



W.P.No.1436 of 2023

In the High Court of Judicature at Madras

Dated : 25.4.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.1436 of 2023
& WMP.Nos.1522 & 1525 of 2023

Mrs.Therasy Vinod Kumar
(a) Vincy Renuka

...Petitioner

Vs

1.The Commissioner, HR & CE
Admin Department,
Chennai-34.

2.The Additional Commissioner,
HR & CE Admin Department,
Chennai-34.

3.The Executive Officer,
Arulmigu Agatheeswarar
Prasanna Venkatesaperumal
Temple, Nungambakkam,
Chennai-34.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in Na.Ka.No.2378/2020/R2 dated 22.9.2021 by the 1st respondent, quash the same and direct the respondents to lease the property at No.7, Appu Street,



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Nungambakkam Chennai-34 to the petitioner on the lease rental to be fixed by the respondents.

For Petitioner : Mr.D.Suriya Durai

For Respondents : Mr.N.R.R.Arun Natarajan,
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the first respondent dated 22.9.2021 and for a consequential direction to the respondents to lease the property situated at No.7, Appu Street, Nungambakkam, Chennai-34 to the petitioner after fixing the monthly rent payable by the petitioner.

2. The petitioner made a similar request on an earlier occasion and it was rejected by the second respondent - Additional Commissioner by proceedings dated 24.9.2014. The same became a subject matter of challenge in W.P.No.33559 of 2014.

3. The said writ petition namely W.P.No.33559 of 2014 was disposed of by a learned Single Judge of this Court by order dated 06.11.2019. It will be relevant to extract the entire order dated



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06.11.2019 in order to understand the background of this case, which is as hereunder:

".....

2. *The brief facts, leading to file the writ petition, reads as follows:*

An extent of 2295 sq.ft. vacant site at No.7, Appu Street, Nungambakkam belongs to the third respondent temple was leased to the fourth respondent. Due to non payment of rent, an eviction proceedings has been initiated by the third respondent temple, and a suit has been filed against the fourth respondent in O.S.No.1384 of 1983, the suit was decreed, and the appeal filed by the fourth respondent in A.S.No.319 of 2004 also came to be dismissed. Thereafter, the temple filed an execution proceedings in E.P.No.1560 of 2009 and the same is pending on the file of the X Assistant City Civil Court, Chennai. Pending execution proceedings, the petitioner and the fourth respondent said to have made some arrangements, by which, the petitioner said to have paid the entire arrears on behalf of the fourth respondent. Thereafter, the petitioner made an application before the Joint Commissioner for compromise in the said execution proceedings to transfer the tenancy in favour of the petitioner. Earlier Joint Commissioner, H.R & C.E., by an order 27.12.2010 recommended for transfer of the tenancy in favour of the petitioner and to enter into a compromise between the parties. Thereafter, another Joint Commissioner, H.R.& C.E., Chennai, has rejected the proposal for transfer of tenancy by an order dated 28.06.2013.



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Challenging the above said order, the petitioner has filed a Revision in R.P.No.94 of 2013 D2 under Section 21 of the H.R.& C.E. Act before the Commissioner and the Commissioner by an order dated 28.10.2013 set aside the order passed by the Joint Commissioner holding that the Joint Commissioner has no jurisdiction to pass the order and he had usurped the power of the Commissioner, and only the Commissioner has the power to deal with such matters. Thereafter, once again, the Additional Commissioner, without considering the order passed by the first respondent/Commissioner dated 28.10.2013 in R.P.No.94/2013, rejected the proposal of compromise by an order dated 24.09.2014 in Na.Ka.No.46669 of 2014 and directed the parties to expedite the execution proceedings. Now, the above order is challenged in this writ petition.

3. Mr.M.Ravindran, learned Senior Counsel, appearing for the petitioner would submit that earlier the order passed by the Joint Commissioner rejecting the proposal for compromise has been set aside by the Commissioner on the ground that only the Commissioner has power to entertain any petition for compromise, and also for transfer of lease. But the second respondent/Additional Commissioner, without even considering the order passed by the Commissioner, has passed the impugned order, for which she has no jurisdiction. Hence, it is liable to be dismissed.

4. Mr.M.Maharaja, learned Special Government Pleader, appearing for the respondents 1 and 2, on instructions, would submit that pending writ petition,



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possession was taken by the temple and the Execution Proceedings is also closed. Now, the third respondent temple is in possession of the property. Since the Execution Proceedings has already been closed, and possession was also taken, at this stage, the petitioner's request for compromise and transfer of lease cannot be considered and the prayer sought for in the writ petition is also infructuous.

5. I have considered the submissions made on either and perused the materials available on records carefully.

6. The grievance of the petitioner is that the petitioner has paid the entire lease amount, and sought for transfer of lease in his favour by entering into a compromise in the suit filed by the temple, the Additional Commissioner has arbitrarily rejected the petitioner's request, for which he has no jurisdiction and he was also supported by the order passed by the Commissioner in R.P.94/2013 dated 28.10.2013, wherein, the Commissioner has stated that the power for permitting compromise is only vest with the Commissioner.

7. Now it is submitted that the Execution Petition has already been closed and possession also taken by the temple. At this stage, there is no possibility of entering into compromise in the suit. Considering the above circumstances, the relief sought by the petitioner cannot be granted at this stage. However, considering the fact that the petitioner has paid the entire arrears of lease amount and also sought for lease in his favour, the petitioner is directed to submit a fresh



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representation before the first respondent/Commissioner seeking for granting of lease in his favour.

8. The petitioner is directed to submit his representation within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Commissioner is directed to consider the same and pass suitable orders on merits in accordance with law within a period of six weeks thereafter, after giving opportunity to the petitioner. Till then, the respondents are directed not to lease out the subject property to any other third party.

