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W.P.Nos.8692, 8696, 8701 & 8705



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.8692, 8696, 8701 & 8705 2023

and

**W.M.P.Nos.8869, 8870, 8873, 8880, 8882, 8886,
8888, 8891 & 8893 of 2023**

1.E.Venkatesan

2.E.Amulraj

... Petitioner
in W.P.No.8692 of 2023

3.A.Sekar

... Petitioner
in W.P.No.8696 of 2023

4.M.Arivazhagan

... Petitioner
in W.P.No.8701 of 2023

5.K.Panneerselvam

... Petitioner
in W.P.No.8705 of 2023

Vs.

1.The Secretary

Rep by its Government of Tamil Nadu

Tourism Culture and Religious Endowment Department,
Secretariat, Chennai.

2.The Commissioner,

Hindu Religious & Charitable Endowments Department,
Uthamar Gandhi Salai, Nungabakkam,
Chennai – 600 034.



3. The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Chennai Division II,
O/o. The Learned Joint Commissioner,
Mylapore, Chennai – 4.

4. The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Chennai Division II,
Yadava Street,
Padi, Chennai – 50.

5. The Board of Trustees/Fit Person,
A.M.Marka Sagaya Eswarar Vagayara Temple,
Poonamalle High Road,
Madurovoyal, Chennai – 600 095.

6. The Executive Officer,
A.M.Marka Sagaya Eswarar Vagayara Temple,
Poonamallee High Road,
Maduravoyal, Chennai – 600 005.

... Respondents
(in all WPs)

Prayer in W.P.No.8692 of 2023: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the 1st respondent to dispose Review Petition No.93 of 2022 pending on the file of the 1st respondent within two weeks and to further direct the 5th and 6th respondents to de-seal the petitioner premises based on the impugned order pending disposal of the above Writ Petition.

Prayer in W.P.No.8696 of 2023: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the 1st



respondent to dispose Review Petition No.94 of 2022 pending on the file of the 1st respondent within two weeks and to further direct the 5th and 6th respondents to de-seal the petitioner premises based on the impugned order pending disposal of the above Writ Petition.

Prayer in W.P.No.8701 of 2023: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the 1st respondent to dispose Review Petition No.95 of 2022 pending on the file of the 1st respondent within two weeks and to further direct the 5th and 6th respondents to de-seal the petitioner premises based on the impugned order pending disposal of the above Writ Petition.

Prayer in W.P.No.8705 of 2023: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to direct the 1st respondent to dispose Review Petition No.98 of 2022 pending on the file of the 1st respondent within two weeks and to further direct the 5th and 6th respondents to de-seal the petitioner premises based on the impugned order pending disposal of the above Writ Petition.

For Petitioners : Mr.J.Siddardhan
(in all WPs)

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader
[For H.R.&.C.E]
(in all WPs)



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COMMON ORDER

The present writ of mandamus is to direct the first respondent to dispose of the Review Petition Nos.93 to 95 & 98 of 2022 pending on the file of the first respondent within a period of two weeks and further direct the respondents 5 and 6 to de-seal the petition premises based on the impugned order pending disposal of the writ petitions.

2. The petitioners state that without knowing the title of the subject property, which belongs to the Temple, the forefathers of the petitioners were in occupation and peaceful enjoyment of the property for more than 60 years. The petitioners and their forefathers believed that the subject land belongs to the Government and petitioners being landless occupants by virtue of long possession, are entitled to be in possession. The petitioners were accepting regularization proceedings in respect of the occupiers of Government lands. The Temple Management issued a notice to the petitioners in the year 2012 and the petitioners came to know that the land belongs to the Temple. The father of the petitioners have not disputed the title of the Temple. They attempted to legalize the tenancy. Accordingly, the father of the petitioners gave a representation on 26.12.2012 to the Temple Management to regularize



them as tenants of the Temple. The said representation was not responded.

Subsequently, proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR & CE Act') was initiated by the second respondent and an order of eviction was issued on 21.09.2019. The petitioners were declared as encroachers and respondents called upon the father of the petitioners to vacate the premises. Similar orders have been passed in respect of the neighbours, who all are in occupation of the temple lands. The father of the petitioners along with other encroachers, who all are in occupation of the Temple lands, preferred a series of revision petitions before the second respondent, challenging the eviction orders. The father of the petitioner and other occupiers have agreed to abide by the conditions to be laid down by the Government to regularize their tenancy with reference to the Government order passed in G.O.Ms.No.340 dated 06.08.2007. However, the respondents have not taken any action to regularize the tenancy. A notice dated 03.05.2021 has been issued by the fifth respondent, calling upon the father of the petitioner to deposit a sum of Rs.17,31,080/- within a period of fifteen days and fixed Rs.22,500/- as monthly rent.



