



W.P(MD) No.20967 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No. 20967 of 2021

and

W.M.P.(MD)No.17566 of 2021

V.Ilamurugan,
Sole Trustee,
Sri Boni Narayana Pillai,
Anna Dhana Kattalai,
Srivilliputhur,
182, Kallatheeswaran Koil Street,
Puducherry 605 001.

...Petitioner

..Vs..

1.The Executive Officer,
Arulmigu Nachiar (Andal Thirukoil),
Srivilliputhur- 626 125,
Virudhunagar District.

2.District Revenue Officer,
Virudhunagar,
Virudhunagar District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a writ, order or direction, more particularly in the nature of a WRIT OF CERTIORARI, calling for records relating to the impugned proceedings of the 2nd respondent in NE.Mu.Aa2/13575/2019, dated 29.09.2021, to quash the same.

For Petitioners	:	Mr.T.Arul
For R1	:	Mr.P.Mahendran
For R2	:	Mr.A.K.Manikkam
		Special Government Pleader



W.P(MD) No.20967 of 2021

ORDER

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This writ petition is filed for issuance of a writ of Certiorari, to quash the impugned proceedings dated 29.09.2021 of the 2nd respondent.

2. According to the petitioner, the Anna Dhana Kattalai was established long ago by one Bo.Ni. Narayanapillai and the office of trustee is by succession. The petitioner relies on the genealogy and states that the petitioner's father namely Venkataramanujan was a trustee until his death in 1991 and the petitioner is the sole trustee after his father's demise. The petitioner submitted that the then Commissioner of HR and CE Department, vide order, dated 06.09.1940 attempted to levy contribution on the properties belonging to the Trust. Challenging the same O.S.No.6 of 1943 was filed in Sub-Court, Ramnad at Madurai, seeking declaration that the order passed by the Commissioner is illegal and to restrain the Department from enforcing its claim for contribution under Section 69 of Madras Hindu Religious Endowments Act. The said suit was dismissed by the Sub Court and on appeal in A.S.No.121 of 1946, vide judgment and decree, dated 19.07.1946, the Hon'ble Division Bench of this Court had allowed the appeal and decreed the suit as prayed for. The Hon'ble Court held that the property belongs to a Private Trust and also held that the endowment is not



W.P(MD) No.20967 of 2021

attached to the temple to come within the meaning of Section 69 of the Hindu Religious Endowment Act.

3. Subsequently, the Authorized Officer under Land Reforms Act 37 of 1972 demanded to surrender 29.40 standard acres of land comprised in survey No.1141, 1171/1 and other properties and on appeal, the Principal Sub-Court (Land Reforms Tribunal), vide judgment, dated 28.08.1975, held that the land belonging to the Trust cannot be declared as surplus. The Trust has been in enjoyment of the properties comprised in Survey Nos.1141 and 1171/1 and is performing the kattalais. After the enactment of Patta Pass Book Act, the Patta No. 106, dated 31.10.1991 was issued in favour of the Trust. In the patta the petitioner's name is shown as Trustee of the said Kattalai. The patta is in relation to 2.85 Hectares of land in S.No.1171/1 and 16.6 acres of land in S.No.1141 of Melarajakumaran Village, Rajapalayam Taluk. Even though the survey numbers and the extent of lands have been correctly recorded but the name of the Trust was wrongly mentioned as Arulmigu Vadapathirasayanam Kovil Anna Dhana Kattalai represented by Trustee Ilamurugan. Hence, the petitioner submitted an application and on such application the name of the owner is corrected as "Bo.Ni. Narayanapillai Anna Dhana Kattalai" represented by its present Trustee Ilamurugan and the corrected Patta No.3459 was issued for the land in S.No.1141.



W.P(MD) No.20967 of 2021

As far as the survey No.1171/1 is concerned, patta transfer has been already ordered by the Tahsildar, Rajapalayam, vide proceedings, dated 13.07.2007 directing to transfer patta in the name of “Bo.Ni. Narayanapillai Anna Dhana Kattalai”. Thus, for both Survey Nos.1141 and 1171/1 the patta holder is the “Bo.Ni. Narayanapillai Anna Dhana Kattalai”.

