



WP(MD)Nos.453 and 1276 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**WP (MD) Nos.453 and 1276 of 2024
and
WMP (MD) No.17059 of 2023 in
WP (MD) No.19778 of 2017**

WP (MD) No.453 of 2024

M.Tirupathi

... Petitioner

Vs

- 1.The District Collector,
Tenkasi District.
- 2.The Joint Commissioner,
Hindu Religious and
Charitable Endowments Department,
Tenkasi.
- 3.The Assistant Commissioner,
Hindu Religious and
Charitable Endowments Department,
Tenkasi.
- 4.The Executive Director,
Arulmigu Kutralanatha Swamy Thirukoil,
Courtallam,
Tenkasi District.

5.V.Murugan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for issuance of writ of



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mandamus directing the 2nd respondents to consider the petitioner's representation dated 15.12.2023 and to dispose of the same in accordance with law within the stipulated time as fixed by this Court.

For Petitioner : Mr.S.Manojkumar

For Respondent : Mr.Subburj,

Nos.1 to 3

For Respondent : Mr.S.Manohar

No.4

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Murugan

... Petitioner

Vs

1.The Assistant Commissioner,
Hindu Religious and
Charitable Endowments Department,
Tenkasi.

2.The Executive Director,
Arulmigu Kutralanatha Swamy Thirukoil,
Courtallam,
Tenkasi District.

3.The Junior Engineer,
TANGEDCO, Courtallam,
Tenkasi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the 2nd respondent to give letter with mentioned shop No.124, addressed to the 3rd respondent to grant electricity connection to the



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petitioner's shop No.124 situated at Arulmigu Courtallanathaswamy Thirukoil Keelaratha Veethi, Courtallam, Tenkasi District Based on the representation dated 20.11.2023.

For Petitioner : Mr.K.Kevinkaran
For Respondent : Mr.Subba Raj,
No.1 Special Govt.Pleader
For Respondent : Mr.S.Manohar
No.2 Standing Counsel
For Respondent : Mr.S.Deenadhayalan
No.3

COMMON ORDER

The writ petition in WP(MD)No.453 of 2024 has filed by one Tirupathi, who is running shop No.92 North Sannathi Street, Courtallam and he has filed this writ petition for a writ of mandamus directing the Joint Commissioner, Hindu Religious and Charitable Endowments Department to consider the petitioner's representation dated 15.12.2023. The representation was made for an appropriate action as against the tenant of the adjacent shop No.124, one Murugan, S/o.Velu Mudhaliyar.



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2.The said Murugan, S/o.Velu Mudhaliyar has filed this writ petition in WP(MD)No.1276 of 2024 for a writ of mandamus directing the Executive Officer of Arulmigu Courtallanathaswamy Thirukoil, Courtallam to consider his representation dated 20.11.2023 for grant of electricity service connection to his shop No.124 at Keela Radha Veedhi, Courtallam.

3.The miscellaneous petition in WMP(MD)No.17059 of 2023 in WP(MD)No.19778 of 2017 has filed by Murugan, S/o.Velu Mudhaliyar for extension of time to pay the arrears of rent to the temple, as directed by this Court in WP(MD)No.19778 of 2017.

4.Since the issue in all these petitions are interlinked and on the request of the learned Counsel on either side, all these petitions are tagged together and taken up for hearing and disposed of by this common order.

5.For the sake of convenience and clarity, the parties to these writ petitions are referred to by their respective names.



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6.The brief facts leading the filing of these writ petitions are under:

(i) Murugan, S/o.Velu Mudhaliyar, is a tenant in respect of the shop No.115. He was having arrears of rent to the tune of Rs.6,55,510/- as on 31.05.2015 and therefore the temple administration has initiated action as against this petitioner under Section 78 of the Hindu Religious and Charitable Endowments Act in MP.No.10 of 2016, wherein an eviction order was passed by the Joint Commissioner on 08.08.2017. Challenging the same Murugan has earlier filed the writ petition in WP(MD)No.19778 of 2017, wherein he has agreed to pay the arrears of rent and therefore, this Court disposed of that writ petition by order dated 21.04.2022 in the following terms:

