

(2014) 10 MAD CK 0081
In the Madras High Court
Case No : W.P. MD No. 7047 of 2006

V. Thiagarajan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 29, 29(1) (e), 33, 34, 34A

Citation : (2014) 10 MAD CK 0081

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Judgement

R. Mahadevan, J.—This writ petition has been filed seeking a Writ of Mandamus, to direct the respondents 1 to 4 to ascertain the lands, including the Inam lands belonging to Arulmigu Subramaniya Swamy Thirukoil, Thiruparankundram and retrieve the lands illegally alienated or occupied by third parties.

2. The case of the petitioner, who was the President of Hindu Paktha Jana Sabai, was that the inam lands belonging to Arulmigu Subramaniya Swamy Thirukoil, Thiruparankundram, were illegally grabbed by the political men and that the lands under their control, would come around 100 acres. In order to retrieve the said lands, the petitioner submitted various representations to the Government. According to him, the 7th respondent is an active member of DMK Party and the respondents 8 and 9 are his brothers. The 8th respondent was the President of Thiruparankundram Town Panchayat. The 10th respondent was the Member of Parliament, representing AIADMK Party. The Register maintained by the temple regarding the details of the temple properties, was not available and therefore, the lands including inam lands, of the temple have to be identified so as to protect them from encroachment. The petitioner also made allegations against the 11th respondent, the Executive Officer of the temple, as he had also colluded with the political men in grabbing the lands of the temple. The plea of the petitioner was that the respondents 1 to 4 have to verify the properties of the

temple, including inam lands and to retrieve the same, against illegal alienation. Since no action had been taken as against the illegal encroachers of the inam lands of the temple, the petitioner had come before this Court.

3. Pending this writ petition, the petitioner, who originally filed the writ petition, died and the second petitioner, namely, K.Selvasundari, had been impleaded as legal representative of the deceased petitioner and is prosecuting this writ proceedings.

4. Denying all the allegations levelled by the petitioner, the second respondent filed the counter affidavit, inter alia, contending that the petitioner had not given the details of the properties which were illegally alienated and that necessary records had been maintained by the Executive Officer of the temple and that the service inam lands of the temple granted for the performance of 8th day Mandagapadi on Panguni Festival, were illegally alienated by the service holders behind the back of the respondents 2 and 3 and that the Resumption Petition filed by the temple, is pending before the Revenue Divisional Officer, Madurai. According to the second respondent, an enquiry relating to the allegations made as against the 11th respondent, is also pending. Hence, he prayed for the dismissal of the writ petition.

5. Whereas the 11th respondent filed the counter affidavit, stating that the third respondent had initiated proceedings under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and thereafter, the temple lands were put to their original position. Therefore, he prayed for the dismissal of the writ petition.

6. No counter affidavits had been filed on behalf of the other respondents, projecting their case.

7. Mr. N.Dilip Kumar, learned Counsel for the petitioner, submitted that though the respondents 1 and 2 contended that action had been taken to retrieve the temple lands, no steps had been taken so far and that the Resumption Petition filed before the Revenue Divisional Officer was kept for a quite long period without any reasons and that the order dated 25.05.2009 had been passed by the Revenue Divisional Officer, wherein there were no references to the sale deeds mentioned in the said petition and that an appeal was also filed before the District Collector challenging the said order dated 25.05.2009. According to him, the temple is having 187.07 acres of nanja lands, out of which, 108.53 acres of land are service inams and 78. 54 acres of land have been leased out to 56 persons. Further, the temple is having 167.01 acres of punja lands, of which, 109.86 acres are stated to be service inams and 57.15 acres of land are leased out to 44 persons and the total income derived from the above said properties, would be very meagre and the temple administration had not fixed the fair rents till date.

8. The specific contention of the learned Counsel for the petitioner is that no action had been taken so as to protect the temple lands and that no annual

verification of the property Register had been made and therefore, he prayed for appropriate orders in this regard. In support of his submissions, he relied upon the following decisions of the Honourable Apex Court:

- (i) The Executive Officer, Arthanareswarar Temple Vs. R. Sathyamoorthy and Others, .
- (ii) Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, .
- (iii) Joint Commissioner, Hindu Religious and Charitable Endowments, Administration Department Vs. Jayaraman and Others, .

