

(2011) 02 MAD CK 0483

In the Madras High Court

Case No : Writ Petition (MD) No. 4850 of 2008 and M.P. (MD) No. 1 of 2008

T.K. Saminathan

APPELLANT

Vs

Special Commissioner and Commissioner of Land
Administration and Others

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(15)

Citation : (2011) 3 MLJ 902

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : V.K. Vijayaragavan, for the Appellant; R. Janakiramalu, Special Government Pleader and R. Subbarayalu, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner, who is a Trustee of Arulmigu Karpaga Vianayar Temple, Tanjore Town, has filed this writ petition praying to quash the order of the first Respondent dated 20.12.2007 and to direct the Respondents 1 to 3 to evict the encroachments in T.S. No. 1519 in Pudhupattinam Village situated at Vanakkara Street, Maharnombu Chavadi, Tanjore Town, within a time frame.

2. The brief facts necessary for disposal of this writ petition are as follows:

(a) The Petitioner is a worshipper of Arulmigu Karpaga Vinayagar Temple and as such he is interested in the temple administration. He is spending amounts for the performance of Poojas in temple and he is an interested person in terms of Section 6(15) of the Hindu Religious and Charitable Endowments Act, 1959.

(b) According to the Petitioner, an extent of 27 cents of land comprised in T.S. No. 1519 in Pudhupattinam Village situated at Vanakkara Street, Maharnombu Chavadi, Tanjore Town was classified as temple poromboke during settlement operations when the village was taken over under the Act 26 of 1948 (Tamil Nadu Estates Abolition and Conversion into Ryotwari Act). The temple was

managed by one Singaram Pillai for a long time and after his demise, his son, grandson and family members, including the Petitioner are managing the temple.

(c) Petitioner states that one Veerapillai of Vanakkara street was a bus driver and his brother Sethuram was Deputy Tahsildar served in Tanjore Taluk. They are the joint owners of the tiled house comprised in T.S. No. 1520. They committed encroachment of an extent of 1250 sq.ft., from the possession of the temple and put up toilet and shed for their convenience.

(d) The occupation of the temple land by the said persons having caused inconvenience to the worshippers, the worshippers as well as residents raised objections against their occupation and steps were taken to evict the encroachers from the said temple land. The Revenue Divisional Officer inspected the site and ordered the Tahsildar to initiate encroachment proceedings. The Tahsildar, Tanjore, passed an eviction order on 7.12.1973 by stating certain grounds. The said Veerapillai preferred appeal before the Revenue Divisional Officer, Tanjore, which was dismissed on 25.11.1975. Again a revision was filed before the District Revenue Officer, Tanjore, who erroneously passed an order giving direction to lease out the property encroached by the said Veerapillai and directed to fix the rent, subject to condition that the encroacher should not extend his occupation in future. The said order of the District Revenue Officer was challenged before the Revenue Board and the Revenue Board allowed the revision and set aside the order of the District Revenue Officer by order dated 25.4.1976.

(e) It is further stated in the affidavit that the said Veerapillai thereafter filed a suit in O.S. No. 140 of 1983 before the District Munsif Court, Tiruvaiyaru, impleading the State as well as the District Collector, Tanjore and contended that he has prescribed title and adverse possession and also prayed for injunction for evicting him. The learned District Munsif dismissed the said suit by judgment dated 16.12.1983. The said judgment and decree was challenged by him in A.S. No. 15 of 1984 before the Sub Court, Tanjore and the said appeal was also dismissed on 9.9.1986. Not satisfied with the order in first appeal, he preferred S.A. No. 337 of 1987 before this Court and this Court rejected all the contentions and dismissed the second appeal on 1.9.1999 and upheld the right of the Government in evicting him under the Land Encroachment Act, 1905. However, the District Collector, Tanjore, failed to initiate action to evict the encroachers in spite of the request made by the Petitioner to the Revenue Officials, including the Collector.

