IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29895 of 2011
and
W.M.P.No.18094 of 2023

1.P.Rathinam (Deceased)
2.Manjula Vinayagam
3.K.Viswanathan
4.A.G.Gowri
5.T.S.Sivaraman
6.B.Sathiyanarayanan
7.Thangam
8.T.Chandran
9.U.Mohana
10.V.Gomathi
11.V.Chinnasamy
12.K.Venkatachalam
13.T.Rathinam
14.N.Somasundaram
15.R.Dhanapal
16.A.Narayanasamy
17.G.Rajammal
18.N.Varadarajan
19.G.Subramanian
20.S.Sambathkumari
21.B.Alagarsamy
22.Alagapparaj
23.D.Yesurathinam
24.K.Leela

25.M.Subramani
26.P.Gomathi
27.K.Samadhani
28.C.Ponnan
29.S.P.Pandian
30.G.Shanmugam
31.M.Adhikesavan
32.K.Susila
33.Umamaheswari Shanthi
34.T.Sundaram Ayyangar
35.Chellammal
36.P.Muralidaran
37.Parimala
38.Venugopal
39.K.Janaki
40.S.Premkumar
41.S.V.S.Ram
42.R.Krishnaveni
43.T.Kamala (Withdrawn)
44.Kanniyammal (Deceased)
45.V.Vasanthan (Withdrawn)
46.M.Krishnasamy Nadar
47.M.Baskarraj
48.P.Gunasekaran
49.S.Sukumar
50.M.Kothandaraman
51.R.Suseela
52.T.Rajasekar
53.Visalatchi Kuppusamy
54.A.M.Radhakrishnan
55.R.Gopal (Withdrawn)
56.M.Chitra (Withdrawn)
57.T.V.Balaiah
58.Jothi Joshua
59.Rajini
60.K.V.Vidya (Withdrawn)
61.A.Anuradha (Withdrawn)

62.Shanthi Jayapal
63.V.Ramkumar
64.V.Savithri
65.S.Maheswari
66.V.Sadayan
67.P.Kamala (Withdrawn)
68.B.Sivakumar
69.S.Parthasarathy
70.C.Natarajan
71.R.Indrani
72.Madhavi
73.Ponmari
74.Selvi
75.P.R.Aravindan

(P-71 to P-75 are substituted as LRS of deceased
P-1:Rathinam as per Order dated 07.12.2016 by
D.K.K.J in M.P.No.1 of 2015 in W.P.No.29895 of 2011)

76.S.Selvanathan
77.Lakshmi
78.S.Sathiyanathan
79.Sakunthala
80.Devaki
81.Krishnaveni
82.Rajeswari

(P-76 to P-82 are substituted as LRS of deceased
P-44:Kanniyammal as per Order dated 07.12.2016
by D.K.K.J in M.P.No.2 of 2015 in W.P.No.29895 of 2011) ... Petitioners

Vs.

1.Government of Tamilnadu,
Represented by its Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai – 600 034.

3.Executive Officer,
Arulmigu Tiruvalleswarar Thirukoil,
Padi, Chennai – 600 050.

4.P.S.Shanmugasundaram,
Hereditary Trustee,
Arulmigu Tiruvalleswarar Thirukoil,
Padi, Chennai – 600 050.
...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandams, calling for the records from the respondent relating to the order of the 2nd respondent dated 21.09.2011 bearing reference No.Vi.No.23/2010/R2 communicated by letter dated 03.11.2011 vide reference No.Na.Ka.Vi.No.23/2010-1 R2 rejecting the petitioners request for conveying the land in S.No.271, 303 and 364 in Padi belonging to the 3rd respondent temple in which they have been lessees/tenants for long number of years and with their permission constructed the houses quash the same and consequently direct respondents 1 to 4 to execute orders of the 2nd respondent dated 05.10.2010.