4. On 29.04.2019, the 1st respondent Executive Officer had submitted a petition before the 2nd respondent seeking cancellation of patta standing in the name of “Vada Pathrasayanam Koil Anna Dhana Kattalai” and for granting patta in the name of “Srivilliputhur Vada Pathrasayanar Koil Anna Dhana Ara Kattalai”. The petitioner came to know about the representation of the first respondent and requested to serve the copy of the petition, but the same was not served. Thereafter, the petitioner submitted a representation, dated 27.08.2021 and 07.09.2021 seeking rejection of the request of the first respondent. But the impugned order, dated 29.09.2021 was passed by the 2nd respondent cancelling the patta standing in the name of the “Arulmigu Vada Pathrasayanam Koil Anna Dhana Kattalai” and ordered to transfer of patta in the name of “Srivilliputhur Vada Pathrasayanar Koil Anna Dhana Kattalai. In the impugned order, the petitioner is shown as opposite party but the respondents had not given any opportunity to state the petitioner's case. The impugned order refers to an enquiry



W.P(MD) No.20967 of 2021

conducted on 25.08.2021. The evidence of the Executive Officer and the Village Administrative Officer were referred in the impugned order. But the petitioner was not called upon to respond to the claim of the 1st respondent and the petitioner was not put on notice to the alleged enquiry. Even the petitioner's representations dated 27.08.2021 and 07.09.2021 were not considered. Hence the impugned order is passed in violation of principles of natural justice. The impugned order refers to an order passed in W.P.(MD)No.14428 of 2017 and the judgment has nothing to do with the Trust or the properties belonging to the petitioner's Trust. The impugned order is abuse of power since an order which results in civil consequences has been passed in total violation of principles of natural justice and hence the petitioner has filed this writ petition.

5. The 1st respondent has filed counter affidavit stating that the petitioner herein in his personal name claiming sole trustee to the Sri Boni Narayanapillai Anna Dhana Kattalai, Srivilliputhur is false, beyond truth and record, illegal and serious misrepresentation and without locus standi and misleading. The petitioner had raised two issues and primarily the petitioner claiming to be the sole trustee patta obtained in his individual name for the Annathanan Kattalai has been changed and transferred in the name of "Sri Boni Narayana Pillai Anna Dhana Kattalai" represented by its Trustee Ilamurugan. As



W.P(MD) No.20967 of 2021

far as the this issue is concerned, the contention of the 1st respondent is that the Will marked as Ex.P 2 in civil suit, the Testatrix one Perundevi Ammal appointed her younger sister Rajammal and her son-in-law Venkatanarayana Pillai as executors of the said Annathana Kattalai had endowed Survey No.1141 admeasuring 39.68 acres and Survey No.1171 admeasuring 7.02 acres in Mela Rajakularaman Village. Even according to the genealogy tree, it shows that the petitioner herein hails from 5th or 6th generation. There are no documents to prove the identity and succession of the petitioner that he is a descendant. The petitioner has totally omitted the other successor Rajammal, the younger sister of Testatrix Perundevi Ammal, for the performance of the Kattalai appointed by Testatrix in Ex.P2 Will. Hence the writ petition in the personal name of the petitioner claiming to be sole trustee is proved to be false, suppressing the truth and omitting other successor, her legal heirs for five generations is not maintainable and liable to be dismissed.

6. As far as the 2nd issue of not granting opportunity and violative of principles of natural justice is concerned, the respondent submitted that the petitioner had suppressed the issue of summons dated 08.08.2019 from the 2nd respondent and further summons dated 23.09.2019, 04.11.2019 and 13.08.2021 and the petitioner has also submitted his objections and additional objections



W.P(MD) No.20967 of 2021

before the 2nd respondent herein on 27.08.2021 and 07.09.2021 respectively which the petitioner had annexed in the typed set of papers in serial Nos.10 and 11.

Hence, the contentions and the documents filed by the petitioner are self-contradictory and it will prove that the petitioner had not approached this Court with clean hands. The petitioner being an advocate at Pondicherry and staying away from Kattali properties, having sent two objections in the course of the enquiry after service of four summons, there is no justification in contending like a layman in the writ petition. That though the petitioner has relied on the judgment of the Civil Court rendered in the year 1946 that levy of contribution claimed by the Madras Hindu Religious Endowment Board for the Kattalai property was set aside, but the trustees did not obtain any Ryotwari patta before the Settlement Officer, when the Estate Abolition Act was brought out vesting all the vacant sites in the Government throughout the country. The Kattalai Trust has not applied or obtained or failed, which might have been suppressed by the petitioner, has no legal right to claim patta before the Tahsildar concerned, as the competent authority is the District Revenue Officer, who is the competent authority after abolishing the post of Assistant Settlement Officer. It is submitted that during re-settlement, the revenue records and patta for the S.No.1141 and 1171 stood in the name of Srivilliputhur Vadapathirasayanar Kovil Anna Dhana Kattalai for more than 50 years. The original Re-Settlement Register still available and maintained



