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W.P.No.30740 of 2013 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2023

PRONOUNCED ON : 27.09.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.30740 of 2013, W.P.Nos.10828 and 34551 of 2014,
W.P.Nos.814, 815, 816, 817, 818, 819 and 820 of 2015

and

M.P.No. 2 of 2013, M.P.Nos.2 and 2 of 2014,
M.P.Nos.1, 1, 1, 1, 1, 1, 1, 2, 2, 2, 2, 2 and 2 of 2015

W.P.No.30740 of 2013:

Federation of Tamil Nadu Hindu Religious Temples,
House sites Leaseholders,
Associations, Regd No. 371 of 2007,
Rep. by its President,
Mr.K.Loganathan
No. 9/17, Rudrappa Street, Choolai,
Chennai – 600 001.

... Petitioner

vs.

- 1.The Secretary to Government of Tamil Nadu,
Commercial Taxes and Religious Endowments Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai – 600 034.



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3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai – 600 034. ... Respondents

PRAYER: Writ Petition is filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to G.O.(Ms).No.131 Tamil Development Cultural and Endowments Department dated 18.05.2004 and G.O.Ms.No.277 of Tamil Development Cultural and Endowments Department dated 02.12.2005 and its consequential proceeding by the authorities and the HR & CE Department, quash the same and to direct the respondents to reconsider the entire matter as per law.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.S.Yashwanth
Additional Government Pleader
(HR and CE)

COMMON ORDER

These writ petitions are filed by the persons who are claiming themselves as lessees/legal representatives of lessees/persons in occupation of temple lands, challenging Government Orders in G.O.(Ms).No.131 and G.O.(Ms).No.277 of Tamil Development Cultural and Endowments Department dated 18.05.2004 and 02.12.2005 respectively.

2. Under G.O.(Nilai).No.131, Tamil Development Cultural and



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Endowments Department, dated 18.05.2004, the 1st respondent has issued certain guidelines to the Executive Authorities of the Temples for effecting name transfer in respect of the properties under the occupation of lessees/legal representatives of lessees/or any person claiming under erstwhile lessees.

3. Under G.O.(Nilai).No.277, Tamil Development Cultural and Endowments Department, dated 02.12.2005, the 1st respondent has issued certain guidelines regarding collection of donations at the time of name transfer/regularisation of lessees in respect of the properties of the temples.

4. Mr.V.Raghupathi, learned counsel appearing for all the petitioners vehemently contended that the guidelines issued by the 1st respondent insisting surrender of superstructures put up by the lessees or persons claiming under the lessees in favour of the temple land is unreasonable and unfair. It is the specific contention of the learned counsel for the petitioners that the respondents are not entitled to insist the petitioners to surrender the superstructure built by them in favour of the temple for the sake of entering into a fresh lease in respect of the site. The learned counsel for the



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petitioners further submitted that the 1st respondent is not entitled to impose such an unilateral and arbitrary terms on the petitioners. The learned counsel also submitted that the respondents are not entitled to compel the petitioners to pay donation of a sum equivalent to 10 months monthly rent and such an unilateral condition is unreasonable and unfair and consequently, the Government Orders impugned in these writ petitions are liable to be quashed.

5. Mr.S.Yashwanth, learned Additional Government Pleader appearing for the official respondents submitted that the conditions mentioned in impugned Government Orders are Guidelines issued to the Executive Authorities of the temples and the same is not binding on the petitioners. In other words, it is the submission of the learned Additional Government Pleader, it is not obligatory on the part of the petitioners to surrender the superstructure and pay donations as per the guidelines and continue the lease. Even as per the Government Orders referred above, the petitioners can very well remove the superstructure and surrender vacant site to the temple after determination of lease. The learned Additional Government Pleader further submitted that most of the writ petitioners are



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not lessees of the temple. These guidelines are issued only for name transfers in respect of third parties inducted by erstwhile lessees and not for blood relations, who wants name transfer.

6. Mr.Ashok Kumar, learned counsel appearing for the 4th respondent in W.P.No.34551 of 2014 submitted that under Rule 9 of Religious Institution (Lease of Immovable Property) Rules 1963, the Executive Authorities of the temple shall take reasonable security from the successful bidder for lease and their security shall be equivalent to a sum of one year rent, therefore, the insistence on donation of 10 months rental value has got statutory backing. The learned counsel also submitted that the surrender of superstructure in favour of the temple is not imposed on the petitioners and if the petitioners want, they can remove the superstructure and surrender the vacant site to the temple.

