
(1999) 06 MAD CK 0029
In the Madras High Court

C.A. Rahim

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 114, 34

Citation : (1999) 3 MLJ 85 : (1999) WritLR 691

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Judgement

M. Karpagavinayagam, J.—C.A. Rahim, the petitioner herein, prays for the issue of a writ of certiorari calling for the records from the

Secretary to Government, Religious Endowments Department relating to G.O.Ms. No. 599, dated 11.10.1990 and to quash the same.

2. The facts which are required to dispose of this writ petition could be summarised as follows:

(a) The petitioner is the tenant of the premises bearing Door No.82-A, Lawrance Road, Thiruppapuliur, South Arcot District, on the monthly rent

of Rs. 625 from 1.7.1981 to 30.6.1984, having been allowed to be a tenant by the Deputy Commissioner, Hindu Religious and Charitable

Endowments, Trichy, who had jurisdiction at the relevant time, by his order dated 31.7.1981.

(b) The petitioner was carrying on textile business in the said property belonging to Shri Rajagopalaswamy Temple, Pudupalayam, Cuddalore, the

fourth respondent, Before the said period is over, the petitioner applied to the fourth respondent viz., the Executive Officer, Rajagopalaswamy

Temple to grant extension of lease for a further period of five years.

(c) On being forwarded by the fourth respondent, the Deputy Commissioner, H.R. and C.E., Mayiladuthurai by the order dated 16.8.1984

extended the lease for a further period of five years from 1.7.1984 to 30.6.1989 on an enhanced monthly rent of Rs. 725. In pursuance to the

acceptance of the conditions contained in the said order, the lease deed for the further period of five years was executed on 11.3.1985.

(d) Since it was an old building and it required urgent repairs, the petitioner applied to the fourth respondent, that is, the Executive Officer,

Rajagopalaswamy temple to effect repairs to the building. Then, the fourth respondent after inspection sent a report to the third respondent the

Deputy Commissioner, Mayiladuthurai. By the order dated 29.7.1986, the Deputy Commissioner permitted for making repair works in the

building with a condition that the repairs should be effected only at the cost of the petitioner and when he vacates the premises, he must hand over

the building as renovated to the temple without claiming any compensation. On accepting this condition, the petitioner effected the repairs with his

own money and continued to carry out the business.

(e) At this juncture, the Deputy Commissioner sent the reports dated 2.12.1986, 5.2.1987, 17.7.1987 and 2.9.1987 to the second respondent,

viz., the Commissioner, H.R. and C.E., bringing to the notice that both the extension of lease and the permission for effecting repairs in the

premises were not in accordance with law, as the provisions would require that the Commissioner alone would be the competent authority to grant

sanction for those things. On considering the various reports and other records, the second respondent the Commissioner, H.R. and C.E. passed

the impugned order dated 20.9.1987 cancelling the further lease granted to the petitioner and calling upon him to vacate the premises.

(f) As against the said order, the petitioner filed a writ petition before this Court in W.P. No. 10053 of 1987. This Court on finding that the other

remedies have not been exhausted by the petitioner, dismissed the said writ petition directing the petitioner to approach the Government by way of

revision u/s 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, by the order dated 16.10.1987.

(g) Accordingly, the petitioner filed a revision petition dated 27.10.1987 before the Government, the first respondent herein. After hearing the

parties, the first respondent rejected the revision by dismissing the same, as there is no case made out for interference. Challenging this order, the present writ petition has been filed before this Court.

3. The counsel for the parties are heard.

4. The main contention urged by the counsel for the petitioner is that the order by the second respondent-Commissioner dated 20.9.1987, the

subject-matter before the Government, which in turn passed the impugned order dated 11.10.1990, cancelling the lease granted to the petitioner,

was passed without giving any opportunity to the petitioner and that Section 34 of the Act which would require the Commissioner to give

permission for the extension of lease beyond the period of five years would not be applicable to the present case, since it is not an extended lease

but it is a fresh lease.

5. I have carefully considered the submissions made by the counsel for the parties.

6. Admittedly, the original lease was granted to the petitioner by the Deputy Commissioner, H.R. and C.E., from 1.7.1981 to 30.6.1984. Before

the expiry of the date, namely, 30.6.1984 the petitioner applied to the fourth respondent for extension of lease. On the basis of the request, the

Executive Officer, Rajagopalaswamy Temple, the fourth respondent sent a report to the Deputy Commissioner, Mayiladuthurai, the respondent

No.3 herein. By the order dated 16.8.1984, the Deputy Commissioner granted extension for a further period from 1.7.1984 to 30.6.1989. In

pursuance of this order, the lease deed for the further period was executed.

7. According to the conditions contained in the order dated 16.8.1984 and the lease deed, the petitioner after the period is over shall hand over

the premises to the Temple Executive Officer, who in turn shall take possession and lease out the said property through reauction and in the interest

of the temple, the said order of lease is liable to be cancelled at any time and the temple administration can taken over the possession.

8. Thus, the perusal of the records would show that the lease periods in which the petitioner was allowed to be tenant are from 1.7.1981 to

30.6.1984 and 1.7.1984 to 30.6.1989. Therefore, it cannot be considered to be a fresh lease deed, more particularly when the order dated

16.8.1984 by the Deputy Commissioner granting further extension of lease for

five years was only on the basis of the request made by the petitioner for a further period of five years.

9. Under these circumstances, Section 34 would certainly apply and as such, the Commissioner alone shall be the competent authority to grant

such a sanction to allow the petitioner to be the tenant for a further period of five years. Therefore, it is clear that the order dated 16.8.1984 by the

Deputy Commissioner extending the lease for a further period of five years is clearly violative of the provisions contained in Section 34 of the Act.

10. Furthermore, the petitioner, admittedly, was allowed to be the tenant even as per the order dated 16.8.1984 only upto 30.6.1989. Even when

the impugned order passed by the Government dated 11.10.1990 the said period was over. So, virtually, the order dated 16.8.1984 was not

allowed to be implemented till the expiry of the period. Therefore, in my view, nothing survives in this writ petition. The petitioner has necessarily to

hand over the possession to the temple authorities even as per the order dated 16.8.1984 to enable them to go for the public auction for leasing

out the said property.

11. Regarding effecting of the repairs from out of the own fund, the petitioner has already agreed to the terms and conditions contained in the order

dated 16.8.1984 and the lease deed to hand over the premises after the period is over without claiming any compensation. Therefore, the

petitioner shall hand over the building as renovated and repaired by him to the temple authorities without claiming any amount towards the

expenses incurred by him for the said renovation.

12. Hence, even without going into the question of opportunity to the petitioner before passing the orders by the Commissioner dated 20.9.1987

and even assuming that the order dated 16.8.1984 granting extension of lease is valid, the petitioner has no other alternative except to hand over

the premises to the temple authorities as he agreed to.

13. With the above observation, the writ petition is disposed of. No costs, consequently, W.M.P. No. 1654 of 1991 stands closed.

14. Before parting with this case, it is to be noticed that the petitioner occupied the premises as a tenant from 1981 to 1989 as per the orders of

the Deputy Commissioner, H.R. and C.E. and thereafter, nearly about 10 years he is occupying even without the orders of the said authorities

under the garb of exercising his right of filing of revision before the Government and the writ petition before this Court.