



W.P.(MD)No.17620 of 2022 etc. batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

**W.P.(MD)Nos.17620, 17635, 17652, 18115, 18117 and 18229 of 2022
and 25941, 25946 and 25958 of 2023**

and

**W.M.P.(MD)Nos.12838, 12839, 12849, 12851, 12863, 12865, 13211,
13213, 13217, 13219, 13301 and 13303 of 2022 and 22296, 22297,
22300, 22301, 22315 and 22317 of 2023 and 7727, 7737 and
7827 of 2024**

W.P.(MD)No.17620 of 2022:-

Muthuramalinga Bose, S/o.Vellaisamy Thevar

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner / Executive Officer,
Arulmighu Dhandayuthapani Swamy Temple,
Palani,
Dindigul District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned public auction notice issued by the second respondent in his proceedings Na.Ka.No.1452/2022/C1 dated 21.07.2022,



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quash the same as illegal consequently, directing the respondents to permit the petitioner to continue as cultivating tenant in respect of the properties measuring to a total extent of 6.78 acres comprised in Survey Nos.86, 215 and 217, situated at Ayyampulli Village, Palani Taluk, Dindigul District.

For Petitioner	: Mr.T.Lenin Kumar
For R1	: Mr.P.T.Thiraviam Government Advocate
For R2	: Mr.R.Murali Standing Counsel

COMMON ORDER

In these Writ Petitions, the respective petitioners have challenged the auction notice issued by the second respondent Joint Commissioner of H.R. & C.E. Department, who is the Executive Officer of the Arulmighu Dhandayuthapani Swamy Temple, seeking to auction the temple's lands for leasing out agricultural purpose, which are admittedly in the possession of the respective petitioners.

2. The respective petitioners are claiming rights over the lands from their predecessors *i.e.*, their husband, fathers or grandfathers etc. The



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case of the respective petitioners is that their possession have been recognized as cultivating tenants through their predecessors under the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961.

3. The specific case of the petitioners is that the predecessors of the respective petitioners were recognized as "cultivating tenants" under the provisions of the aforesaid Act and therefore, the rights of the petitioners as "cultivating tenants" cannot be diluted by the respondents by issuance of impugned notice seeking to auction the leasehold rights over the lands, which are in the possession of the respective petitioners under the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961.

4. The learned counsel for the petitioners would also submit that names of their predecessors have been gazetted by the Government and recognized as "cultivating tenants" within the meaning of the aforesaid Act and therefore, at best, the respondents can seek for increase of only lease rent under the aforesaid Act. If only the petitioners fail to pay the fair rent under Section 21 of the aforesaid Act, they can be evicted from the lands.



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5. It is submitted that without following the procedure under the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961, the petitioners cannot be evicted indirectly from the lands by issuing the impugned auction notice seeking to auction the right to take the land on lease.

6. That apart, the learned counsel for the petitioners would place reliance on Rule 16 of the Religious Institutions (Lease of Immovable Property) Rules, 1963 framed under Section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

7. It is submitted that under Rule 16 of the aforesaid Rules, there is a specific embargo on the Trusts and the Temples from leasing the land by public auction and remission of land coming under the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57 of 1961). Rule 16 of the aforesaid Rules reads as under:-

"16. Rules not to apply.- (1) The provisions of these rules relating to lease by public auction and remission shall not apply to lands coming under the



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purview of the Tamil Nadu Public Trusts (Regulation of and Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57 of 1961).

(2) These rules shall not apply to maths and specific endowments attached to maths."

8. Hence, it is submitted that the rights conferred under the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 cannot be violated. That apart, it is submitted that in some of the cases, the names of the predecessors of the petitioners have also been gazetted under the Notification issued under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.

9. It is submitted that the Notifications have been issued and gazetted in terms of Section 3(9) of the aforesaid Act, which reads as under:-

"3. Preparation of record of tenancy rights.

(1)

.....

(9) After the disposal of all the applications under sub-section (6) in respect of any village, the record officer shall make necessary alterations in the draft record of tenancy rights in accordance with the orders



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passed under sub-section (8) and shall prepare the final record of tenancy rights for the village."

10. The learned Standing Counsel for the second respondent would submit that the provisions of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is a stand-alone provision, which will apply to the lands and immovable properties of the Temple. It is therefore submitted that it is no argument that the petitioners are not the tenants merely because their predecessors were tenants.

11. It is further submitted that the provisions of the Religious Institutions (Lease of Immovable Property) Rules, 1963 cannot be read in isolation. It is submitted that it is intended to protect the interest of the Temple and therefore, there is no embargo on the second respondent from issuing the impugned public auction notice to lease the lands of the Temple.

