



Writ Petition Nos.6538 of 2020 & 580 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition Nos.6538 of 2020 & 580 of 2021

and

W.M.P.Nos.7761 & 7763 of 2020 in W.P.No.6538 of 2020 &
W.M.P.Nos.647, 648 & 752 of 2021

K.Thirumaran

S/o.R.Kasinathan

...Petitioner in W.P.No.6538/2020

1.K.Suresh

S/o.K.Kothandaraman

2.K.Balaji

S/o.K.Kothandaraman

...Petitioners in W.P.No.580/2021

Vs

1.The Government of Tamil Nadu

represented by

The Additional Chief Secretary to Government,
Tourism, Culture & Religious Endowments Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner,

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

3.The Joint Commissioner,

Hindu Religious and Charitable Endowments Department,
RTO Road, Sathuvachary,
Vellore - 632 009.



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4.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
District Collectorate Campus,
Kancheepuram - 631 501.
Kancheepuram District.

5.The Executive Officer,
Arulmighu Adhipeedaparameswari Kalikambal
Thirukoil,
Jawaharlal Street,
Kancheepuram - 631 502. ... Respondents in both writ petitions

PRAYER :

W.P.No.6538 of 2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent issued in G.O.Ms.No.51, Tourism, Culture & Endowments Department dated 18.02.2020 and G.O.Ms.No.49, Tourism, Culture & Endowments Department dated 18.02.2020 confirming the order of the second respondent issued in Suo Motu Revision No.3/2014 D2 dated 15.09.2014 and quash the same and further direct the fifth respondent herein to execute the Lease Deed in respect of the property measuring an extent 9900 sq.ft. situated in Survey Nos.145/1 and 145/2, Kancheepuram Town in petitioner's favour and permit him to continue as Tenant in respect of the aforesaid property.

W.P.No.580 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent issued in G.O.Ms.No.49,



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Tourism, Culture & Endowments Department dated 18.02.2020 confirming the order of the second respondent issued in Suo Motu Revision No.3/2014 D2 dated 15.09.2014 and quash the same and direct the respondents to permit the petitioners to continue as tenants in respect of the lands in Survey Nos.145/1 and 145/2 measuring an extent of 96 cents, Kancheepuram Town after effecting name transfer and execution of lease deed in their favour.

For Petitioners : Mr.S.V.Sugumar [W.P.No.6538/2020]
Mr.J.Lakshminarayanan [W.P.No.580/2021]

For Respondents : Mr.N.R.Arun Natarajan
[in both W.Ps.] Special Government Pleader [R1 to R4]
Mr.R.Bharanidaran
Standing Counsel [R5]

COMMON ORDER

The issue involved in both these writ petitions are interconnected and hence, they are taken up together, heard and disposed of through this common order.

2. The petitioners in W.P.No.580 of 2021 are the legal heirs of one Kothandaraman, who was originally the lessee under the fifth respondent temple. The lease period came to an end on 26.02.1998. Thereafter, the Executive Officer of the fifth respondent temple filed a suit in O.S.No.37 of 2009 before the District Munsif Court, Kancheepuram, seeking for the relief



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of recovery of possession. The respondent temple entered into a compromise and decided to collect fair rent for the property. A proposal was also sent to the Commissioner.

3. The further case of the petitioners is that the Commissioner took up a *suo motu* revision u/s.21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act [for brevity 'the Act'] and passed an order dated 15.09.2014 cancelling the fixation of fair rent by the Joint Commissioner and directed the Executive Officer to take necessary action for taking possession of the property and thereafter, lease out the property in public auction.

4. The father of the petitioners challenged this order before the first respondent and the first respondent through impugned proceedings dated 18.02.2020 dismissed the revision. The father of the petitioners expired in the mean time. Aggrieved by the same, the legal heirs of Kothandaraman have filed W.P.No.580 of 2021.

5. The petitioner in W.P.No.6538 of 2020 was inducted as a sub-



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lessee for an extent of 9900 sq.ft. The Joint Commissioner through proceedings dated 27.06.2008 also accorded permission to regularize the tenancy of the sub-lessee. The Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowments Department [for brevity 'the Department'] initiated *suo motu* revision u/s.21 of the Act and passed an order dated 15.09.2014 cancelling the proceedings of the Joint Commissioner and directing the Executive Officer to take possession of the property and thereafter, to lease out the property in public auction. This order passed by the Commissioner of the Department was confirmed by the first respondent through proceedings dated 18.02.2020. The same has become a subject matter of challenge in W.P.No.6538 of 2020.

6. Heard Mr.S.V.Sugumar, learned counsel for petitioner in W.P.No.6538 of 2020, Mr.J.Lakshminarayanan, learned counsel for petitioner in W.P.No.580 of 2021, Mr.N.R.Arun Natarajan, learned Special Government Pleader appearing for respondents 1 to 4 and Mr.R.Bharanidaran, learned Standing Counsel appearing for fifth respondent.