9. Per contra, Mr. K.Chellapandian, learned Additional Advocate General appearing for Mr. VR.Shanmuganathan, learned Special Government Pleader, for the respondents 1 to 6, placing reliance upon the counter affidavit filed by the second respondent, contended that the petitioner had made baseless allegations against the temple administration and that the petitioner had not even furnished the details about the illegal encroachment said to be made by the respondents 7 to 10. He further contended that the records relating to the movable and immovable properties of the temple, including the inam lands, are available in the temple, based on which, appropriate action would be initiated in this regard. Insofar as the allegations against the 11th respondent are concerned, it is the submission of the learned Additional Advocate General that the enquiry is being conducted by the Joint Commissioner, Tirunelveli and Madurai and that action would be initiated against him, if prima facie, case is made out.

10. Whereas the learned Counsel for the 11th respondent, placing reliance on the counter affidavit filed by him, submitted that the petitioner had not made out a case for interference at the hands of this Court and that the writ petition filed by the petitioner, is not maintainable, since he had not come with clean hands. In support of his contentions, he relied on the decision of the Division Bench of this Court, in R. Mohanasundaram and Others Vs. Arulmigu Kolavizhi Amman Temple and Others, . Paragraph 32, would run thus:

"32. Of course, under Section 29, the religious institution has to prepare and maintain the registers, which is subject to annual verification, but the object of maintenance of registers is only for proper and efficient administration of the temple. Maintenance of registers and annual verification is only procedural and is concerning the internal administration of the temple. In case if the registers are not maintained properly, the Officer, who is in-charge of the temple is answerable. That would not in any affect the title of plaintiff temple over the suit property, especially in the light of ancient documentary evidence adduced by the plaintiff temple. If at all, the appellants felt that those registers are essential, the appellants should have taken necessary steps calling for production of those registers. Now, in the appellate stage, the appellants cannot turn round and contend on the aspect of maintenance of registers."

11. I have carefully considered the rival submissions and perused the materials available on record.

12. The questions that arise for consideration, in the case on hand, are as to whether the temple lands had been illegally alienated? and whether steps have been initiated by the temple administration to retrieve the same?

13. Here, is a case, where the petitioner knocked the doors of justice complaining encroachment of the temple lands by the political men. Any complaint relating to land grabbing, in particular, temple lands, would be a very serious issue. On those days, the lands were donated to the temples to ensure revenue to fulfil the day-to-day needs of the temple administration in celebrating the festivals throughout the year and to renovate the temples to stand for centuries. In case, the lands given to the temples are jeopardized, then, the ultimate object behind the donation made, would not be achieved any more.

14. Coming to the facts of the present case, this Court finds that it is the claim of the petitioner that the lands belonging to Arulmigu Subramaniya Swamy Thirukoil, Thiruparankundram, were illegally grabbed by the politically influenced persons, to the extent of 100 acres and the temple administration did not maintain any records to show the lands of the temple.

15. A perusal of the typed set of papers would apparently make it clear that Resumption Petition No. 11580 of 1998 filed before the Revenue Divisional Officer, Madurai, was dismissed on 25.05.2009 and an appeal was also filed before the District Collector, in A.P.File. No. 48433 of 2009, on 07.07.2009. Even after a lapse of five years, the said appeal petition has not been numbered, by the District Collector, which, would exhibit the attitude of the appellate authority in dealing with the temple lands.

16. Moreover, it is the main allegation of the petitioner that the records pertaining to the temple lands had not been properly maintained and therefore, the encroachers had been grabbing the temple lands, without any difficulty. Strict maintenance of the records would always help in preventing such illegal encroachments. Though it was contended by the respondents 1 to 6 and the 11th respondent that the records are maintained properly, no materials were produced to alleviate the same. A series of letters were produced by the 3rd respondent in support of his contention that they had been taking steps to curb the land grabbing and alienation of the temple properties. The letters would only worsen the case of the respondents. After 19.01.1999, the Executive Officer had written a letter after 8 years i.e. only on 22.11.2007. As per section 29 of the Hindu Religious and Charitable Endowments Act, 1959, (in short "the Act"), the 11th respondent is duty bound to maintain the registers containing all the particulars stipulated therein. Going by the scheme of the Act and the language used in Section 29(1)(e) of the Act, the records must also contain particulars regarding the extent of land, the name of the person in service, the name of the person holding the lands either by service inams or lease, period of lease, the use to

which the land has been put to and the income from the lands. The respondents must also effect periodical visit of the properties as contemplated under section 33 of the Act to ensure that only the lessees are in possession. Only if all the particulars are maintained, it will be possible to ascertain the value of the land and the fair rent. In the case on hand, it is seen that the records had not at all been maintained by the temple authorities and hence, the authorities are in the dark about the encroachments of the temple lands, by causing huge loss to the temple.