12. It is further submitted that the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 contemplates a method for recognizing a person as a cultivating



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tenant. In this connection, a reference was made to Section 21 of the said Act to state that there is no lease deed subsisting as on date in respect of the respective petitioners. It is therefore submitted that there is no merit in the challenge to the impugned order.

13. In support of his submissions, the learned Standing Counsel for the second respondent has relied on the following decisions:-

(i) **Sri Pushpavaneshwaraswami Temple, Devasthanam, Rep. by its Executive Officer, West Thirupunthuruthi vs. A.Jeyapal and others** [S.A.No.1463 of 2001, decided on 11.02.2021]

(ii) **V.Muthusamy vs. The Joint Commissioner, H.R. & C.E. Department, Palayamkottai, Tirunelveli District and others** [W.P.(MD)No.16833 of 2017, decided on 12.02.2018]

(iii) **L.Subramanian vs. The Commissioner, H.R. & C.E. Department, Chennai and another** [W.P.No.2769 of 2023, decided on 05.04.2023]

14. The learned Government Advocate for the first respondent refers to Section 5 of the said Act to say that none of the petitioners have rights, as their predecessors have not followed the requirements of Section



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5 of the Act, which reads as under:-

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"5. Modification of entries in the approved record of tenancy rights.-

(1) Where any person claims that in respect of any land already included in the approved record of tenancy rights any modification is required in respect of the entries in such record either by reason of the death of any person or by reason of the transfer of interest or by reason or any other subsequent change in circumstances, he shall make an application to the record officer for the modification of the relevant entries in the approved record of tenancy rights.

(2) An application under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

(3)(a) Before passing an order on an application under sub-section (1), the record officer shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the record officer decides that any modification should be made in respect of the entries in the approved record of tenancy rights, he shall pass an order accordingly and shall effect the modification and make such incidental and consequential changes in the approved record of tenancy right as appear to him to be necessary, for giving effect to his order.

(b) If the record officer decides that there is no case for effecting an modification in the entries in the approved record of tenancy rights, he shall reject the application."



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WEB COPY 15. It is therefore submitted that there are no merits in these Writ Petitions and hence, these Writ Petitions are liable to be dismissed.

16. By way of rejoinder, the learned counsel for the petitioners would submit that some of the petitioners have filed application under Section 5 of the Act, which is kept pending for more than 5 years and the respondents have issued impugned auction notice seeking to auction the lands, which are admittedly in possession of the petitioners. It is submitted that the petitioners have been paying the rent regularly, however, all of sudden, the impugned auction notice was issued.

17. The learned counsel for the petitioners relied on the decision of the Principal Bench of this Court in the case of **V.Angu vs. The Commissioner, Hindu Religious and Charitable Endowment Department**, 2016 (2) CWC 731, wherein, it has been held as under:-

"13. Though the temple is listed under Section 46 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the land in question does not fall under the Act. As per the provisions of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961, the land will come only under the purview of the said Act. The Religious



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Institutions (Lease of Immovable Property) Rules, 1963, prohibits its applicability to the lands coming under the purview of the Tamil Nadu Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961. Therefore, issuance of notice for public auction, invoking the provisions of TN HR & CE Act and The Religious Institutions (Lease of Immovable Property) Rules, 1963 by the temple authorities is contrary to the provisions of law.

14. It is well settled that even a trespasser cannot be dispossessed, except under due process of law. The appellant being statutory tenant has been cultivating the lands in question for the past 25 years. There is provision to evict a tenant under Tamil Nadu Public Trusts Act. Section 19 of the said Act provides the procedure to evict cultivating tenant in certain cases. Without resorting to any procedure known to law, to evict the appellant from the land, issuance of the notification for public auction to lease out the land is a gross violation and is liable to be quashed."

18. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Government Advocate for the first respondent and the learned Standing Counsel for the second respondent Temple.

19. In my view, the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961, makes it clear that the provisions of the said Act will have the effect



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notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage or contract or decree or order of a Court or other authority. Thus, Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 has to read subject to the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961.

20. That apart, Rule 16 of the Religious Institutions (Lease of Immovable Property) Rules, 1963 framed under Section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 also makes it clear that the provisions of this Rule do not apply to lease by public auction and remission of lands coming under the purview of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961.