For Petitioners : Mr.N.G.R.Prasad
for M/s.Row and Reddy
(for P-1 to P-42, 44, 46 to 54, 57 to 59, 62 to 66, 68 to 82)
: (for P-43, 45, 55, 56, 60, 61 and 67 are dismissed as withdrawn *vide* order dated 03.09.2023 in W.M.P. No.18094 of 2022)

For R1 & R2 : Mr.N.R.R. Arun Natarajan
Special Government Pleader
For R3 : Mr.P.Akkilesh
for M/s.A.S.Kailasam & Associates
For R4 : Mr.A.R.Suresh
for Mr.K.Arumugam

ORDER

The writ on hand has been instituted challenging the order dated dated 21.09.2011 issued by the Commissioner, Hindu Religious and Charitable Endowments Department, rejecting the claim of the Writ Petitioners for sale of the temple house site property to the petitioners.

2. The petitioners admittedly are the tenants in occupation of the land belongs to the temple viz., Arulmigu Tiruvalleswarar Thirukoil, Padi, Chennai – 600 050.

3. The learned counsel Mr.N.G.R.Prasad, appearing for the petitioners would submit that the petitioners are tenants for several years and paying rents. The erstwhile Hereditary Trustee of the temple gave an assurance that the temple property will be sold in favour of the petitioners, since they are in occupation for many years. During the earlier round of litigation, the Hon'ble Division Bench has passed an order in W.A.No.2077 of 2004 dated 27.03.2007. Further, he would rely on the observations made by the Hon'ble Division Bench of this Court that the portion of the property was alienated in favour of 66 tenants and therefore, similar benefit is to be extended to the writ petitioners also by alienating the temple land in favour of the petitioners. In this regard, paragraph no.15 of the Judgement of the Hon'ble Division Bench is also relied on.

3.1. Further, he would submit that the resolutions passed by the Trustees of the temple were also relied on. These resolutions were passed by the Hereditary and Managing Trustee, proposing to sell the temple property in favour of the writ petitioners. Since it was not acted upon, they have approached the Court by way of Writ Petition in W.P.No.15527 of 2000 dated 31.03.2004. It was allowed and challenging the same, Writ Appeal in W.A.No.2077 of 2004 was filed, wherein, the Hon'ble Division Bench has allowed the Writ Appeal filed by the Executive Officer, Arulmigu Tiruvalleswarar Thirukoil with an observation that the respondents shall take note of the sale of the land for 66 persons similarly placed while taking decision as to whether to sell the lands any more or not and the benefit of the temple alone should be the criteria and the same can be decided by the respondents on *denovo* consideration under the provisions of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "HR & CE Act").

3.2. Further, he would rely on the internal communications between the Commissioner, HR & CE Department and the Government. The Commissioner, HR & CE Department has forwarded a recommendation to the Government for appointment of one more Commission for resolving or determining the issues. The said recommendation was not taken by the Authorities and therefore, the petitioners are constrained to move the present writ petition.

3.3. Further, it is mainly contended that the petitioners alone cannot be discriminated in view of the fact that the temple had already alienated the property in favour of 66 tenants and therefore, similar benefit is to be extended to the writ petitioners by alienating the house sites under the possession of the petitioners as of now.

4. Mr.N.R.R. Arun Natarajan, the learned Special Government Pleader appearing for the HR & CE Department would vehemently contend that the impugned order itself has been passed pursuant to the directions issued by the Hon'ble Division Bench in W.A.No.2077 of 2004 dated 27.03.2007, wherein, paragraph no.15 of the Judgment unambiguously reveals that the respondent shall take note of the sale of the land for 66 persons similarly placed while taking decision as to whether to sell the lands any more or not and the benefit of the temple alone should be the criteria and the same can be decided by the respondents on *denovo* consideration under the provisions of the HR & CE Act. Therefore, the interest of the temple and the provisions of the HR & CE Act to be taken into consideration while

extending the benefit in favour of the writ petitioners on par with the 66 persons in favour of whom alienation was made.

