**(2003) 10 MAD CK 0169**

**In the Madras High Court**

**Case No :** Writ Petition No. 23509 of 2003

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| Pasumpon Muthuramalinga Thevar Nagar Narpani Mandram | APPELLANT |
| Vs | |
| Executive Officer, Arulmighu Thiruvalleeswarar Thirukoil Padi, Hindu Religious and Charitable Endowments, The Secretary, Housing and Urban Development Department and The Secretary, Tamil Development Culture and Religious Endowments Department | RESPONDENT |

**Date of Decision :** 07-10-2003

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2004) 2 LW 395

**Hon'ble Judges :** P.D. Dinakaran, J

**Bench :** Single Bench

**Advocate :** S. Sadasharam, for the Appellant; G. Sukumaran, Spl.G.P. for Respondent No. 2, M.S. Palanisamy, AGP for Respondents 3 and 4, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.D. Dinakaran, J.—The petitioner Mandram, claiming themselves a registered Society under the provisions of the Societies Registration Act, having about 240 members in the Mandram, who are in occupation of the house sites over an extent of 4 acres located in Survey No. 295/2, 3, 4, 5, 6 in No. 80, Padi Village, Ambattur township, Chennai, which admittedly belongs to the first respondent temple, and apprehending that the said land is likely to be handed over to the Slum Clearance Board by the first respondent temple authority, as per G.O. Ms. No. 337, Housing and Urban Development Department dated 18.5.1981, the petitioner Mandram made a representation to the second respondent on 24.11.1997, expressing their desire to purchase the house sites occupied by the respective members of their Mandram.

2. As no order was passed on the said representation, the petitioner seeks a writ of Mandamus directing the respondents to alienate by way of absolute sale the

various extents of house sites under the occupation of the members of the petitioner Mandram in Survey No. 295/2, 3, 4, 5, 6 in No. 80, Padi Village, Ambattur township, Chennai, namely the house site area absolutely belonging to the Arulmighu Thiruvalleeswarar Thirukoil, Padi, Chennai, for a reasonable price that may be fixed by respondents 1 and 2 with reference to G.O.Ms. No. 337, Housing and Urban Development Department, dated 18.5.1981.

3. It is not in dispute that the first respondent temple authorities are the owners of the said land. Even though the learned counsel for the petitioner contends that the members of the petitioner Mandram are in occupation of the said land, he is not in a position to satisfy this Court as to the existing lease that are relied upon.

4. On the other hand, the learned Special Government Pleader denies the very lease relied upon by the members of the petitioner Mandram. In the absence of any material produced to the satisfaction of this Court that the members of the petitioner Mandram has got vested statutory right, it is well settled in law that no Mandamus as prayed for could be granted.

5. That apart, G.O.Ms. No. 337, Housing and Urban Development Department dated 18.5.1981 itself is general in nature. Assuming the petitioner was aggrieved by the said G.O., the same has not been challenged by any of the members in the individual capacity till date.

6. In any event, as rightly pointed out by the learned Special Government Pleader for the second respondent, Section 34 of the Tamil Nadu HR & CE Act provides the procedure to be followed in the matter of alienation of immovable property which reads as follows:

" Section 34:

Alienation of immovable trust property:- (1) Any exchange sale or mortgage and any lease for a term exceeding five years of any immovable property ;belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

Provided further that the commissioner shall not accord such sanction without the previous approval of the Government.

Explanation: Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate) whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

 

(2) When according such sanction, the Commissioner may impose such conditions and give such direction as he may deem necessary regarding the utilisation of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may within three months from the date of his receipt of copy of the order, and any person having interest may, within three months from the date of the publication of the order, appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the inams referred to in Section 41."

7. If that be so, in my considered opinion, no direction to the respondents to alienate by way of absolute sale of various extent of house sites which are under alleged occupation of the members of the petitioner Mandram, Chennai, as prayed for could be granted, which would otherwise be a violation to the statutory provision, viz. Section 34 of the Act.

For all these reasons, the writ petition fails and therefore dismissed. No costs. Consequently, WPMP No. 29038 of 2003 is also dismissed.

 