



W.A.(MD)Nos.1042 and 1043 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)Nos.1042 and 1043 of 2024
and
C.M.P.(MD)Nos.7624 and 7626 of 2024**

**K.Paramasivan
S.Kuthalingam**

**... Appellant in W.A.(MD)No.1042 of 2024
... Appellant in W.A.(MD)No.1043 of 2024**

VS

**1.The Commissioner,
The Hindu Religious Charitable
Endowment Department,
Nugampakkam, Chennai.**

**2.The Joint Commissioner,
The Hindu Religious Charitable
Endowment Department,
Tenkasi District.**

**3.The Executive Officer,
Arulmigu Kutralanathar Temple,
Courtallam, Tenkasi District. ...Respondents in both cases**



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COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, to set aside the common order of this Court dated 27.03.2024 passed in W.P(MD)Nos.6080 and 6081 of 2024.

For Appellant : Mr.P.Edin Brough
For R1 and R2 : Mr.P.Subbaraj
Special Government Pleader
For R3 :Mr.S.Manohar
(in both cases)

COMMON JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

These Writ Appeals are directed against the common order, dated 27.03.2024 in W.P(MD)Nos.6080 and 6081 of 2024.

2.As both appeals are arising out of a common order, by consent, both the appeals are jointly heard together and disposed of by this common order.

3.The shops bearing Nos.117 and 118 belonging to Arulmigu Kutralanathar Temple, were leased out to the appellants pursuant to the public auction conducted by the respondents. The appellants, who had



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originally been granted lease for the shops for a period of three years, are in possession and continuing in the lease for nearly ten years by initiating civil proceedings. As there was also default in payment of rent, the Executive Officer of the Temple, the third respondent herein, had initiated proceedings under Section 78 of HR & CE Act. The orders passed by the second respondent and confirmed by the first respondent in R.P.Nos.197 and 198, dated 13.02.2020, was challenged in W.P(MD)Nos.6015 and 6022 of 2022. The Writ Petitions were disposed of by allowing the appellants to deposit the arrears of rent in three instalments and also for extension of the lease period, liberty was given to submit necessary application before the authorities concerned. Even though immediately arrears were paid, as the lease period itself was over, orders for eviction were passed for enabling the Temple authorities to bring the shops for fresh auction. Challenging the same, the appellants have preferred the Writ Petitions.

4.The learned Judge by taking note of the fact that the properties belonging to the Temple should be leased out by public auction only then proper revenue for the properties could be augmented, directed the Temple authorities to bring the respective shops through public auction within a



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period of two months. As the appellants have paid the rental arrears, they were permitted to participate in the public auction and also allowed the appellants to continue in possession, but however, shall vacate and hand over the possession one week prior to the conduct of the auction. Aggrieved with the orders passed by the Writ Court, the appellants have preferred the above appeals.

5.The learned Counsel for the appellants argued that though only a vacant site was handed over to the appellants, they have put up a structure and have spent considerable amount and are running chip shops. Even though the learned Judge has allowed the appellants to participate in the auction, but however, if the shops are to be vacated and handed over to the authorities, the appellants would be incurring additional expenditure, which would be detrimental to their interest and as such sought for interference of this Court in respect of the direction to hand over the shops to the Temple.

6.The learned Standing Counsel appearing for the third respondent submitted that in view of the direction issued by the Writ Court, already they had issued advertisement calling for public auction and in fact, the



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appellants have also preferred two Writ Petitions challenging the auction notice in W.P.(MD)Nos.12488 and 12489 of 2024, which were also ultimately dismissed on 12.06.2024. The learned Counsel further contended that unless the appellants hand over the possession of the shops to the Temple, there will not be much bidders to participate, as they will have a doubt, as to whether the successful bidder would be immediately put in shops and sought for dismissal of the Writ Appeals.

7.Heard learned Counsel on either side and perused the materials available on record.

