

(2011) 09 MAD CK 0112

In the Madras High Court

Case No : Writ Petition No. 18818 of 2011 and M.P. No. 1 of 2011

M. Ramachandran

APPELLANT

Vs

The Assistant Commissioner, Hindu Religious and Charitable Endowment (Admn.) Department, Dharmapuri-5, Dharmapuri District, The Executive Officer/Takkar, A/M. Karaga Mariammam Thirukovil and The Joint Commissioner, Hindu Religious and Charitable Endowment (Admn.) Department

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Religious Institutions (Lease of Immovable Property) Rules, 1963 — Rule 4
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(20), 63, 69(1), 78, 79(2)

Citation : (2011) 09 MAD CK 0112

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; S. Kandaswamy, Spl. G.P. (HR and CE) for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice N. Paul Vasanthakumar

1. The prayer in the writ petition is to issue a writ of declaration that the eviction order dated 24.06.2011, passed by the first Respondent and the public auction notice for lease of immovable property dated 01.08.2011, passed by the second Respondent, in respect of the property measuring an extent of 8.70 Acres comprised in S.F. No. 206, Pavalanthur Village, Penagaram Taluk, Dharmapuri District, as illegal and non est, in view of the non-compliance of Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and Rule 4 of the Religious Institution (Lease of Immovable Property) Rules, 1963.

2. The case of the Petitioner is that an extent of 11.70 Acres of land, comprised in S.F. No. 206, Pavalanthur Village, was under the care and control of one

Sendraya Gounder, manager of Arulmigu Karaga Mariammam Thirukovil, which was said to have been given by way of Inam, prior to the year 1950. The said Manager had executed two registered made over documents in the year 1973, as Document Nos. 409 and 410 of 1973, one in the name of one Lakshmanan, son of Burudiayappan, to an extent of 3 Acres, and another in name of Petitioner's father, namely Mari Gounder to an extent of 8.70 Acres in the above land. Petitioner's father died in the year 1998, leaving behind the Petitioner and his family members, and after his death, they are in possession and enjoyment of the entire extent of 8.70 Acres of land.

3. It is claimed by the Petitioner that even when his father was alive, he was in continuous possession and enjoyment of the land, along with his brother. Petitioner's father, along with the said Lakshmanan, has filed O.S. No. 183 of 1983, before the District Munsif Court, Dharmapuri, against one Perumal Gounder, for declaration of title and for permanent injunction, in respect of the subject properties and the said suit was decreed on 25.10.1983. Petitioner's father and his brother, Chinnasamy, along with the said Lakshmanan, have filed a petition in O.A. No. 117 of 1987, u/s 63 (b) of the Hindu Religious and Charitable Endowment Act, 1959, before the third Respondent, praying for a declaration that they are the hereditary trustees of the said Temple and the said O.A., came to be dismissed on 14.07.1997. Thereafter, an appeal was preferred before the Commissioner, HR & CE, Chennai, u/s 69(1) of the Act and the said appeal was allowed on 26.04.2011, by remanding the matter (O.A. No. 117 of 1987) to the Joint Commissioner, Salem, for fresh disposal, in accordance with law.

4. According to the Petitioner, he is having kits receipts, copies of settlement deeds, receipts for payment of contribution to the Department, etc., and his family is rendering service as Poojaris to the Temple. However, the first Respondent has issued an eviction notice, dated 24.06.2011, treating the Petitioner as an encroacher and directed him to vacate the property. Therefore, the Petitioner has issued a legal notice on 27.06.2011. However, without considering the same, a public auction notice was issued on 01.08.2011 by the second Respondent to grant lease in respect of Fasli 1421 for the period between 01.07.2011 and 03.06.2012, in respect of the subject property. Petitioner claims to be in possession and enjoyment of the property.

5. Based on the above said averments, this writ petition is filed, contending that even if the Petitioner is an encroacher, the procedure contemplated u/s 78 of the Act, has not been followed by issuing a show cause notice, calling for objections and only after considering the objections, eviction order can be passed.

