



W.P.No.23055 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.23055 of 2023

and

WMP.Nos.22558, 22559 & 22561 of 2023

- 1.T.V.Kamalahasan
- 2.T.R.Moorthy
- 3.T.Sundaram
- 4.R.Jayakumar
- 5.T.Yasodha
- 6.M.Krishnan
- 7.S.Sundaram
- 8.T.R.Mani
- 9.A.Sugumaran
- 10.S.Poongodi
- 11.T.M.Shanmugam
- 12.T.K.Balasubramanian
- 13.S.Shanthi
- 14.J.Srinivasan
- 15.T.L.Thirugnana Sambandan
- 16.V.Baskaran
- 17.Elumalai
- 18.S.Arumugam
- 19.K.Dilip Shankar
- 20.Arjunan
- 21.Sakunthala
- 22.Sekar

...Petitioners

Vs.



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- 1.The Commissioner
Hindu Religious and Charitable
Endowments Administrative Department
Nungambakkam, Chennai 600 034.
- 2.The Thakkar/Assistant Commissioner
Hindu Religious and Charitable
Endowments Administrative Department
Arulmigu Kandaswamy Thirukoil
Thiruporur, Chengalpattu District.
- 3.The Executive Officer
Arulmigu Kandaswamy Thirukoil
Thiruporur, Chengalpattu District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the Public Auction Notice dated 20.07.2023 for the Fasli Year 1433, 1434 and 1435, issued by the respondents 2 & 3 and quash the same.

For Petitioners : Mr.S.Senthilnathan

For Respondents : Mr.S.Yaswanth
Additional Government Pleader



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ORDER

This Writ Petition is filed by the petitioners challenging the auction notice issued by the third respondent to auction the agricultural lands belonging to the third respondent to the extent of 216.12 acres.

2. According to the petitioners, they are all cultivating the lands to the extent of 40.41 cents comprised in S.Nos.12, 12/1, 14, 15, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 35, 39, 41, 58, 64, 64/2, 78, 78A, 80, 81, 86, 123, 136, 137, 138, 144, 145, 146, 148, 161/2, 161/4 of Thiruporur Village, Chengalpattu District, for more than 100 years.

3. The third respondent temple filed a suit for declaration of title and recovery of possession in OS.Nos.759, 760 & 761 of 1987 of on the file of the learned District Munsif Court, Chengalpattu against the fourth petitioner herein and others. The said suit was dismissed by the trial Court as well as by the first Appellate Court. The second appeal filed by the third respondent temple in S.A.Nos.543, 544 & 545 of 1994 was allowed declaring the title of the temple and granting a decree for recovery of possession.



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4. Aggrieved by the same, the fourth petitioner and others arrayed as defendants in the suit, filed SLP before the Hon'ble Apex Court and the same was converted as Civil Appeal Nos.4021 of 2007, 4590 of 2007 and 738 of 2008. All the Civil Appeals were allowed by the Hon'ble Apex Court and the matter was remanded back to the High Court and therefore, the Second Appeals are pending before this Court.

5. It is the case of the petitioners that when the above second appeals are pending, the third respondent temple decided to lease out the subject matter of the second appeals and other lands covered under Ex.A21 marked in that suit by open auction and the impugned auction notice has been issued. It is the case of the petitioners that they have been cultivating the properties covered under the auction notice for the past 100 years and therefore, the third respondent has no right to issue the impugned auction notice.

6. Mr.S.Yaswanth, learned Additional Government Pleader takes notice for the respondents and on instructions, submitted that the properties



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are brought for auction in pursuance of the directions given by the first Bench in W.P.No.11824 of 2020.

7. The learned Additional Government Pleader also submitted that the status report dated 28.07.2023 was filed before the first Bench in Contempt No.1334 of 2022 in W.P.No.11824 of 2022. The learned Additional Government Pleader also produced the copy of the order passed by the first Bench on 01.08.2023 wherein it is recorded that out of 440.45 acres of land under encroachment, 216 acres of land have been recovered and brought for auction. It is the submission of the learned Additional Government Pleader that the impugned notice is issued only in pursuance of the directions issued by the first Bench to remove the encroachment.

8. Even in the status report filed by the third respondent in paragraph No.7 he mentioned about the pendency of the second appeals in respect of 18.56 acres in various Survey numbers.

9. Admittedly, in respect of 18.56 acres second appeals are pending before this Court after the order of remand by the Hon'ble Apex Court



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in S.A.Nos.543 to 545 of 1994. Admittedly, the said second appeals are arising out of the suit for recovery of possession filed by the third respondent temple.

When main suit itself for recovery of possession the third respondent is not entitled to bring subject matter of second appeals, over which it has no physical possession. In such circumstances, it is not open to the third respondent to bring those properties for auction without getting appropriate orders from this Court in S.A.No.543 to 545 of 1994. However, in respect of remaining properties, it is open to the third respondent to proceed with the auction in accordance with law.

10. As far as the contention raised by the petitioners that they are all cultivating 40.41 cents of land, covered by the auction notice is concerned, this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot decide the disputed question of fact whether the petitioners are in possession and cultivating the properties or the respondent temple is in possession. If the petitioners are in lawful possession, it is always open to them to file appropriate civil suits to establish their right and protect their alleged lawful possession in accordance with law.



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11. Accordingly, this Writ Petition is dismissed with above

observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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