17. On facts, this Court finds that a resumption petition had been filed by the Executive Officer of the temple to retrieve the temple lands and it came to be dismissed by the Revenue Divisional Officer and consequently, an appeal was also preferred before the District Collector, but, the said appeal is still to be numbered. Hence, this Court is of the view that the temple authorities had not taken steps to retrieve the lands belonging to the temple. The word "atrocious" would fall short to describe the conduct of the respondents 1 to 6. The appeal was filed in 2009 and the same is yet to be numbered. The 4th respondent has either not understood the seriousness of the case or the staff under him may not have brought the filing of the appeal to his knowledge. If the case is later, the 4th respondent must immediately take steps against the concerned staff for having colluded with encroachers and third parties in delaying the numbering and hearing of the appeal. Apparently, the Service Inams can only be enjoyed and cannot be alienated. The purpose of granting service inams is mainly to utilize the income from the lands to satisfy the basic needs of the pujaris and the expenses towards maintenance of the temple. There is a specific bar under section 34 of the Act against alienation without the approval of the commissioner. Any alienation in violation of section 34 is null and void. The commissioner has to call for objections and then pass an order sanctioning the sale by giving specific reasons and after the approval of the government. Money alone cannot be the criteria for according sanctions. In any case, no such permission was accorded in the instant case. The alienation in this case was not done by the trustees or the executive officer but by the beneficiaries under the grant. Indisputably, there is a condition in the grant forbearing alienation and therefore the beneficiaries under the settlement patta can never alienate the land. Once the service of the beneficiary is terminated, the land will have to be passed on the person in service. The only motive behind the delaying of the appeal is to be in possession and reap the profit as long as possible, as, in any case the appeal would have to be allowed in view of the settled proposition of law as laid down by the Honourable Apex Court in the decision relied upon by the learned Counsel for the petitioner, in *Joint Commissioner, Hindu Religious and Charitable Endowments, Administration Department Vs. Jayaraman and Others*, . The relevant paragraphs are extracted hereunder for ready reference:

"7. It is seen that the claimants had got themselves appointed as hereditary trustees by applying under Section 63(b) of the H.R & C.E. Act. They could not thereafter shed their character as trustees of the temples holding the lands

belonging to the temples at a subsequent stage at least without impleading the H.R & C.E. Department and the deities and without getting a valid adjudication of their right over the properties. It is clear that in spite of the necessity for impleading the H.R & C.E. Department being pointed out, the claimants made no attempt to implead the H.R & C.E. Department either before the Settlement Tahsildar or before the District Judge and consequently, the orders passed by the Settlement Tahsildar and by the District Court were clearly illegal and not binding on the deities or the H.R & C.E. Department. The claimants had, in fact, acted totally without bona fides in an attempt to corner the properties for themselves or at least to make undue gains for themselves by selling the properties. Such action would certainly not bind the deities or the H.R & C.E. Department. The High Court, representing the sovereign as *parens patriae* ought to have come down on the respondents herein and ought to have issued directions for the protection of the properties.

11. It was contended that the purchase price had been deposited in a Fixed Deposit and so long as there is no failure on the part of the claimants to perform the services which they are liable to perform, there is no necessity to interfere with the transaction of sale effected by them. It is seen that going by the prevalent valuation and the market value as reported, the lands were sold for a meager price or that the sale deeds indicated only a meager price as consideration for the same with all that it implies. Such a transaction is clearly seen to be not in good faith. That the District Court proceeded to accept the value for which the property was being sold even without making an enquiry into the market value that the properties would have fetched at the relevant time while giving the permission for the sale, is shocking. The jurisdiction under Section 34 is advisory. The Court should have satisfied itself of the need for sale and the propriety of the sale proposed. The mere pleas that it was difficult to protect the property and that there was only meager income therefrom were by themselves not grounds to direct or permit the sale.

12. It is seen that there has been a clear attempt by the claimants to over-reach the deities and the authorities under the H.R & C.E. Act, while managing the properties dedicated for the purposes of the temple, properties granted and managed by them in their capacities as *poojaries*, for the maintenance of the temples. The attempt has to be deprecated.