5. Further, he would submit that the impugned order would reveal that the Commissioner, HR & CE Department has commenced the proceedings only by referring the order of the Hon'ble Division Bench passed in W.A.No.2077 of 2011 dated 27.03.2007. Therefore, consideration was made with reference to the observations made by the Hon'ble Division Bench in the Writ Appeal and the same was allowed in favour of the temple. After considering the issues, the Commissioner, HR & CE Department formed an opinion that the temple income is self sufficient for the purpose of managing its affairs and administration and further alienation of property is no more required. Further, unnecessary sale would cause prejudice to the interest of the minor deity as laid under Section 34 of the HR & CE Act. Therefore, the Commissioner, HR & CE Department arrived at a conclusion that the further sale of the property belongs to the temple is unnecessary and accordingly rejected the claim of the writ petitioners.

5.1. In this context, he also referred Section 34 of the HR &

CE Act, which enumerates that

> "Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by 1[the Commissioner] as being necessary or beneficial to the institution."

5.2. Therefore, he would submit that the Commissioner, HR & CE department being the Authority competent to take final decision regarding alienation of temple property, the case of the writ petitioners were considered with reference to the observations made by the Hon'ble Division Bench and thus the writ petition is to be rejected.

6. The learned counsel appearing on behalf of the Hereditary and Managing Trustee also objected to the contention of the petitioners by stating that the temple can able to manage its administration from and out of its own income and thus further alienation of the property is not required. The Hereditary Trustee raised an objection before the Commissioner, HR & CE

Department for alienation of property belongs to the temple and the said objection was also considered by the Commissioner, HR & CE Department and the applications filed by the petitioners were rejected.

7. Mr.A.R.Suresh, learned counsel appearing for the 4th respondent would contend that the very same in respect of the property belongs to the temple *viz.,* Arulmigu Tiruvalleswarar Thirukoil was considered by this Court in W.P.No.2843 of 2011 etc., dated 02.11.2012, wherein, the Hon'ble Division Bench Order in W.A.No.2077 of 2004 dated 27.03.2007 has been elaborately considered by the learned Single Judge in the said order and the writ petitions filed by the tenants were dismissed. Therefore, the present writ petition is governed by the decision by made in W.P.Nos.2843 of 2011, etc., dated 02.11.2012 and liable to be rejected.

8. Considering the arguments, Section 34 of the HR & CE Act is unambiguous. Any exchange, sale or mortgage or any lease for a term exceeding 5 years of any immovable property belonging to the temple is null and void unless it is sanctioned by the Commissioner, HR & CE Department. Therefore, lease or sale of temple properties are absolutely governed under the

provisions of the HR & CE Act. The Commissioner, HR & CE Department being a competent authority to grant necessary approval, the case of the petitioners were considered by the Commissioner with reference to the observations made by the Hon'ble Division Bench of this Court in writ appeal as cited supra. Therefore, the order passed by the Hon'ble Division Bench is clear that there is no direction to alienate the property in favour of the tenants. The Hon'ble Division Bench took note of the fact that the alienations were already made in favour of the 66 tenants.

8.1. Taking all these facts into considerations, a direction was issued to go for denovo consideration, by considering the interest of the temple and the other criterias. The impugned order was a direction to look into the interest to alienate the temple property and to take a decision accordingly. In the impugned order, in the opening paragraph, the Commissioner has categorically stated that the consideration is made based on the observations of the Hon'ble Division Bench of this Court dated 27.03.2007 in W.A.No.2077 of 2004. The Commissioner, HR & CE Department has elaborately considered the issues and made a finding that the income of the temple is self sufficient and able to manage its affairs from and out of its own income and there is no necessity to alienate the property any further and any such alienation would result in loss and would cause prejudice to the interest of the temple. The objections raised by the Hereditary and Managing Trustees were also taken into consideration and accordingly, the application submitted by the petitioners to alienate the temple property was rejected.

