

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04 - 01 - 2016

JUDGMENT DELIVERED ON : 29 - 02 - 2016

CORAM:

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No. 1972 of 2015

K.S. Kuppusamy .. Petitioner

vs.

1. The Commissioner
Hindu Religious and Charitable Endowments Department
Nungambakkam
Chennai - 34
 2. The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Coimbatore
 3. The Executive Officer
Arulmighu Sellandiamman Thirukoil
Perundurai, Erode
 4. Kongu Vellalar Matric Higher Secondary School
Rep. by its Correspondent
T.N. Chenniappan
Perundurai - 638 052
(R4 impleaded as per order dated
12.10.2015 in M.P. No. 2 of 2015)
- ... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India seeking writ of Mandamus directing the respondents to fix the rent as per the market value and conduct public auction for the shops and other establishments in lands belonging to Arulmighu Sellandiamman Temple in Survey No. 787/1, 2, 3, 4 and 5 in Perundurai Village by considering the petitioner's representation dated 09.01.2015.

For Petitioner : Mr. R. Ezhilarasan

For RR 1 and 2 : Mr. S.T.S. Murthi, GP
Assisted by
Mr.V.R. Kamalanathan, AGP
Mr. V. Shanmugasundar, GA

For R 3 : Mr. Anand Venkatesh

For R 4 : Mr. V. Raghavachari
for Ms. V.S. Usha Rani

ORDER

PUSHPA SATHYANARAYANA, J.

The lands of the Lords are in trouble!! Even Gods and Lords are not spared. The temples in Tamil Nadu are historic symbols of Tamil history and they are the properties of the community as a whole. But God's money is robbed by the notorious society. The tenants and encroachers are defrauding on rents for the temple lands which are taken on lease and breaking of Hundis, steeling the temple jewels, the value of which are unmeasurable and the lifting of antique metal icons to other countries are increasing day by day.

2. These are illustrations of sordid handling of temple properties across Tamil Nadu by Hindu Religious and Charitable Endowments Department that administer most of the temples in the State. Every temple across Tamil Nadu has been suffering these kinds of troubles with losses running into several hundred Crores of Rupees though the Government claims to be serious about consolidating temple assets.

3. The petitioner, claiming to be a worshipper of Arulmighu Sellandiamman Thirukoil situate at Perundurai, Erode, and also Executive Committee Member in the Annaithu Thiruvilakal Nadathum Committee and member of Kadaikulam and Medhikulam Section, has filed this Writ Petition seeking for issuance of Mandamus directing the respondents to fix the rent as per the market value and conduct public auction for the shops and other establishments in lands belonging to Arulmighu Sellandiamman Temple in Survey No. 787/1, 2, 3, 4 and 5 in Perundurai Village by considering the petitioner's representation dated 09.01.2015.

4. According to the petitioner, Arulmighu Sellandiamman Temple, which is a de-notified temple belonging to Kadaikulam and Medhikulam sect of Kongu Vellalar Gounder Community, had some landed properties in Perundurai measuring 10.87 acres of which the fourth respondent Kongu Vellalar Matriculation Higher

Secondary School was granted an extent of 4.02 acres on lease to establish a school. It is also the case of the petitioner that besides the above leased area, the School had occupied 2.50 acres of land without any authorization.

5. According to the petitioner, some original tenants have sublet the shops to third parties unauthorizedly collecting huge rents thereby making unlawful gains causing wrongful loss to the temple. It is his contention that if auction is conducted, more revenue could be generated. The main grievance of the petitioner is that though he made representations to the authorities concerned to remove the encroachers and the sub-tenants and to take action against the unauthorized occupants, since the same went in vain, he has come up with the instant Writ Petition in the welfare of the temple.

6. Though the Writ Petition was filed with regard to Arulmighu Sellandiamman Temple, Perundurai, since the petitioner is not a tenant under the said Temple, and as the Writ Petition relates to the procedures flouted by the Temple and conducting of public auction for fixation of fair rent, the matter was taken as Public Interest Litigation.

7. From the materials available on record, it is seen that earlier, the petitioner filed Writ Petition in W.P. No. 3641 of 2013 wherein this Court, by order dated 14.02.2013, issued directions to the authorities therein to pass appropriate orders on the representation of the petitioner. But despite the order, no action was taken. The petitioner had also filed Writ Petition in W.P. No. 642 of 2012 regarding fixation of rent in respect of the Kongu Vellalar School and this Court vide order dated 29.4.2013, fixed the rent at Rs.72,809/-. But according to the petitioner, no amount has been fixed by the lease rent fixation committee in respect of 2.50 acres used as playground by the Kongu School and the appeal being W.A. No. 1477 of 2013 filed against the same was heard along with this Writ Petition.

8. Heard the learned counsel for the petitioner as well as the learned counsels appearing for respondents and perused the records.

9. Despite vast extent of lands and properties were left as endowments by the then Kings and Zamindars to take care of performance of poojas and festivals in the temples, many of the encroachers and also tenants swindle and swallow the wealth rendering the temples penniless. Though the matter may appear to be superficial, they are deep rooted indeed!

