



W.P.No.2382 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

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THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.2382 of 2021

and

WMP.Nos.2689 & 2690 of 2021

S.Rajendran

...Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
4. The Deputy Commissioner/Executive Officer,
Arulmigu Kallalagar Thirukovil,
Alagarkovil, Madurai District.

...Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in R.P.No.99 of 2019 dated 04.08.2020 and quash the same.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.K.Karthikeyan, GA, for R1 to R3
: Mr.P.Gopalan, for R4

ORDER

This Writ petition has been filed seeking quashment of the order passed by the 1st respondent in R.P.No.99 of 2019 dated 04.08.2020.

2. The case of the petitioner is that, he is a cultivating tenant under Dhiwan Ramarayar Mandapam Trust in respect of the land bearing S.No.16/2 in Patta No.130 measuring 92 cents. The said trust is a public charitable trust. Initially the petitioner's father became a lessee under the trust and thereafter the petitioner has been cultivating the land since 1971. The lease amount was fixed at Rs.500/- per fasli and it was increased from time to time. At present, the lease amount is Rs.3000/- per fasli and the petitioner has been regularly paying the lease amount to the trust without



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any default. Since the trust was not in a position to maintain the property, they handed over the property to the 4th respondent for administering the property and the 4th respondent was receiving the lease amount through one of its employees and the petitioner had paid a sum of Rs.6000/- in January 2017 for the lease period of 2016 and 2017, for which no receipt was issued by the said employee namely Sivarajendran and despite reporting the same, no action has been taken by the 4th respondent. In such circumstances, the 4th respondent issued a notice to the petitioner alleging that he had made over the lease to some third party in 1997 for an extent of 5-1/4 cents, upon receipt of the said notice, thought the petitioner submitted appropriate explanation, without considering the same, after a lapse of 15 years, the 4th respondent illegally passed an eviction order, which was challenged by the petitioner in W.P.(MD).No.2183 of 2018 and the same was allowed on 12.01.2018, pursuant to which, the 2nd respondent initiated proceedings u/s.78 of H.R. & C.E. Act in M.P.No.97/2018. Without properly considering the documents submitted by the petitioner, an eviction order was passed by the 2nd respondent without any jurisdiction, as if he is an encroacher. Aggrieved by the said order of the 2nd respondent, the petitioner filed an appeal before the 1st respondent in R.P.No.99 of 2019, however, the 1st



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respondent, vide order dated 04.08.2020 dismissed the said appeal.

Challenging the same, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, there is a special statute available under Tamilnadu Public Trust (Regulation and Administration of Agricultural Land) Act, 1961 for evicting the cultivating tenant and only the authority under the said Act has power to order for eviction. While so, the 2nd respondent without any jurisdiction initiated the proceedings under Section 78 of the HR &CE Act and ordered for eviction, which is not sustainable. Further, initially, the proceedings under Section 78 of the Act was initiated by the 4th respondent temple authorities and the same was set aside by the Madurai Bench of Madras High Court, vide order dated 12.01.2018 made in W.P.(MD).No.2183 of 2013. Subsequently, the 2nd respondent initiated the Section 78 proceedings on the ground that the petitioner sublet a portion of the subject land in favour some third parties, without obtaining proper approval from the competent authority under Section 34 of the HR &CE Act and ordered for eviction u/s 78 of the Act which was subsequently confirmed by the 1st respondent, which cannot be sustained. Accordingly, he prayed for appropriate orders.



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4. Learned counsel appearing on behalf of the 4th respondent submitted that, the subject property measuring an extent of 3750 sq.mtrs., comprised in S.No.16/2 (T.S.No.17/2) Kochadai Village, Madurai belong to Arulmighu Diwan Ramarayer Kattalai attached to the respondent temple and the same was leased out to the petitioner's father for agricultural purpose. However, on field verification, it was found that the petitioner, under the grab of being with a political party and having been a ex-Councillor, without any authority and without obtaining necessary permission from the 4th respondent temple or from the official respondents and further the petitioner had also sub-leased the lands in favour of the third parties for running an Automobile repair workshop and apart from that, he also dug a borewell and sold the water commercially to the third parties and all the said irregularities were noted by the Assistant Commissioner, Madurai. When it has been specifically mentioned in the leased deed executed in favour of the petitioner that the tenant shall not sub-let the subject premises and there shall not be sharing of any sort with any other persons and there shall not be any commercial exploitations, the above said act of the petitioner is a clear violation of the leases conditions and no proper record has been maintained by the petitioner with regard to sub-letting due to which, the 4th respondent



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suffered huge loss and thereby, the temple initiated the proceedings as against the petitioner u/s. 78 of the Act. Thereafter, the Joint Commissioner initiated proceedings u/s. 78 and after providing opportunity to the petitioner, arrived at a conclusion that the petitioner violated the lease conditions and not paid any amount to the temple and thereby, ordered for eviction, which was confirmed by the appellate authority and the same cannot be said to be erroneous. Accordingly, he prayed for dismissal of this Writ petition.

5. Learned Government Advocate appearing on behalf of the respondents 1 to 3 submitted that this Court appointed an Advocate Commissioner in order to ascertain whether the subject lands/lease land is enjoyed by the petitioner as an agricultural land or commercial property and the Advocate Commissioner submitted a report before this Court stating that, the subject property is covered by compound wall on all four sides and a small Vinayagar statue is erected under a Banyan tree in a portion of the property and apart from that a Water treatment plant with storage units and an office block and that itself shows that the petitioner exploited the subject agricultural land for commercial purpose and enriched himself.



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WEB COPY 6. Heard learned counsel on either side and perused the material documents placed on record.

7. A perusal of the Advocate Commissioner report clearly reveals that the land has been utilised for purposes other than which it was leased out to the petitioner. The lands have been utilised for other purposes without obtaining any approval from the competent authority. Such being the case, when the lands have been used for purposes other than for which it has been let out, the petitioner having not followed the lease conditions, cannot seek to take shelter under the other provision of law for initiation of action and rightly action has been initiated u/s.78 of the HR & CE Act, which is perfectly in order and no interference is warranted with the same.

8. Further, the respondents are directed to take possession of the subject property and go for public auction and the petitioner is permitted in participate in the public auction subject to payment of all dues payable.



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WEB COPY 9. For the reasons aforesaid, this Writ petition stands dismissed. No costs. Consequently, the connected Miscellaneous petitions are closed.

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

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M.DHANDAPANI, J.

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