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Writ Petition No.23715 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.09.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.23715 of 2023
WMP.Nos.23227, 23229 of 2023

Kaveri

... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Salem, Salem District.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Dharmapuri,
Dharmapuri District.

4.The Circle Inspector,
Arulmighu Sanjeevarayaswami Temple,
Pommasamuthiram,
Nallampalli Taluk,
Dharmapuri District.



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5.The Fit Person,
Arulmighu Sanjeevarayaswami Temple,
Pommasamuthiram,
Nallampalli Taluk,
Dharmapuri District.

6.The Tahsildar,
Nallampalli Taluk,
Dharmapuri District.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records relevant to the impugned order of land lease public auction notice dated 24.07.2023 passed by the respondents 4 and 5 and quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby direct the respondents 1 to 5 in Survey No.242, Somanhalli Village, Dharmapuri District to an extent of 1.95.0 Punjai Hectare.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR&CE)
for R1 to R5
Ms.P.Anandhakumar
Government Advocate for R6

ORDER

This writ petition is filed challenging the auction notice issued by the 5th respondent in respect of 1.95 hectares of land in S.No.242 in



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Somanhalli Village, Nallampalli Taluk, Dharmapuri District belongs to 5th respondent/Arulmighu Sanjeevarayaswami Temple, Pommasamuthiram.

2. It is the specific case of the petitioner that originally paternal grand father of the petitioner namely Kariyan @ Muniyan was cultivating tenant of the above said land. After his death, there was a dispute between the father of the petitioner and his brother and the father of the petitioner was allowed to cultivate the northern half share of the above said land and he also obtained an order from the Record Officer of RTR records recording him as a cultivating tenant of the northern half of the above said land. The father of the petitioner died on 07.04.2023 and thereafter the petitioner has been cultivating the northern half of the above said land. In the meantime, the 5th respondent herein issued an impugned auction notice to lease out the above said land in open auction.

3. The learned counsel appearing for the petitioner submits that subsequent to death of his father, he submitted an application before the 6th respondent/Record Officer on 19.08.2023 requesting him to record his name as cultivating tenant and the said application is pending. Therefore, it



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is the submission of the learned counsel for the petitioner, the petitioner is entitled to statutory protection of cultivating tenant. The 5th respondent is not entitled to bring the property for open auction.

4. The learned Special Government Pleader (HR & CE) appearing for the respondents 1 to 5 on instructions submitted that the petitioner is not cultivating the above said land and the said land is kept as un-cultivated land (Tharisu). Therefore, the petitioner is not entitled to any protection as cultivating tenant. He further submitted that the petitioner claimed right only over the northern half of the property mentioned above and in respect of the southern half of the property, there is no impediment for the 5th respondent to proceed with auction. It is also submitted by the learned Special Government Pleader, the auction was conducted on 10.08.2023 and six persons participated in the auction and therefore, the 5th respondent may be permitted to confirm the auction in respect of the southern half of the above said land.

5. Admittedly, father of the petitioner namely Shanmugam was recorded as cultivating tenant in respect of the northern half of the land in



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S.No.242 with an extent of 1.95 hectares. After the death of said Shanmugam, the petitioner in his capacity as his legal representative is entitled to claim protection from eviction under Tamil Nadu Public Trust Act provided he is able to establish that he is cultivating land by contributing his physical labour. Whether the petitioner is entitled to protection from eviction under the relevant Act is a question that has to be decided by the authority empowered under the relevant enactment, namely the Record Officer (RTR) under Tamil Nadu Agricultural Lands Records of Tenancy Rights Act. The petitioner said to have filed an application for modification of entry in RTR records before the 6th respondent on 19.08.2023 and the same is pending. In such circumstances, it is for the 6th respondent to consider the request of the petitioner for recording his name as the cultivating land after issuing notice to the 5th respondent and pass final orders. Till final order is passed in the application said to have been submitted by the petitioner before the 6th respondent, the possession of the petitioner shall not be disturbed, subject to following condition.

6. It is also submitted by the learned Special Government Pleader, the petitioner is not regular in payment of rent. The petitioner



produced copies of the receipt issued by the 5th respondent temple dated 09.04.1993 to 07.04.2023. A perusal of the same would suggest on 09.04.1993, the father of the petitioner paid a sum of Rs.60/- to 5th respondent temple. Subsequently on 17.02.2022 he paid a sum of Rs.20,000/- and the same was received by the 5th respondent towards the part of the rent payable by the petitioner.

7. In such circumstances, without going into the merits of the arrears of the rent to be paid by the petitioner, this Court is inclined to direct the petitioner to pay a sum of Rs.20,000/- to the 5th respondent temple within a period of four weeks from the date of receipt of copy of this order. The amount so paid by the petitioner shall be adjusted towards past, present and future rent payable by the petitioner. The fair rent to be paid by the petitioner has to be determined in accordance with law in an appropriate proceeding initiated by the 5th respondent. If the petitioner failed to deposit the amount as directed the interim protection granted shall stand automatically vacated.



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8. As far as southern half of the above mentioned property is concerned, even as per the case of the petitioner, the father of the petitioner namely Shanmugam was recorded as tenant only in respect of the northern portion. In such circumstances, the 5th respondent is at liberty to confirm the auction in respect of the southern portion of the land.

9. With these observations, this writ petition is disposed of.
No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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S.SOUNTHAR, J.

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