
(2010) 12 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No. 24579 of 2008 and M.P. No. 1 of 2008

G. Umapathy

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Citation : (2011) WritLR 35

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : T. Mohan, for the Appellant; J. Raja Kalifulla, GP assisted by M. Sneha, GA for RR1, 4-7, G. Sankaran, Adv, for R8 and T. Chandrasekaran, Spl. G.P. for RR2-3, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—In this writ petition, the Petitioner claiming to be the former executive trustee of the Meenakshi

Amman Udanurai Sri Venkateswarar Temple (hereinafter referred to as the "Temple") has sought for a direction upon the Respondents to

remove all encroachments upon the properties belonging to the temple and to repossess the encroached properties and effectively perform their

functions as per the Hindu Religious & Charitable Endowments Act, 1959 (hereinafter referred to as the "Act").

2. The case of the Petitioner is that the temple owns vast extent of lands at Kadapperi Village in Madurantakam Taluk and during 1999, a resurvey

of lands was undertaken and as the temple authorities did not seek for grant of patta in favor of the temple, the lands were classified as

"Anatheenam" (unclaimed) lands. The State Government and the Municipal authorities have stated that the lands are poromboke lands and

proposed to set up a "Uzhavar Sandai" in the property comprised in survey No. 11/3, and therefore, the Petitioner has come forward with this writ

petition seeking for the above mentioned relief.

3. The learned Counsel appearing for the Petitioner submits that the classification of the land as "Anatheenam" is incorrect and therefore,

appropriate steps have to be taken by the Government to restore back the lands to the temple. The learned Counsel further submits that the

Executive Officer of the temple had earlier filed a suit in O.S. No. 195 of 2008 on the file of the District Munsif Court, Madurantakam, but the suit

was abruptly withdrawn. Further, the learned Counsel would submit that though at present, the "Uzhavar Sandai" has been constructed on the said

lands, the Respondents 9 and 10 have to be directed to deposit the market value of the land to the credit of the temple. As regards the

maintainability of the writ petition, the learned Counsel placed reliance on the decision of the Hon"ble Supreme Court in A.A. Gopalakrishnan v.

Cochin Devaswom Board and Ors. (2007) 6 MLJ 751 and the decision of the Division Bench of this Court in K. Gokul Murugesan and Anr. v.

State of Tamil Nadu and Ors. (2008) 4 MLJ 513.

4. We have heard the learned Government Pleader and the other learned Counsels appearing for the Respondents.

5. The claim of the writ petition is that the land in question, originally belonged to the temple and during resurvey, the same was wrongly classified

as "Anatheenam" lands and that the authorities should be directed to reclaim the lands or in the alternative to secure the market value of the land to

be deposited to the credit of the temple. When a question was posed by this Bench to the learned Counsel for the Petitioner as to how a writ

petition is maintainable on the subject issue, the learned Counsel placed reliance on the decision of the Hon"ble Supreme Court in the case of A.A.

Gopalakrishnan, referred supra, and submitted that the properties of temples, deities, etc., have to be protected and it is also the duty of Court to

protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation. The learned Counsel also

placed reliance on the decision of the Division Bench of this Court in the case of K. Gokul Murugesan, referred supra, and submitted that the writ

petition is maintainable.

6. The decision of the Hon"ble Supreme Court in the case of A.A. Gopalakrishnan, arose out of a civil proceedings, wherein an extent of 21 cents of land, which belonged to a temple under the management of the Cochin Devaswom Board were encroached upon by certain private parties and they were in illegal possession. The illegal occupants filed civil suit for declaration of title and ultimately, the matter came up before the Hon"ble Supreme Court and taking note of the facts and circumstances of the case, the Hon"ble Supreme Court observed that it is also the duty of the Court to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

7. In the case of K. Gokul Murugesan, the Division Bench of this Court was dealing with a case relating to a property owned by a temple at Thirusoolam, a suburb of Chennai, and the revenue records stood in the name of the temple and the temple was absolute owner of the said lands. These lands was sought to be claimed by certain third parties based upon certain mutation of revenue records done at the instance of the Assistant Settlement Officer, Department of Survey. The Division Bench held that such mutation is clearly a malafide attempt to create title in respect of the properties of the temple and in such circumstances, held that the writ petition would be maintainable.

8. Coming to the facts of this case, we have perused the copy of the plaint in O.S. No. 195 of 2008 filed by the Executive Officer of the temple.

The prayer in the said suit was for a decree of permanent injunction to restrain the Defendants from interfering with the possession and enjoyment of the said lands. In the plaint, it has been clearly stated that though the lands were classified as "Anatheenam", and it was claimed that the lands were in possession and enjoyment of the temple and therefore, the official Defendants have to be restrained from putting up the "Uzhavar Sandai".

It is brought our notice by the learned Counsel for the Petitioner that the suit has been withdrawn. In our view, the Plaintiff correctly withdrew the suit, since admittedly, even as per the pleadings, the temple did not have title over the said lands, but it was candidly admitted in the plaint and the land was classified as "Anatheenam" lands. Therefore, in our view the very foundation of the Petitioner's case itself lack basis, as there was no document of title in favor of the temple in respect of the said lands. In such circumstances, this Court cannot accede to the prayer sought for by the

Petitioner to restore the lands to the temple or to direct the Respondents to deposit the market value to the credit of the temple.

9. As noticed above, in the decision of the Hon'ble Supreme Court in A.A. Gopalakrishnan, as well as the decision of the Division Bench of this

Court in K. Gokul Murugesan, there was no dispute as regards the title of the temple to the properties in question. Further, the case before the

Hon'ble Supreme Court arose out of a civil proceedings initiated by the encroachers before the Sub-Court. Equally in the case of K. Gokul

Murugesan, the Division Bench interfered in the matter as it came to a firm conclusion that the mutation of the revenue records was a mala fide

attempt to create title in respect of a temple property in favor of private persons. However, in the present case, there is no allegation of malafide or

misappropriation. Hence, the decisions relied on by the learned Counsel for the Petitioner does not in any manner advance the case of the

Petitioner as they cannot be applied to the facts and circumstances of this case. Therefore, the prayer sought for in the writ petition is misconceived

and cannot be granted.

10. In the result, the writ petition fails and it is dismissed. However, dismissal of the writ petition shall not preclude the Petitioner from working out

his claims before the appropriate forum, if so advised. No costs. Consequently, connected miscellaneous petition is closed.