



W.P.(MD)No.16539 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16539 of 2023

and

W.M.P.(MD)Nos.13825 & 13827 of 2023

P.Karthik

... Petitioner

Vs.

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Ellis Nagar,
Madurai.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Virudhunagar.
3. The Executive Officer/Thakkar,
Sirukalasanthi Kattalai (presently
Arulmighu Vaithiyanathaswamy Thirukovil),
Madavar Valagam,
Srivilliputhur,
Virudhunagar District.

4. S.Jawahar

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance a *Writ of Certiorari*, to call for the records of the impugned auction notice issued by the 3rd respondent, dated 30.06.2023 and quash the same.

For Petitioner : Mr.VB.Sundhareshwar

For R-1 & R-2 : Mr.R.Ragavendran,
Government Advocate

For R-3 : Mr.H.Arumugam

ORDER

This writ petition is filed for *Writ of Certiorari* challenging the auction notice issued by the 3rd respondent, dated 30.06.2023.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. The contention of the petitioner is that one Gunasekaran was a cultivating tenant in the land belongs to the Sirukalasanthi Kattalai Aulmighu Vaithiyanathaswamy Thirukovil, Srivilliputhur, Virudhunagar District. After the



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demise of the said Gunasekaran, his legal heir, namely Panneerselvam has executed a written agreement, dated 30.12.2020 to the writ petitioner, to sell his cultivating rights for Rs.15,00,000/-. In the meanwhile, the 3rd respondent has issued an auction notice for the said land to auction the cultivating rights. Since the petitioner had purchased the cultivating tenant rights from the legal heirs of erstwhile rights holder for Rs.15,00,000/-, the petitioner is challenging the auction notice which is intending to auctioning the cultivating rights in the present writ petition.

4. The word “cultivating tenant” is defined in section 2 (aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1955 and the same is extracted hereunder:

(aa) -Cultivating tenant?- (i) means of person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii) includes –

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land;

(c) a sub-tenant if he contributes his own physical labour or that of any member



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of his family in the cultivation of such land; or

(d) any such sub-tenant who continues in possession of the land notwithstanding that the person who sublet the land to such sub-tenant ceases to have the right to possession of such land; but

(iii) does not include a mere intermediary or his heir;

It is seen that the original cultivating rights are with the said Gunasekaran, after his demise his legal heir namely Pannerselvam may have the same cultivating rights, if he is cultivating the land by his own physical labour. But in the present case the said legal heir Pannerselvam has intended to go outstation for some job opportunities and he could not continue cultivation. In such circumstances the said Pannerselvam has no right to continue as cultivating tenant. According to the petitioner the said Pannerselvam had transferred the cultivating rights to the petitioner through the agreement dated 30.12.2020. On perusing the alleged agreement, it is seen that the cultivating rights are sold to Rs.15,00,000/-. Whereas the cultivating rent paid to the temple is only Rs.8,875/- per pasali year. From this it is evident that under the guise of selling the cultivating tenant rights, the said Pannerselvam has sold the land.



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5. The said Pannerselvam may have right to sub lease the land, but the lease amount ought to be paid to the temple and the not to the said Pannerselvam and it amounts to usurping the land of the temple. Therefore, the alleged agreement is totally illegal and based on the said alleged agreement the petitioner cannot stall the auction proceedings.

6. Therefore, this Court is not inclined to entertain this writ petition and the writ petition is liable to be dismissed. The respondents are directed to proceed with the auction notice.

7. With these observations and directions, this Writ petition stands dismissed. There shall be no order as to costs. Consequently, W.M.P(MD) No. 13825 of 2023 is allowed and W.M.P(MD)No.13827 of 2023 is closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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**Order made in
W.P.(MD)No.16539 of 2023**

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