



WEB COPY



W.P.No.34487 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.34487 of 2022
and W.M.P.Nos.33937, 33938 & 33940 of 2022

1. S.Manian
2. S.Ganeshamoorthy
3. E.Arasan
4. K.Rajendran

.. Petitioners

Vs.

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Cuddalore.
3. The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Cuddalore.
4. The Inspector,
Hindu Religious & Charitable Endowment Board,
Cuddalore.
5. The Executive Officer,
A/M Drowpathi Amman Koil,
Moolakuppam and Post,
Cuddalore Taluk, Cuddalore District.



W.P.No.34487 of 2022

6. Amaresan

.. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records and quash the impugned re-auction notice issued by the 5th respondent dated 07.12.2022 fixing auction on 22.12.2022 and consequently issue a Mandamus forbearing respondents 1 to 5 from conducting public auction in respect of the following properties classified as Dry in Naduveerapattu Village, Cuddalore Taluk S.No.121/27 - 0.07.50 Hec.Ares, S.No.121/3 - 0.19.50 Hec.Ares, S.No.121/31 - 0.04.50 Hec.Ares, S.No.122/1 - 0.50.50 Hec.Ares, S.No.134/1 - 0.28.50 Hec.Ares, S.No.121/28 - 0.23.50 Hec.Ares, S.No.121/29 - 0.05.50 Hec.Ares and Vilangalpattu Village, Cuddalore Taluk S.No.79/1 - 0.38.00 on 22.12.2022.

For Petitioners : Ms.Sumitha

For Respondents : Mr.N.R.R.Arun Natarajan
Spl.G.P. (HR & CE)

- - - - -

ORDER

This writ petition has been filed seeking to quash the auction notice issued by the 5th respondent dated 07.12.2022.

2. It is the case of the writ petitioners that the land in question belongs to Drowpathi Amman temple, which is a private temple. The



W.P.No.34487 of 2022

petitioners were inducted as lessees by the 6th respondent herein and the writ petitioners were in possession of the said property for the past 15 years. The management of the temple and the properties of the temple were throughout been with the 6th respondent herein. The property in question was leased out on 07.03.2018, for a period of five years and the petitioners have paid the entire lease amount. The petitioners were not only the lessees but also cultivating tenants and therefore they are entitled to the rights under the Tamil Nadu Cultivating Tenants Protection Act, 1955 and Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. Further according to the petitioners the lease period is still existing and it expires only on 06.03.2023, whereas, the respondents 1 to 5 have no right in the management of the temple and its properties. Hence challenging the impugned auction notice issued by the 5th respondent dated 07.12.2022, the present writ petition has been filed.

3. The learned counsel appearing for the petitioners would submit that the temple is a private temple and the 6th respondent herein was managing the temple and its properties. The petitioners were in possession of the agricultural lands belonging to the temple and the 6th respondent leased out the said properties to the petitioner vide lease agreement dated



W.P.No.34487 of 2022

07.03.2018 and the lease expires only on 06.03.2023. Therefore, the temple authorities have no right to call for the auction. Hence the impugned order is challenged in the writ petition.

4. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) takes notice for the respondents 1 to 5 and submitted that originally one B.Moorthiraman, filed a writ petition in W.P.No.1440 of 2014 challenging the order of the temple authorities claiming that the temple is a private property. The said writ petition was dismissed by an order of this Court dated 20.11.2018 and this Court has clearly recorded a finding that the claim of the petitioner therein that the temple is a private temple and his claim as the hereditary trustee has already been negated by the authorities and a Fit Person was also appointed to the temple.

5. The learned Special Government Pleader further submitted that the 6th respondent herein the lessor of the writ petitioners has also filed a writ petition in W.P.No.1293 of 2022 claiming right over the temple properties. This Court by an order dated 01.02.2022, dismissed the writ petition and hence submitted that the present writ petition is nothing but an abuse of process of law.



W.P.No.34487 of 2022

WEB COPY 6. I have heard the learned counsel on either side and also perused the materials available on record.

