



W.P(MD)No.5535 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.02.2023

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

W.P(MD)No.5535 of 2018

and

W.M.P(MD)Nos.19469, 5439 and 5438 of 2018

Lakshmi Ammal

.. Petitioner

Vs.

- 1.The Settlement Officer,
The Commissioner of Land Survey and
Settlement Department,
Survey House, Chepauk,
Chennai-5.
- 2.The District Collector,
Collectorate Office,
Madurai.
- 3.The District Revenue Officer,
Collectorate Office,
Madurai.
- 4.The Tahsildar,
Madurai East,
Madurai.



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5.The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai.

6.The Joint Commissioner,
Hindu Religious & Charitable Endorsement,
No.1, West Chitrai Street,
Madurai-01.

7.The Executive Officer,
Thirumohur Kalamegaperumal Devasthanam
Thirumohur
Madurai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, call for the records of the order in Ni.Mu.No.19164/2017/Ji5 passed by the 3rd respondent, dated 06.12.2017 quash the same and consequently, direct the respondents 1 to 3 to retain the patta in the name of petitioner for patta No.209 for the punja lands comprised in S.No.102, 159, 160 and 130/2 at Narasingam Village, 4th bit, Madurai East Taluk, Madurai District.

For Appellant :Mr.M.V.Venkateshan, Sr.Counsel
for Mr.S.Vellaichamy

For R1 to R6 :Mr.P.Subbaraj,
Special Government Pleader



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ORDER

DR G.JAYACHANDRAN,J.
AND
K.K. RAMAKRISHNAN,J.

Large piece of land lying opposite to Madurai Bench of Madras High Court, is the subject matter of these four writ petitions. One is filed by the individual by name Lakshmi Ammal seeking Certiorarified Mandamus being aggrieved by the issuance of patta in the name of Kothanda Ramaswamy Temple and the other three writ petitions filed as a Public Interest Litigation one for Mandamus to the HR&CE Department to lease the said land for the purpose of utilizing by the High Court and rest of the two keep the pieces of land extending about 10 acres free from being used as a dumping yard by the public.

2.The matters are being under consideration of this Court for the past three years and even before that, we find that the said Lakshmi Ammal, who is the petitioner in W.P(MD)No.5535 of 2018, had approached this Court filing a writ petition in W.P(MD)No.9876 of 2011 seeking issuance of Writ of Certiorarified Mandamus, being aggrieved by the two



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communications of the HR&CE Department, dated 12.01.2005 and another dated 03.04.2009, but lost her case claiming title over the property.

3.To understand the back-ground of these writ petitions, it is necessary to extract the order of the learned Single Judge, passed in W.P(MD)No.9876 of 2011, dated 18.11.2011 filed by Lakshmi Ammal. Hence, the said order is extracted below:

“The petitioner has come up with the above writ petition, challenging two orders, one dated 12.1.2005 by which the Government rejected the request of the petitioner to grant exemption to the Temple in question from the application of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1958 and another order dated 3.4.2009 issued by the Commissioner refusing to give no objection for the sale of the land.

2. Notice was ordered in the writ petition on 30.8.2011.

Subsequently, an interim order of injunction was passed on 12.9.2011.

3. Thereafter, one Hindu Baktha Jana Sabha filed an application for Impleading. In the meantime, the Government also filed an application for vacating the interim order of injunction. When the vacate injunction petition came up for hearing, on 10.10.2011, I passed the following orders:



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"The learned counsel for the petitioner seeks time. Post on 13.10.2011. However, it is represented by the learned Additional Government Pleader that taking advantage of the Interim order of injunction granted on 12.9.2011, the petitioner started putting up construction. Therefore, it is made clear that the petitioner shall not continue with the construction and shall not alienate or encumber the property and shall also not alter the physical features of the property until further orders. Post on 13 10.2011.

4. Subsequently, the matter came up on 29.10.2011 and the learned counsel for the petitioner sought adjournment, promising to argue the matter on 8.11.2011.