W.P(MD) No.20967 of 2021

in the Office of the District Collector, Virudhunagar, in the name of said Annathana Kattalai of temple and remains un-assailed. In fact, a certified copy of extract of re-settlement issued by the Office of District Collector, Virudhunagar District on 14.03.2007 prove that re-settlement register still stands in the name of Temple Annathana Kattalai only. But the petitioner herein without any knowledge of the same or verification of ancient revenue record, without any notice or enquiry obtained a patta in collusion with subordinate revenue officials during UDR proceedings, in his individual name as sole Trustee of the Annathana Kattalai in the temple. The 1st respondent submitted a petition before the 2nd respondent on 29.04.2019, that too in the wake of enquiry conducted as per the order and direction issued in W.P.(MD)No. 14428 of 2017 to ascertain the irregularities and illegalities in the Temple and Religious Trust Properties. In the enquiry the respondents submitted that the petitioner had obtained patta in his individual name for the Trust property and the same was rectified. The civil suit and land reforms proceedings are not germane to the present issues involved for adjudication. Hence based on the petition filed by the 1st respondent, the 2nd respondent had conducted enquiry. The petitioner had submitted his detailed objections on 27.08.2021 and additional objections dated 07.09.2021. The 2nd respondent after perusing the statements from the Revenue Officials including Village Administrative Officials and after affording opportunity to the petitioner



W.P(MD) No.20967 of 2021

had passed an order. The 2nd respondent had considered the statement of the VAO, wherein he had stated that the petitioner had changed the patta in his individual name which was in the name of Annathana Kattali, without possession or enjoyment. It is also learnt that no annathanam or performance of kattalai endowed by the petitioner or anyone in the name of Trust in the temple all these years, but the petitioner is trying to plot out the property for which the petitioner had changed the patta in his name. Further the issue in the writ petition is patta dispute, the 2nd respondent had restored the patta in Annathana Kattalai, but the petitioner is seeking to change patta in his personal name so as to deal with the property as his own. The contention of the petitioner that the petitioner trust is performing kattalai in the temple are false, as even in the civil suit of the year 1946 the Hon'ble High Court had held that for long years there was performance of kattalai as per the Ex.P2 Will, only for some period performance of Kattalai was carried out in the 1st respondent temple after getting permission. Thus there is no proper discharge or performance of Kattalai as per Ex.P2 Will or Inam Register, not only prior to 1946 but thereafter till now. The averments and allegations contained in paragraphs 10 to 19 are pertaining to transfer of patta obtained by the petitioner in 1991 in the individual name of the petitioner which stood in the name of Kattalai Trust. The other averments are the enquiry conducted based on the High Court order. The petitioner is not justified in



W.P(MD) No.20967 of 2021

contenting that he had no knowledge of the enquiry. The patta is changed in collusion with subordinate revenue officials during UDR proceedings without approaching the competent authority and the same is illegal. Therefore, the petitioner is not entitled to patta in his name and it should stand in the name of the temple only.

7. The petitioner had filed rejoinder affidavit wherein the petitioner had denied the contents of the counter in entirety. The rejoinder affidavit states that the respondents is trying to usurp the trust property through illegal means as they do not have any semblance of right and the impugned order was passed behind the back without giving any notice or opportunity to the petitioner. The allegation that the petitioner was provided with notice is proved by the document annexed in Serial No.10 and 11 is denied by the petitioner. As far as Serial No.10 is concerned the document pertains to the communication from the petitioner to the respondent stating that the petitioner had not received any summons and an attempt has been made to initiate proceedings behind the petitioners back and to enable the petitioner to file a detailed counter and give the petitioner an opportunity to contest the proceedings. As far as Serial No.11 is concerned, it is a detailed representation about the illegal manner in which the respondent are trying to claim right over the private trust, as the respondent visited the trust property



W.P(MD) No.20967 of 2021

and on enquiry the petitioner came to know about the application made by the first respondent. In sequel to that as a matter of abandon caution, the petitioner sent a detail representation, pointing out the manner in which the trust was created and respondent are not having any right to interfere in the trust affairs. In so far as the averment that the Testatrix Perundevi Ammal had appointed her sister Rajammal as trustee is concerned, the petitioner had stated that in the very same Will dated 08.05.1850 it is made clear that after the death of said Rajammal the trusteeship devolved on her son-in-law, Venkatanarayana Pillai and genealogy provided in the page number one of the typed set is true. Further the petitioner submitted that the said Parthasarathy Pillai and Vedavalli both died issueless and therefore Kodanda Raman who is the husband of Kanakavalli derived trusteeship and then petitioner's grandfather Rangapillai left behind the petitioner's father as sole legal heir and the same has now devolved upon the petitioner as a sole surviving descendant. The petitioner further stated the decisions rendered in A.S.No.121 of 1946 on the file of High Court of Madras dated 19.07.949 and Land Reforms Appeal No.3/1975 on the file of Principal Sub Judge of Ramanathapuram at Madurai dated 29.08.11975 would clearly prove that the Endowment Board and Revenue Officials have nothing to do with the Private Trust property and it is also proved by the judgement dated 4.01.1993 in O.S.No.48 of 1986 on the file of District Munsif Court, Srivilliputhur. The petitioner further submitted that the



