

S. Raju Vs. Arulmigu Kapaleeswarar Temple Represented by Its Executive Officer and anr.

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Court : Chennai

Decided On : Sep-05-2001

Reported in : (2001)3MLJ768

Appellant : S. Raju

Respondent : Arulmigu Kapaleeswarar Temple Represented by Its Executive Officer and anr.

Judgement :

ORDER

P. Shanmugam, J.

1. Petitioner prays for the issue of a writ of certiorarified mandamus by calling for the records of the second respondent namely the Commissioner, Hindu Religious and Charitable Endowments Department, to quash his order dated 24.10.2000 and direct the Commissioner to approve the resolution of the Trustees to compromise the litigation and continue the petitioner as a tenant.

2. As against the petitioner, the temple, represented by the Executive Officer, has filed a suit O.S.No. 6185 of 1984 for a direction to the petitioner to handover the possession of the property of the temple after removing the superstructure. In the complaint, it is stated that in or about April, 1976, the plaintiff has put up a wire

mesh fencing enclosing the Nandavanam. Sometime later, the defendants broke open the wire fencing forcibly and trespassed into the Nandavanam, destroyed the flower plants, stole the coconuts from the coconut trees and then have put a thatched shed unauthorisedly. It is further stated that they have made a complaint to the police, but no action has been taken and hence that above suit. According to the temple, the petitioner is a trespasser and is liable to be evicted. The suit property consisted of a vacant land measuring 10' x 8' in R.S.No. 3137, Door Nos. 14/1 to 17/1, Poonambala Vadhiyar Street, Mylapore. The suit was decreed on 9.1.1985 as prayed for. Thereafter, E.P.No. 803 of 1997 was filed for execution of the decree. Later, the Trustees of the temple, who are not parties to this writ petition, appear to have decided to withdraw the proceedings initiated against the petitioner. Petitioner thereafter filed W.P.No. 15718 of 2001 for a direction to the Commissioner to forthwith grant approval of the resolution of the Board of Trustees of the temple. This Court, by order dated 18.9.2000, directed the Commissioner to pass orders. The impugned order came to be passed, wherein it is stated that the resolution of the Board of Trustees is not in the interest of the temple and thereafter, the Executive Officer was directed to take appropriate steps to cancel the resolution. The present writ petition is filed against this order.

3. From the facts set out above, it is clear that the petitioner is in possession of a temple land unauthorisidely after trespassing into the temple's property and putting up a structure without any permission. The temple having pursued the civil litigation against the petitioner and having obtained a decree and having filed the execution petition, without securing possession of the property, the Board of Trustees have decided to compromise the matter. The Commissioner, under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the Act), is empowered to call for and examine the records of any Trustee of a religious institution to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed therein. According to the petitioner, the resolution passed by the Board was pending for approval and in view of the non-grant of the approval, the legal proceedings were continued and that now, the Commissioner has passed a non-speaking order. A reading of the impugned order, shows that according to the Commissioner, the resolution of the Board of Trustees is not in

the interest of the temple. Section 49-B of the Act enables the Executive Officer not to implement the resolution of the Board. The Executive Officer has to consider whether the resolution has been passed in accordance with law, whether the said resolution is in excess or abuse of the powers conferred on the Trustees and whether if implement, it is likely to cause of financial loss to the institution and that it is not beneficial to the institution. In this case, the first respondent has failed to consider these aspects before forwarding the resolution to the Commissioner. The Commissioner is empowered to look into the criteria laid down for the purpose of the resolution.

4. Chapter VII of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (hereinafter referred to as the Act) deals with encroachments. Section 77 of the Act prohibits the trustees of a religious institution to grant licence for the occupation of any land of the religious institution. Sub-section (2) of Section 77 says that such lease, if granted, shall be null and void. Section 78 obliges the Assistant Commissioner to report and taken action against the encorachers. An encroacher has been defined and explained in that Section as meaning any person who unauthorizedly occupies any property without the approval of the competent authority and continues to remain in the property. Section 79 deals with the mode of eviction. Sub-section (2) of Section 79 provides for the person aggrieved for instituting a suit to establish that the religious institution has no title to the property. A penalty is provided for under Section 79(B). An appeal is provided for under the Act, in the light of these elaborate provisions contained to deal with the encroachments and the obligation enjoined upon the trustees of the religious institution. It is not permissible for the trustees to regularize the encroachments or the licence alleged to have been given. In this case, instead of the petitioner moving the Civil Court to establish his title, the temple has moved the Civil Court and obtained a decree. In such circumstances, the action of the Trustees of the temple on the Executive Officer of the temple, to recommend the regularization of the encroachment of the petitioner is beyond the scope of the Act and is contrary to the commands to the content of the Act. The decision of the Commissioner holding that the resolution of the Managing Trustee is not in the interest of the institution is the mildest expression that could have been, in the circumstances of the case. Hence, there is absolutely no ground to interfere with

the order of the Commissioner.

5. On facts, it is seen that the land belongs to the temple and the petitioner is not a lessee of the temple land. His contention that he is supplying flowers for the holy purpose of Arulmigu Kabaleeswarar temple is stated only to be rejected. As per the plaint averment, it is seen that the petitioner has broken the fencing enclosing the Nandavanam and then trespassed into the Nandavanam, destroyed the flower plants, stole the coconuts and then put up thatched shed unauthorizedly. Therefore, the petitioner is a trespasser of the temple land and he cannot be treated as a tenant. However, the petitioner has managed to be in possession of the property and the decree obtained in O.S.No. 6185 of 1984 in the year 1985 is yet to be executed. The action of the Board of Trustees, which is found to be not in the best interest of the temple in the above circumstances, cannot be held to be arbitrary or illegal. On the face of it, the case of the petitioner is not bona fide and deserves no consideration.

6. Hence, no grounds are made out to grant the relief sought for in this writ petition. The writ petition therefore fails and it is accordingly dismissed. No costs. Consequently, W.M.P. No. 22596 of 2001 is closed.

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