



WP.No.3574 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

WP.No.3574 of 2021
and W.M.P.Nos.4061 & 4065 of 2021

D.Kalyanasundaram

.. Petitioner

Versus

1. The Additional Commissioner (Enquiry)
Hindu Religious and Charitable Endowments Department
No.119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.

2. The Assistant Commissioner
HR and CE Department
Hindu Religious and Charitable Endowments Department
Salem 636 001.

3. The Fit Person/Inspector
A/M.Durgai Amman Thirukoil
Nallikalpatti Viillage
Salem Taluk and District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned permission granted by the 1st respondent in its proceedings in O.MU.No.40420/2020/V1 dated 20.11.2020 and quash the same as illegal and consequently direct the respondents not to disturb the petitioner from the peaceful possession and enjoyment of the lands in S.Nos.171/3, 173 /1-A, 173/1 -B, Nallikalpatty Village, Salem Taluk and District.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.K.Karthikeyan(Government Advocate)
HR & CE for R1 and 2
Mr.K.Ashok Kumar for R3



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ORDER

This writ petition is filed challenging the proceedings passed by the first respondent in O.Mu.No.40420/2020/V1 dated 20.11.2020, quash the same and consequently direct the respondents not to disturb the petitioner from the peaceful possession and enjoyment of the lands in S.Nos.171/3, 173 /1-A, 173/1 -B, Nallikalpatty Village, Salem Taluk and District.

2. The case of the petitioner is that the third respondent temple namely Arulmigu Durgai Amman Thirukoil situated at Nalikalpatty Village & Post, Salem Taluk and District comes under the supervisory jurisdiction of the respondents 1 and 2. The temple owns agricultural lands in S.Nos.171/3, 173 /1-A, 173/1 -B, Nallikalpatty Village, Salem Taluk and District. The said lands have been given to the Dharmalingam/petitioner's father and Manickam to cultivate the land. After the death of the petitioner's father, as a legal heir, the petitioner is in occupation of the lands to the extent of 4.5 acres. The petitioner's father name was recorded as Sagupadiyalar by the Tahsildar, Salem and their names were effected as cultivating tenant as per the Tenancy Act from 1972 and the same was published in Government Gazette dated 21.09.1972 which shows that they are registered as a cultivating tenants.

3. While so, the second respondent proceeded under Section 78 of the



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HR & CE Act on 13.01.2015 to evict his father from the lawful possession.

The Joint Commissioner, Salem rejected the second respondent's request to evict and directed to take steps under Section 101 of the HR & CE Act, however, till date, the such steps have not been taken. While so, the first respondent granted permission to conduct public auction vide proceedings dated 20.11.2020 and public notice is also issued. Hence, the petitioner sent a representation on 08.02.2021, however, no order is passed. Challenging the proceedings dated 20.11.2020, this writ petition.

4. The learned counsel for the petitioner submitted that though the petitioner's father was recognised as cultivating tenants and the petitioner being the legal heir is entitled to enjoy the property as per Section 2 (25)(i)(ii) of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961 and they should be dispossessed only after following the due process of law as under Section 19 of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961. Hence, conducting auction is not sustainable in the eye of law and seeks for considering the representation of the petitioner dated 08.02.2021.

5. The learned counsel for the third respondent submitted that the



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petitioner's father was appointed as an Hereditary Trustee of the third respondent temple and had created the tenancy records in his name for own cultivation and also obtained a computerised patta in his favour, which was also challenged by the third respondent temple and the same is pending. Subsequently, in the year 2010, the petitioner's father was also suspended for failure to discharge and enquiry under Section 53(2) of the HR & CE Act was also initiated as against the petitioner's father namely Dharamalingam. Pursuant to his demise, the petitioner's brother Viswanathan became the hereditary trustee and the petitioner occupied the temple properties under the guise of tenants and obtained electricity connections, property tax in their favour for their own purposes. Thus, the said Viswanathan was also suspended vide enquiry dated 24.07.2020 and a fit person is appointed for the third respondent temple. The newly appointed fit person in order to ensure the well and healthy administration of the temple took effect steps to conduct the public auctions for the subject properties and a resolution was also passed in this regard and public auction was also conducted on 22.02.2021 after following due procedures, wherein, 31 persons had participated and bid was finalised and the possession is also handed over the lawful tenants. Now, the petitioner has come up with this writ petition seeking to quash the permission for conducting the public auction dated 20.11.2020 cannot be sustained in the eye



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6. The learned Government Advocate (HR&CE) submitted that the petitioner's representation will be considered on merits and orders will be passed in accordance with law within a period stipulated by this Court.

7. Heard both sides and perused the materials placed on record. Admittedly, the facts of the present case are in dispute. The petitioner claims that the petitioner's father recorded his name as a tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1965 by the Record Officer, Tahsildar, Salem, whereas, the third respondent claims that the petitioner's father is not a cultivating tenant and he is only an Hereditary trustee, who is also suspended by the Joint Commissioner, Salem and his second son became Hereditary trustee and had utilised the temple properties in their favour by obtaining patta in their favour and the petitioner's brother is also suspended by the Joint Commissioner, Salem and a fit person is appointed for looking after the management of the temple properties.

8. This Court is of the opinion that all these issues has to be decided only



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the authorities concerned. Thus, this Court is inclined to direct the first respondent to consider the representation of the petitioner dated 08.02.2021 and pass appropriate orders on merits and in accordance with law whether the petitioner is a cultivating tenant or hereditary trustee after hearing the petitioner as well as the third respondent temple. Such exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this Order.

9. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Internet: Yes/No



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M. DHANDAPANI, J.



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