

(2015) 05 MAD CK 0023

In the Madras High Court

Case No : Writ Petition (MD) Nos. 7926-7975, 8070-8072, 8169, 8090 and 8208-8215 of 2015

Shanmugam Chettiar

APPELLANT

Vs

Joint Commissioner-cum-Executive Officer

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 34, 34(A), 78
Transfer of Property Act, 1882 — Section 108(j)

Citation : (2015) 5 MLJ 306

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

Bench : Single Bench

Advocate : V. Bharathidasan for AL. Gandhimathi, for the Appellant; K. Govindarajan, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J—The challenge in all these writ petitions is to an auction notification, issued by the respondent Temple, dated 28.04.2015, published in the Tamil Daily Thinamani on 03.05.2015. Since the issue raised in all these writ petitions are identical, they were heard together and are disposed of by this common order.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent Temple.

3. The admitted facts are that the petitioners were inducted as lessees of shops owned by the respondent Temple. The petitioners, pursuant to the lease granted in their favour, are in possession of the respective shops from 2004-05 onwards. The petitioners claim that they have been paying rents promptly without any default and once in every three years the respondent Temple revised the lease rent by enhancing the same by 15%, which has been accepted and paid by the petitioners and they are not in default. While so, notices were issued to the

petitioners by the Competent Authority calling upon them to vacate and hand over the possession of the shops, failing which, they were informed that action would be initiated under Section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter, referred to as "the Act"). While so, the impugned auction notification was issued by the respondent Temple proposing to bring for auction the leasehold right of the shops to be granted for a period commencing from the date of approval of grant of lease till 30.06.2018.

4. The learned counsel appearing for the petitioners submitted that the action of the respondent Temple in issuing impugned auction notification is arbitrary and illegal and without jurisdiction. It is submitted that the petitioners are in lawful occupation of the respective shops and promptly paying the rent and while they are in possession of the shops bringing the same shops for public auction is illegal.

5. It is further submitted that the respondent has received the rent upto the current month and no steps have been taken for evicting the petitioners and no orders have been passed. In the event of eviction proceedings being initiated, it is open to the petitioners to appropriately defend the same and establish that they are entitled to continue in occupation of the shops on payment of reasonable rent as fixed by the respondent. It is submitted that without resorting to such procedure, issuing an auction notification for the shops in possession of the petitioners is arbitrary and unjust. Further, it is submitted that the petitioners solely depend upon the income, which they earn from the business carried on in the shops and if the auction proposed to be conducted pursuant to the impugned notification is held, the petitioners rights would be jeopardized.

6. Reliance was placed on G.O. No. 456, dated 09.11.2007, wherein the Government has ordered that the lease rent could be increased only by 15% over and above the existing lease rent and not at the rate of 33.3%. Further, it is submitted that there is no certainty in the period of lease proposed to be granted pursuant to the impugned auction notification as the date of commencement of lease has not been mentioned and the date of expiry of the lease alone has been mentioned as 30.06.2018. Further, it is submitted that the impugned notification has been issued in violation of the statutory rules, namely, the Religious Institutions (Lease of Immovable Property) Rules, 1963 and the mandatory 15 days clear notice has not been issued.

7. Further, it is submitted that the auction notification, dated 28.04.2015, was published only in the Tamil Daily "Thinamani", which does not had wide circulation in the area and therefore the impugned notification is liable to be set aside. In support of such contention, reliance has been placed on the decision of the Honourable Division Bench of this Court in S. Vasudevan v. Commissioner, Kumbakonam Municipality and Another in W.P.(MD) No. 2176 of 2013, dated 14.02.2013.

8. Further, it is submitted that the procedure under Section 34(A) of the Act has

to be followed for fixing fair rent and the same has not been adopted and no orders have been passed in this regard. It is further submitted that in the impugned auction notification, dated 28.04.2015, the proposed lease rent has been fixed for all the shops and auction was proposed to be held on 19.05.2015 at 11.00 a.m. However, subsequently, by way of another notification, dated 08.05.2015, the lease rent has been refixed at an exorbitant rate and the procedure adopted is wholly illegal and contrary to the statutory rules and the action of the respondent Temple is illegal and arbitrary.

