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W.P.No.8442 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.8442 of 2016

and

W.M.P.No.7488 of 2016

Devaraj

... Petitioner

Vs.

1.The Commissioner,
HR & CE Department,
Uthamar Gandhi Road,
Nungambakkam,
Chennai – 600 034.

2.The Joint Commissioner,
HR & CE,
Commercial Tax Building, Ground Floor,
Dr.Balasundaram Road,
Coimbatore – 641 018.

3.The Assistant Commissioner,
HR & CE,
Commercial Tax Building, Ground Floor,
Dr.Balasundaram Road,
Coimbatore – 641 018.

4.Hereditary Trustee,
Arulmigu Paramasivan Thirukoil,
Ramachettipalayam,
Sundakamuthur Village, Perur,
Coimbatore District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the 1st respondent by proceedings in R.P.No.151/2015/D2 dated 08.02.2016 confirming the order of the 2nd respondent by proceedings in M.P.No.41/2010/A1 dated 30.06.2015 and quash the same.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents : Mr.K.Karthikeyan
Government Advocate [R1 to R3]
Ms.G.Sumitra [R4]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the 1st respondent by proceedings in R.P.No.151/2015/D2 dated 08.02.2016 confirming the order of the 2nd respondent by proceedings in M.P.No.41/2010/A1 dated 30.06.2015 and quash the same.

2. The case of the petitioner is that, he is a cultivating tenant under the 2nd respondent and his tenancy right has been recognized under the Tamil Nadu Agricultural Lands Record of Tenancy Act in T.R.No.25/1992 dated 04.04.1995 in respect of the subject lands. Then



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fit person/executive officer, Arulmigu Patteswararswamy Devasthanam had executed a lease deed dated 1.7.1987 and the petitioner was put in possession of the subject lands and cultivating the same till date. The petitioner was regularly paying the lease amount without any default till 2008. Whiles, the 2nd respondent by notice dated 31.03.2010 sought explanation from him as to why he should not evicted from the above property as encroacher u/s 78 of the HR & CE Act. However, without the considering the reply of the petitioner, the 2nd respondent vide order dated 30.06.2015 ordered for eviction, against which, the petitioner filed a revision before the 1st respondent u/s 21 of the HR & CE Act and the 1st respondent dismissed the revision vide impugned order dated 08.02.2016. Challenging the same, the present writ petition is filed before this court.

3. Learned counsel for the petitioner on record submitted that already he had given change of Vakalath to the petitioner, however, the petitioner has not chosen to engage any advocate. Accordingly, he prays for appropriate orders.



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4. Learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that, no mandatory sanction was obtained by the petitioner for the alleged lease as stated u/s 34 of the Act and the rules made thereunder and the petitioner managed to continue to be in possession, occupation and enjoyment, squatting upon the temple property without any valid lease deed by paying a paltry sum of Rs.2,000/- for entire extent of acre 8.32 cents. Thereby, the hereditary trustee of the 4th respondent had lodged a petition before the 2nd respondent to initiate proceedings u/s 78 of the Act against the petitioner and the 2nd respondent after affording opportunity of hearing to the petitioner, had arrived at a conclusion that the petitioner is an encroacher and ordered for eviction, against which, the petitioner preferred a revision u/s 21 of the Act before the 1st respondent and the 1st respondent after hearing the parties and upon perusing the records, passed the impugned order confirming the order passed by the 2nd respondent. Therefore, the impugned order is sustainable in the eye of law and is not liable to be quashed.

5. Learned counsel appearing for the 4th respondent submitted that, in the absence of 4th respondent, the fit person appointed by the



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Government executed a lease deed in favour of the petitioner for a period of one year from 01.07.1987 to 30.06.1988 without approval of the competent authority in terms of Section 34 of the HR & CE Act and the such a mandatory procedure contemplated u/s 34 of the HR & CE Act was not followed while executing the lease in favour of the petitioner. Further, the petitioner not paid the lease amount and on enquiry, it is found that the petitioner is a land encroacher, thereby proceedings u/s 78 of the Act was initiated against him and ordered for eviction. Aggrieved by the same, the petitioner filed a revision. After affording sufficient opportunities, the 1st respondent had passed the impugned order, which cannot interfered with. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. The petitioner claimed that he is in possession and enjoyment of the land comprised in S.F.Nos.401/1, 401/3 and 402 to an extent of 8.32 acres situated at Sundakamuthur Village, Coimbatore for the past 29 years pursuant to the lease executed in his favour by the then Competent



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Authority on 01.07.1987 and the said land belongs to the 4th respondent temple. Whiles, the 2nd respondent initiated proceedings u/s 78 of the HR & CE Act and passed an order dated 30.06.2015 by arriving at a conclusion that the petitioner is an encroacher and ordered for eviction. Against the said order, the petitioner filed a revision before the 1st respondent and the same was dismissed by the 1st respondent vide impugned order dated 08.02.2016.

8. Section 34 of the HR & CE Act is extracted hereunder :-

“34. 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 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



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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.”

9. It is seen that no mandatory sanction was obtained by the petitioner for the alleged lease as claimed by him u/s 34 of the HR & CE Act and rules made thereunder and he managed to continue to be in possession, occupation and enjoyment, squatting upon the temple property without any valid lease deed by paying a meagre sum of Rs.2,000/- for the entire extent of acre 8.32 cents.

10. First of all, the petitioner ought to have held a valid lease sanction order to claim any right under the Tamil Nadu Agricultural



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Lands Record of Tenancy Rights Act, 1969. However, in the case on hand, there exists no mandatory lease sanction order as required under the law or any valid lease agreement between the landlord and the alleged tenant. Further, the alleged tenancy riht said to be obtained by the petitioner and recorded by the authority behind the bank of the landlord-idol of the temple and without any lease hold right sanction order from the competent authority has no legal sancity in the eye of law and will not bind either the deity or the authority. Therefore, the impugned order passed by the 1st respondent is *per se* sustainable and the same does not require any interference.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected writ miscellaneous petition is also dismissed.

27.08.2024

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



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