



W.A.No.2308 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.08.2023

Delivered on: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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The Deputy Commissioner / Executive Officer
Arulmigu Kapaaleeshwar Temple
Mylapore,
Chennai-600 004.

.. Appellant

Vs.

1. TTK Healthcare Limited,
represented by its President (Commercial),
& Company Secretary,
No.19, Luz Church Road, Mylapore,
Chennai-600 004.

2. The State of Tamil Nadu
represented by its Secretary to Government,
Hindu Religious & Charitable Endowment Department,
Fort St. George, Chennai-600 009.

3. The Commissioner,
Hindu Religious & Charitable Endowment Department,
Nungambakkam, Chennai-600 034.



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4. The Joint Commissioner,
Hindu Religious & Charitable Endowment Department,
Nungambakkam,
Chennai-600 034.

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.3360 of 2014 dated 11.06.2014.

For Appellant : Mr. A.K. Sriram, Senior Counsel
for M/s. A.S. Kailasam & Asso..

For Respondents : Mr. Shivakumar & Suresh [for R1],
Mr. Yashwanth, Additional Government
Pleader (HR & CE) [for R2 to R4]

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful 4th respondent in the Writ petition is the appellant before us.

2. The brief facts of the case of the appellant before the Writ Court were that the land measuring 3471 square feet bearing Door No.19, Luz Church Road, Mylapore, Chennai-600 004 belonging to the appellants was under occupation of one Mr. T.K. Natarajan, who was the original lessee under the appellant temple and he had constructed a building. Subsequently, the said lessee, Mr. T.K. Natarajan, had executed a Gift



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Deed in favour of the appellant temple on 23.11.2012. The 1st respondent / Writ petitioner in and by a letter dated 23.11.2012 requested for a grant of lease and in G.O. Ms. No.353 dated 04.06.1999 and in G.O. Ms. No.277 dated 02.12.2005, guidelines have been issued in respect of temple lands and the 1st respondent / Writ petitioner was called upon to comply with the said guidelines. While the negotiations were going on, the appellant rejected the request of the 1st respondent to regularize the lease and called upon the 1st respondent to handover the possession of the demised premises and failing which, action would be taken u/s.78 of the Hindu Religious and Charitable Endowment Act. The 1st respondent, therefore, filed the Writ petition, originally, seeking relief of a Writ of Certiorari Mandamus to quash the G.O. Ms. No.277 dated 02.12.2005 demanding 15 times fair rent for commercial occupation and consequently to direct the renewal of lease in favour of the 1st respondent. However, pending Writ petition, it is seen that the 1st respondent chose to amend the prayer in the Writ petition and gave up the relief of the challenge to G.O. Ms. No.277 dated 02.12.2005.



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3. The Writ Court, though found that the petitioner has not challenged the Government order, treating it as a peculiar and special case, directed the 1st respondent to pay 10 times of fair rent value as security deposit instead of 15 times at market value.

4. The said order is under challenge before us on the ground that when the 1st respondent had withdrawn his challenge to G.O. Ms. No.277 dated 02.12.2005, such an order is contrary to the said G.O. ought not be passed by the Writ Court.

5. We have heard Mr. A.K. Sriram, Senior Counsel for M/s. A.S. Kailasam & Associates for the appellant and Mr. Shivakumar for the 1st respondent and Mr. Yashwanth, Additional Government Pleader (HR & CE) appearing for the Respondents 2 to 4. We have also perused the records.

6. Though the counsel on both sides would admit that there were negotiations going on between the temple and the Writ petitioner, the same



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did not take any final shape. The counsel appearing for the 1st respondent / Writ petitioner would impress upon us that only because of the settlement talks the challenge to G.O. Ms. 277 dated 02.12.2005 was withdrawn with a hope that the matter would be settled and only in the light of such developments, the Writ Court had also passed the impugned order. However, we are unable to see any material placed before the Writ Court regarding any settlement between the temple parties and the 1st respondent / Writ petitioner with regard to the payment of a lease amount or security deposit.

7. Admittedly the 1st respondent as a Writ petitioner had initially chosen to challenge G.O. Ms. No.277 dated 02.12.2005, under which a demand of 15 times of fair rent was required as donation and for reasons best known to the 1st respondent / Writ petitioner, that challenge was given up, pending the Writ petition. That being admitted, the Writ Court ought not to have passed the impugned order directing 10 times fair rent inspite of 15 times to be paid as donation.



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8. No doubt, the order of the Writ Court appears to have been complied with by the 1st respondent / Writ petitioner and even pending Writ appeal, the 1st respondent has made bonafide attempts to settle the matter and has also engaged in necessary correspondence in that regard.

9. When the 1st respondent has withdrawn his challenge to G.O. Ms. No.277 dated 02.12.2005 which mandates 15 times fair rent to be paid as donation, it was not open to the Writ petitioner to seek any relief contra to the said G.O. Unfortunately, the Writ Court having referred to the fact that the petitioner has amended the prayer in the Writ petition, held that the 1st respondent was entitled to get relief on account of peculiar and special circumstances. We are unable to convince ourselves with the said approach of the Writ Court. If the 1st respondent had not amended the original prayer sought for in the Writ petition and he ultimately succeeded in the said challenge, then it would be open to the Writ Court to pass the directions in variance to G.O. Ms. No.277 dated 02.12.2005. On the contrary, when there is no challenge, admittedly, to the relevant G.O., the 1st respondent is bound to comply with the terms of the said G.O.



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10. One another fact that has been brought to our notice is that after the Writ petition came to be filed, the appellant has not increased the rent and the 1st respondent has been continuing to pay the rent that prevailed at the time of filing the Writ petition in 2014. It is stated by the learned Senior counsel appearing for the appellant, Mr. A.K. Sriram that every three years, rents are revised and the 1st respondent is enjoying the benefit of the same rent from 2014. Per contra, Mr. Shivakumar, the learned counsel for the 1st respondent would fairly submit that the 1st respondent is ready to pay the revised rent for the past years but since the officials demanded the rental arrears of the erstwhile tenant, retrospectively, there was no agreement to pay the same. Insofar as the 1st respondent and their occupation is concerned, the 1st respondent was ready and willing to pay the revised rent.

11. In view of the discussions hereinabove, we direct the 1st respondent to give a fresh representation to the appellant temple within a period of 4 weeks from the date of receipt of copy of this order, requesting for renewal of lease and also setting out their revised offer in so far as



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payment of rent, deposit as well as donation and on receipt of such representation, the appellant temple shall pass suitable orders indicating the amount that would be payable by the 1st respondent to get renewal of lease in its favour, within 4 weeks thereafter.

12. With the above observations, the Writ Appeal is allowed and the order passed in W.P. No.3360 of 2014 dated 11.06.2014 is set aside. There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
20.09.2023

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

To

1. The State of Tamil Nadu
represented by its Secretary to Government,
Hindu Religious & Charitable Endowment Department,
Fort St. George, Chennai-600 009.

2. The Commissioner,
Hindu Religious & Charitable Endowment Department,
Nungambakkam, Chennai-600 034.



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3. The Joint Commissioner,
Hindu Religious & Charitable Endowment Department,
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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs)

Pre-delivery judgment in
W.A.No.2308 of 2019

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