8.2. Regarding the observations of the Hon'ble Division Bench in the year 2007, this Court considered the same in W.P.No.2843 of 2011 dated 02.11.2012 and the relevant paragraphs is as under:

> "*V.Fifth Contention:*
>
> *(a) The Division Bench of this Court permitted sale of the land belonging to the very same temple and as such the petitioners are entitled to a similar relief.*
>
> *(b) The issue before the Division Bench in the Executive Officer, Arulmighu Thiruvalleeswarar Thirukkoil, Chennai and another V.Jagathambigai Nagar Co-operative House Site Society and others (Judgment dated 27 March 2007 in W.A.No.2077 of 2004) was in respect of the legality and correctness of the order passed by the learned Single Judge directing the Commissioner to take a decision to grant approval to sell the land taking into account the*

proposal made by the hereditary trustee of the temple. The Division Bench opined that the learned Single Judge was not right in issuing a mandamus to accord sanction to the proposal, as, the said direction would amount to curtailing the discretion of the statutory authority as contemplated under Section 34 of the Act.

(c) There is no dispute that the commissioner is authorised under Section 34 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "HR & CE Act") to grant permission to assign the temple land. There should be an appropriate application before the Commissioner indicating the reasons which weighed with the temple to assign the land. Before granting any such permission the Commissioner is expected to publish a notice inviting objections/suggestions and only after considering the views or objections received, the issue can be decided. The Division Bench in the decision cited supra has not issued a direction to the Commissioner to grant permission to assign the land. The Division Bench very clearly stated that it is for the Commissioner to decide the matter in accordance with the provisions of the Act.

16. Section 34 of the HR & CE Act is reproduced below:

"Alienation of immovable trust property:-

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable

property, belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner;

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation:Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, the Commissioner may impose such conditions and gave such direction, as he may deed necessary regarding the utilisation of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the government and to the trustee and shall be published in such manner as may be prescribed.

(4) The Trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of publication of the order, appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the inams referred to in Section 41."

17. The question or the Commissioner granting permission to assign the land does not arise for consideration now, as the temple had not made a proposal to assign the land. It is only when the temple takes a decision to sell the land in public auction, the question of considering the proposal by the Commissioner would arise. Even then, there is no question of assigning the land to the petitioners. The Commissioner should evolve the manner and method of selling the land. In any case, the sale *cannot be by way of a secret method. The interest of the temple necessarily has to be protected.*

18. The idol is deemed to be a minor and as such the temple authorities should protect the interest of the minor. The temple is expected to evolve a transparent method to sell the land. Therefore, in a matter like this, a mandamus to sell the land to the person in occupation on reasonable valuation cannot be granted. The tenants necessarily has to compete with others and only in case their offers are matching with the offers received from others; they can make a claim for preferential allotment.

Conclusion:

19. The factual matrix very clearly gives an indication that the temple is in ownership and possession of the land. The Government have no manner of right over the temple land. It is not open to the petitioners to make a claim for assignment by the Government. Therefore, I do not find any merit in the contentions taken by the petitioners.

20. In the result, the writ petitions are dismissed. Consequently, the connected Mps are also closed. No costs."

The issues addressed by the petitioners herein are no more *res integra* and this Court has elaborately considered as stated above.

8.3. It is relevant to consider the Judgment of the Honble Division Bench in Review Application (Writ) Nos.169 & 170 of 2021 dated 02.06.2023. This Court in *Suo motu* proceedings has elaborately considered the scope of Section 34 and for alienation of temple properties. The relevant portions of the Judgment are extracted herein:

> *"16.With regard to direction no.33, it will be necessary to look into the relevant provision of the HR&CE Act, which reads as follows:*
>
> *"34.Alienation of immovable Trust property:- (a) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.*
>
> *Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published, in such manner as may be prescribed, inviting objections and suggestions with respect thereto, and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.*
>
> *Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.*
>
> *Explanation:- (4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of*

any exchange, sale, mortgage or lease of any immovable property, belonging to or given or endowed for the purpose of any religious institution and the Commissioner shall give effect to all such directions."