7. Mr.R.Mahalingam, learned counsel for the 4th respondent in W.P.No.10828 of 2014 submitted that petitioner in the said writ petition is only an encroacher and proceedings have been initiated against him under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments



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Act, 1959 for his eviction and just to escape from enforcement of the eviction order, the writ petitioner has come up with this writ petition.

8. Mrs.Usha Tholgappian, learned counsel for the 4th respondent in W.P.Nos.814 to 820 of 2015 submitted that the petitioners in W.P.Nos.814 to 820 of 2015 are third parties and they are not lessees of the temple. The learned counsel also submitted that petitioners in W.P.Nos.814 to 820 of 2015 are legal representatives of the erstwhile lessees. The learned counsel also adopted the arguments of the learned Additional Government Pleader for the respondents 1 to 3 and other respondents.

9. The main question that has to be decided in these writ petitions is that whether the guidelines issued by the 1st respondent directing the Executive Authorities of the temple to insist surrender of the superstructure and payment of 10 months advance as donation at the time of entering into a fresh lease is reasonable and fair.

10. A perusal of G.O.(Nilai).No.131, Tamil Development Cultural



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and Endowments Department, dated 18.05.2004 issued by the 1st respondent would suggest that the lessees of the temple properties are not entitled to transfer the leasehold right in favour of the third parties. In case, the lessees of the temple properties, transfer their leasehold right or sublet the same without consent of the temple, the temple is entitled to cancel the lease and bring the property for open auction for fresh lease.

11. This guideline is inconsonance with the explanation to Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which explains the word 'Encroacher' which reads as follows:-

“78. ... Explanation. - For the purpose of this section, the expression 'encroacher' shall mean any person who unauthorisedly occupies, any tank, well, spring or water-course or any property and to include-

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and

(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease,



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mortgage or licence granted to him.”

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12. The above said Government Order also reads that if the person inducted into possession of the temple property is a blood relation of the lessee and the period of lease is still subsisting, name transfer can be effected after getting approval from Competent Authority. Therefore, it is clear in respect of legal representatives, who succeeds to the possession of the temple properties during continuation of the lease, name transfer can be effected without any condition like surrender of superstructure/building or payment of donation.

13. If the person, who is in occupation of the property is a third party (not being blood relative) and in cases where the lease period is already over, Executive Authority of the temple has to see whether allowing the said occupant is beneficial to the temple. If the Executive Authority of the temple comes to a conclusion that allowing the said third party occupant to continue to occupy the property is beneficial to the religious institution, he can be considered as a fresh lessee and a fresh lease agreement has to be entered into by fixing fair rent. In cases where the site of the temple alone



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was let out and a third party had been inducted into possession by the erstwhile tenant without any authorisation by the temple and the lease period is also over, the lessee or the person claiming under him is bound to hand over the vacant site after removal of the superstructure even under Common Law.

14. Even assuming the original lessee himself had put up superstructure in the site let out to him, he is under the obligation to surrender the vacant site by removing the superstructure, after lapse of lease period, even under Common Law. If the person in possession of the leasehold site wants to continue the occupation of the superstructure, even after expiry of lease period, then as per the guidelines issued in the above said Government Order, he is liable to surrender the superstructure to the owner of the site and enter into fresh lease. This guideline is issued just to protect the superstructure and enable the occupant to continue his possession. If he is not willing to surrender the superstructure to the temple, he can very well remove the superstructure put up by him and surrender the vacant site to the original owner namely the temple.

15. As rightly contended by the learned Additional Government



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Pleader appearing for the respondents 1 to 3, the guidelines issued by the 1st

respondent in the above said Government Order is only binding on the Executive Authority of the temple and it is not binding on third party occupant. If the third party occupant is not agreeable for surrender of the superstructure to the temple and continue the lease, he can very well remove the superstructure and surrender the vacant site to the temple, so that the temple can lease out the vacant site by going for open auction, which will fetch more amount. The guideline issued by the 1st respondent under the above said Government Order insisting surrender of superstructure to the temple in case the Executive Authority decides to renew the lease in favour of the third party occupant is a provision included with object of saving the superstructure which otherwise has to be demolished after determination of lease period. Therefore, the contention raised by the learned counsel for the petitioners that the condition imposed by impugned G.O.(Nilai).No.131, requiring third parties/erstwhile lessee to surrender the superstructure to the temple to enter into fresh lease arrangement is unreasonable and arbitrary is not acceptable to this Court. In fact, the said condition helps the third party occupant/erstwhile lessee to preserve the superstructure put up by them.