5. However, an appeal was filed thereafter and a mention was made before the Division Bench for pulling this writ petition out of the list of this Court, by giving an impression that the writ petition is proposed to be withdrawn. But the Division Bench passed an order on 17.11.2011 as follows:-

"This writ petition is delinked from the writ appeal No. 1232 of 2011. The records disclose the matter was already pending before



the learned single Judge and it is for the learned counsel for the petitioner in the writ petition to move only before the learned single Judge and the same cannot be taken with the writ appeal pending before this Court.

Hence, Registry is directed to post this writ petition before the concerned learned single Judge namely Hon'ble Mr. Justice V.Ramasubramanian, on 18.11.2011.

6. Today, the learned counsel for the petitioner submitted that he is withdrawing his appearance from the case. But the petitioner was present in Court along with one Mr.Sabari Babu claiming to be a person brought up by the petitioner. She wanted to withdraw the writ petition. She herself made an endorsement seeking permission to withdraw the writ petition. Mr.Sabati Babu also sought liberty to move the Government.

7. But the following facts will disclose that the petitioner is not entitled to any liberty:-

(i) way back in the year 1937, an order was passed in O.A.No.162 of 1937, to the effect that the Temple In question comes within the purview of the HR&CE Department, though as an excepted Temple.

(ii) All along the petitioner claimed to be a Hereditary



Trustee of the Temple, without questioning the jurisdiction of the HR&CE Department.

(iii) But suddenly the petitioner made two different pleas, one for granting exemption for the Temple from the application of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1958 and another for permission to sell the property as if it is her property. Both these requests go contrary to each other.

8. Today, the stand taken by the petitioner is that the HR&CE Department has nothing to do with the Temple and that the property is a private property. Thus, the stand taken today contradicts a settled position which is in existence for over 75 years.

9. The property is a very valuable property located just opposite to the High Court. Except finding that the attempt now made by the petitioner appears to be at the instance of some third parties for grabbing the land, I do not find any reason as to how the position settled for 75 years could be unsettled in a writ petition.

10. In view of the above, the writ petition is dismissed as Withdrawn after recording all the above facts and specifically rejecting the plea of the petitioner for liberty to work out her remedies elsewhere. The Interim order passed by me restraining the petitioner from alienating or putting up any construction or altering the physical features of the



property will continue to remain in force and it will be open to the Department to take appropriate action for taking control and preserving the property. No, costs, Consequently connected miscellaneous petitions are also dismissed.”

4.The said Lakshmi Ammal, being aggrieved by the order of the learned Single Judge, has preferred intra-Court appeal, which came before the Division Bench of this Court. The said writ appeal was dismissed. Not satisfied with the dismissal order, the said Lakshmi Ammal has preferred review application in Rev.Apl(MD)No.24 of 2012, which came to be disposed of on 26.07.2012, wherein the Division Bench while dismissing the review petition has observed as below:

“9. In the Memorandum of grounds having levelled allegations against the learned single Judge and also vehemently opposed refusal of liberty to move the Government, Petitioner did not pursue the Writ Appeal and the Writ Appeal in W.A. (MD) No.1434 of 2011 was also withdrawn. At the time when the Writ Appeal was withdrawn, Petitioner made a specific request for expunging the observations made by the learned single Judge. The Division Bench declined to do so. The order dismissing W.A. (MD) No. 1434 of 2011 as having withdrawn reads as under:-



"Even though learned counsel for the appellant seeks permission of this Court to withdraw this writ appeal, this Court affirms the view of the learned Single Judge as regards the right of the appellant/writ petitioner as stated in the last paragraph of the order dated 18.11.2011 in W. P. (MD) No. 9876 of 2011 which reads as under:

"10. In view of the above, the writ petition is dismissed as withdrawn after recording all the above facts and specifically rejecting the plea of the petitioner for liberty to work out her remedies elsewhere. The interim order passed by me restraining the petitioner from alienating or putting up any construction or altering the physical features of the property will continue to remain in force and it will be open to the Department to take appropriate action for taking control and preserving the property. No costs. Consequently, connected miscellaneous petitions are also dismissed."