W.P(MD) No.20967 of 2021

order in W.P.(MD)No.14428 of 2017 dated 12.02.2018 relied on by the second respondent has no nexus with the trust property nor the Arulmigu Vaadapathra Sayanam Temple, Srivilliputhur and the said order is referred to usurp the trust property in Arulmigu Avudainayagi Ambal Sametha Desiganatha Swami Temple. The second respondent has passed the impugned order behind the back and strangely the impugned order refers as if the enquiry was made by the Village Administrative Officer with the local people and from that it was concluded that the property in question is not Trust property by overlooking the decisions of the competence, Civil Court. Therefore all the averments in the counter filed by the 1st respondent from paragraph 1 to 18 lack bonafides and there is no iota of truth. Hence the petitioner pray to allow the writ petition.

8. Heard Mr.T.Arul, learned Counsel appearing for the petitioner, Mr.P.Mahendran, learned Standing Counsel appearing for the 1st respondent and Mr.A.K.Manikkam, learned Special Government Pleader appearing for the 2nd respondent and perused the records.

9. The first contention of the respondents is that the Genealogy Tree stated by the petitioner is false, suppressing the truth, the petitioner claims to be the descendent as 6th generation but there is no details or documents to prove the



W.P(MD) No.20967 of 2021

identity and succession of the petitioner. Further the other successor Rajammal, younger sister of Perundevi Ammal was omitted and hence the genealogy is false.

But the contention of the petitioner in his rejoinder affidavit is that the said Will itself states that after Rajammal, the management of charity would be handed over to her son-in-law namely Venkata Narayana Pillai and in such circumstances the descendent of Rajammal cannot claim any rights. On perusal of the Will it is seen under “Clause 1” it is stated that the said Rajammal and Venkata Narayana Pillai both should carry on the charity and under Clause 10 it is stated that after the demise of Rajammal the entire property and charity should go to Venkata Narayana Pillai. Therefore, this Court is of the considered opinion that the contention of the respondent that the Rajammal descendent are not shown and hence the genealogy cannot be accepted fails. Further in the judgment rendered in A.S.No.121 of 1946 the genealogy is traced, wherein it is recorded that the property in question is an endowment for charity, the original founder of this was one Bo.Ni.Narayana Pillai who founded the charity before 1801 and after his death the charity was managed by his son Ayya Pillai, thereafter his grandson Annaswami Pillai. After the death of Annaswami Pillai his wife Peundevi Ammal had managed the charity. Thereafter the said Rajammal sister of Perundevi Ammal and Venkatanarayan Pillai son-in-law of Perundevi Ammal had managed the Trust. In the rejoinder affidavit the petitioner had submitted that after the said



W.P(MD) No.20967 of 2021

VENKATANARYAYA PILLAI the next generation had managed the Trust. Subsequent to the death of Parthasarathy Pillai and Vedavalli who both died issueless, Kodanda Raman who is the husband of Kanakavalli derived trusteeship and then petitioner's grandfather Rangapillai has served as Trustee. Further the said Ranga Pillai was added as party in A.S.No.121 of 1946. As per the genealogy submitted by the petitioner the said Ranga Pillai is his grandfather who died in the year 1950. Then the petitioner's father namely Venkataramanujam had managed who died in the year 1991. Thereafter the petitioner is the present Trust holder. Therefore, this Court is of the considered opinion that the contention of the respondents about the genealogy is erroneous.

10. Both the petitioner and the respondents admitted that to perform the Anadhana Kattalai the properties were endowed. But according to the petitioner the said Anadhana Kattalai is named as "Bo.Ni. Narayanapillai Anna Dhana Kattalai" belonging to the petitioner family to carryout various charity. However, the claim of the respondent is that it is "Ara Kattalai" belonging to the temple namely "Srivilliputhur Vadapathirasayanar Kovil Anadhana Kattalai". In order to ascertain whether it is belonging to the petitioner family or to the temple it is necessary to refer the Will dated 08.05.1850 executed by Perundevi Ammal, wherein the list of charities to be carried out is narrated and the same is stated



W.P(MD) No.20967 of 2021

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- A fund was set apart for providing annadhanam to 24 brahmins daily at the choultry constructed by Narayana Pillai in **Kasi** amounting to 2400 Varahans or Rs.8,400/-
- Likewise, from the fund to the tune of 1500 varahans or Rs.5250/- annadhanam shall be provided to 12 brahmins for one “pattinampadi rice” at the choultry and also to provide food for outsiders (paradesi) daily at the choultry constructed in **Chidambaram**
- In the same **Chidambaram** for 1000 varahans or Rs. 3500/- cooked food to be offered daily to the deity of Thillai Govindarajan Swamy and then the same shall be distributed to 24 brahmins
- In **Rameswaram** in their own choultry to providing food for 16 brahmins from 1000 varahans or Rs.3500/-
- In **Srirangam** the cooked food shall be offered to Ranganayaki Swamy and then distribute to 24 brahmins, for which 1000 varahans or Rs.3500/- was as apart as fund.
- In **Thiruvallikeni (Triplicane)** to offer food to the deity Parthasarathy then daily food for 6 brahmins
- In Divyadesam like **Vanamamalai, Alvarthirunagari** and other divyadesam per divyadesam annadhanam for 25 Thirunamams i.e. for feeding 24 Vaishnavite Brahmins.
- In **Srivilliputhur** for the purpose of conducting



