



WEB COPY



W.A. No. 909 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 909 of 2023

1. M. Babu

P. Balamurugan (deceased)

2. A. Kasthuri

3. S. Subbaiya

4. G. Rajammal

5. K. Rajamani

6. S. Balamurugan

7. B. Dhanalakshmi

8. Minor Uma Mageswari

9. Minor Ushadevi

(Appellants 7 to 9 legal heirs of
Deceased appellant P. Balamurugan.

Appellants 8 and 9 are minors. The
7th appellant is the natural guardian
And mother)

(Accepted the cause title vide
Court order dated 29.03.2023 made
In C.M.P. No.2812/2023 in
W.A.SR. No.12654/2023.

(TR, ACJ & DBCJ)

..Appellants

Vs.



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1. The Secretary,
Tourism, Culture & Religious
Endowments Department,
Secretariat, Fort St. George,
Chennai – 600 009.
 2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Uttamar Gandhi Salai,
Nungambakkam, Ch-34.
 3. The Joint Commissioner, Chennai,
Office of the Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Uttamar Gandhi Salai,
Nungambakkam, Ch-34.
 4. Arulmigu Thirusoolanathar Thirukoil,
Rep. by its Executive Officer,
Thirisoolam, Chennai – 600 043.
 5. The Revenue Divisional Officer,
Tambaram Taluk, Tambaram.
 6. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chengalattu.
 7. The Tahsildar,
Pallavaram.
- ..Respondents

Prayer: Writ Appeal as against the order dated 16.11.2022 passed in W.P. No.
19641 of 2022.



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For Appellants :: Mr.S.R. Rajagopal,
Senior Counsel for
Mr.S.V.Vijayaprashanth

For Respondents :: Mr.N.R.R. Arun Natarajan
Standing Counsel for HR & CE for
R1 to R4
Mr.P. Ganesan,
Govt. Advocate for R5 to R7

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

Challenging the order dated 16.11.2022 passed in W.P. No. 19641 of 2022 by the learned Single Judge, by which the relief sought by writ petitioners for a direction to the 1st respondent herein to number the revision petitions filed by them by condoning the delay of 60 days in filing the same and for a consequential direction to the 4th and 6th respondents not to dispossess them from the properties occupied by them till the disposal of the revision petitions filed by them, has been rejected.

2. A brief summary of facts that is relevant for the disposal of the writ appeal:

The writ petitioners, who are appellants 1 to 6 herein as well as the deceased appellant, P. Balamurugan (now represented by his legal heirs, appellants 7 to 9) were said to have purchased certain properties from their vendors under the bona fide belief that the title of the properties vests with them, while actually, the properties



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belong to the 4th respondent temple. Oblivious of the real fact, the writ petitioners had been in continuous use and occupation of the said properties for nearly 15 years by constructing superstructures. They have been assessed to property tax and were paying other charges and only thereafter, when the officials of the 4th respondent temple demanded them to vacate and hand over possession, they came to know that the properties belong to the 4th respondent temple. Proceedings were initiated under Section 78 of Hindu Religious & Charitable Endowments Act, 1959 ('HR & CE Act' in short) against them and during the course of enquiry before the Joint Commissioner, HR & CE Department, they were intimated that fair rent would be determined in respect of the portions under their occupation and tenancy would be regularized. The writ petitioners also agreed to abide by any condition that may be imposed.

(ii) While so, notices were caused upon the writ petitioners and other adjacent plot owners, who had constructed similar dwelling units in their respective plots and they were called upon to attend an enquiry in terms of Section 78 of HR & CE Act. During the course of enquiry before the Joint Commissioner, HR & CE Department, Chennai, they expressed that they were ready to pay the fair rent in respect of their respective portion of land and also undertook to abide by any condition that may be imposed by the authority for regularization of their tenancy of the subject lands. However, treating the writ petitioners as encroachers, on the basis of the report submitted by the Assistant Commissioner, eviction order dated



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01.06.2020 were passed by the Joint Commissioner, HR & CE Department as against which appeals were preferred by the writ petitioners along with similar residents under Section 21 of the HR & CE Act before the 2nd respondent/Commissioner, HR & CE Department, in R.P. Nos. 136 to 158/2020 D2, which came to be dismissed by order dated 11.02.2022 thereby confirming the order of the Joint Commissioner, HR & CE Department and directions were issued to the 4th respondent temple to evict them.

(iii) Though an appellate remedy namely, a revision petition under Section 114 of the HR & CE Act before the 1st respondent was available, as against the order passed by the 2nd respondent, the writ petitioners, who claim to be unaware of the same, failed to avail the appellate remedy within the limitation period of 90 days. A few officials of the 4th respondent temple accompanied by the Executive Officer and the Tahsildar, Pallavaram seem to have tried to seal the properties of the writ petitioners and handed over a copy of the proceedings of the Assistant Commissioner dated 17.06.2022. Only after receipt of notice issued by the Assistant Commissioner, HR & CE Department, stating that steps would be taken for their eviction, the revision petitions were filed before the 1st respondent with a delay of 60 days.

(iv) For the statutory appeals to be numbered and heard, the writ petitioners filed W.P. No. 19641 of 2022 for a direction to the 1st respondent herein to number the revision petitions filed by them on 11.07.2022 by condoning the delay of 60 days and for a consequential direction to 4th and 6th respondents not to dispossess the writ



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petitioners till the disposal of the revision petitions. The said writ petition came to be dismissed by the order under challenge, resulting in filing of the writ appeal.