9. It is further submitted that the grant in favour of the petitioners is a lease and not a license and by assessing the intention of the parties that the petitioners having been given exclusive possession of the property, the petitioners are tenants and the nature of the transaction is a lease. In support of such contention, reliance has been placed on the decision of the Honourable Supreme Court in the case of Associated Hotels of India Ltd. Vs. R.N. Kapoor, AIR 1959 SC 1262 : (1960) 1 SCR 368

10. Further, it is submitted that the person, who is in settled possession of the premises, cannot be dispossessed without recourse to law and in support of such contention, reliance has been placed on the decision of the Honourable Supreme Court in the case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, (2003) 10 SCALE 950 : (2004) 1 SCC 769 : (2003) 6 SCR 850 Supp : (2004) AIRSCW 4205 : (2003) 8 Supreme 928

11. With the above submissions, the learned counsel prayed for setting aside the impugned auction notification.

12. The learned counsel for the respondent Temple submitted that merely because notice was issued to the petitioners by the previous Joint Commissioner proposing action under Section 78 of the Act that by itself will not prevent the respondent from taking appropriate action to safeguard the temple property and to ensure that sufficient revenue is generated for the temple. By relying upon the decision of this Court in the case of Sri Madhavaperumal Devasthanam v. Dhanalakshmi and Others, 1996-1 L.W. 231 : LNIND 1996 MAD 1130 , it is submitted that the Executive Officers, who are put in-charge of the Temple, are changed periodically and if there is some slackness on the part of the Executive Officers or the Trustees of the Temple, it is the duty of the Court to see that the idol does not suffer thereby and Courts should be astute to protect the interest of an idol in any litigation. Reliance has also been placed on the decision of the Honourable Supreme Court in the case of A.A. Gopalakrishnan Vs. Cochin Devaswom Board and Others, AIR 2007 SC 3162 : (2007) 5 CTC 165 : (2007) 10 JT 567 : (2007) 10 SCALE 572 : (2007) 7 SCC 482 : (2007) 9 SCR 1 : (2007) AIRSCW 5741 and it is submitted that it is the duty of the Courts to protect and safeguard the properties of the religious and charitable institutions from wrongful claims or misappropriation.

13. Reliance was also placed on the decision of this Court in the case of K.V.

Pushpavalli Vs. Arulmighu Theerthabaleeswarar Devasthanam and P. Hayath Basha in support of the contention that provisions of Section 108(j) of the Transfer of Property Act, being a general law, cannot prevail over the provisions of Section 34 of the Act, which is a Special Act.

14. The learned counsel further submitted that the petitioners are not lessees and several of them, who are in occupation of the shops, are persons, who have taken over the premises from the original lessees and are unauthorized occupants and the lease period expired several years back and merely because rents were collected periodically that itself will not legalize the illegal possession of the petitioners.

15. It is further submitted that the purpose for issuing the impugned auction notification is to augment the revenue of the respondent Temple to enable them to provide adequate facilities to the devotees and the action of the respondent is in public interest. It is further submitted that the impugned auction notification proposes to invite highest bids for the donation of the Temple and this action of the respondent cannot be faulted and a challenge to a similar provision in respect of an auction, which was conducted by Arul Mighu Prasanna Nanjundesvarar Thirukovil, Idappadi, Salem District, in W.P. No. 3503 of 2011, was rejected by this Court, by order, dated 20.10.2011. It is further submitted that the petitioners, if they do not suffer from any other disqualification, are free to participate in the proposed auction and lease would be granted to the highest bidder. On the above submissions, the learned counsel seeks to sustain the impugned auction notification.

16. After elaborately hearing the learned counsel for the parties and carefully considering the materials placed on record, the only issue, which falls for consideration in these batch of cases, is as to whether the respondent could issue the impugned auction notification proposing to bring for auction the leasehold right of the shops owned by the respondent Temple, which admittedly is in possession of the petitioners.

17. To decide this issue, it may not be necessary at this stage to see as to whether the petitioners were the original lessees or whether they had taken over possession from the original lessees. Infact, in one of the writ petitions in this batch, the transfer in favour of the writ petitioner was approved by the respondent Temple subject to certain conditions, which were complied with by the said petitioner. The question would be when persons are in occupation of the shops in question, without evicting them in the manner known to law, could the respondent issue the impugned auction notification.

18. This Court is conscious of the observations made by the Honourable Supreme Court in the case of A.A. Gopalakrishnan v. Cochin Devaswom Board (cited supra) and by this Court in Sri Madhavaperumal Devasthanam v. Dhanalakshmi and Others (cited supra), wherein it was pointed out that it is the duty of the Court to protect and safeguard the properties of the religious and charitable

institutions from wrongful claims or misappropriation or when there is slackness on the part of the Executive Officers or the Trustees of the Temple, there is a duty on the Court to see that the idols do not suffer thereby and the Court should protect the interest of the idol in any litigation. This observation made by the Honourable Supreme Court cannot be applied in the abstract without reference to the factual scenario.