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W.P(MD) No.20967 of 2021

Thattheeyaaradhanam for 24 Tirunamams i.e. for feeding 24 Vaishnavite Brahmins in Andal Sannadhi for 500 varahans or Rs.1750/-

- In **Tirupathi** daily dharma activities shall be carried out from the income of the endowed properties.
- During festival in **Thiruvallikeni (Triplicane), Thiruvottriyur, Thiruvenkadu**, the choultry constructed in these places shall be illuminated by “deepam” through the services of Brahmins and shall put up “panthal” (shelter).

11. From the above narrated charities, it is evident that various charities to be carried out in various places like Kasi, Chidambaram, Rameswaram, Srirangam, Thiruvallikeni, Srivilliputhur, Tirupathi, Vanamalai, Alvarthirunagari and other Divyadesams etc. It is seen that the charities stated in the Will is to grant anadhanam to brahmins, for which the Learned Counsel submitted that annadhanam to brahmins was considered as offering food to the Pitrukal i.e. ancestors and therefore the same cannot be considered as public charity since it is granted to specific private persons. Further it is seen that anadhanam is granted at their own choultry constructed by the ancestors at various places. However, in Srivilliputhur the endowment is not having any choultry, hence the same is granted in the temple. Infact the temple had permitted to grant



the said anadhanam inside the temple for some period, but subsequently the anadhanam was granted outside the temple. It is pertinent to state herein that the counter also states that the Anadhanam was given in the temple for some period but thereafter it is stopped and the same is extracted hereunder:

“The contention of the petitioner that the petitioner trust is performing kattalai in the temple are false, as even in the civil suit of the year 1946 the Hon’ble High Court had held that for long years there was performance of kattalai as per the Ex.P2 Will, only for some period performance of Kattalai was carried out in the 1st respondent temple after getting permission. Thus there is no proper discharge or performance of Kattalai as per Ex.P2 Will or Inam Register, not only prior to 1946 but thereafter till now.”

Both the petitioner and the respondents admitted it was carried inside temple for some time, thereafter it was stopped. But the petitioner states it is stopped inside the temple but it is being carried on outside the temple. But the respondent is interpreting as if the anadhanam itself is stopped. And the contention of the respondent is incorrect since the annadhanam was carried on in Vatapatrasayi temple from 1801 until 1865. Thereafter there is no evidence, however it is presumed that until 1935 the annadhanam was carried on in the Vatapatrasayi temple. And thereafter there was objection from the temple, then the annadhanam was carried at Nachiar Devasthanam from 1935 onwards. These facts are evident



W.P(MD) No.20967 of 2021

from the judgment in A.S.No.121 of 1946. Therefore, the contention of the respondents that the petitioner stopped the charities is incorrect. Further from the Will it is evident that annadhanam is primary and it is not specifically stated that it should be inside the temple. Where ever their own choultry is 'available', the annadhanam was conducted in the choultry. But where ever their own choultry is 'not available', then the annadhanam was conducted in the temple. In other words, the basis of the endowment, is to conduct annadhanam either in choultry (if their own choultry is available) or temple (if their own choultry is not available) and it is not necessary that the said charities ought to be carried out in the temple. Further nowhere in the Will it is stated that the properties are endowed to the temple.

12. For arguments sake, if the contention of the respondent ought to be accepted, then Vatapatrasayi temple cannot claim exclusive right. Since in Chidambaram the cooked food ought to be offered to Thillai Govindarajan Swamy and in Srirangam the cooked food ought to be offered to Ranganayaki Swamy. Interestingly in Vatapatrasayi temple no such offering is stated to deity Andal. Hence it is evident that the trust should carry on charity of annadhanam and the same is not attached to the temple. Therefore, none of the temples stated above has any right over the properties endowed for the charity of annadhanams and



W.P(MD) No.20967 of 2021

specifically Srivilliputhur Vatapatrasayi temple is not having any right over the endowment.