8.Arulmigu Kutralanatharswamy Temple, Kutralam, which is under the control of the HR & CE Department, had granted lease in favour of the appellants in the year 2013 pursuant to a public auction for a period of three years. In the year 2016, when the lease period came to an end, the appellants continued to be in possession by initiating proceedings before the civil Court. As there was default in payment of rent in respect of the two shops bearing Nos.117 and 118, the third respondent Temple had filed a petition under Section 78 of the HR & CE Act before the second respondent



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in M.P.No.18 and 2 of 2018. The second respondent by order, dated 05.10.2018, allowed the petitions holding that the appellants have committed wilful default and declared them as encroachers. The review preferred in R.P.Nos.197 and 198 of 2018 before the first respondent was also dismissed confirming the orders passed by the second respondent. The appellants have preferred Writ Petitions in W.P.(MD)Nos.6015 and 6022 of 2020, challenging the orders passed by the first respondent under Section 78 of the HR & CE Act. By order, dated 07.09.2023, the Writ Petitions were allowed by giving liberty to the appellants to pay the arrears of default amounts in three instalments and also giving liberty to the appellants to submit necessary application before the authorities for extension of lease period.

9.It is the case of the respondents that the appellants have also sub-let the properties and have not paid the lease amount, which necessitated them to file petitions under Section 78 of the HR & CE Act for treating them as encroachers. Even though pursuant to the orders passed in the Writ Petitions, the appellants paid the lease arrears, however, since the entire lease period came to an end, the third respondent Temple proceeded to bring



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the shops for public auction. The properties of the religious institution has to be necessarily given lease by way of public auction to augment proper revenue to the Temple, but the appellants, who have taken the properties on lease for three years in 2013 were able to successfully continue to be in the possession of the properties for nearly 11 years. The learned Judge by taking note of these factual aspects, directed the respondents to bring the subject properties for public auction within a period of two months and also since the appellants have paid all the arrears amount, they were allowed to participate in the public auction, if they are interested and further, the learned Judge allowed the appellants to continue in possession, but hand over the vacant possession of the subject properties to the third respondent Temple atleast one week before the conduct of the auction.

10. We are informed that in compliance to the order passed by the Writ Court, the third respondent had issued public auction notice, which had also been put to challenge by the appellants in W.P(MD)Nos.12488 and 12489 of 2024. However, the same also came to be dismissed on 12.06.2024. In such circumstances, we see no reason or any error to interfere in the orders passed by the learned Judge.



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11. At this juncture, the learned Counsel for the appellants submitted that the appellants are ready to hand over the possession of the vacant shops to the third respondent Temple, as directed by them before 12 pm on 19.06.2024, as the proposed auction is fixed on 20.06.2024. However, the learned Counsel for the appellants raised an apprehension that the third respondent Temple, after taking over possession of the shops, shall simply postpone the auction proceedings for no reasons.

12. Taking note of the above aspects, we are inclined to pass the following order:

(a) The order passed by the learned Judge in W.P.(MD)Nos.6080 and 6081 of 2024, dated 27.03.2024 is sustained and the Writ Appeals fail.

(b) The appellants shall hand over vacant possession of the shops to the third respondent Temple before 12 pm on 19.06.2024.

(c) The third respondent shall conduct the auction without any further delay, as per the auction fixed on 20.06.2024 for auctioning the subject property of the Temple.



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13.With the above directions, the Writ Appeals stand dismissed.
However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**[R.S.K., J] & [G.A.M., J]
18.06.2024**

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

cmr

To

1.The Commissioner,
The Hindu Religious Charitable
Endowment Department,
Nugampakkam, Chennai.

2.The Joint Commissioner,
The Hindu Religious Charitable
Endowment Department,
Tenkasi District.

3.The Executive Officer,
Arulmigu Kutralanathar Temple,

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cmr

Common judgment made in
W.A(MD)Nos.1042 and 1043 of 2024



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