6. The second Respondent has filed a counter affidavit and contended that Arulmigu Mariammam Temple, Pavalandur Village, Vettuvanhalli Penagaram Taluk, Dharampuri, is a public religious institution, as defined u/s 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and the temple is under the administrative jurisdiction of the Assistant Commissioner, HR & CE Department, Dharmapuri. Now, a fit person is appointed by the Assistant

Commissioner, Dharmapuri, in his proceedings, dated 21.07.2011 and he is looking after the day-to-day administration of the temple. Earlier, O.A. No. 26 of 1981 was filed by Petitioner's father and his brother, Chinnaswamy and one Lakshmanan before the Joint Commissioner, HR & CE, and the same was dismissed for default on 24.04.1982. Subsequently, they have filed O.A. No. 117 of 1987, before the Deputy Commissioner, HR & CE, Salem, which was also dismissed in the year 1997, against which, an appeal was filed before the Commissioner, HR & CE Department, Chennai, who has set aside the order and remitted the matter back to the Joint Commissioner, Salem, for fresh disposal, by order, dated 26.04.2011.

7. The second Respondent has further submitted that the temple owns an extent of 11.69 acres of Nanja land in S. No. 206 and the said land is an inam land, endowed for the maintenance and upkeep of the second Respondent temple. Now, no one is looking after the maintenance of the temple. Therefore, a fit person was appointed to look after the day-to-day affairs and one Duraisamy, is performing poojas in the temple. After taking over the administration of the temple and its properties, public auction was called by auction notice dated 01.08.2001.

8. It is also stated in the counter affidavit that the Petitioner is working as Postal Inspector and he was never in management of the temple, at any point of time and he never performed any pooja service in the temple. The execution of the made over document by one Sendraya Gounder, who was the then Manager of the above said Temple, to Petitioner's father and one Lakshmanan, will not confer any right over the property, except to the temple. The suit filed before the District Munsif Court, Dharmapuri, is between the private parties and it is only an injunction suit, which was decreed ex parte.

9. The second Respondent has further submitted that Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 is dealing with eviction of encroachment in the temple land and the Joint Commissioner concerned, has got powers to order eviction and in this case, the Petitioner is claiming that the lands are inam lands and endowed for the performance of daily poojas and other festivals. Since Petitioner's father and others have agitated for hereditary trusteeship, the Petitioner's alleged enjoyment of the property, while working as Postal Inspector is nothing but a cheating, by not paying anything to the temple.

10. The second Respondent has further submitted that the statutory authority, having vested with duty to protect the interest of the temple, has passed orders and the auction was conducted on 11.08.2011, in which, 23 persons have participated and one Krishnamurthy, S/o. Goundappan, has offered the highest bid of Rs. 34,750/- and the auction is yet to be confirmed. According to the second Respondent, the said amount can be used for the temple poojas and other expenses and therefore, the Petitioner has no right in the inam lands, enjoyed by his father.

11. The Petitioner has filed a reply affidavit, stating that he, being the legal heir of the title holder under document dated 12.03.1973, he is entitled to maintain the writ petition.

12. Heard the Learned Counsel for the respective parties and perused the materials available on record.

13. Petitioner is not admitting the fact that he is an encroacher. On the contrary, Petitioner is claiming right over the property, as he is a legal heir of the title-holder, under document dated 12.03.1973. The said stand is taken by the Petitioner in the notice issued by the counsel dated 27.6.2011. In para 8 of the affidavit, Petitioner has stated that he shall not be termed as an encroacher or trespasser. In para 4 of the reply affidavit also the petitioner has stated that the Petitioner and Ors. are legal heirs of the title-holder under document dated 12.3.1973. The respondents are disputing the said claim made by the Petitioner. Thus, it is clear that the facts are in dispute. If the Petitioner is claiming any right based on the title, the remedy open to the petitioner is to file a Civil Suit, before the appropriate Civil Court and establish his right.

14. Section 78 of the HR&CE Act, 1959 is applicable for removal of encroachment. In the explanation to Section 78 it is stated that "encroacher" shall mean any person who unauthorized occupies any property without approval of the competent authority and any person who continues to remain in the property after the expiry or termination or cancellation of the lease or mortgage or licence granted to him. In this case, the Petitioner is not admitting the fact that he is an encroacher and he is claiming right, as a title holder only. The said contention raised by the Petitioner cannot be decided u/s 78 of the Act and the Petitioner has to necessarily establish his right before the competent Civil Court, through oral and documentary evidence. Section 79(2) of the Act also enables the person to move the civil court to establish that the religious institution or endowment has no title to the property. The Petitioner's contention in respect of not following Section 78 of the Act while passing the impugned order can also be raised in the civil suit. Thus, I am of the firm view that the Petitioner has to agitate his rights, if any, only through the Civil Court and not in this writ petition.

15. The writ petition is dismissed, giving liberty to the Petitioner to approach the Civil Court to establish his right, if any. It is also made clear that none of the contentions raised by both parties are decided in any manner in this order. No costs. Consequently, connected Miscellaneous Petition is also dismissed.