



WEB COPY

WP No. 7902 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.7902 of 2023

And

WMP Nos.8165 and 8166 of 2023

1.Nethaji
2.Mathaiyan

... Petitioners

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Nungambakkam High Road,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Salem.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Dharmapuri,
Dharmapuri District.



4. The Executive Officer,
Arulmizhu Payil Mariamman Temple,
Nekunthi Village,
Errapaiyana Alli Post,
Dharmapuri District.

... 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 connected with the impugned order passed by the third respondent proceeding Sa.Mu.Na.Ka.No.914/2022-2/A1 dated 10.10.2022 and quash the same as null and void and consequently direct the second respondent to consider the petitioners representation dated 12.09.2022 to the petitioners regularised tenant under the temple land in Survey No.255/2, 3 at Nekkunthi Village, Nallampalli Taluk, Dharmapuri District.

For Petitioners : Mr.M.Selvam

For Respondents : Mr.K.Karthikeyan,
Government Advocate for HR&CE.

ORDER

The petitioners claim that they are the tenant in respect of the temple property and the Authorities are attempting to dispossess the petitioners from the temple land.

2. The petitioners submitted their representation stating that



their father was originally in occupation of the temple land and thereafter they are in possession in respect of the said property. The petitioners filed earlier in WP No.30304 of 2022, seeking the relief of directing the Joint Commissioner, Hindu Religious and Charitable Endowments Department to dispose of the application submitted by the petitioners on 12.09.2022.

3. This Court passed an order on 14.11.2022, wherein in paragraphs 3 and 4, it has been observed as under:-

“3. Learned Special Government Pleader appearing for the Respondents states that the Temple to which the property belongs, has not been made as a party to the Writ Petition and the Petitioners have to get patta of the property, which is now wrongly obtained in the name of the Petitioners, transferred to the said Temple in order to be treated as lessees of the said property. In such circumstances, Learned Counsel for the Petitioners states that the Petitioners would take necessary action before the concerned authority in that regard and seeks permission of the Court to withdraw the Writ Petition reserving the rights of the Petitioners to pursue for any other relief, if



such necessity arises, before the proper forum in the manner recognized by law and he has made an endorsement to that effect in the court record.

4. In fine, the Writ Petition is dismissed as withdrawn with the aforesaid clarifications. No costs.”

4. Pursuant to the directions issued by this Court, the Competent Authority passed an order in proceedings dated 10.10.2022 stating that the temple properties are to be leased out only by conducting public auctions. The petitioners, if eligible, have to participate in the auction proceedings.

5. However, the fact remains that the petitioners are not holding any valid 'lease' nor a 'tenant' in respect of the temple land. The said proceedings issued by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, is under challenge in the present writ petition.

6. The learned Government Advocate, appearing on behalf of



the respondents brought to the notice of this Court that the petitioners 1 and 2 have filed yet another writ petition in WP No.34205 of 2022, seeking the relief of directing the second respondent to dispose of the representation submitted by the petitioners on 12.09.2022.

7. This Court dismissed the writ petition referring the earlier order passed by this Court in WP No.30304 of 2022.

8. The practice of filing repeated writ petitions to direct the respondents to consider the representation, at no circumstances, be encouraged.

9. In the present case, the petitioners filed earlier writ petition and this Court directed the Authorities to consider the representation submitted by the writ petitioners. The Authorities have considered the application submitted by the writ petitioners and passed an order in proceedings dated 10.10.2022 stating that the temple properties are to be dealt with in accordance with the provisions of the Hindu Religious and Charitable Endowments Act and to lease out the property for a public



auction.

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10. Instead of participating in the public auction, the petitioners are attempting to litigate the issues again and again and in possession of the property. Such litigative possession, at no circumstances, be encouraged by the Courts.

11. Once the petitioners are not holding any valid lease and the Authorities have initiated action to conduct public auction in respect of the temple property. The petitioners have to participate in the auction and thus the order impugned in the present writ petition was issued in consonance with the provisions of the Hindu Religious and Charitable Endowments Act. Thus, there is no infirmity in respect of the order passed by the third respondent. If at all the petitioners are eligible, they are at liberty to participate in the public auction to be conducted by the Competent Authorities.

12. The learned counsel for the petitioners has raised a ground that the impugned order has been passed by the Assistant Commissioner,



Hindu Religious and Charitable Endowments Department, who has no power to pass such an order under Section 34 of the Hindu Religious and Charitable Endowments Act. The petitioners have stated that the order impugned has been passed without any jurisdiction.

13. Careful perusal of the order impugned dated 10.10.2022 would reveal that it is not an order deciding any issues. The order impugned passed by the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, is an information provided to the petitioners by stating that as per Section 34 of the Hindu Religious and Charitable Endowments Act, the temple properties are to be leased out only through public auction.

14. That apart, the order further states that the Executive Officer has to initiate action in this regard. Therefore, the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, has informed about the provisions of the Hindu Religious and Charitable Endowments Act and asked the Executive Officer to initiate action.



15. Mere information to the Executive Officer to initiate action in accordance with the Hindu Religious and Charitable Endowments Act, cannot be construed as a decision taken by the Assistant Commissioner, Hindu Religious and Charitable Endowments Department. Thus the very ground raised that the Assistant Commissioner, Hindu Religious and Charitable Endowments Department has no jurisdiction, deserves no merit consideration, since the Assistant Commissioner, Hindu Religious and Charitable Endowments Department has not taken any final decision under the Statute. He has intimated the provisions to the Executive Officer in initiation of action and thus, the petitioners are not entitled for any relief on the ground of jurisdiction.

16. The petitioners, since not holding any valid lease, they are not entitled to continue in the possession. Thus the Authorities Competent are empowered to recover the possession from the petitioners and conduct public auction in the interest of Temple Administration.



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17. With the abovesaid observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

05-04-2023

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

To

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S.M.SUBRAMANIAM, J.

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