From the above provision, it is clear that the exchange, sale or mortgage and any lease for a term exceeding five years of any immoveable property is generally null and void. The exception being the prior sanction of the Commissioner for the necessity or beneficial to the institution. It is pertinent to mention that the word 'necessity' used therein would have to be related to the necessity of the temple or institution and not for the necessity of third parties. Necessity and beneficial intent being a pre-requisite condition, must be satisfied before the decision to even lease out the property for more than five years. Such a decision must be taken for the rational consideration. Therefore, this court is of the opinion that for alienation of the immovable properties belonging to the religious institutions, all the conditions stipulated in the proviso like publication, calling for objections and previous sanction from the Government and explanation to Section 34 of the HR&CE Act have to be scrupulously followed and it has to be established that such alienation is beneficial to the interest of the temple or institution and that, the alienation is the only option to ensure that the activities of temples including performance of rituals will be disturbed, *if the property is not sold. It must also be fornecessity or beneficial for the temple or the religious institution. Before the properties are alienated, the other provisions regarding common good fund, funds of other temples to be used for the preservation and other activities of the other temples, contribution from the public, will have to be taken into consideration. Even thereafter, if there is a requirement, a decision on sale of property can be taken, that too, after following due procedure as contemplated under the HR&CE Act. The government lands are to be first utilized for public purpose before the lands belonging to the temples are touched. The directions to be issued by the Government under the explanation should also be inconformity with the above principles. It is significant to mention here that a Division Bench of this Court in the judgment in W.A No. 2831 of 2002 has already held that temple properties cannot be acquired. There are Government orders in G.O.MS.No.1266 (Rev.) dated 30.05.1981 and G.O.Ms.No.1630 dated 26.09.1984 on the subject. As such, the temple properties cannot be gifted away against the interest of the institution. The intention with which the charities given by the donor cannot be shun away at the pleasure of the government or the Commissioner. The Will of the donor is of paramount importance, which cannot be surpassed at executive pleasure against the interest of the temples. At this juncture,* *it is necessary to place on record the importance of maintenance of accounts regarding the contribution by thedonors, hundi collection, expenditure and importance of independent audit performed by an authority not forming part of state functionary. Therefore, the alienation by the government can only be in consonance with the provisions and object of the HR&CE Act; and that, the actions taken by the HR&CE Department shall always be subject to judicial review as this Court being one of the guardians of the rights guaranteed by the constitution, is vested with such power. "*

8.4. In the present case, the petitioners are seeking alienation of the temple property. Alienation can never be claimed as an absolute right. Moreover, selling the temple property is the decision to be taken by the competent authority in the interest of the temple. Deity being minor, the department is bound to protect the interest of the temple properties. In the event of any violation, the Authorities who are committing such illegality are liable to be prosecuted and in the interest of the minor deity at all circumstances are to be protected and the decision taken by the Commissioner, HR & CE Department, in the present case not to alienate the property cannot be found fault with. Since there is a categorical finding that the income of the temple is self sufficient and there is no interest to alienate the property any further. As stated above, alienation of the temple property is the decision to be taken in accordance with law by the competent authority and the petitioners being the tenants have no right in claiming alienation and the Hon'ble High Court in exercise of the powers of judicial review cannot issue any direction to the HR & CE to sell the property by executing the sale deed in favour of the writ petitioners. It is needless to state that the respondents are bound to protect the temple property by promptly recovering lease amount and in the event of any illegality or irregularity, suitable actions are to be initiated.

Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

veda
Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No

To
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Represented by its Secretary to Government,
Hindu Religious and Charitable Endowments Department,
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S.M.SUBRAMANIAM, J.

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