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W.P. No. 31485 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 31485 of 2023

L.Shanmugam

... Petitioner

-VS-

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungampakkam High Road,
Chennai.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Kallakurichi – 606202.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Villupuram District.
4. The Hereditary Trustee,
Arulmigu Umamageswarar Temple,
Chinnasalem, Kallakurichi.
5. The President,
Vadakananthai Town Panchayat,
Chinna Salem Taluk,
Kallakurichi.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, to direct the First to Third



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Respondents to dispose the representations given by the Petitioner on 29.08.2023 to the First to Third Respondents within the time limit that may be stipulated by this Court and to direct the Respondents not to take any coercive action as against the Petitioner and other tenants without following due process of law till the pendency of the Petitioner's representation being considered.

For Petitioner : Mr. Cleetus. W

For Respondents : Mr. K.Karthikeyan,
Government Advocate (for R1 to R3)

Mr. U.Baranidharan,
Additional Government Pleader (for R5)

ORDER

Heard Mr. Cleetus. W., Learned Counsel for the Petitioner, Mr. K.Karthikeyan, Learned Government Advocate, who takes notice for the First to Third Respondents, and Mr. U.Baranidharan, Learned Additional Government Pleader, who takes notice for the Fifth Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. Having regard to the nature of order proposed to be passed in the Writ Petition, which would not cause any prejudice to the Fourth Respondent, notice to him is dispensed with.



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3. The Petitioner along with certain others have been in occupation of the property of an extent of 89 cents in S. No. 447/9 of Vadakananthal Village in Kallakurichi District, which admittedly belongs to the Temple of the Fourth Respondent.

4. It is the case of the Petitioner that he is a tenant of the said property and that he had along with others made a representation dated 29.08.2023 to the First to Third Respondents to grant lease of that property to them and had requested that he should not be evicted therefrom until orders are passed on that representation. As it did not evoke any response, it has necessitated the filing of this Writ Petition.

5. It is represented by Learned Government Advocate appearing for the First to Third Respondents, on instructions, that the Petitioners and the others mentioned by him are encroachers of that property without semblance of any right, title or interest over the same and that it is proposed to grant lease of the said property to the Fifth Respondent after evicting the Petitioner and other encroachers following the prescribed procedure under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. He has also filed a memo to that effect, which is placed on record.



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6. Having regard to the rival contentions of the parties, it would assume significance here that the Petitioner has not produced any material to show that he is in occupation of the property as a tenant of the Fourth Respondent, which necessarily gives rise to the inference that he is an encroacher liable to be evicted from that property.

7. In this context, reference must be made to the dictum laid down by the Hon'ble Supreme Court of India in the decision in **Director of Settlements, A.P. -vs- M.R. Apparao** [(2002) 4 SCC 638], which reads as follows:-

"17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person,



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*corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*

Applying the aforesaid principles to the facts of this case *viz-a-viz* the cogent reasons assigned by the First to Third Respondents for refusing to accede to the claims made by the Petitioner, there does not appear to be any justification for this Court to direct them to dispose the representation dated 29.08.2023 made by the Petitioner as sought in the Writ Petition.



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WEB COPY In the result, the Writ Petition is dismissed. No costs.

03.11.2023

kv

Index: Yes/No

NCS : Yes/No

Note: Issue order copy by 31.01.2024.

To

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P.D. AUDIKESAVALU, J.

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