



WEB COPY

WP No.2769 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-04-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.2769 of 2023

And

WMP Nos.2886 and 2889 of 2023

L.Subramanian

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

2.Arulmigu Vaidyanathaswami Temple
Represented by its Executive Officer,
Thirumazhapadi Village,
Ariyalur Taluk and District-621 851.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
for issuance of a Writ of Certiorarified Mandamus, calling for the records of



the second respondent pertaining to the Notice dated 13.01.2023 and quash the same in respect of S.Nos.380/3 and 181/14, Annimangalam Village, Ariyalur Taluk and District and consequently forbear the respondents, their men, representatives and agents from interfering with petitioner's possession and enjoyment of the aforesaid lands situate in S.Nos.380/3 and 181/14, Annimangalam Village, Ariyalur Taluk and District.

For Petitioner	: Mr.P.Valliappan, Senior Counsel for M/s.PV Law Associates.
For Respondents	: Mr.N.R.R.Arun Natarajan, Special Government Pleader (HR&CE).

ORDER

The Auction Notice issued by the second respondent in proceedings dated 13.01.2023, is sought to be quashed in the present writ petition.

2. The petitioner states that the property is situated at Annimangalam Village, Ariyalur Taluk and District comprised in S.Nos.380/3 measuring to an extent of 1.82.00 Ares and S.No.181/14



measuring to an extent of 0.41.00 Ares, which are originally belonged to Arulmigu Vinayagar Temple and Arulmigu Mariamman Temple vide Patta Nos.4 and 15 respectively.

3. The petitioner further states that he was a tenant in respect of the temple property and earlier he filed Civil Suit in OS No.1279 of 1980 on the file of the District Munsiff Court at Ariyalur, seeking the relief of permanent injunction against one Mr.Govindasamy and another. However, in the said suit, the Temple Authority or the HR&CE Department, was not a party.

4. The learned counsel for the petitioner mainly contended that petitioner is a cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1965 and therefore, he is entitled to have possession in respect of the temple property, which is said to be auctioned through the impugned Auction Notice dated 13.01.2023.

5. The learned Special Government Pleader appearing on behalf of the respondents raised an objection by stating that the petitioner is



not a tenant and there is no lease in favour of the petitioner. In the absence of any valid lease, the petitioner is not entitled to continue in possession and the Authorities have already initiated action to auction the property belonged to the temple by issuing Notifications. The Authorities have given an option to the petitioner to participate in the auction proceedings, if he is otherwise eligible. However, the petitioner, instead of participating in the auction proceedings, has filed the present writ petition.

6. The claim regarding the petitioner that he is the cultivating tenant, this Court has considered the issue in WP No.13180 of 2022 dated 19.05.2022 and the relevant paragraphs 10 to 13, read as under:-

“10. This Court is of the considered opinion that admittedly the property belongs to the temple which is listed under Section 49 of the HR & CE Act. While so, the properties of the temple are to be dealt with in accordance with the provisions of the HR & CE Act and the Rules thereof. When the subject property belongs to the temple, and the authorities competent are empowered to lease the property under Section 34 of the HR & CE Act, the said provisions would apply and the provisions of



the Central Act cannot override the provisions of the Special Act. In such circumstances, the Special Act would prevail over the Central Act and in the present case, the petitioner is unable to establish that his father-s name was recorded as a cultivating tenant in the temple records or his father was recognized as a cultivating tenant either by the temple authorities or by the HR & CE department. Therefore, the said judgment of the Hon-ble Division Bench is of no avail to the petitioner.

11. The Hon-ble Division Bench in paragraph 8 of the said judgment held as follows:-

“8. It is an admitted fact that the land in question belongs to the Second Respondent~Temple, which is a listed Temple under Section 46 of the TN HR & CE Act, 1959. The factum remains that the Appellant is a Statutory Tenant as his name is recorded as a Tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1965. He has been cultivating the land in question for the past 25 years as a



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Tenant.”

12. In view of the fact that the petitioner has not established that he is a cultivating tenant nor the name of the father of the writ petitioner was recorded as a cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1965, the petitioner cannot be construed as a cultivating tenant and further after the death of the father of the writ petitioner, the lease was not extended in favour of the petitioner by the competent authorities.

13. This being the factum established, the petitioner is not entitled to claim any benefit as cultivating tenant and the authorities competent are empowered to conduct public auction in respect of the temple properties by following the procedures as contemplated under the Statute and the Rules in force. The petitioner is also at liberty to participate in the public auction if he is otherwise eligible in accordance with law. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”



7. In the present case, the petitioner could not establish that he was recorded as a cultivating tenant in the Temple Register. The proceedings of the Revenue Divisional Officer under the Tenancy Act, has no avail in respect of the claim of the petitioner regarding the property governed under the provisions of the Hindu Religious and Charitable Endowments Act.

8. The proceedings of the Revenue Divisional Officer reveals that the petitioner has not paid any rent to the temple. However, the petitioner states that he has paid rent to the temple.

9. May that as it be, the temple properties are governed under the provisions of the Tamil Nadu Hindu Religious Charitable and Endowments Act and the petitioner is not holding any valid lease in respect of the temple property.

10. The petitioner has given an option to participate in the auction proceedings to be conducted by the Competent Authorities. In the absence of any valid lease in favour of the petitioner, the petitioner cannot



claim possession for an indefinite period and more-so the petitioner is in possession of the subject property for several years.

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11. The Hindu Religious and Charitable Endowments Act, which is the Special Act, governing the temple properties, would prevail over the General Laws and therefore, in the absence of any valid lease in favour of the petitioner under the provisions of the Hindu Religious and Charitable Endowments Act, the petitioner cannot claim any right of possession in respect of the temple property.

12. The learned counsel for the petitioner has relied on the judgment of this Court in the case of **V.Angu vs. The Commissioner, Hindu Religious and Charitable Endowment Department and Others [MANU/TN/1396/2016]**, wherein the appellant was considered as a cultivating tenant and therefore, he was protected under the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961. However, the Tamil Nadu Hindu Religious and Charitable Endowments Act, which is the Special Act, would prevail over the General Laws that any person claiming the property right in respect of the temple



properties, has to establish that he has been granted with lease or tenancy by the Competent Authorities under the provisions of the Hindu Religious and Charitable Endowments Act. Thus the very claim set out by the learned counsel for the petitioner is untenable. More-so, the name of the petitioner has not been recorded in the Temple Register either as a 'Lessee' or as a 'Cultivating Tenant'.

13. This being the factum established, the petitioner is not entitled for the relief as such sought for in the present writ petition. However, the petitioner is at liberty to participate in the auction proceedings by following the procedures as contemplated. In the event of the petitioner's participating in the auction proceedings, the Authorities may allow the petitioner to participate in the auction proceedings scheduled to be held on 06.04.2023.

14. In this view of the matter, the petitioner is directed to hand over the possession of the temple property to the respondents, enabling them to complete the auction process in the manner known to law.



15. With the abovesaid direction, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

05-04-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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S.M.SUBRAMANIAM, J.

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