10. The temples play an important role in the heritage of Tamil Nadu. Therefore, conservation, maintenance and development of temple are important in view of the historical and archaeological values of the temples in Tamil Nadu. After several enactments for the administration and governance of Hindu Religious and Charitable Institutions and endowments, Madras Hindu Religious and Charitable Endowments Board was created. Later on, the Board was abolished and the administration vested with Hindu Religious and Charitable Endowments Act which created hierarchy of authorities such as Commissioner, Deputy Commissioner and Assistant Commissioner by prescribing rights and duties. The Act also provides for various means of improving the administration of Hindu Religious Institutions.

11. The religious institutions are classified as listed and non-listed institutions based on annual income under Sections 46(1) and 49(1) of the Act. The administration is also divided regionally for effective governance. There are also Taluk level Inspectors based on revenue Taluks. Besides, there is a Chief Audit Officer in charge of auditing accounts of religious institutions.

12. Insofar as the issue on hand is concerned, it relates to recovery of rental income from lessees and also to retrieve the lands from the encroachers.

13. The Hindu Religious and Charitable Endowments Act provides for fixation of fair rent for the buildings and sites belonging to Hindu Religious Institutions. There is a Committee consisting of Regional Joint Commissioner, Executive Officer or Trustee or Chairman, Board of Trustees and the District Registrar of Registration Department to fix fair rent for buildings and sites used for commercial and residential purposes. The Committee is to fix fair rent for the temple lands and buildings.

14. There are Revenue Courts headed by Special Deputy Collector to handle cases filed regarding collection of arrears of land lease amount, fixation of fair rent for the agricultural lands and for eviction of lessees who have put the lands for different use. These Courts function under the provisions of the Tamil Nadu Public Trusts (Regulation and Administration of Agricultural Lands) Act, 1961 who are in default.

15. It is a fact well known that during Updating Registry Scheme (UDR), the pattas were wrongly (?) transferred to the names of many private individuals. To rectify and reverse those entries, the Department has to take action. Several cases are pending for years inspite of initiation of proceedings without action taken by the authorities. Protection is the

need of hour for the agricultural lands, commercial complexes, residential buildings, sale / purchase of properties with proper sanction. In such course of action, this Court feels that a survey and report may be called for in this regard with a future plan of action.

16. Next comes the question of removal of encroachment!

Valuable temple lands are being encroached by third parties or by existing lessees as in the present case. No steps are being taken by the authorities to recover the land or fix rent for the said lands also.

17. To top it all, is the scheme of regularization of encroachments. While regularizing the encroachers as tenants, rent is fixed only prospectively. No rent is recovered for their use and occupation for the past. The said regularization is said to be made only for those who are occupying for more than 30 years.

18. The temple lands are source of loss to authorities. Most of the properties are being sublet despite the repeated verdicts of the Hon'ble Apex Court as well as this Court that subletting is not permissible.

19. To sum up, the Tamil Nadu Hindu Religious and Charitable Endowments Department is to safeguard the temples and uphold the glory at the same time, to respect and satisfy the sentiments of the people.

(i) Temples and Mutts in Tamil Nadu own more than 5 lakhs of acres of agricultural and other lands. The tenancy laws in Tamil Nadu and the non-functioning of Revenue Courts make it almost impossible for land owner / temple to realize any rent or revenue from the lands leased. It cannot be denied that the Hindu Religious and Charitable Endowments Department takes no credible steps to realize the rents and arrears of rents. Many of the temples in Tamil Nadu though capable of earning huge income, are facing tremendous loss running to several Crores of Rupees and the magnitude of the loss is so huge that reflects the failure of existing mechanism. In such circumstance, to safeguard and protect the value and valuables of the temples, a Special Court could be formed to deal with cases relating to Hindu Religious and Charitable Endowments exclusively so that the cases would be cleared in a speedy manner within the time frame.

(ii) Though Hindu Religious and Charitable Endowments Department claims to have been administering only the secular aspects of temple administration and ensuring that the moneys due to the institutions are realized and used for the purposes

for which the endowments were made, it sounds lofty but in reality, should say, No.

(iii) There is no external audit for many years which makes it impossible to gauge how much money is recovered and utilized. Therefore, in the considered opinion of this Court, to have a proper scrutinization of accounts and for effective control of management, External Auditors could be appointed. The money recovered thus should only be used for maintenance of temples and should not be used for any other purpose. Several small temples which go without income for everyday upkeep can be taken care of by the bigger temples of the area having sufficient and surplus income.

The Writ Petition stands disposed of with the above observations. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai - 34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Coimbatore.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Erode.
4. The Executive Officer,
Arulmighu Sellandiamman Thirukoil,
Perundurai, Erode.

+1cc to Mr.N.Anand Venkatesh, Advocate, S.R.No.13071
+2cc to Mr.V.S.Usha Rani, Advocate S.R.No.12726
+ 1 cc to Mr. R. Ezhilarasan, Advocate Sr 12743 (29/3/16)

W.P.No.1972 of 2015

tej (CO)
srg(15/03/2016)