13. The above finding is supported by the finding in A.S.No.121 of 1946 also and the relevant portion is extracted hereunder:

“The simple question therefore that is in issue between the parties is whether this endowment is one Which is attached to the temple of Nachiar as claimed by the defendant in the written statement. From Exhibit P-1, the Will of Perundevi Ammal, it would be seen that wherever the food had to be offered to the deity and distribution to the Brahmins thereafter, it was expressly so provided in the document. For example, both in the case of the offering to Thillai Govindarajaswami at Chidambaram and Sri Ranganayakaswami at Srirangam the Will expressly states that the food should first be offered to the deity and should thereafter be distributed to the number of Brahmins specified therein. In other cases no such condition was imposed. Wherever the founder had a choultry of his own he provided that the feeding of the Brahmins, in cases where it was not required to be offered to the deity, should be carried out in his own choultry. At Srivilliputtur, it is in evidence the founder did not construct any choultry and therefore naturally he could not direct that the feeding should be conducted in a choultry of his own. It is not a condition precedent in the case of the feeding at Srivilliputtur that there should be an offering to the deity in the first instance and then alone the food should be distributed to the number of Brahmins. All that the clause says is that provision is made for conducting the feeding of 24 Srivaishnava Brahmins in the Andal Sannathi at Srivilliputtur. The fact that the feeding of these Brahmins



exactly at the Andal Sannathi was not considered to be material is evident from the fact that for nearly less than a century the feeding took place in Vatapatrasayi temple apparently because there was a kitchen available there. It was not till 1935 that the hugdars thought of shifting the cooking and feeding to Nachiar temple and it was with the permission of the trustee and on hugdars agreeing to pay rent that they were allowed to feed the Brahmins there. If, as contended on behalf of the defendant, this was really one attached to Nachiar temple at Srivilliputtur it is difficult to see why the trustee should demand the hugdars to pay rent and why permission of the trustee was required to carry on feeding in the kitchen in the Nachiar temple. Further, that it was in Vatapatrasayi temple that the feeding was going on all along is evident from the communication of the Executive Officer, Exhibit P-13, which was issued to the hugdars so late as March 1941 even after the order of the Board which is challenged, Exhibit P-4 was passed. We may therefore take it as a proved fact that for a very long time the feeding was carried on in the temple of Vatapatrasayi and it was only in 1935 that with the permission of the trustee of Nachiar Devasthanam and on condition of paying rent that they were permitted to cook the food and feed the Brahmins in Nachiar temple. No doubt, on behalf of the defendant one of the witnesses, D.W.1 who is the Sthanika Pattar in Srivilliputtur temple wanted to prove that this offering of the food to the Brahmins is really part and parcel of the midday service in the temple and that no other naivedyam is offered in the temple. This apparently is an attempt to establish the case of the defendant as put forward in paragraph 4 of the written statement viz. that the food is first offered to the deity and the distributed to the Brahmins so as to make this charity one attached to or concerned with the temple. But his cross examination discloses that the statement of his in the chief examination



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does not stand scrutiny. He was forced to admit that a number of temple servants have to be fed everyday out of the naivedyam that is offered the mid-day services and this comes out only from the naivedyam that is offered to the deity. If really according to the terms of the endowment this offering is confined to 12 Brahmins it is impossible for the authorities of the temple to distribute the food to servants in breach and in violation of the trust. He is therefore forced to admit that there is other naivedyam or offering to the deity of food out of which the servants are being fed. The other witnesses examined on their side do not support D.W. 1. on his point. D.W. 2 twisted the fact by saying that the cooked food is offered to the deity on the occasion of mid-day service. It is in evidence and it is even admitted by the witnesses examined on behalf of the defendant that the Vaishnavite Brahmins would not eat the food unless it is offered to the God in the first instance and therefore it is that the food, before it is distributed to the 12 Brahmins, is offered to one God or the other either in the Vatapatrasayi temple or in Nachiar temple or sometimes even to Alwars. The offering of food to the deity is not a prerequisite for distributing it to the Brahmins and therefore it cannot be treated as essential condition. If this connection between the offering and the temple goes it is difficult to see in what sense this is "attached to" or "connected" with the temple. It is in evidence and it is even admitted by the defendants witnesses that the two institutions are independent and are separate having separate paricharakas, archakas, musicians and so on and the attempt to make it one institution so as to give room for the argument that even if the offering was made Vatapatrasayi temple it would be a case in which under section 69 of the defendant would be entitled to levy of contribution is futile. D.W. 2 in fact is forced to admit that the feeding by the huadars has no connection with the preparation of naivedyam in the temple for the daily puja. In the face of this evidence it is



impossible to imagine or to infer what connection or what attachment this feeding has to the temple.

