,100/- per fasli 1411 to 1416 per each shop, which was enhanced by 15% once every three years in terms of agreement entered between the Petitioners and the Respondent.

3. It is further submitted by the learned counsel for the Petitioners that the Petitioners have not committed any default in payment of the rent fixed by



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the Respondent. The rent has been paid according to the Petitioners until 22.06.2022, which was relied upon to show that the Petitioners are in possession and enjoyment of the said shops and they have not defaulted in payment of rent agreed upon. While so, the Respondent had issued the impugned notice, dated 15.11.2022 while referring to notice issued by the Respondent dated 08.11.2022, wherein, it was stated that the Respondent is going to conduct public auction for the shops under his control including Shop Nos.4 and 12 on 22.11.2022 at 05.00 pm. Further the impugned proceedings were made on the basis of order in Writ Petition in W.P.(MD)No. 16779 of 2022 dated 30.08.2022, which primarily dealt with the cases of sub-tenants, who are occupying the premises unauthorizedly, whereas, the Petitioners are successful bidders and are in legal possession and are paying the rentals without any default and therefore, the above order may not bind the Petitioners.

4. The learned counsel for the Petitioners placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***State of U.P and others Vs Maharaja Dharmander Prasad Singh and others*** reported in ***(1989) 2 SCC 505***. The relevant portion of the order reads as under:

“30. A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or



otherwise. The use of the expression 're-entry' in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lease cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'. In Bishan Das Vs. State of Punjab this Court said:

“We must, therefore, repel the argument based on the contention that the Petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order...”

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.”

31. Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.”

5. To the contrary, the learned counsel for the Respondent submitted that normally license / lease tenure is for a period of three years which may be renewed. However, in the present case, the Petitioners have not produced any material which would show that there had been periodically renewal, though it is not in dispute that the Petitioners are in possession.



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6. The Petitioners would submit that inasmuch as they are not sub-tenants /sub-lessees, but original tenants / licensees, the impugned auction proceedings which are passed on the basis of the order of this Court in W.P. (MD)No.16779 of 2022 which is with reference to sub tenant, the impugned auction insofar as it includes the property leased / licenced to petitioners is misconceived.

7. It is submitted by the learned counsel for the Respondent that the property belongs to the Respondent Temple and once the license / lease period is expired, it is open to the Respondent to bring the property to auction. As a matter of fact, vide proceedings dated 15.11.2022, the Petitioners had given an undertaking that they would participate in auction and also hand over the vacant possession in case they do not turn out to be the successful bidders. In view of the same, it is not open to the Petitioners to question the auction notice.

8. This Court finds merits in the submission made by the learned counsel for the Respondent for two reasons:

(a) There is nothing in the Hindu Religious and Charitable Endowments Act or in the Rules imposing restriction / limitation on the Temple authorities



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to bring to auction the lease properties of the temple once the lease / licence period has expired, unless renewed.

(b) In any view, the petitioners having given an undertaking to take part in the auction and to vacate the premises in case they do not turn out to be the successful bidders, it may not be open to the Petitioners to now resile from the undertaking.

In the present case, the Petitioner was in possession beyond the period of tenure, which was originally entered. The Petitioners were put on notice of the present auction and the Petitioners had also undertaken to take part in the auction.

9. Taking into account the above facts, this Court is of the view that the Petitioner may not be justified in challenging the impugned auction. The Petitioners shall be at liberty to take part in the tender process, and would abide by the auction results.

10. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No



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To
The Joint Commissioner Cum Executive Officer,
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Swamy Thirukkovil,
Srirangam, Trichy,
Trichy District.

MOHAMMED SHAFFIQ, J.

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