19. It is no doubt true that if there is misappropriation, wrongful claims or illegality committed against the properties owned by the idol or Temple, the Court should be astute to protect the rights of the idol or Temple. However, the case on hand is placed on a different pedestal. Admittedly, the shops in question are not vacant and they are not in possession of the petitioners. It is an admitted fact that the petitioners are in possession and they are carrying on business. It may be true that some of the petitioners may not be the original lessees. But, this by itself cannot be a ground to state that the petitioners are not in occupation of the premises in question. Assuming the impugned auction notification is allowed to proceed and bidders are allowed to participate in the auction and the highest bidder is not one of the writ petitioners, who are in occupation of the premises, then the question of confirming the auction in favour of the highest bidder cannot be made. Presumably, for this reason, the impugned notification states that the lease period shall commence from the date of approval and end by 30.06.2018. In my view, the date of commencement of the lease should be specific and there cannot be uncertainty. If the respondent states that the lease should commence from the date of approval by the Competent Authority and lease will be for the period of three years, then the notification should state that the lease will be granted for a period of three years from the date of approval of the approval by the Competent Authority. In such an event, the date of expiry of the lease period cannot be fixed. However, curiously in the impugned auction notification, the date of commencement of the lease is left to uncertainty, but, the date of expiry of lease has been fixed. This would amount to "putting the cart before the horse".

20. Examining the issue from another point of view, as projected by the respondent Temple, there cannot be any dispute to the need of the Temple to augment their resources. But, while doing so, procedure established by law should be followed and the procedure should be fair and transparent. It is equally true that the fairness in procedure is not only applicable to the respondent, but equally applicable to the lessees. The petitioners claimed to be in possession as lessees from 2004-05 onwards. There is no document placed before this Court to show that the lease was periodically renewed by executing lease deed or issuing fresh orders except for the fact that rents have been collected and in certain cases enhanced rent once in three years with enhancement of 15% has been collected. However, before bringing for auction, the leasehold right of the shops in question and the right, which is claimed by the petitioners, have to be terminated in the manner known to law. The respondent should be in a position to claim that they are in possession of the premises and they have got an

indefeasible right to grant the lease by way of public auction to third parties. However, factual scenario in the present case is otherwise. In such circumstances, if the impugned auction notification is allowed to be proceeded, it would be resulted in chaos and confusion and third party interests would come in and date of those parties would linger uncertainty. Therefore, the procedure adopted by the respondent has to be faulted.

21. So far as the right of the respondent Temple to bring for public auction in respect of the donation payable to the Temple which in effect is a non-refundable payment, this very condition was put to challenge on somewhat similar grounds in W.P. No. 3503 of 2011 and this Court rejected the contention and held that the Temple has decided to get the maximum revenue and the same cannot be faulted. Therefore, the petitioners cannot question the action of the respondent in bringing for auction, the maximum donation payable for each shops, which in effect is a non-refundable payment, to be paid to the Temple so as to enable the bidder to secure lease in their favour.

22. It is to be noted that after the impugned auction notification, dated 28.04.2015, was issued and writ petitions were filed challenging the same, another notification has been issued by the respondent Temple on 08.05.2015. On perusal of the notification, it is seen that it has been termed as a "addendum" or "correction" to the impugned auction notification, dated 28.04.2015. A correction or addendum could be an addition to an existing notification. Similar is a corrigendum. However, in the instant case, though the auction notification, dated 08.05.2015 is termed as a addendum or a corrected a notification, there is a gross change in the monthly rent fixed for all the shops. By way of illustration, in respect of shop Nos. 1 and 5 in Poonga Road Shopping Complex, the monthly rent was fixed at Rs. 4,900/- in the impugned notification, dated 28.04.2015. This has been revised to Rs. 14,600/- in the subsequent notification, dated 08.05.2015. Therefore, the notification, dated 08.05.2015, cannot be treated as a addendum or corrigendum or rectification of the impugned auction notification, dated, 28.04.2015. The revision of the monthly rent payable for each shops by three times the original fixation is in effect of a fresh notification.

23. The learned counsel appearing for the respondent Temple submitted that the necessity to issue the second notification, dated 08.05.2015, is on account of the fact that the Fair Rent Fixation Committee determined the fair rent and after the report was received, the notification, dated 08.05.2015, has been issued. If such is the case, then it is evident that the notification, dated 08.05.2015, is based on a subsequent material, which has reached the hands of the respondent, namely, the report of the Fair Rent Fixation Committee. Hence, this is one more reason to hold that the notification, dated 08.05.2015, cannot be treated as an addendum or corrigendum to the impugned auction notification, dated 28.04.2015.

24. For all the above reasons, the impugned notification, dated 28.04.2015, and the so-called addendum, dated 08.05.2015, are unsustainable. Accordingly, the

writ petitions are allowed and the impugned auction notification, dated 28.04.2015, and the addendum, dated 08.05.2015, are quashed. The respondent is at liberty to proceed afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.