



W.P.No.5782 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.5782 of 2015

and

M.P.Nos.1 & 2 of 2015

V.A.Balasubramanian

... Petitioner

Vs.

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai-9.

2. The Secretary to Government,
Tamil Development and Culture
And Charitable Endowments,
Secretariat, Chennai-9.

3. The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai-34.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the entire records in respect of the G.O.131 dated 18.5.2004 and G.O.No.277 dated 2.12.2005 on the file of Secretary to Government, Tamil Development Culture and Endowments, Secretariat, Chennai-9, the 2nd Respondent and quash the same.



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For Petitioner : Mr.D.Rajagopal
For Respondents : Mr.G.Ameedius,
Government Advocate (for R1).
Mr.K.Karthikeyan,
Government Advocate (for R2 & R3).

ORDER

The present writ petition has been filed challenging the Government Order issued in G.O.Ms.No.131, Tamil Nadu Development Culture and Endowment Department, dated 18.05.2004.

2. With reference to the relief sought for, the issues were elaborately adjudicated by this Court in a batch of writ petitions in W.P.No.30740 of 2013 etc., and an order was passed on 27.09.2023. Since the issues raised in the present writ petition are no more res integra, this Court is inclined to pass the very same order passed in W.P.No.30740 of 2013 dated 27.9.2023. The order reads as under:

“18. On the other hand, if the party in occupation of the property is a third party, not having any right to succeed to the estate of the deceased and the lease period is also over or name transfer is sought for by a



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blood relative in possession of the leasehold property after expiry of the lease period, he shall be treated as an encroacher within the meaning of explanation (b) to Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Therefore, he is liable to face the eviction proceedings as lease period is already over.

19. If such a person approach the Executive Authority of the temple for name transfer, the impugned Government Order enables the Executive Authority of the temple to enter into a fresh lease arrangement with such person in occupation of the property, if the Executive Authority comes to a conclusion that entering into a fresh lease is beneficial to the religious institution. Only in such cases, the impugned Government Order insists the Executive Authority of the temple to collect donation as mentioned above.

20. In the absence of such an enabling provision, the Executive Authority has to initiate eviction proceedings against the third parties/erstwhile lessee/legal representative of erstwhile lessee for taking possession of the property and thereafter, the fresh lease shall be entered into by bringing the property for open auction as per the Religious Institutions (Lease of



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Immovable Property) Rules, 1963. The provision in the impugned Government Order enabling the Executive Authority of the temple to collect donation from the third party/erstwhile lessee is beneficial to them or otherwise they have to face eviction proceedings.

21. Further, as rightly contended by the learned Additional Government Pleader for respondents 1 to 3 that the condition regarding payment of donation is not binding on third party/erstwhile lessee. They have no authority to occupy the property after expiry of the lease period in the light of explanation to Section 78 of HR and CE Act. If they are not willing to accept the condition mentioned in the Government Order, they can very well surrender the property and walk away. The question of payment of donation will arise only if they want to enter into fresh lease arrangement with the temple. The Executive Authority of the temple as a contracting party is entitled to put forth its own terms and if the same is not applicable to the third parties/erstwhile lessees, they are not under any compulsion to enter into a fresh lease. Therefore, the condition imposed in the above said Government Order enabling the Executive Authority of the temple to enter into lease arrangement with third party/erstwhile lessee in occupation of temple property



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cannot be treated as unreasonable or unfair as contended by the learned counsel for the petitioners. On the contrary, it enables the persons in occupation of the temple property to enter into new lease arrangement without surrendering the property.

22. In view of the discussions made earlier, the condition mentioned in the impugned Government Orders requiring the third party/erstwhile lessees to surrender the superstructure in favour of the temple or pay donation to the temple at the rate specified in order to enter into fresh lease arrangement is found to be valid and accordingly, all the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.”

3. In view of the order cited supra, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.01.2024

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)



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To

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S.M.SUBRAMANIAM. J.,

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