

C.Venkatesan Vs. the Commissioner Hindu Religious and Charitable Endowments and ors.

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Court : Chennai

Decided On : Apr-18-2012

Judge : Vinod K.Sharma, J.

Acts : Hindu Religious and Charitable Endowments Act - Section 34; [Constitution of India](#) - Articles 226

Appeal No. : W.P. No.18754 of 2011 and M.P.No.1 of 2011

Appellant : C.Venkatesan

Respondent : The Commissioner Hindu Religious and Charitable Endowments and ors.

Advocate for Def. : Mr.R.Bala Ramesh, Adv.

Advocate for Pet/Ap. : Mr.V.Raghavachari, Adv

Judgement :

Prayer: Writ petition is filed under Article 226 of [Constitution of India](#) for the issuance of a writ of Certiorari, calling for the records on the file of the 2nd respondent in his proceedings bearing Nos.Se.Mu.Pa.Mu.No.6491/2010/A2 dated 25.08.2010 and Se.Mu.Pa.Mu.No.6490/2010/A2 dated 25.08.2010 and to set aside the same as illegal, erroneous, unjust and without jurisdiction.

ORDER

1. The petitioner has approached this Court with a prayer for issuance of a writ in the nature of Certiorari, to quash the order Nos. Se. Mu.Pa.Mu.No. 6491/2010/A2 dated 25.08.2010 and Se.Mu.Pa.Mu.No.6490/2010/A2 dated 25.08.2010.
2. The petitioner submits that he is a devotee of Vaikunda Perumal and Embar Swamy Devasthanam Temple, situated at Maduramangalam, Kancheepuram District. The petitioner also claims to be the Trustee of the Temple.
3. Vaikunda Perumal and Embar Swamy Devasthanam Temple is one of the oldest Temple in the State with its own specialities. The Temple owns immovable properties and one such property is situated at 158, Gandhi Road, Sriperumbadur. Vide the impugned orders, permission is granted to respondent nos. 4 & 5 respectively, to raise construction on the recommendation of the 3rd respondent. The construction has been allowed by demolishing the old construction existing thereon. This is however subject to the condition, that respondent nos. 4 & 5 will not claim any right of equity or claim permanent lease.
4. The submission of petitioner is that this construction is in violation of Rules, as no provision is made to leave passage to 2000 sq.ft. of land remaining land belonging to the Temple.
5. The case of petitioner is that respondent no.2, does not have any jurisdiction to pass the impugned orders without following procedure, contemplated under the Act. The impugned order further accepts the respondent nos.4 & 5 are tenants.
6. It is the stand of petitioner that no auction to lease the property, was held. That the impugned order could not be passed on the recommendation of the Executive Officer, as it is the duty of the respondents to auction the tenancy rights in the interest of Temple. That the lease in favour of respondent nos.4 & 5 is not as per the provisions of Section 34 of Hindu Religious and Charitable Endowments Act, therefore, the impugned orders are liable to be quashed.
7. The writ petition is opposed by respondents, by filing counter, wherein a specific stand is taken, that by way of impugned order, the existing tenant has been

permitted to reconstruct the building, on clear understanding, that the superstructure so raised would be property of the Temple, and that the respondent nos.4 & 5 will not claim any interest in the property. The construction can therefore, be safely said to be in the interest of the Temple for which, the petitioner, as devotee and Trustee, cannot have any grievance.

8. As regards the challenge to lease is concerned, it is needless to mention, that no lease deed has been placed on record, to show that there has been any violation of Section 34 of HR&CE Act.

9. In absence of specific allegations, that the lease is for a period, which violates Section 34 of the Act, this question cannot be gone into while determining the legality of the impugned order, permitting construction of the building by respondent nos. 4 & 5.

10. The impugned orders, having been passed in consonance with law and being in the interest of Temple, do not call for any interference by this Court, in exercise of writ jurisdiction under Article 226 of the [Constitution of India](#).

11. No merits. Dismissed.

12. No costs. Consequently, connected miscellaneous petition is closed.

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