

(2011) 07 MAD CK 0325

In the Madras High Court

Case No : Writ Petition No. 5635 of 2009 and M.P. No. 1 of 2010

M. Nallathambi

APPELLANT

Vs

The Executive Officer and The Joint Commissioner Hindu
Religious and Charitable Endowments Department

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0325

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. appavu, for the Appellant; T. Chandrasekaran, for R1 and R.
Kannan, G.A. for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner claims that he is the owner of the land in Survey No. 49/1 in Poonamallee. He also got the lease for an adjacent land in Survey No. 47/1 to an extent of 28 cents by the 1st Respondent Executive Officer, Thirukachi Nmbigal Varadharaja Perumal Thirukoil at Poonamallee. The said land has been enjoyed from the year 1999 with yearly lease amount of Rs. 1017/-. In the present Writ Petition, he seeks for a direction to receive the lease amount for the land to the extent of 28 cents, which is situated in Bye-Pass Road, Poonamallee, Thiruvellore District so long as he is in possession.

2. The Writ Petition was admitted on 15.3.2010. Pending the Writ Petition, no interim order was granted though an application was taken out in M.P. No. 1 of 2010. in the meanwhile, the 1st Respondent has filed a counter affidavit dated 25.8.2010. In the counter affidavit, it was stated that during the year 1998, a public auction was conducted for cultivating the land in question. The writ Petitioner was one of the successful bidder and he took the lease of the land in Survey No. 47/1 for a period of one year and that period was from 1.6.1998 to 31.6.1999. Subsequently, the lease period was not extended by the temple. But the Petitioner was paying the amounts on adhoc basis on various dates. The said

amount was received and kept in the head of damages for use and occupation. The proceedings were initiated in terms of Section 78 by Joint Commissioner, HR & CE Department, Vellore. The Petitioner did not make use of the land for cultivation purpose. He also let out the land by subletting the same to one Elango for doing fabrication work and received the substantial amount as lease amount through subletting. In the absence of any lease, the Petitioner's prayer cannot be countenanced.

3. The Petitioner's inspiration in filing the Writ Petition arose out of another Writ Petition filed by one K. Kannappa in W.P. No. 136 of 2009 dated 17.2.2009. In that case, this Court directed the Petitioner in that Writ Petition to send representation to the authorities to consider his representation.

4. It is seen from the records that the Petitioner had the lease only for a period of one year and thereafter there is no record to show it was extended any further period. Section 34 of the HR & CE Act clearly stipulates that any exchange, sale or mortgage or lease for a period exceeding five years of any immovable property belonging to the temple will be null and void, unless it is sanctioned by the Commissioner of HR & CE Department.

5. In the absence of any legal or enforceable right on the part of the Petitioner, this Court is not inclined to grant the relief as prayed for. Even for the counter affidavit, no reply has been filed by the Petitioner, thereby denying the case of subletting by the Petitioner. In the circumstances, there is no case made out. Hence, the writ petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.