3. According to the appellants, the order of the learned Single Judge in dismissing the writ petition on the ground that the revision petitions were filed beyond the time prescribed is unsustainable as in similar batch of cases pertaining to the same temple and against the same impugned notices, orders have been passed directing the encroachers to deposit the arrears to the temple for regularization of tenancy and orders have also been passed condoning the delay in filing the appeal. Further, the appellants would state that they are similarly placed like one Suganthi, who was a petitioner before the 2nd respondent in R.P. No.127/D2/2020 and whose premises was sealed by the officials of the 4th respondent and within a few days after she agreed to pay the rent, her portion was de-sealed and certain conditions were imposed before agreeing to accept her as a tenant of the temple for a period of 3 years and a caution deposit of Rs.50,000/- was also paid by her. However, such consideration and grant of lease were not extended to other tenants including the appellants. Eventhough the appellants agreed to pay the fair rent/lease, if fixed by the authorities, it was not accepted by the 2nd respondent and they were treated as encroachers, which only shows the biased attitude on the part of the respondent Department. When the appellants are not disputing that the property belongs to the 4th respondent temple, the eviction order passed by the Joint Commissioner, HR &



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CE Department dated 01.06.2020 as confirmed by the order dated 11.02.2022 passed by the 2nd respondent in R.P. Nos. 136 to 158/2020 D2 under Section 21 of the HR & CE Act is arbitrary, discriminatory and that they should also be extended the same relief as that of Suganthi when they stand on the same footing.

4. Learned Standing counsel appearing for HR & CE Department would submit that the title is not in dispute and that the appellants, who are encroachers, are squatting on the temple property and therefore, the 2nd respondent rightly confirmed the order of eviction passed by the Joint Commissioner, HR & CE Department by order dated 11.02.2022 and the delay in availing the appellate remedy has also been rightly held against the writ petitioners and that no relief could be granted. He would further submit that in paragraph No.3 of the order passed by the learned Single Judge, the entire issue has been left open and in case, the appellants are allowed to continue in the property, in spite of the order passed under Section 21 of HR & CE Act, it will be very difficult to remove the encroachers, who are more than 600 in number.

5. In response, Mr.S.R. Rajagopal, learned Senior Counsel for the appellants would submit that the appellants are not disputing the title and agree that the temple is the owner of the property. Be that as it may, unless fair rent is fixed under Section 34A of the HR & CE Act, which has not been done in the present case,



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the Department cannot demand any amount. The appellants are willing to remit the entire arrears in instalments if the fair rent is fixed under Section 34A and that they will not question the same as they are interested in continuing in the temple property as tenants/lessees. It is also submitted by the learned Senior Counsel that an undertaking affidavit has been filed on 8th November, 2022 recognising the ownership of the temple and also agreeing to subject themselves to any condition to be laid down by the respondent Department in order to inducted as tenants and further agreeing to pay the fair rent to the temple duly without any default.

6. Heard both parties.

7. The fact that the properties under the occupation of the appellants belong to the temple is not in dispute. According to the appellants, the properties under their occupation were purchased by them unaware of the fact that they are temple properties. However, according to the respondent Department, the appellants are encroachers. Nonetheless, the respondent Department has no objection provided the appellants pay the fair rent duly fixed under Section 34A of HR & CE Act.

8. It has been brought to the notice of this Court that fair rent has already been fixed in terms of Section 34A for the entire properties, based on the determination in case of Suganthi, whom the appellants have referred to and she has been paying the fair rent.

9. Since there are about more than 10 commandments stipulated by HR &



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CE and that the appellants are willing to abide by the ten commandments, we expect HR & CE Department to fix the fair rent for the individual persons, which shall be paid by the appellants without questioning the same. If the appellants are not willing to pay the fair rent and going to question the same, they can very well vacate the place in order to enable the temple to allot the place to some other persons.

10. The contention of the appellants that the respondent Department's approach is biased and discriminatory insofar as they are concerned while it is not so in the case of Suganthi, who is also similarly placed like the appellants and who has been allowed to continue as a tenant for a period of 3 years in the temple property, do not appeal to us as Suganthi had approached the authority and agreed to abide by the conditions and therefore, the relief was granted. In the case on hand, if the appellants approach and agree to the terms of the respondent Department, they would also be given relief. In any event, the lease shall not be extended beyond 3 years at any point of time and if the appellants agree for periodic revision, their request may be considered.

11. The fair rent under Section 34A of HR & CE Act shall be fixed within a period of one month from the date of receipt of a copy of this order by the competent authority as stipulated under the HR & CE Act and without any murmur, the appellants are expected to pay the same. The arrears shall be paid within a period of six months from the date of such determination.



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12. Notwithstanding the determination of fair rent under Section 34A of HR & CE Act, without prejudice to the parties, a sum of Rs.2 lakhs less the amount already paid, shall be paid by those appellants herein, whose premises have been sealed, within a period of 15 days from the date of receipt of a copy of this order and the said amount shall be adjusted in the fair rent, that is going to be fixed. In the event of payment of Rs.2 lakhs mentioned supra, the premises of those appellants, which have been sealed shall be desealed.

13. The writ appeal is disposed of with the above directions. No costs. Connected C.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)

nv

21.07.2023

To

1. The Secretary,
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2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
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Nungambakkam, Ch-34.
3. The Joint Commissioner, Chennai,
Office of the Joint Commissioner,
Hindu Religious and Charitable
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Uttamar Gandhi Salai,



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Nungambakkam, Ch-34.

4. Arulmigu Thirusoolanathar Thirukoil,
Rep. by its Executive Officer,
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S. VAIDYANATHAN,J.

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