13. In the circumstances, we allow this appeal and setting aside the order of the High Court in Civil Revision Petition (NPD) No. 1684 of 2002 and that of the Principal District Judge, Dindigul in Trust Original Petition No. 44 of 2001, dismiss Trust Original Petition No. 44 of 2001 filed by the claimants. Consequently, the permission granted for the sale would also stand set aside and the sale effected by the claimants pursuant to such permission will be deemed void and would

confer no right on the purchasers thereunder or on any one claiming under or through them. It is also clarified that the revised order of the Settlement Tahsildar under Act 30 of 1963 and the revised patta granted are not binding on the deities or on the H.R & C.E. Department. The appellant would be entitled to its costs both here and in the High Court."

Applying the above dictum of the Honourable Apex Court, the alienations made by the beneficiaries are void and not binding on the temple and the H.R & C.E Department. However, to prevent any future allegations regarding the violations of principles of natural justice, the appeal must immediately be taken on record and disposed by the 4th respondent within eight weeks after giving opportunity to all the parties concerned.

18. The effect of non-maintenance of records has not only resulted in alienation of service inams, but has also resulted in sub-leasing of the leased properties and extended tenure of the lessees. As stipulated in section 34, the lease of the property cannot be beyond five years. In the present case, the lessees have been squatting over the properties for more than five years by paying a meagre rent. A sub-lessee can only be termed as an encroacher. This court finds the contention of the respondents that it is the petitioner who has to give particulars regarding sub-lease as unreasonable. Entrusted with the administration of endowments of the temple, the respondents must not only be vigilant but also act with responsibility. The contention only further augments the case of the petitioner that the records are not maintained properly. Hence the respondents are directed to immediately identify the encroachers and evict them in accordance with Sections 78, 79 and 79-A of the Act. The main purpose of leasing out the properties is to generate income to the temple. Therefore after eviction, the lands must be leased out by conducting public auction. The upset rent in the auction shall be determined by following the procedure contemplated under Section 34-A of the Act. Ultimately, this Court finds that a roving enquiry has to be conducted regarding the non-maintainability of the records by the temple administration, as to the actual lands owned by the temple and appropriate action has to be initiated as against the erring officials.

19. Accordingly, the respondents 1 and 2 are directed to hold an enquiry as to the non-maintainability of the records by the temple authorities and take action in accordance with law as against the officials concerned in this regard. The Preamble of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as follows:

"An Act to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu.

WHEREAS it is expedient to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu."

As evident, the main object of the Act is to maintain the endowments of Hindu Religious and Charitable Institutions. It is a separate Department under the control of the State Government and enormous expenditure is incurred towards salary of the various categories of persons in the Department. This court, under the extra-ordinary jurisdiction under Article 226 cannot shut its eyes to the irregularity and permit the authorities to demean the object of the Laws and the provisions of the Act. Therefore, merely appointing officers and functioning without any responsibility will not serve any purpose. If any officer of the HR & CE Department acquires knowledge regarding any violation of any grant or inaction or undue favouritism towards any particular person, he must immediately inform the authority concerned or the Fit Person to take immediate steps against such person(s) committing the violation or the erring official(s). The income from the endowments of the institutions are maintained in separate accounts under the control of the State Government. There are many temples in the State which though are under the control of the HR & CE Department, are poorly maintained. The incomes of many such temples are so poor that the lighting of the lamps has itself become difficult. The 2nd respondent is directed to constitute a committee to look into the income of various temples under its control and pave a scheme so as to not only preserve the old temples but also to ensure that the daily rituals are carried out without any hindrance. Further, the respondents 1 and 2 are directed to issue circulars to the temple authorities, all over the State to keep maintaining the relevant records pertaining to the temple lands properly and to follow the guidelines to be framed thereunder, without any default, to cut at the root of land grabbing in future.

20. Insofar as the appeal pending before the District Collector is concerned, this Court directs the fourth respondent to number the appeal filed by the temple administration as against the order dated 25.05.2009, passed in the Resumption Petition, if not already numbered and consider the appeal on merits and in accordance with law and dispose of the same as expeditiously as possible, not later than two months from the date of receipt of a copy of this order. It is made clear that the fourth respondent is at liberty to look into all aspects regarding the allegations of land grabbing in depth and hear all the parties concerned and pass appropriate orders, as per law.

21. In fine, this writ petition is ordered with the above directions. No costs.