(f) The Petitioner therefore filed W.P. No. 4011 of 2004 and prayed for issuing writ of mandamus and in the said writ petition this Court by order dated 4.10.2004 directed the District Collector to initiate action within eight weeks after giving notice to both parties. The District Collector thereafter issued notices to both parties, inspected the site and issued an order on 25.4.2005 and turned down the request of eviction by stating that the land is in enjoyment of Veerapillai for a long time and neither the HR & CE department nor any party requested to evict encroachment and due to private enmity the Managing Trustee

requested for eviction and no necessity has arisen to evict the encroachment of the said person for expansion of the temple. The said order was challenged before the first Respondent who also passed an erroneous order on 20.11.2007.

(g) The said Veerapillai died and his legal heir got impleaded before the first Respondent when the revision was pending. The said order of the first Respondent dated 20.12.2007 is challenged in this writ petition on the ground that the said order is contrary to the order of Board of Revenue dated 9.12.1978, judgment and decree in O.S. No. 114 of 1980 confirmed in S.A. No. 337 of 987 dated 1.9.1999, among other things.

(h) It is the contention of the Petitioner is that when the said Veerapillai failed in his attempts to get relief from the Revenue Department as well as from the Civil Court, he could not object for eviction from the Temple property; that the temple property cannot be put to different user, which can be used only as communal property; that construction of toilet near the temple by the said Veerapillai is affecting the sanctity of the temple; that the 4th Respondent being the legal heir of the said Veerapillai, is bound by the order of the Board of Revenue as well as Civil Court, which was confirmed by this Court, as the subject matter is one and the same; and that, therefore the order passed by the first Respondent is to be set aside with further direction to the Respondents 1 to 3 to evict the encroachment in T.S. No. 1519 within a time frame.

3. The District Collector, Tanjore, has filed a counter affidavit and mentioned about the order passed by the Board of Revenue, Civil Court and this Court. However, a contention is raised stating that the encroacher is in possession of the temple land to an extent of 1250 sq.ft. for the past 72 years. It is further stated that as and when the land is required for expansion of the temple for the convenience of the devotees, eviction can be made.

4. The 4th Respondent has filed separate counter affidavit contending that the Petitioner herein has filed O.S. No. 222 of 2005 before the District Munsif Court, Tanjore and prayed for a decree to declare the temple as a private temple and also prayed for not to appoint any Trustee for the Temple by the department. It is contended in the counter affidavit that the subject land is in continuous possession and enjoyment of his father and his brother and ryotwari patta has been issued for T.S. No. 1520 and for the subject land ryotwari patta was omitted to be issued. It is also stated therein that the encroachment is not at all a hindrance for the public or devotees of the temple in any manner. The writ petition is filed out of personal enmity between the families and not by way of public interest.

5. Heard the learned Counsel for the Petitioner, the learned Special Government Pleader for Respondents 1 and 2 and the learned Counsel appearing for the 4th Respondent.

6. The points for consideration in this writ petition are,

- (i) Whether the Petitioner has got any locus stand to maintain the writ petition?
- (ii) Whether the 4th Respondent can resist the eviction proceedings having failed in his attempt to retain the possession of the land after rejection of his predecessors claim by the Revenue Board as well as the Civil Court which was confirmed by this Court?
- (iii) Whether the Respondents 1 and 2 are justified in stating that the temple is not in need of the said encroached land?

7. The Petitioner is not only a Trustee, but also a devotee of the subject Temple. Therefore he has got every locus stand as he is an interested person in terms of Section 6(15) of the HR & CE Act, 1959 to seek for eviction, which section reads as follows,

Section 6(15) person having interest means-

- (a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;
- (b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;
- (c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity.

Thus, the objection raised regarding the locus stand of the Petitioner, cannot be sustained, even though the Petitioner is raising dispute regarding the character of the Temple as to whether it is a public Temple or a private Temple. The issue regarding the nature of the temple need not be decided in this writ petition, as it is not the subject matter of the writ petition.