"4.Considering the fact that the petitioner's belongings are still inside the shop, which was put under lock and seal on 27.10.2017 and has not been used since then during the pendency of the present writ petition, I am inclined to



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dispose of this writ petition by giving liberty to the petitioner to pay the arrears of rent amounting to a sum of Rs.7,12,510/-, which has been estimated in the counter, within a period of 60 days from the date of receipt of a copy of this order in two equal monthly installments. If the petitioner pays the first installment by 21.05.2022 or before the aforesaid date, the lock and seal of the shop shall be removed by the 3rd respondent. It is made clear that the petitioner shall pay the balance amount of arrears by 21.06.2022 or before the aforesaid date. It is also made clear that the petitioner shall pay the fair rent that has been collected for the period commencing from the date, when the petitioner takes repossession of the shop. In case, there is any failure on the part of the petitioner, this order shall stand vacated automatically without further reference to this Court and the 3rd respondent is at liberty to repossess the shop and auction it for being rented out to the third party. The petitioner is also directed to pay the balance arrears of rent for the period during lock and seal



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as may be determined by the respondent temple considering the fact that the property has been under locked and sealed."

(ii) However, Murugan has failed to pay the amount as directed by this Court and he has also filed WMP(MD)No.17059 of 2023 seeking extension of time to pay the arrear amount as directed by this Court in WP(MD)No.19778 of 2017 and this Court by order dated 07.09.2023 has directed the petitioner to pay the arrears of amount in three installments and the 1st installment had to commence with effect from 10.10.2023 and has also directed the petitioner to pay the remaining amount each month on or before 10th day of every month and has also directed the miscellaneous petition to be posted after a period of four weeks.

(iii) The tenant of the adjacent shop Tirupathi has filed this writ petition that Murugan, S/O.Velu Mudhaliyar, has not paid the arrears of rent as directed by this Court in WP(MD)No.19778 of 2017 and



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has also sub-leased the shop to one Murugan, owner of an Eatery namely, Sun Chips and this according to him is violative of the orders of this Court and in connivance of the Executive Officer of the temple. He also claims that the present sub-lessee Murugan is in occupation of the shop by drawing illegal electricity service connection.

(iv) When the writ petition filed by Tirupathi is pending, Murugan, S/O.Velu Mudhaliyar has filed the writ petition in WP(MD)No.1276 of 2024 seeking a direction to the TANGEDCO to grant electricity service connection to his shop No.124 by considering his representation.

7.The learned Counsel for the TANGEDCO submits that the Executive Officer has not mentioned the shop of Murugan and therefore, they have not effected service connection to the said shop. However he submits that the shop in possession of Murugan was inspected by TANGEDCO officials and they have found the illegal drawing of electricity service connection



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and action was contemplated as against the occupier of the shop.

8.The Executive Officer of Arulmighu Courtallanatha swamy Thirukoil has filed a counter affidavit that the father of the Tirupathi was a tenant of the temple property at Shop No.92, North Sannathi Street. After the demise of his father, he is in illegal occupation of property and has sub-leased the property and he is having rental arrears of Rs.1,92,760/- till 31.01.2024. It is also stated that he has is also in occupation of another shop No. 106 at East Car Street, Courtallam, which was leased-out to one Sudalai and for that shop also there is an arrears of rent to the tune of Rs.1,50,943/- till 31.01.2024.

9.The learned Counsel for the respondent temple submits that they have issued notice to the petitioner Tirupathi to pay the arrears of rent. The other petitioner Murugan is a tenant of the temple property at Shop.No.115 and he is having the



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rental arrears to the tune of Rs.6,55,510/- as on 31.05.2015. Therefore action was initiated as against him under Section 78 of the HR and CE Act (Act 22 of 1959) in MP.No.10 of 2016 and eviction order was also passed on 08.08.2017. As against the same Murugan has earlier filed a writ petition, wherein this Court has passed a conditional order and it has not been complied as directed by this Court. However by filing the extension application the petitioner Murugan has obtained an order from this Court to re-open the shop and therefore, the shop was reopened on 10.10.2023. According to him, the petitioner Murugan is still having an arrears of rent of Rs.9,49,419/-. He also submits that as against the said interim order dated 07.09.2023 passed in WMP(MD)No.17059 of 2017, the temple has filed writ appeal and it is yet to be numbered.