7. The petitioners claim right under the 6th respondent who is stated to be the hereditary trustee of Drowpathi Amman Temple. It is relevant to note that the 6th respondent has already filed a writ petition in W.P.No.1293 of 2022 before this Court and this Court taking note of the fact that the order appointing Fit Person by proceedings dated 26.11.2013 was challenged by one B.Moorthiraman in W.P.No.1440 of 2014 and the same came to be dismissed. While dismissing the writ petition in W.P.No.1293 of 2022, the learned Single Judge has extracted the order passed in W.P.No.1440 of 2014 dated 20.11.2018 in paragraph 5, which reads as follows:

"5. This Court has considered the issues and passed an order on 20.11.2018 dismissing the writ petition with the following observations:

"3. It is an admitted fact that, earlier, one Boopathi, who belongs to the petitioner's family filed an application before the Joint Commissioner, Villupuram under Sec.63(b) of the Tamil Nadu H.R. &



WEB COPY



W.P.No.34487 of 2022

C.E. Act for framing a scheme for the administration of the temple on the ground that they are the hereditary trustees of the temple and the Joint Commissioner, Villupuram by an order dated 16.09.2011 dismissed the application. Challenging the same, the petitioner has filed an appeal before the Commissioner, H.R. & C.E. Department, Chennai in A.P. 11/2013 D2 and that appeal was also dismissed by the Commissioner by an order dated 24.09.2018 holding that the claimant did not adduce any evidence to show that their ancestors are the trustees of the said temple, and the temple was constructed by his ancestors, and it is in the exclusive management of the entire family. Thus, the above order has become final.

4. In the above circumstances, the respondents department has already passed an order appointing the 4th respondent as a fitperson of the temple, and that was not challenged by the



W.P.No.34487 of 2022

petitioner. The claim of the petitioner that the temple is a private temple, and he is hereditary trustee, has already been negated by the authorities, and a fit person was also appointed to the temple. In the said circumstances, the petitioner do not have any right over the temple cannot challenge the order directing him to hand over possession of the temple. Therefore, there is no illegality in the order passed by the 4th respondent.

5. In the result, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed."

8. Similarly, in the earlier writ petition filed by B.Moorthiraman, also claiming the same right as that of the 6th respondent herein, the said writ petition also came to be dismissed and the order has been extracted above.

9. Such view of the matter, when a persons' locus standi has already been decided by this Court that there is no semblance of right in the temple



W.P.No.34487 of 2022

property, now the petitioners claiming right under the person whose claim was already been negated by this Court cannot have any better right. That apart, it is relevant to note that the petitioners base their right mainly on the basis of an unregistered lease agreement exceeding one year. According to them the lease is for a period of 5 years from 07.03.2018 to 06.03.2023. It is relevant to note that any lease of immovable property exceeding one year requires compulsory registration under Section 17 of the Indian Registration Act. Unless the document is registered as mandated under Section 17 of the Indian Registration Act, the said document cannot be looked into for any other purpose except for collateral transactions under Section 49 of the Indian Registration Act. Therefore, once the document is not admissible in evidence, the transfer of interest in the immovable property cannot be construed as collateral transaction to bring the said document within the ambit of Section 49 of the Indian Registration Act. On this ground also the petitioners cannot claim any right.

10. It is also relevant to note that a Fit Person has already been appointed on 19.09.2011. The proceedings challenging the appointment of the Fit Person has also been dismissed by this Court in the earlier writ petitions referred above. Once the property vests with the temple under the



W.P.No.34487 of 2022

HR & CE department, lease of immovable properties should be strictly in accordance with Section 34 of the HR & CE Act.

11. Such view of the matter, I do not find any merit in this writ petition and the writ petition is liable to be dismissed and accordingly dismissed. Consequently, the miscellaneous petitions in W.M.P.No.33937 of 2022 is allowed as prayed for and W.M.P.Nos.33938 and 33940 of 2022 are closed. No costs.

02.01.2023

Index : Yes / No

Neutral Citation : Yes / No

kk

To

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Cuddalore.
3. The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Cuddalore.
4. The Inspector,
Hindu Religious & Charitable Endowment Board,
Cuddalore.



W.P.No.34487 of 2022

5. The Executive Officer,
A/M Drowpathi Amman Koil,
Moolakuppam and Post,
Cuddalore Taluk, Cuddalore District.



WEB COPY



W.P.No.34487 of 2022

N.SATHISH KUMAR, J.

kk

W.P.No.34487 of 2022
and W.M.P.Nos.33937,
33938 & 33940 of 2022

02.01.2023