BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.24541 of 2024
and
W.M.P(MD)No.20903 of 2024

Pitchaimani ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
No.119, Uthamar Gandhi Road,
Nungampakkam,
Chennai – 600034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Trichy.

3.The Thakkar/Executive Officer,
Arulmigu Varatharajaperumal Temple,
Sethevimangalam (North),
Mannachanallur Taluk,
Trichy District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned auction notice proceeding No.Nil Dated 11.09.2024 issued by the third respondent and quash the same and consequently direct the second respondent to fix fair rent to the land cultivating by the petitioner total extent of 78 cents situated at Survey No.96, 151, Seedevimangalam Village, Mannachanallur Taluk, Trichy District by considering the petitioner's representation, dated 01.10.2024.

For Petitioner	: Mr.S.B.Kayvin Prince
For R1 & R2	: Mr.K.S.Selvaganesan Additional Government Pleader
For R3	: Mr.V.Chandrasekar Additional Government Pleader

O R D E R

The present writ petition has been filed challenging the impugned auction notice, dated 11.09.2024 on the premise that the petitioner is in possession of the lands, which is subject matter of auction.

2. It is submitted by the learned counsel for the petitioner that the petitioner and his family members is engaged in cultivation of the subject property for over several decades. It was submitted that the petitioner is a cultivating tenant and the attempt by the respondent authorities to proceed to conduct public auction is bad, inasmuch as no notice was issued to the petitioner before issuing the auction notice. Though the Writ Petition was filed challenging the auction notice, however during its pendency auction was

conducted and the highest bidder has been identified. Nevertheless, the petitioner would submit that the auction notice itself suffers from infirmities which are fatal, thus subsequent proceedings would also be invalid in the eyes of law.

3. To the contrary, it is submitted by the learned Additional Government Pleader for the respondents 1 to 3 that the petitioner is an encroacher and therefore, the petitioner's objection to the auction may not be justified.

4. In response, the learned counsel for the petitioner would submit that even if the petitioner is an encroacher, nevertheless proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act ought to be initiated and completed and only thereafter auction could have been conducted, for the temple ought to be in possession of the land before bringing it to auction. In support of the above submission, reliance was placed on the following judgments of this Court:

(a) ***Rajamanickam and others Vs The Joint Commissioner, HR & CE and others in W.P.No.11267 of 2016, dated 17.09.2021***.

> 9. Section 78 of TN HR & CE Act is of significance and Section 78, which deals with encroachments, creates a legal fiction, that legal fiction is ingrained in Section 78(1)(b)

vide which a lessee qua a temple property becomes an encroacher, if the lessee continues to remain in the property after (i) expiry (ii) termination or (iii) cancellation of the lease. In this case, it is first of the three. As already alluded to supra, there is no disputation or disagreement that the lease in favour of the writ petitioners has expired and therefore, by operation of Section 78(1)(b), writ petitioners are clearly encroachers. This is a clear departure from the Transfer of Property Act, 1882, wherein under such circumstances a lessee becomes a lessee holding over. It is not necessary to dilate much on this aspect of the matter as the law in this regard is well settled. Therefore, the proper course available to said Temple is to initiate proceedings under Section 78 of TN HR & CE Act against the writ petitioners. Section 78 is a legal mechanism by itself and jurisdictional Joint Commissioner is statutorily vested with powers to deal with cases under Section 78 of TN HR & CE Act. It is a quasi judicial adjudicatory process with inbuilt mechanisms. It is rather surprising that this course has not been taken for more than half a decade now, even if the date of auction notice and the filing of captioned writ petition is taken as the reckoning date. 10. In this regard, this Court deems it appropriate to notice the submission of Mr.S.Senthilnathan, learned counsel for writ petitioners that writ petitioners are lessees qua said lands under said Temple from 'time immemorial'. There is no disputation that said Temple itself is an ancient temple, may be time immemorial. If one goes back on a time machine Rs. 100/- may have been a princely sum at some point of time, but it became insignificant in terms of annual rent long ago. This sum ceasing to be a princely sum and a sum of any significance in terms of annual rent itself is now a vintage event and this is the reason that prompted this Court to make the opening remark that this is not fiction or fairy tale, but a reminder (sordid reminder though) of the age old adage that 'facts can be stranger than fiction'. For abundant clarity, this Court deems it appropriate to set out that Rs.100/- annual rent means Rs.8.33/- monthly rent. Monthly rent of Rs.8/- per acre itself is unthinkable and puts one back by more than a century in the time machine. Therefore, this Court is of the considered view that this insignificant sum having been paid upto date is no argument.

11. In the light of the narrative thus far, following, A.A.Gopalakrishnan principle, this Court deems it appropriate to dispose of captioned writ petition in the following manner:

a) Impugned auction notice dated 17.02.2016 is set aside without expressing any opinion on the merits of the matter and this is on the sole ground that said Temple will have to be in possession to auction said lands;

b) said Temple, more particularly second respondent shall initiate proceedings under Section 78 of TN HR & CE Act forthwith i.e., without any further delay and in any event within three(3) weeks from today i.e., on or before 08.10.2021;

(b) ***V.Muthusamy Vs The Joint Commisioner in W.P(MD)No.16833 of 2017, dated 12.02.2018***.

20. Despite the directions of this Court as early as on31/10/2014, no steps have been taken by the Commissioner of the HR& CE Department to constitute the committee and secure the interest of the temples in the State and its properties. Considering the facts and circumstances of the case and in the capacity as parens patriae, this Court issues the following directions to the respondents:

a. The first respondent shall conduct an enquiry under section 78 in so far as related the property in this writ petition, after affording opportunity to the respondents 3 to 17, petitioner and other interested parties, if any, and pass orders within a period of four weeks from today;

b. The 18th respondent shall issue a public notice within two weeks by employing all the methods like publication in news papers, notice board of the temples, publication in their official website and in any form of print or media, intimating that the *persons in possession of the temple lands to voluntarily pay the arrears of rent within four weeks from the date of issuance of such notice*

and upon such failure, appropriate action must be initiated under 34B of the HR & CE Act and recover/retrieve the properties;

5. The learned Additional Government Pleader for the respondents 1 to 3 would then submit that the respondent authorities may be granted liberty to initiate proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, if circumstances warrant and thereafter, on completion, if it is found that the petitioner is an encroacher, they may be granted liberty to evict the petitioner in accordance with law and then proceed with fresh auction.

6. The Writ Petition stands disposed of on the following terms:

a) Without deciding on the rights or obligation of the petitioner, the petitioner is directed to pay the amount which has been offered by the highest bidder/successful bidder with regard to the extent of land in the possession of the petitioner.

b) If the petitioner is in possession of excess land than what is brought to auction, excess amount corrresponding to such excess land in possession shall be worked out and the same shall be paid by the petitioner within a period of 10 days from the date of receipt of a copy of this order.

c) If the petitioner is found to be an encroacher, the respondent Temple is at liberty to proceed in accordance with law.

d) If the petitioner is not found to be an encroacher, it is open to the respondent authorities to refix the rent in terms of Section 34-A of HR and CE Act.

e) It is also open to the successful bidder to submit a representation for refund of the tender amount/deposit, if any. If such representation is made, the same shall be considered and appropriate orders shall be passed in accordance with law, after issuing notice to the petitioner, and any other interested parties / stake holders within a period of 6 weeks thereon.

f) If the respondent authorities choose to initiate proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, the same shall be concluded as expeditiously as possible.

No costs. Consequently, connected miscellaneous petition is closed.

25.10.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
SN

To:

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MOHAMMED SHAFFIQ, J.

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