



W.P.(MD).No.16782 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16782 of 2023

and

W.M.P(MD)Nos.14008 & 14011 of 2023

G.Paneer Selvam

... Petitioner

Vs.

1.The Deputy Commissioner,
Hindu Religious Charitable Endowments
Department,
Madurai – 16.

2.The Assistant Commissioner,
Hindu Religious Charitable Endowments
Department,
Virudhunagar.

3. The Executive Officer,
Hindu Religious Charitable Endowments
Department,
Arulmigu Vaidyanatha Swamy Temple,
Madavar Valagam, Srivilliputhur,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a *Writ of Certiorari*, calling for the records pertaining to the Impugned Notice, dated 21.06.2023 and the consequential Public Auction Notice dated 30.06.2023 issued by the 3rd respondent and quash the same.



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For Petitioner : M/s.T.Thangamani
For R-1 & 2 : Mr.S.Kameswaran
Government Advocate
For R-3 : Mr.H.Arumugam

ORDER

This Writ Petition has been filed for *Writ of Certiorari* to quash the Impugned Notice, dated 21.06.2023 and Public Auction Notice, dated 30.06.2023.

2. The petitioner's grand-father was granted cultivating rights in respect of the temple land belongs to Madavarkulam Arulmigu Vaithiyanatha Swamy Thirukovil. After the demise of his grand-father and his father, the petitioner is in possession of said temple land. Thereafter, the petitioner has transferred the cultivating rights to one Karthick and the said Karthick sublet the said land to one Raja Nursing College. The college is occupying the said temple land as playground and also tried to encroach upon the said temple land.

3. The learned counsel appearing for petitioner vehemently submitted no notice was granted to the petitioner for auction. Since the petitioner has violated the terms and conditions of lease, the petitioner has no right to claim any rights, hence the contention of the petitioner that he was not



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granted any notice is rejected. Infact the petitioner has committed fraud on the temple. The said Karthik has also filed a writ petition in W.P.(MD)No.16539 of 2023 challenging the same auction notice and this Court has held as under:

“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 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 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.

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,



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W.M.P(MD)No. 13825 of 2023 is allowed and W.M.P(MD)No.13827 of 2023 is closed.”

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4. This Court has already held that the petitioner is not using the land for cultivating purpose with his own physical labour in the writ petition stated supra. Therefore, this Court is directing the petitioner to vacate the temple land and hand over the possession to the temple authorities, within a period of 15 days, from the date of receipt of a copy of the order. The respondents are directed to conduct auction as issued in the impugned notice.

5. With these observations and directions, this Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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S.SRIMATHY, J.

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