2. Though the learned Counsel for the appellant submits that after withdrawal of the writ petition, the observations made by the learned Single Judge cannot stand as it is; Yet considering the serious disputes raised as regards the right of the appellant/writ petitioner to deal with the property having gone through the order of the learned Single Judge and the interim order passed, this Court feels that the observations made as extracted above merits to stand as it is.

3. The writ appeal consequently stands dismissed as



withdrawn including the writ petition. Consequently, the connected Miscellaneous Petition is dismissed. No costs." (underlining added)

5.This order appears to have been challenged by Lakshmi Ammal before the Hon'ble Supreme Court by way of SLP and the said SLP came to be dismissed, on 30.11.2012. Thus, the sum and substance of the earlier round of litigation initiated by the the said Lakshmi Ammal, has ended against her with an observation that the property in dispute is vested with the Kothanda Ramasamy Temple and the rejection of the request of Lakshmi Ammal to permit her to alienate the property has been upheld and has reached finality. Further, the restrained order of the learned Single Judge denying liberty to Lakshmi Ammal to agitate the issue before any other forum also confirmed. In such circumstances, the said Lakshmi Ammal has preferred a suit in O.S.No.895 of 2013, for declaration of title, before the I Additional Sub-Court, Madurai. The said Plaint was presented on 26.09.2013 with the following pleadings:

“III. Suit property previously cultivable Nanja land, at presently kept as dry vacant site is situate at Bit No 4, Narasingam Village, of Madurai North Taluk, Madurai is very



well within the jurisdiction of this Honourable Court.

IV. It is submitted that this suit properties and some of other properties are the ancestral originally belonged to one Mrs.Nachiarammal.

V. They have no issue and adopted Mrs.Nachirammal's sister son Mr. Gnanapiran Thirumalai Nambigal who died (1879) leaving behind his adopted son Mr.Ananda Krishnan @ Paramasamy Thirumalai Nambigal Where as one of the 3rd adopted son Mr. Gnanapiran Thirumalai Nambigal, passed away in 1917 leaving behind his wife Mrs. Alamelu Nachiar, Thirumalai Nambigal as his legal heir. He also had no issue and demised in the year 1926 leaving behind his adopted son Mr.Thiruvengkadathan Thirumalai Nambigal, who also died in the year 1944, leaving behind his wife (i.e) this plaintiff herein as his legal heir. Genealogy tree is also attached with the plaint and the copy of the same is produced as document No.1. The copy of death certificate of Mr. Thiruvengkadathan Thirumalai Nambigal is produced as document No.2 and the Legal heir certificate issued by R.D.O Dindigul on 14-11-1944 and the copy of certificate produced as Document No.3.

VI. All the revenue records (i.e) Patta, Chitta and settlement do stand in the name of Mr. Thiruvengkadathan Thirumalai Nambigal, who is the husband of this plaintiff. The copy of Chitta issued before (Estate abolition and Ryotwari) Act 1948 is produced as document No.4 and original computer



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Chitta issued by the Tahsildar, Madurai North Taluk is produced as Document No.5 and the patta pass book (issued under UDR scheme), the Xerox copy as Document No.6. The copy of the settlement register from the year 1948 to 1956, 1957 to 1962 and 1963 to 1986 till date (as available records in the settlement Office) are produced as Document Nos. 7, 8 and 9. The kist receipt for the Fasli year 1417 is produced as Document No.10. (from the year 2009 and there after no land kist levied as the properties are un-cultivable and dry lands).