7. Learned Special Government Pleader appearing on behalf of



respondents 1 to 4 submitted that the temple has already taken possession of the entire property on 18.03.2020. Learned Standing Counsel appearing on behalf of the fifth respondent temple submitted that the temple wants to augment income and hence, has decided to construct a Kalyana Mandapam.

8. The short issue that arises for consideration in these writ petitions is as to whether the order passed by the Commissioner of the Department as confirmed by the order passed by the Government suffers from any illegality warranting interference of this Court.

9. The main ground that was urged before this Court is that the temple had already decided to pursue their remedy by filing a suit for recovery of possession. In view of the same, there is no scope for initiating proceedings to evict the petitioner in accordance with the provisions of the Act.

10. In the considered view of this Court, the issue that was raised by learned counsel for petitioner is no longer *res integra*. The Division Bench of this Court in the judgment in ***A.N.Kumar v. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai*** [(2011) 2 LW (1)]



has specifically dealt with this issue and after overruling the judgment of the

Single Bench in ***B.Shaji v. Sree Pravaraswamy Devasthanam [2010 (3)***

CTC 851] had held as follows:

"49. We summarise our conclusions as under:

So far as the suits filed by the temple for eviction of tenants/licensees/lessees/mortgagees for filing of the ejectment suit, the Civil Court's jurisdiction is not barred. The decision to approach Civil Court or invoke the provisions of H.R. & C.E. Act vests with the Temple.

In cases of encroachers, temple authorities can either resort to the provisions under Sections 78, 79, 79-A, 79-B or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple.

In view of the express bar under 2nd proviso to Section 79, in so far as the suits by the encroachers/lessees/licensees/mortgagees, the bar under Section 108 will get attracted excepting in instances specifically stated in the 1st proviso to Section 79."

11. The next ground that was urged by the learned counsel for the petitioner is that the second respondent went wrong in exercising the *suo motu* revision powers as against the proceedings of the Joint Commissioner after nearly 5 years/6 years. In view of the same, it was contended that such exercise of power is illegal and beyond the jurisdiction of the Commissioner.

12. The crux of the argument of learned counsel for petitioners is that



the Commissioner should not exercise the *suo motu* revisional power after considerable length of time. This submission made by learned counsel for petitioners is unsustainable. This Court has already dealt with this issue in the case of ***Ganesan v. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and others [(2019) 7 SCC 108]*** and the relevant portion is extracted hereunder:

"66. Thus, Section 69(2) gives suo motu power to the Commissioner to call for and examine the records of the proceedings of Joint Commissioner or the Deputy Commissioner in respect of which no appeal has been preferred within the period specified in sub-section (1). Thus, in case appeal is not filed within 60 days against the order of Joint Commissioner or the Deputy Commissioner, the Commissioner is vested with suo motu power to call for and examine the records. The suo motu power has been given to the Commissioner to correct the orders of Joint Commissioner or the Deputy Commissioner even if no appeal has been filed within 60 days. Giving of suo motu power to the Commissioner is with the object to ensure that an order passed by the Joint Commissioner or the Deputy Commissioner may be corrected when an appeal is not filed within time under Section 69(1). The scheme of Section 69 especially sub-section (2) also reinforces our conclusion that the legislature never contemplated applicability of Section 5 in Section 69(1) for condoning the delay in filing an appeal by applying Section 5 of the Limitation Act."

13. It is clear from the above that there is no limitation for the Commissioner to exercise the *suo motu* revisional power and hence, this Court does not find any illegality in the Commissioner exercising such a



power in the present case.

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14. Even on the merits of the case, the original lease came to an end on 26.02.1998. Thereafter, the status of the petitioners in W.P.No.580 of 2021 can only be considered as trespassers. In view of the same, there is no question of fixation of fair rent, which will apply only in case of persons, who are recognised as lessees by the temple and it has been authorised by the Commissioner of the Department. Consequently, the authorities are always entitled to initiate action u/s.78 of the Act for eviction of the petitioners.

15. The petitioners in W.P.No.580 of 2021 have also sub-leased a portion of the property to an extent of 9900 sq.ft. to the petitioner in W.P.No.6538 of 2020. This sub-tenancy was authorised by the Joint Commissioner and it was rightly reversed by the Commissioner. The sub-tenancy was done by the trespassers and the so-called sub-tenant cannot claim a better right than the original lessees, who have already become trespassers in the eye of law.

16. In the light of the above discussion, this Court does not find any



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ground to interfere with the order passed by the Commissioner exercising the *suo motu* revisional power, which was subsequently confirmed by the Government.

17. In the result, both these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

After this Court had dictated the order, learned counsel for petitioners in W.P.No.580 of 2021 submitted that some of the materials belonging to the petitioners are available inside the subject property and therefore, the learned counsel requested this Court to permit the petitioners to take away their materials. Learned Standing Counsel appearing on behalf of respondent temple submitted that the petitioners can make a representation in this regard to the temple and the petitioners will be permitted to take their belongings.

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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