



W.P(MD)No.212 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.212 of 2024 and
WMP(MD) Nos.231 & 232 of 2024

N.Palanisamy

... Petitioner

Vs

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Thousand Lights West,
Nungambakkam,
Chennai -34.
- 2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Palayamkottai,
Tirunelveli District – 627 009.
- 3.The Deputy Commissioner/ Executive Officer/Fit Person,
Arulmighu Chokkalingaswwamy Thirukovil,
Thiruvengadam,
Tenkasi District – 627 719.
- 4.The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Tenkasi.



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5.The Tahsildar,
Tahsildar Office,
Thiruvengadam.

Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 18.12.2023 in Na.Ka.No.5775/2023-1/A3 of the fourth respondent and order dated 29.09.2023 in RP No.72/2021/D2 of the first respondent herein and the order dated 17.02.2021 in MP No.25 of 2019 of the second respondent and quash the same.

For Petitioner	: Mrs.A.L.Gandhimathi Senior Counsel for Mr.C.Mahadevan
For R1, R2,R4 & R5:	Mr.P.Subba Raj Special Government Pleader
For R3	: Mr.V.R.Shanmuganathan Standing Counsel

ORDER

This writ petition is filed as against the order of the Commissioner, HR & CE Department confirming the order passed by the Joint Commissioner, HR & CE Department that the petitioner is an encroacher of the land belongs to Arulmighu



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Chokkalingaswamy Thirukovil, Thiruvengadam, Tenkasi District and the petitioner was directed to vacate from the subject property and hand over the possession of the property to the temple authorities on or before 09.01.2024.

2.The case of the petitioner is that the temple authorities have initiated proceedings as against the writ petitioner under Section 78 of the HR & CE Act, treating him as an encroacher of the temple land in S.No.1240/2B, Thiruvengadam Village to an extent of 743.75 sq.ft. As against the same, revision filed by the petitioner was dismissed. Therefore, the petitioner has moved this writ petition before this Court that he is having valid Sale Deeds in favour of him.

3.Considering the issue involved in this writ petition and taking into consideration of the period of occupation of the subject property by the petitioner and also considering the fact that the writ petitioner is doing some business for his livelihood in the subject



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property for several years, this Court suggested the learned senior counsel to advise the petitioner to resolve this issue amicably.

4. In earlier occasion, when this writ petition is taken up for hearing along with other connected writ petitions in WP(MD) Nos.421 to 429 of 2024, the learned counsel appearing for the writ petitioners submitted that on their advice, all the writ petitioners herein have agreed to accept the right and title of the subject properties by Arulmighu Chokkalingaswwamy Thirukovil, Thiruvengadam/ the fourth respondent herein and filed an affidavit of undertaking to that effect. In their affidavit of undertaking, the petitioners in all the writ petitions have agreed to pay a fair rent as decided by the committee appointed by the fourth respondent temple. For better appreciation, the relevant paragraph from the affidavit of undertaking filed by the petitioner herein is extracted as under:-

3. I submit that I am admitting the right and title of the respondent temple in respect of the property of an extent



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of 743.75 sq.ft consisting of Door Nos.11,12 and 13 in Survey No.1240/2B, Thiruvengadam Village, Thiruvengadam Taluk and Tenkasi District, in which my building is constructed. I undertake that I will pay the ground rent for the said property and I may be granted lease in respect of the property on reasonable ground rent as fixed by the concerned authorities, I also undertake to pay the ground rent periodically without fail.”

5.Considering the affidavit of undertaking filed by the petitioner, this Court has directed the third respondent temple to get written instructions on the possibility of treating the petitioner as a tenant of the temple and to fix a fair rent.

6.The learned counsel for the third respondent temple has also produced a written instruction dated 04.02.2024, which he has received from the Joint Commissioner and submits that the temple authorities are prepared to accept the writ petitioner as their tenant for a period of less than five years. The learned counsel



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further submits that the immovable properties of the temple can be allotted only by way of conducting an auction as per Rule 2 of Religious Institutions (Lease of Immovable Property) Rules, 1963. However, on the suggestions made by this Court, the third respondent temple has come forward to accept the petitioner as their tenant for a period of less than five years.

7.In view of the above and recording the affidavit of undertaking filed by the petitioner and the written instruction of the temple authorities, this writ petition is disposed of with the following directions:-

- i. The petitioner shall be considered as tenant of Arulmighu Chokkalingaswamy Thirukovil, Thiruvengadam/ the third respondent and a fair rent shall be fixed for the property, which is in occupation of the petitioner.



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- ii. The Committee constituted under Rule 11 of the Religious Institutions (Lease of Immovable Property) Rules, 1963, shall fix a fair rent w.e.f. 01.01.2024, within a period of one month from the date of receipt of a copy of this order
- iii. The petitioner has to pay the fair rent as fixed by the temple authorities without any fail.
- iv. The temple authorities shall permit the petitioner to occupy the subject property for a period of four years and eleven months. Thereafter, the property can be brought for an auction.
- v. The petitioner is also at liberty to participate in the auction to be conducted by the temple authorities.



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vi. In the event, if there is any default in rent, it is open to the respondents to initiate action against these petitioner under Section 78 of the HR & CE Act, 1951.

No costs. Consequently, connected Miscellaneous Petitions are closed.

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(1/2)

NCC:Yes/No
Index:Yes/No
Internet:Yes
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