VII. The plaintiff submits that ini year 1937 dated 5-2-1937 the said Mr. Thirumalai Nambigal, the adopted son of Mr.Thiruvengadathan executed "Othi" deed in favour of Thiru.Pethivelpitchan Ambalatharar, othied the one suit property and some other property other than the suit properties for the purpose of meeting out the expenses of the festival of "Sri Kothandaramasamy Temple" and Kazendra Motcham festival of Arulmigu Kalamega perumal at the time of
மண்டகப்படி, it runs like this, that, "ஞானபிரான் திருமலை நம்பிகள் வம்ச" (Adopted son of Nacharammal) விருத்திக்காக நாச்சியாரம்மாள் அவர்களுக்கு பாதுகாவலராக இருந்த மேற்படியாரின் கணவர் திரு.சடகோப பட்டர் என்பவரால் ஒத்தக்கடையில் ஸ்ரீகோதண்டசாமி கோவில் கட்டி, ராமர், சீதா, லெட்கமணன் மற்றும் ஆஞ்சநேயர் சிலைகளை பிரதிஷ்டை செய்தும், மேலும் திருமோகூர் அருள்மிகு காளமேகப்பெருமாள் ஒத்தக்கடையில் இருந்து நரசிங்கம் போகும் வழியில் மண்டகப்படி அமைத்து கஜேந்திரமோட்சம்



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திருவிழா செய்வது போன்ற சேலவினங்களுக்காக தனது சொந்த சொத்தில் (ஒத்திப் பத்திரத்தில் கண்டது) இருந்து வரும் வருமானத்தில் செய்யவேண்டியது. *This document filed for the purpose of to show the genealogy of the plaintiff. So the copy of othi deed produced as Document No.11. Further more the properties are the ancestral one from 1879 and the plaintiffs husband's great grand father were enjoying the properties by hereditary.*

VIII. The temple is a private family temple and the Hereditary trustee now the plaintiff spent all expenses out of the income from the suit properties and other properties. After the death of Mr.Thiruvengkadathan Thirumalainambigal, adopted son of Gnanapiram Thirumalainambigal and his wife of the plaintiff continued till 1944 and after wards the plaintiff continued the above expenses out of the income from the shops attached with the Sri Kothandaramasamy Temple and the income from the suit properties availed by her family expenses since the lands are the ancestral one. The copy of the othi deed as Document No.12 for the purpose of to prove the deity of family temple and so the document is produced. The suit properties are converted as Royath and the Rayathuwari patta has also been issued as per Section 11 (A) of the Act 26/48 of Tamilnadu (Estate Abolition and transfer of Rayathuwari) Act 1948."



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It is now reported that during pandemic period, the said suit was dismissed and petition to restore the suit is pending.

6.Be that as it may, now the said Lakshmi Ammal has preferred the writ petition in W.P(MD)No.5535 of 2018, being aggrieved by the transfer of patta in the name of Temple Kothanda Ramaswamy Temple.

7.This Court is of the view that after lost her battle earlier seeking exemption from HR&CE Act and permission to alienate the property and a candid restraint order of refusal of liberty to agitate before any other forum, this writ petition has no legs to stand. Further, the suit has been filed and the same has been dismissed for default and restoration application is still pending. In such circumstances, the writ petition has been filed questioning the transfer of patta in the name of Kothanda Ramaswamy Temple, which is in consonance with the orders passed by the High Court starting from the order in W.P(MD)No.9876 of 2011, dated 18.11.2011. Therefore, this Court finds that there is no substance in the writ petition in W.P(MD)No. 5535 of 2018, which has been filed by Lakshmi Ammal as if she was not given opportunity and after her demise, one Balajanaki, Padmavathy and



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Subhasini, has sought leave to be impleaded as legal representatives of the deceased Lakshmi Ammal and entered into her shoes to pursue the writ petition based on the Will alleged to have executed by Lakshmi Ammal.

8.This Court holds that Lakshmi Ammal claim over the property which is the subject matter of the writ already been negated by this Court, therefore, none other can through Lakshmi Ammal stake claim over the property.

9.With the above observation, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (K.K.R.K.,J.)
22.02.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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DR G.JAYACHANDRAN,J.
AND
K.K. RAMAKRISHNAN,J.
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To

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