16. In the absence of such an enabling guideline, the third party



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occupant/erstwhile lessee has to demolish the superstructure and surrender the vacant site of the property to the lessor/temple after expiry of the lease by efflux of time. Therefore, this Court comes to the conclusion that the guideline issued by the 1st respondent in the above said Government Order insisting the Executive Authority of the temple to get surrender of superstructure from the third party occupant/erstwhile lessee before entering into fresh lease of the site is more beneficial to the third party occupant/erstwhile lessee. In the absence of such a guideline, the superstructure has to be removed and vacant site shall be surrendered to the temple and site has to be brought for open auction for fresh lease as per the rules of Religious Institutions (Lease of Immovable Property) Rules, 1963.

17. A perusal of G.O.(Nilai).No.277, Tamil Development Cultural and Endowments Department, dated 02.12.2005 issued by 1st respondent would suggest that in case of name transfer in respect of residential houses for site, the lessees shall pay 10 times of the fair rent as donation to the Religious Institution and in respect of the commercial leases, the lessee shall pay 15 times of the fair rent as donation to the Religious Institution. The impugned Government Order clearly says that in cases where the name



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transfer is sought for by the blood relatives while the lease is subsisting the name transfer can be effected by getting orders from Competent Authority.

Therefore, the guideline issued by 1st respondent for collection of donation is not applicable to name transfer in respect of blood relations when the lease period is not over.

18. On the other hand, if the party in occupation of the property is a third party, not having any right to succeed to the estate of the deceased and the lease period is also over or name transfer is sought for by a blood relative in possession of the leasehold property after expiry of the lease period, he shall be treated as an encroacher within the meaning of explanation (b) to Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Therefore, he is liable to face the eviction proceedings as lease period is already over.

19. If such a person approach the Executive Authority of the temple for name transfer, the impugned Government Order enables the Executive Authority of the temple to enter into a fresh lease arrangement with such person in occupation of the property, if the Executive Authority comes to a



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conclusion that entering into a fresh lease is beneficial to the religious institution. Only in such cases, the impugned Government Order insists the Executive Authority of the temple to collect donation as mentioned above.

20. In the absence of such an enabling provision, the Executive Authority has to initiate eviction proceedings against the third parties/erstwhile lessee/legal representative of erstwhile lessee for taking possession of the property and thereafter, the fresh lease shall be entered into by bringing the property for open auction as per the Religious Institutions (Lease of Immovable Property) Rules, 1963. The provision in the impugned Government Order enabling the Executive Authority of the temple to collect donation from the third party/erstwhile lessee is beneficial to them or otherwise they have to face eviction proceedings.

21. Further, as rightly contended by the learned Additional Government Pleader for respondents 1 to 3 that the condition regarding payment of donation is not binding on third party/erstwhile lessee. They have no authority to occupy the property after expiry of the lease period in the light of explanation to Section 78 of HR and CE Act. If they are not



willing to accept the condition mentioned in the Government Order, they can very well surrender the property and walk away. The question of payment of donation will arise only if they want to enter into fresh lease arrangement with the temple. The Executive Authority of the temple as a contracting party is entitled to put forth its own terms and if the same is not applicable to the third parties/erstwhile lessees, they are not under any compulsion to enter into a fresh lease. Therefore, the condition imposed in the above said Government Order enabling the Executive Authority of the temple to enter into lease arrangement with third party/erstwhile lessee in occupation of temple property cannot be treated as unreasonable or unfair as contended by the learned counsel for the petitioners. On the contrary, it enables the persons in occupation of the temple property to enter into new lease arrangement without surrendering the property.

22. In view of the discussions made earlier, the condition mentioned in the impugned Government Orders requiring the third party/erstwhile lessees to surrender the superstructure in favour of the temple or pay donation to the temple at the rate specified in order to enter into fresh lease arrangement is found to be valid and accordingly, all the Writ Petitions are



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dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes
Speaking order : Yes
Neutral Citation : Yes
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To

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- 2.The Commissioner,
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S.SOUNTHAR, J.

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**Pre-delivery order made
in W.P.No.30740 of 2013 etc., batch**

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