8. Even according to the Respondents 1 to 3, 27 cents of land in T.S. No. 1519 is Temple poromboke land and the 4th Respondent's father and his brother was only encroachers. The findings given by the Board of Revenue regarding this aspect is as early as on 9.12.1978. Paragraphs 3 and 4 of the said findings can be usefully extracted hereunder,

3. The Board has examined the case carefully along with the report of the District Revenue Officer and with other connected records. A show cause has been issued to the Respondent Thiru. Veera Pillai and he has replied the same. The Board considers that the encroachments on temple poramboke are prima facie objectionable and when noticed action should have been initiated to evict the same immediately. It is not for the encroacher to raise the plea that the land is in excess of the temple requirements as he had to put up construction. The concessions contemplated under the G.O. Ms. No. 3069, Revenue dated 22.7.1961 are intended for the benefit of the temple to add to its income. No

interest of the temple orders of the District Revenue Officer are against the spirit of the G.O. and contrary to the general principles and as such need cancellation.

4. Accordingly, the Board considers that temple poramboke lands are to be utilised in the best interests of the temple and further the Respondent Thiru R. Veerapillai is not eligible for Government land as he is not landless poor. The Board therefore directs that the order of District Revenue Officer, Thanjavur, in his Rc.217183/75, dated 25.4.1976 be hereby set aside and allows the Revision Petition filed by the Petitioner, Thiru G. Radhakrishna Pillai.

In the suit filed by the 4th Respondent's father, his claim was negated up to the second appeal. The relevant portion of the order passed by this Court in S.A. No. 337 of 1987 dated 1.9.1999 in paragraph 12 reads as follows,

12. Therefore, from the legal position, it is clear that mere description of the word as "temple poramboke" does not conclude the matter, in favour of the Plaintiff. No implied grant or lost grant can be inferred from such recital. The right of the sovereign over such land never ceases to be in force. The State Government definitely continues to have their say in the matter. The very description of same as temple poramboke does not preclude the State Government from issuing notice with reference to the property. In fact, acknowledging the superior sovereign power of the Government, the Plaintiff himself has chosen to request the Government to grant patta to him and when penal charges memos were levied, the Plaintiff paid the same and thereby acknowledged the authority of the State Government. In such circumstances, the contention that because the property has been described as temple poramboke, the Government ceases to have any control or right over the same, is without any merit. Hence it follows that there is no merit in this appeal.

From the above referred orders viz., the order of the Board of Revenue as well as the order passed by this Court, it is evident that the 4th Respondent's father and his brother have not established their right to be in possession of any ground and they were treated only as encroachers. The second Respondent is duty bound to initiate action to evict the encroachers. The Petitioner earlier approached this Court by filing W.P. No. 4011 of 2004 and this Court by order 30.12.2004 directed the second Respondent to dispose of the representation seeking eviction of the 4th Respondent's father from the temple poramboke land by considering the representation of the Petitioner dated 4.10.2004 within a period of eight weeks there from.

9. The contention of the District Collector and the first Respondent that the temple is not in need of the land cannot be accepted. The temple lands and the land appurtenant thereto are to be enjoyed by the devotees/worshippers of the temple and it cannot be used by any encroacher, that too, for constructing toilet near the temple which will hamper the sanctity of the temple, which will cause nuisance to the worshippers in general. When public interest and private interest are pitted against each other, it is the well settled proposition of law that the

public interest will have to be prevailed over private interest and the Courts have to lean to uphold the public interest in preference to the private interest. The said principle is reiterated by the Supreme Court in the case of State of U.P. and Others Vs. Bhupendra Nath Tripathi and Others,

In the said judgment, the Supreme Court held as follows:

... In cases like these, interest of individuals cannot be placed above or preferred to larger public interest. (see L. Muthukumar and Another Vs. The State of Tamil Nadu and Others,

10. In the case on hand, the 4th Respondent is promoting his private interest, which is also unfortunately supported by the second Respondent, confirmed by the first Respondent, who are bound to protect the interest of the temple than supporting the cause of the 4th Respondent. On the basis of the above findings, we are of the view that the Petitioner has made out a case for eviction of the 4th Respondent from the temple poromboke land. The third Respondent has not chosen to show any interest in this matter and failed to protect the interest of the temple, though he was served notice as early as on 25.8.2008.

11. In fine, the impugned order is set aside and the writ petition is allowed. The 4th Respondent is directed to hand over vacant possession of the temple poromboke land to the second Respondent within eight weeks from the date of receipt of copy of this order, and in turn, the second Respondent is directed to hand over possession to the temple within two weeks there from. There is no order as to costs. Connected M.P. No. 1 of 2008 is closed.