21. In case, the second respondent Temple wants to evict the petitioners, a specific method has been prescribed under Section 19 of the said Act, which reads as under:-

"19. Public trust may evict cultivating tenant in certain cases.- (1) Any public trust may evict any cultivating tenant:-



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(a) *Who, if in arrear on the date of the commencement of this Act with respect to the rent payable to the public trust, does not pay such rent within a month after such date, or who, in respect of the rent payable to the public trust after the date of the commencement of this Act, does not pay such rent within a month after such rent becomes due; or*

(b) (i) *who has done any act or has been guilty of any negligence which is destructive of, or injurious to, the land or any crop thereon; or*

(ii) *who has altogether ceased to cultivate the land; or*

(c) *who has used the land for any purpose not being an agricultural purpose; or*

(d) *who has contravened consecutively for two crops the provisions of sub-section (1) or (2) of section 27; or*

(e) *who has willfully denied the title of the public trust to the land.*

Explanation: *A denial of the public trust's title under a bona fide mistake of fact is not wilful within the meaning of this clause.*

(2) (a) *A cultivating tenant under any public trust, may deposit before the authorized officer the rent, or if the rent be payable in kind, its market value on the date of deposit, to the account of the public trust:-*

(i) *in the case of rent in arrear on the date of the commencement of this Act, within a month after such date;*

(ii) *in the case of rent accrued due after the date of the commencement of this Act, within a month after the date on which the rent accrued due.*

(b) *The authorized officer shall cause notice of the deposit to be issued to the trustee of the public trust and determine, after a summary enquiry, whether the amount deposited represents the correct amount of rent due from the cultivating tenant. If the authorized officer finds that any further sum is due,*



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he shall allow the cultivating tenant such time as he may consider just and reasonable having regard to the relative circumstances of the public trust and the cultivating tenant for depositing such further sum inclusive of such costs as the authorized officer may allow. If the authorized officer adjudges that not further sum is due, or if the cultivating tenant deposits within the time allowed such further sum as is ordered by the authorized officer, the cultivating tenant shall be deemed to have paid the rent within the period specified in clause (a) of sub-section (1). If having to deposit a further sum, the cultivating tenant fails to do so within the time allowed by the authorized officer, the trustee of the public trust may evict the cultivating tenant as provided in sub-section (3).

(3) (a) The trustee of every public trust seeking to evict a cultivating tenant falling under sub-section (1) shall, whether or not there is an order or decree of a Court for the eviction of such cultivating tenant make an application to the authorized officer.

(b) On receipt of such application, the authorized officer shall, after giving reasonable opportunity to the trustee of the public trust and the cultivating tenant to make their representations, hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it and in a case falling under clause (a) of sub-section (1) in which the cultivating tenant had not availed of the provisions contained in sub-section (2), the authorized officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the public trust and the cultivating tenant for depositing the arrears of rent payable under this Act inclusive of such costs as he may direct. If the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent under clause (b) of sub-section (2). If the cultivating tenant fails to deposit the sum as



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directed, the authorized officer shall pass an order for eviction:

Provided that the authorized officer shall not direct the cultivating tenant to deposit such arrears of rent as have become time barred under any law of limitation for the time being in force."

22. The Hon'ble Supreme Court has categorically held that when the law mandates a particular thing to be done in a particular manner, then, it has to be done in that manner. [See **State of Uttar Pradesh vs. Singhara Singh and others**, AIR 1964 SC 358].

23. Therefore, irrespective of the decisions cited by the learned Standing Counsel for the second respondent, I am of the view that the impugned orders seeking to evict the petitioners indirectly by issuing the impugned auction notice cannot be countenanced. In fact, the petitioners will have to be evicted only on the ground that they are not cultivating tenants within the meaning of Section 2(5) of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961. It includes any such person, who continues in possession of the land after the determination of the tenancy agreement or the heir of such person, if the heir contributes his own physical labour or that of any member of his



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family in the cultivation of such land. The definition of cultivating tenant

as defined in Section 2(5) of the said Act, reads as under:-

"2(5). "cultivating tenant":-

(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii) includes-

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; but

(iii) does not include a mere intermediary or his heir.

Explanation: *For purposes of Chapter III and IV, a co-operative farming society shall be deemed to be a cultivating tenant;"*

Whichever way if we look at, the attempt of the second respondent to dilute such rights by issuing auction notice, cannot be countenanced.

24. In the light of the above, the Writ Petitions are allowed. Liberty is however given to the second respondent not only to issue notices for evicting the petitioners or in the alternative, to enhance the fair rent in the



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manner prescribed under the Act and the Rules made thereunder. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2/jen

01.07.2024

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
- 2.The Joint Commissioner / Executive Officer,
Arulmighu Dhandayuthapani Swamy Temple,
Palani,
Dindigul District.



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C.SARAVANAN, J.

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Common order in
W.P.(MD) Nos.17620, 17635, 17652, 18115, 18117 and 18229 of 2022
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