*We are not now called upon in this case to consider the meaning of a "kattalai" such as the Annadhana kattalai and other which were the subject-matter of some decisions of this court and also Privy council. The word "kattalai" does not occur in Ex P-1 and the description of this in the Inam Register of 1865 is of no consequence when we have got the earlier document Ex P.1 It is therefore unnecessary to refer to the various decisions which have been referred to by the learned subordinate Judge in his judgement. **This endowment is not "attached" to the temple within the meaning of Section 69 of the Hindu Religious Endowments Act. We are of opinion that the Board is not entitled to levy contribution.***

The appeal must, therefore, be allowed and the plaintiff's suit decreed as prayed for with costs throughout."

In the said judgment it has been clearly held that the endowment is not attached to the temple under section 69 of Hindu Religious Endowment Act and hence the authority had no power to levy contribution on the properties.

14. But the respondent submitted that the said judgment is not applicable to the present case since the issue is different in both cases. On perusing the same it is seen in Appeal Suit case the HR&CE Department had directed the endowment to pay contribution to HR&CE department since the charity ought to be considered as endowment coming under the purview of section 69 and the



W.P(MD) No.20967 of 2021

Hon'ble Court held that the endowment is not attached to temple and hence the contribution cannot be levied. And in the present case the HR&CE Department claims that the endowment is attached to temple and hence the patta ought to be issued in the name of the temple. The only difference is in Appeal Suit the HR&CE Department claimed contribution and in the present case the HR&CE Department is claiming patta in the name of the temple. Another difference is that in earlier Appeal Suit the Nachiar Devasthanam was fighting for HR&CE Department and in the present case the Vatapatrasayi Temple is fighting for HR&CE Department. But in both the cases the HR&CE Department is under the impression that the endowment is attached to the temple and is claiming contribution or patta. When in the Appeal Suit it is held that the endowment is not attached to the temple then the same finding is applicable to the present case also. Therefore, this Court is of the considered opinion that there is no difference since the core issue is one and the same and the core question is whether "Sri Bo.Ni. Narayana Pillai Annadhana Kattalai" endowment is attached to the temple of Vatapatrasayi Temple or not. Hence the contention of the respondents that the judgment of the Appeal Suit is not having any say in the present case is incorrect and erroneous.

15. The next contention of the respondents that after the judgment in



W.P(MD) No.20967 of 2021

A.S.No.121 of 1946 the Trustees did not obtain any Ryotwari patta before the Settlement Officer. When the Estate Abolition Act was brought out vesting all the vacant sites in the Government throughout the country, then the petitioner is bound to obtain patta from Settlement Officer. Since the petitioner did not obtain the Settlement Patta, then the petitioner is not entitled to patta. Such a plea of the respondents cannot be accepted. If the Patta is not obtained by the petitioner, then the rights of the petitioner will not vanish or cannot be curtailed. When it had come to the knowledge of the respondents that there is a judgment in favour of the petitioner, instead of passing the impugned order, the respondents ought to have directed the petitioner to obtain Patta from the District Revenue Officer, who is the competent authority after abolishing the post of Assistant Settlement Officer. Instead of do so, the 1st respondent obtaining Patta in the name of the Vatapatrasayi Temple is like grabbing the land belonging to the Bo.Ni.Narayana Pillai Annadhanam Kattalai. And the 2nd respondent by issuing patta had colluded with the 1st respondent to grab the land.

16. The next contention of the respondent is that based on the direction of the Hon'ble Court in W.P.(MD)No. 14428 of 2017, the present proceedings were initiated. But the contention of the petitioner is that the order rendered in the said writ petition has nothing to do with the issue in the present case. On perusing the



W.P(MD) No.20967 of 2021

same it is seen that the order was passed issuing general directions to the HR&CE Department to remove the encroachments and recover the temple property, to recover from illegal alienation etc. In the present case the 1st respondent has no right over the property as per the judgment in A.S.No.121 of 1946 and hence the said judgment is not applicable to the present case.

17. The next contention of the Learned Standing Counsel appearing for the 1st respondent is that in the revenue records, the entry stands in the name of temple as “Srivilliputhur Vatapatrasayanar Kovil Annadhana Kattalai”. Even in the SLR Register, Settlement proceedings, UDR proceedings the lands are registered as “Srivilliputhur Vatapatrasayanar Kovil Annadhana Kattalai” and the said entry is in existence for the past fifty years. Hence, the contention of the 1st respondent is that the land belongs to the temple and the temple being the sole custody of the endowments is entitled to have patta in the name of the temple. Further contention of the respondent is that after the judgment in A.S.No.121 of 1946, the petitioner trust did not obtain any Settlement Patta from the Settlement Officer and hence now the trust cannot seek any patta in the name of the Trust. This Court is of the considered opinion that such a contention cannot be entertained. Since failure to obtain Settlement Patta after the Judgment in the aforesaid A.S., will not extinguish the rights of the petitioner Trust.