....."

4. Pursuant to the above order of the learned Single Judge of this Court dated 06.11.2019, the petitioner made a representation seeking for leasing the subject property in her favour and the impugned proceedings dated 22.9.2021 came to be passed by the 1st respondent rejecting the request made by the petitioner and further informing the petitioner that lease can be granted to the subject property only by calling for a public auction. Aggrieved by the same, the present writ petition has been filed before this Court.

5. I have heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.



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6. There is no dispute with regard to the fact that the property in dispute belongs to the third respondent - Temple. The nature of right that is claimed by the petitioner seems to be more in the nature of a legitimate expectation based on some understanding that was reached between the parties in E.P.No.1560 of 2009 on the file of the 10th Assistant Judge, City Civil Court, Chennai, when the petitioner paid the entire arrears of rent to the third respondent - Temple on behalf of the original tenant Ms.Dakshayani Ammal. There is also no dispute with regard to the fact that the subject property is in the possession of the third respondent - Temple from 2018 onwards.

7. It is seen from the records that initially, a recommendation was made by the Joint Commissioner to the Commissioner, Hindu Religious and Charitable Endowments Department (for short, the Department) through the letter dated 27.12.2010 to consider transferring the tenancy from the name of the said Ms.Dakshayani Ammal to the name of the petitioner. However, the Executive Officer of the third respondent - Temple was not inclined to transfer the lease in favour of the petitioner and accordingly, the request made by



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the petitioner was rejected through communication dated 28.6.2013 by conveying the order of the Joint Commissioner concerned dated 04.9.2012.

8. The said order of the third respondent dated 28.6.2013 became the subject matter of challenge before the first respondent and the petitioner filed a revision petition. Further, the first respondent, through the order dated 28.10.2013, interfered with the order passed by the Joint Commissioner dated 04.9.2012 and the revision petition filed by the petitioner was allowed.

9. The matter again went before the second respondent - Additional Commissioner, who, by proceedings dated 24.9.2014, rejected the claim made by the petitioner and directed the possession of the property in dispute to be taken over immediately. Pursuant to that, the possession was also taken over by the third respondent - Temple. The said order dated 24.9.2014 was the subject matter of challenge in W.P.No.33559 of 2014 and the order dated 06.11.2019 passed in the said writ petition has already been extracted supra.

10. The crux of the issue involved in this writ petition is as to



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whether the petitioner has any legal right to compel the Department to give the subject property on lease to the petitioner and as to whether there is any corresponding duty on the part of the Department to comply with the request made by the petitioner.

11. The main ground that was raised by the learned counsel for the petitioner is that this Court must take into consideration the antecedents of this case and the payment that was made by the petitioner towards arrears of rent on behalf of the erstwhile tenant. It is further submitted that some weightage must be given for the payment made by the petitioner and that the petitioner was made to run from pillar to post for the last 12 years without being given any relief.

12. I have carefully considered the submissions made by the learned counsel for the petitioner.

13. The first respondent, through the impugned proceedings dated 22.9.2021, had taken into account the antecedents in this case and had come to the conclusion that the subject property must be



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given on lease only by calling for public auction. The first respondent had also taken into consideration the fact that the petitioner had been holding certain properties belonging to the third respondent - Temple as a lessee.

14. During the course of hearing, the learned Special Government Pleader appearing for the respondents has brought to the notice of this Court the fact that the petitioner and her family members are the lessees with respect to some of the properties belonging to the third respondent - Temple, that there is a huge arrears of rent due and payable by them and that even in so far as the property, in which, the petitioner is a lessee, is concerned, she is in arrears of rent to the tune of Rs.4,07,360/-. The learned Special Government Pleader submits that this conduct of the petitioner and her family members must also be taken into consideration by this Court.

15. At this juncture, it will be relevant to take note of the judgment of this Court in the case of ***the Director, Archaeological Survey of India, Janpat, New Delhi-4 [Suo Motu W.P.No.574 of***



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2015 dated 07.6.2021], in which, the Division Bench of this Court issued a slew of directions and in so far as the granting of lease with regard to the temple lands is concerned, it was made clear that it must be done through public auction. Further directions were also issued to the effect that for those, who are holding on to the properties belonging to the temples, action must be initiated to evict them as per law.

16. In the considered view of this Court, the first respondent was perfectly right in rejecting the claim made by the petitioner since the petitioner does not have any legal right to insist for letting the subject property in her favour and to recognize her as a tenant. The previous events, at the best, only gave a hope to the petitioner that she would be given the subject property on lease. This hope does not attain the status of a legal right warranting interference into the order passed by the first respondent.

17. If really the Department was serious enough to recognize the petitioner as a tenant, there was no need for them to take possession of the subject property as early as 2018. Unfortunately,



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the subject property is lying idle and has not fetched any income to the third respondent - Temple for more than a decade. Hence, it is high time that the subject property is brought for public auction and a fair rent is fixed to be collected from the successful bidder, who is recognized as a tenant. It goes without saying that the petitioner is also entitled to participate in the auction and submit her bid. Except giving this liberty, this Court does not find any ground to interfere with the order passed by the first respondent as it is perfectly in line with the directions issued by the Division Bench of this Court in the order dated **07.6.2021** in ***Suo Motu W.P.No.574 of 2015 referred supra.***

18. In the result, the writ petition stands dismissed. No costs. Consequently, the connected WMPs are also dismissed.

25.4.2023

To

1.The Commissioner, HR & CE
Admin Department, Chennai-34.

2.The Additional Commissioner,
HR & CE Admin Department,
Chennai-34.

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3.The Executive Officer,
Arulmigu Agatheeswarar
Prasanna Venkatesaperumal
Temple, Nungambakkam,
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N.ANAND VENKATESH,J

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