10.The learned Counsel for the petitioner Tirupathi submits that though there is a specific direction by this Court directing him to pay the amount, the Executive Officer has allowed the

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petitioner Murugan to run the shop and has failed to take action and therefore, he submitted a representation to the Joint Commissioner for an appropriate action to protect the temple property. He also claims that Murugan has sub-leased the property to another Murugan, who is running chips shop viz., Sun Chips.

11.The learned Counsel for the petitioner Murugan submits that the petitioner Tirupathi has filed this writ petition due to personal animosity and also by suppressing the orders of this Court passed in WMP(MD)No.17059 of 2023. The petitioner has paid the arrears of rent of Rs.7 Lakh to the temple and the shop was re-opened only on the interim directions of this Court dated 07.09.2023 in WMP(MD)No.17059 of 2023. He also submits that this arrears of amount as claimed by the respondent temple as Rs.9,49,919/- is not correct and he states that the shop was closed from 27.10.2017 and it was re-opened only on 09.10.2023 and the temple is claiming rent for the period when the shop remained closed by the temple administration.



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12. According to him there is no arrears of rent and he has paid the entire arrears and he is not liable to pay the rent for the period when the shop remained closed.

13. This Court considered the rival submissions and perused the materials placed on record.

14. Arulmigu Courtallanatha Swamy temple is an ancient temple. This temple is having several properties in Courtallam. The temple is having revenue from the shops and also from the vacant places during the season time at Courtallam. The respondents have stated in their counter affidavit that the petitioner Murugan is a tenant of the temple having rental arrears to the tune of Rs.6 Lakh and therefore proceedings under Section 78 of the HR and CE Act was initiated in the year 2016, wherein an eviction order was also passed. This Court by order dated 21.04.2022 directed the petitioner to pay the rent within a period of 60 days. This order appears to have been passed on the undertaking of

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this petitioner that he was willing to clear the arrears. This Court has directed the petitioner Murugan to pay arrears of rent of Rs.7,12,510/- in two installments as on 21.05.2022 and on 21.06.2022 and the petitioner was also directed to pay the balance arrears of rent for the period, when the shop was kept under lock and seal by the respondent temple. The petitioner Murugan has not filed any appeal as against that order and he has also not paid the rent, as directed by this Court.

15.The petitioner Murugan has approached this Court for extension of time to make the payment only on 22.08.2023, after a period of 16 months. The petitioner Tirupathi, the tenant of the adjacent shop claims that the shop was run by drawing illegal electricity connection. He also claims that Murugan has sub-leased this shop to another one Murugan. Murugan has filed WP(MD)No.1276 of 2024 for grant of electricity connection to the shop No.124 at Keela Radha Veedhi at Courtallam. The respondent temple states that he is a tenant in respect shop No.115.



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Neither the petitioner nor the respondent temple has produced any document to substantiate that the petitioner Murugan was a tenant of the respondent temple. Even if any lease was granted to the petitioner, the details of the lease is not known. It appears that for sometime this temple is managed by the retired officials.

16.This Court passed a detailed order on 22.01.2024 and directed the respondent to file their response to these writ petitions. Even then, the respondents have not placed any documents to substantiate that this Murugan was a tenant of the temple. The writ petitioner Tirupathi another tenant as well as the Executive Officer of the temple claim that Murugan, S/o.Velu has sub-leased the shop to another Murugan, who is running the chips shops in the said shop.

17.Similarly Tirupathi the other writ petitioner has also sub-leased the temple property. The Executive Officer claims that Tirupathi shop No.