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3. The petitioners state that the second respondent / Commissioner, H.R.&C.E Department has directed to ascertain the feasibility for regularizing the petitioners as tenant and the petitioner and other occupiers have given a consent to abide by all the conditions. However, the authorities have not taken any action. The final Review Petition filed in R.P.Nos.132, 133, 136 & 137 of 2021 was dismissed. Against the said order, the Review Petition Nos.93 to 95 & 98 of 2022 was filed before the second respondent and the said Review Petition is pending. Thus, the petitioners are constrained to move the present writ petition.

4. The petitioners have mainly contended that they are in continuous possession of the Temple lands for more than 60 years and they have agreed to abide by the conditions stipulated in the Government order for the purpose of regularizing their tenancy. The second respondent failed to consider the long possession of the petitioner and they have put up construction in the temple lands.

5. The respondents have sealed the property on the ground that the petitioner has failed to pay the rental dues and the other damages, but the



petitioners have paid a sum of Rs.2,61,500/- on 22.10.2021 and even after the compliance of the orders passed by the second respondent in M.P.No.1 of 2021, the premises have been sealed without giving sufficient time to the petitioners to make an alternate accommodation.

6. The learned Special Government Pleader appearing on behalf of the respondent brought to the notice of this Court that the second respondent / Commissioner has elaborately considered all the grounds raised by the petitioners and passed final orders in R.P.Nos.132 to 136 of 2021 dated 16.06.2022. The Revision Petition preferred by the petitioners were already disposed of and therefore, the present writ petition is not maintainable. Meanwhile, the authorities competent have sealed the premises and possession has been taken by the competent authorities. The petitioners are encroachers and encroachments made by them cannot be legalized by the Department. If at all the petitioners are willing to secure any lease in accordance with the provisions of the HR & CE Act, they have to undergo the procedures as contemplated and the petitioners cannot re-occupy the premises, which is already been taken possession by the competent authorities of the Department.



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7. The petitioners have approached the respondents to de-seal the premises and to regularize the tenancy of the petitioners. Therefore, even at the time of filing of the Revision Petition, the petitioners were not in possession of the Temple property and the authorities competent had taken possession.

8. With reference to the relief sought for by the petitioners to de-seal and to regularize the tenancy of the petitioners, after hearing the learned counsels appeared on behalf of the petitioners, the Commissioner passed the following orders:

a) "The Executive Officer of the above Temple is directed calculate the rental arrears and furnish the same to the petitioners within a week from the date of receipt of this order.

b) Thereafter the petitioners are directed to pay 30% of the arrear amount as furnished by the Executive Officer of the above Temple, from the date of receipt of this order.

c) The Assistant Commissioner, Chennai is directed to remove the seal and restore the possession of the premises to this petitioner on



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production of proof for the payment as ordered above.

d) Further the petitioners are directed to pay the revised rent before the 5th of every month till the disposal of the Revision Petition.

The above M.P. Is hereby disposed of with the above directions. The main revision petitions are posted for hearing on 10.11.2021.”

9. The arrears of rent demanded by the Temple was up to the year 2012 and the Temple has contended that the petitioners are earning more income by subletting the property but failed to pay the monthly rent to the Temple. The petitioners have carried out constructions in the Temple property without proper approval from the competent authorities. The petitioners and some outsiders were involved in an unfortunate incident, when the authorities went to take possession of the subject property. F.I.R.No.1094 was registered at Koyambedu Police Station and four persons were kept in remand. Due to the misconduct of the petitioners, the temple is not willing to accept the petitioners claim as tenants and by considering their misconducts.



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10. Even in the year 2014 itself, the second respondent / Forum has directed to examine the feasibility of regularising the tenancy of occupiers subject to condition. The Temple administration has calculated the damages for use and occupation of the property and informed the same to the petitioners. But they did not pay the damages claimed by the Temple.