W.P(MD) No.20967 of 2021

18. When this Court held that the rights will not extinguish, the Learned Counsel tried to impress this Court by stating that the said entry is in existence for past 50 years in the revenue records, hence at this period of time the same cannot be changed. This Court is of the considered opinion that the such a contention cannot be accepted. The endowment was created long back prior to 1801, which is the finding rendered in A.S.No.121 of 1946 wherein it is held that “the original founder of this was one Bo.Ni.Narayana Pillai and he must have founded this sometime before 1801.” Hence the endowment was created 224 years back. The Will executed by Perundevi Ammal was on 08.05.1850, which is more than 175 years back. The Judgement and Decree in A.S.No.121 of 1946 was rendered on 19.07.1949, which is more than 75 years back. But the entry is only 50 years back. It is relevant to mention here it is unknown how the revenue officials had made changes in revenue records when the records show the property was endowed to private trust and there is clearly finding in the A.S. that the property is not endowed to temple. Therefore, this Court is of the considered opinion that the revenue entry in the name of the temple is against the endowment created by Bo.Ni.Narayana Pillai, against the Will executed by Perundevi Ammal and against the judgment of the Hon’ble High Court in A.S.No.121 of 1946. Consequently, the entry ought to be changed in the name of the Bo.Ni.Narayana Pillai Annadhanam Kattalai endowment only.



W.P(MD) No.20967 of 2021

19. Having held that the entry is against the judgment rendered in A.S.No.121 of 1946, also this Court is of the considered opinion that the 1st respondent had clearly committed contempt of court by disobeying the finding rendered in A.S. judgment. The 1st respondent had filed counter against the judgment and has the audacity to state that the said A.S. judgment is not applicable to the present case. When there is a clear finding that the Bo.Ni.Narayana Pillai endowment is not "attached" to the temple, the 1st respondent had stated that the endowment is attached to the temple, hence the same would clearly attract the provisions of Contempt of Courts Act. Besides being contempt, the 1st respondent has initiated another litigation for the decided issue, thereby wasted the time of the court. Infact this Court is inclined to punish the 1st respondent. However, in order to give opportunity to the respondents this Court is refraining from initiating contempt proceedings and directing the respondents to make correct entries in the revenue records that the properties belong to “Bo.Ni Narayanapillai Anna Dhana Kattalai” represented by its present Trustee Ilamurugan.

20. The respondents had expressed apprehension that the petitioner being a sole trustee would plot the lands and sell the same. This Court is of the considered opinion that the Will clearly states that the lands can be used for the



W.P(MD) No.20967 of 2021

purpose of carry on the annadhanam activities but the lands cannot be sold. As per Will the petitioner has no right to sell or encumber the property and he has the duty to carry on the annadhanam activities. Therefore, the apprehension of the respondent is unnecessary.

21. The Learned Standing Counsel appearing for the 1st respondent relied on Section 63 of the Act and also relied on the definition of “religious charity” and “religious endowments”. Under definition of “Religious Endowment” it is stated that any endowment for the performance of any service or charity of a public nature connected with any religious charity would amount to religious endowment. As far as the definition of religious charity it is stated that a public charity associated with Hindu festival or observance of a religious character whether it is connection with the math or temple or not, then the same would amount to religious charity. Under section 63 the Joint Commissioner or the Deputy Commissioner has power to decide the issue whether the property is religious endowment. However, the Learned Counsel appearing the petitioner that under the definition of religious charity, it is held feeding of Brahmins during festival seasons cannot be considered as religious charity as held in Commissioner Vs S. Ramasamy Iyer reported in 2001 (2) LW 654. After hearing the rival submissions this Court is of the considered opinion that the issue in the present



W.P(MD) No.20967 of 2021

case is the whether the Bo.Ni Narayanapillai Anna Dhana Kattalai is connected with temple and whether patta ought to be issued in the name of temple and or the Trust. The said issue is considered and answered in favour of the petitioner. As far as section 63 and other definitions are concerned the same was not the issue before this Court and hence the same is left open.

22. For the discussions and reasons stated supra the following orders are passed:

- a. The impugned order granting patta in the name of 1st respondent temple is hereby set aside.
- b. The 2nd respondent / District Revenue Officer, the competent authority shall issue patta to the petitioner in the name of “Bo.Ni.Narayana Pillai Annadhanam Kattalai” represented by present trustee V. Ilamurugan within a period of four weeks from the date of receipt of a copy of this order.
- c. Consequential changes shall be carried on in the original Re-Settlement Register maintained in the Office of the District Collector, Virudhunagar,



W.P(MD) No.20967 of 2021

23. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2023

Index: Yes/No
Internet: Yes/No

Tmg



W.P(MD) No.20967 of 2021

To

District Revenue Officer,
Virudhunagar,
Virudhunagar District.



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W.P(MD) No.20967 of 2021

S. SRIMATHY, J.,

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W.P(MD) No. 20967 of 2021

26.09.2023