
(2011) 11 MAD CK 0266

In the Madras High Court

Case No : Writ Petition No. 30353 of 2008 and M.P. No's. 1 and 2 of 2011

C. Natesan

APPELLANT

Vs

The Special Commissioner and Commissioner, Hindu Religious and Charitable Endowments Department, Nungambakkam High Road, Chennai- 600034, The Joint Commissioner, Hindu Religious and Charitable Endowments Department, The Executive Officer/Fit Person, Arul Mighu Sendraya Perumal Thirukoli and Mr. K. Sekar

RESPONDENT

Date of Decision : 12-11-2011

Acts Referred:

Citation : (2012) 1 CTC 298

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; R. Kannan, Government Advocate for Respondent Nos. 1 and 2, No appearance for Respondent No. 3, P. Valliappan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The Petitioner in this Writ Petition has challenged the Auction Notification issued by the Joint Commissioner of Hindu Religious and Charitable Endowments Department, Salem, viz., the Second Respondent herein, bringing for auction, among other properties, the property comprised in Survey No. 45/3, measuring an extent of 1.08 acres. According to the Petitioner, the said land belongs to the third Respondent-Temple and the Temple is listed Temple as provided u/s 46(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the T.N.H.R. & C.E. Act"). Further, it is stated that the said land was given on lease to the predecessors in interest and it is also alleged that their names were recorded in the tenancy records. The Petitioner claims that he is the brother-in-law of one Mr. Krishnan, who was the predecessor in interest and the said land was transferred in his favour. In the typed set of papers, the Petitioner has filed the Photostat copy of

receipts claiming the same to be the receipts issued by the Trustee of the Temple for payment of lease rent.

2. The learned Counsel appearing for the Petitioner, after reiterating the facts of the case, assailed the impugned order on the ground that the Second Respondent has no jurisdiction to bring the property in question for public auction or to grant any lease to anyone, as the lease is governed under the provisions of the Tamil Nadu Public Trust (Regulation and Administration of Agricultural Lands) Act, 57 of 1961 and no action can be taken invoking the provisions of T.N.H.R. & C.E. Act, 1959.

3. Though notice has been served on the Respondents 1 to 3 and they have entered appearance through the Government Advocate for H.R. & C.E. Department Cases, they have not filed any Counter Affidavit.

4. The learned Counsel for the Fourth Respondent, by relying upon the Counter Affidavit submitted that the provisions of Act 57 of 1961 has no Application to the facts of the present case and the provisions of T.N.H.R. & C.E. Act, 1959, alone would be applicable and the auction Notification of the Respondent is fully justified. In support of his contention, the learned Counsel placed reliance on the decision of the Hon'ble Supreme Court reported in the case of Joint Commnissioner, Hindu Religious and Charitable Endowments, Administration Department Vs. Jayaraman and Others,

5. Heard the learned Counsel for the parties and perused the materials available on record.

6. Admittedly, the Petitioner has not produced any lease deed to show that he is a lessee in respect of the land in question and lease was granted by the Respondent-Temple in his favour. The Petitioner claims that his predecessors in title have transferred the lease in his favour. It is further alleged that the predecessors in interest were granted lease and their names were also recorded as tenants. However, no documents have been filed by the Petitioner before this Court in support of any of such contentions. The typed-set of papers contains the receipts signed by the Hereditary Trustee of the Respondent-Temple and the Petitioner claims that these are receipts issued for payment of lease rent. At the very outset, the statement is to be rejected for the reasons that unless the Petitioner establishes that he has legal right over the property in question, Writ of Mandamus cannot be issued, as sought for by him. The Petitioner has not denied the fact that the land is owned by the Respondent-Temple. It is also admitted by the Petitioner that the Temple is under the control of the First Respondent-Department in accordance with Section 46(1) of the Act. If that be the case, then, the provisions of T.N. H.R. & C.E. Act, 1959, would alone apply.

7. It is seen that Act 57 of 1961, was enacted to provide for regulating the administration of agricultural lands held by public trust and for regulating the relation of public trust and their cultivating tenants in the State of Tamil Nadu. The said Act repealed the provisions of Tamil Nadu Cultivating Tenants Protection

Act, 1955 and the Tamil Nadu Cultivating Tenants" (Payment of Fair Rent) Act, 1956. At no stretch of imagination it can be stated that the Respondent-Temple is a public trust. It is also not the case of the Petitioner that it is a Public Trust. In such circumstances, the provisions of Act 57 of 1961 has absolutely no Application to the facts of the present case. Further, the Third Respondent-Temple cannot be deemed to be a public Trust, within the meaning of Section 2(25) of Act 57 of 1961. That apart, it is stated that the Fourth Respondent is in possession of the property in question. For all the above reasons, the Petitioner has not made out a case for interference and hence, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected M.Ps. are closed.