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92, North Sannathi Street, Courtallam was leased to Tirupathi's father and after his demise the petitioner has sub-leased the property and he is having the rental arrears of Rs.1,92,760/- He has also sub-leased another shop 106 and he is having arrears of rent to the tune of Rs.1,50,943/- in the said shop. Though the temple administration was aware of the fact that the temple properties have been sub-leased and there is a huge arrears of rent, action was not taken to collect the arrears of rent. As per Section 111 of the Transfer of Property Act, the lessee is not entitled to have possession of the temple property after the lease period is over, which is extracted hereunder:

"111. Determination of lease.—

A lease of immovable property determines—

(a) by efflux of the time limited thereby;



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(b) where such time is limited conditionally on the happening of some event—by the happening of such event;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;

(g) by forfeiture; that is to say,
(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2)



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in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

18. In both these cases the persons are in occupation of the temple properties without any lease and the arrears of was also not collected. After the lease period, the occupier shall be treated only as an encroacher. Even during the lease if the lessee does not pay the rent regularly, he can be treated as



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an encroacher and action can be taken to evict him under Section 78 of the HR and CE Department. Action was also taken as against the said Murugan in the year 2015. The eviction order was passed in the year 2016. However, by filing the writ petition, the petitioner Murugan has prolonged the proceedings for the past six years. The shop was also remained closed. The petitioner Murugan has also agreed to pay the rent including for the period when the shop remained closed, but he has not taken any steps to pay the amount as directed by this Court and the petitioner Tirupathi tenant of the adjacent shop claims that Murugan is a sub-lessee and he is running the shop illegally with the connivance of the then Executive Officer.

19.This is not the first time this Court has come across the case of mismanagement of the Courtallanathaswamy temple. In an earlier occasion, in a batch of writ petitions, affidavits were filed that the temple shops at Courtallam have been leased out to three individuals for sub-leasing the



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properties with huge margin. Some of the shops were not auctioned citing that there was no bidder, but the same shops were indirectly allotted for extraneous consideration.

20. When such serious allegations are made, it is the duty of the Commissioner, Hindu Religious and Charitable Endowments Department to look into the issue and take appropriate action.

21. This Court expects the Commissioner to take appropriate action on these allegations and to ensure that the temple properties are protected and maintained properly and the revenue of the temple are properly accounted for.

22. Further, the Hon'ble Supreme Court in A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Ors., reported in (2007) 7 SCC 482, has held as follows:

"10. The properties of deities, temples and Devaswom Boards, require to be



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protected and safeguarded by their Trustees/Archaks/ Sebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

23.Since the deity is a minor, the Court is having a role to protect the property of the deity on parens patria jurisdiction. The Doctrine of parens patria jurisdiction evolve from Charanlal Sahu's case.



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24.Following the ratio laid down by the Hon'ble Supreme Court in A.A.Gopalan's case, this Court in WP.20237/2021, dated 22.09.2021, has held as follows:

"d) The temple lands vest in the idol, idol being of minor status in law, this Court is guardian. In other words, this Court is parens patriae and this principle was reiterated by Hon-ble Supreme Court in A.A.Gopalakrishnan case [A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Ors., reported in (2007) 7 SCC 482] wherein Hon-ble Supreme Court held that it is the duty of the Courts to protect and safeguard the properties of religious and charitable institutions. Therefore, in my parens patriae capacity i.e., parens patriae capacity of this Court and custodia legis qua temple properties that vest in idol in minor status, I deem it appropriate to say that the prayer which on first blush came across as innocuous, cannot be acceded to."

25.There is no document placed before this Court that the petitioners are lessees of the respondent



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temple. The petitioner Murugan has also not paid the arrears of rent as directed by this Court. In the absence of the lease, this Court is not inclined to grant the relief as sought for and these writ petitions are dismissed with a direction to the Executive Officer of the Temple, to initiate action under Section 78 of the HR and CE Act as against the petitioners and also as against all the similarly placed persons.

26. In view of the orders passed in these writ petitions, the miscellaneous petition in WMP(MD)No.17059 of 2023 is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

15.02.2024

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To

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- 1.The District Collector,
Tenkasi District.
- 2.The Joint Commissioner,
Hindu Religious and
Charitable Endowments Department,
Tenkasi.
- 3.The Assistant Commissioner,
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Charitable Endowments Department,
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B . PUGALENDHI , J .

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