11. The petitioners were squatting on the property of the religious institution without any valid lease agreement. Though the petitioners were enriching themselves by running commercial establishment, and subletting the properties, they had failed to pay the damages for use and damage of the property of the temple. The said properties were endowed for the maintenance of the temple. But the petitioners are preventing the temple to get income from the said property by defaulting the payment. If the properties are leased out in public auction, the temple will get huge income. More so, the petitioners have assaulted the authorities and prevented them from doing their lawful duties and a Criminal Case was registered against the petitioners.

12. The conduct of the petitioners to legalize the illegality was taken into consideration, which was observed by the second respondent / Forum in



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the order passed in the Revision Petitions. The father of the petitioner has given a representation in the year 2012 to treat the petitioners and other occupiers of that locality as tenants and they have agreed to abide by the conditions stipulated by the Government. When the action was taken by the authorities in the year 2014 and the feasibility was considered to regularize the petitioners as occupiers subject to certain conditions, the Temple administration has calculated the rental arrears, damages for use and occupation of the property and raised demand and informed the same to the petitioner and asked them to pay the amount, but the petitioners had not paid the damages as claimed by the temple. Though the petitioner states that they agreed to abide by the conditions, they have failed, even to pay the damages for use and occupation as calculated and demanded by the temple administration.

13. Further, the petitioners are squatting on the temple property for several years without any valid lease agreement or permission. Pertinently, the petitioners earned more income by way of subletting the temple land to the third parties and failed to pay the monthly rent to the Temple. The petitioners have carried out constructions in the temple land without proper



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approval from the competent authorities. The petitioners allowed the outsiders to involve in an unfortunate incident, when the authorities went to take the possession of the subject property and the authorities were physically assaulted by the petitioners and therefore, the Criminal Case was registered on the file of the Koyambedu Police station and four persons were kept in remand.

14. Under those circumstances, the second respondent / Commissioner and the competent authorities found that the petitioners are not entitled for any leniency and found that regularization will lead to further financial loss to the Temple administration and took a decision, not to regularize the tenancy of the occupiers in the subject property.

15. The Temple administration is bound to fix the fair rent as per Section 34-A of the HR & CE Act and the property is to be leased out only to public auction for the benefit of the temple for which the endowment was created. If at all the petitioners are interested in getting lease, they have to participate in the public auction subject to condition for payment of damages as claimed by the Temple Administration.



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16. The abuse of temple properties at no circumstances be tolerated either by the department or by the Courts. Some noble hearts donated their hard-earned money or valuable properties in favour of the Temple for the purpose of doing service to the temple and to the devotees. The intention of the donors must be honoured at all circumstances by the competent authorities under the Act. The authorities are duty bound to maintain the temple properties in consonance with the provisions of the HR & CE Act and Rules and they cannot allow the Temples to suffer financial loss, despite that, the Temple owns the property. The Department is a trustee/parentis. Thus, their paramount duty is to protect the temple properties and to ensure that the temple administration gets monetary benefits in commensuration with the market rate prevailing and by following the procedures.

17. Periodical revision of rent and fixation of rent is the duty mandated under the HR & CE Act. Thus, the encroachers are to be removed by following the procedures as contemplated. In the present case, the petitioners are encroachers. They do not possess any valid lease nor secured any permission from the Department. Contrarily, the petitioners and other occupiers of that locality earned huge money by constructing illegal



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buildings and by subletting the properties to the third parties. Their misconduct towards the authorities and the registration of a Criminal Case was also taken into consideration by the second respondent / Forum.

18. All these facts would lead to an inevitable conclusion that the petitioners are not entitled for the relief of regularization and such regularization would cause infringement of the right of the Deity in the temple / owner and more so, would affect the financial prosperity of the temple, to be derived from and out of the property belonging to the temple. The petitioners have not even paid the damages demanded for use and occupation. They have not paid the rent even though they are earning huge money, by constructing illegal buildings and subletting the same.

19. The authorities have already taken possession of the temple property and the petitioners have not even paid the rent and the damages calculated for use and occupation. This being the factum, the petitioners are not entitled for any relief. The respondents are bound to proceed with the property in the manner contemplated under the provisions of the Act and Rules.



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20. Accordingly, the writ petition stands dismissed. No costs.
Consequently, connected Miscellaneous Petitions are closed.

06.04.2023

Kak/Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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- 2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
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S.M.SUBRAMANIAM, J.

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