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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**WP(MD)No.24793 of 2023
and
WMP(MD)No.20983 of 2023**

A.Muthuraman

... Petitioner

Vs.

1.The District Collector,
Madurai, Madurai District.

2.The Revenue Divisional Officer,
Madurai.

3.The Tahsildar,
Madurai North Taluk Office,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.1205/2023/A3 dated 04.08.2023 passed by the third respondent and quash the same as illegal, consequently directing the respondents to issue patta for the Arulmighu Thottichiamman Temple which is situated in Survey No.207/16 with an extent about 2.25 ares (5 ½ cents) in Oormetchikulam Village, Paravai II bit, Madurai North Taluk, Madurai District.



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For Petitioner : Mr.S.Ramsundarvijayaraj

For Respondents : Mr.V.Nirmal Kumar,
Government Advocate

ORDER

Heard both sides.

2.The petitioner requested issuance of patta in favour of the petition mentioned temple in respect of the petition mentioned land. The petitioner's request was negatived on the ground that the land has been classified as Sarkar Poramboke. The question that calls for consideration is whether this ground of rejection can be sustained. It is beyond dispute that the temple is located in the petition mentioned land and the relevant column in the revenue record mentions the existence of the temple.

3.The entire case of the respondents is based on the aforesaid classification of the land as "Sarkar Poramboke". In *S.Sridhar v. State of Tamil Nadu* (2020) 8 MLJ 438 had held as follows :

“13.7 To answer this issue, it is necessary to set out briefly the Columns found in the 'A' Register Extract. There cannot be any dispute that the entries in 'A' Register do not confer title to anybody as it is not a title document and it is only a record of those particulars which are relevant to



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determine the land revenue due from those lands. Each one of the 12 columns of the 'A' Register signifies the extent and quantum of land revenue payable by the owners of those lands to the State.

.....

13.12. Thus, having regard to the admitted fact that the entry made in Column No.12 of the 'A' Register indicates the nature of the disputed lands as 'temple' and the same are in continuous possession and enjoyment of the respective temples and also taking note of the specific stand of the petitioners that they sought only possessory and enjoyment rights over the disputed lands in favour of the temples and they never disputed the title of the same vesting with the Government, this Court holds that the temples are entitled to the rights of possession and enjoyment in respect of the disputed lands. Needless to say that no trustee/ private individual shall claim right over the disputed lands possessed and enjoyed by the temples in any manner whatsoever.

.....

14.24 Such being the legal position, it can safely be discerned that though the right and title over the disputed land vest with the Government, the Government shall not utilise / alienate / assign / transfer the same and construct permanent structures therein for the purposes other than the beneficial interests of the temple, that too, without the consent of HR&CE Dept, as required under Rule 13 of the Revenue Standing Order No.26. Also, taking note of the fact that no consideration for the land has been collected from the Fisheries Department and having regard to the language employed in the impugned G.O, it is evident that there is no transfer of title. Hence, the impugned G.O. granting sanction for transfer of the entire extent of land in S.No.82/1 to the Fisheries Department, without following Rule 13 of the Revenue Standing Order No. 26 as well as the relevant provisions of the HR&CE Act, is per se illegal and arbitrary.”



The Hon'ble First Bench of this Court confirmed the order in *The District*

Collector v. S.Guhan (2022-3-L.W 948). It was held as follows :

“26.The challenge to G.O. dated 27.09.1963 was made showing rights of the temple in land in question. The learned Single Judge found possession of land with the temple even prior to the year 1951. A reference of 'A' Register was given to show column 12 wherein temple has been indicated. Based on long possession and the judgment of the Apex Court, it was held that the land in question belongs to the temple, thus could not have been assigned by the impugned G.O.

27. The main ground raised by the petitioners/nonappellants was in reference to the Revenue Records showing the land in question to be of the Temple. According to the learned Advocate General and even if we go by the record Columns 3 and 4 of 'A' Register of 1951, shows it to be Government Poramboke land, but Column 12 indicates it to be of a Temple. It is only in 1963, the change in the revenue record was made maintaining Columns 3 and 4 showing it to be a Government poramboke, while in Column 12 addition of the Fisheries Department was made, but maintaining it for a Temple.

28. The question for our consideration is as to whether a land belonging to the Temple should be denoted and mentioned as Temple poramboke land in Columns 3 and 4 of the records or in Column 12.



29. According to the petitioners/non-appellants, the land of the Temple is shown to be a Government Poramboke land in Columns 3 and 4, while in Column 12, the reference of the Temple is given to show it to be a Temple poramboke land. The aforesaid has been seriously contested by the learned Advocate General by pursuing the appeal for challenging the impugned order of the learned Single Judge. He submitted that if the land is of the Temple, it is to be mentioned as a Temple poramboke in Columns 3 and 4 and if at all it is shown to be a Government Poramboke in Columns 3 and 4, in Column 12 it should be shown to be Temple poramboke, which is missing in the record of 1951. In Column 12 the land is shown to be of Temple and not of Temple poramboke.

30. The argument of the learned Advocate General cannot be accepted because the land under Temple remains to be a Government poramboke and the Commissioner of HR&CE Department controls the affairs. In Column 12 of the 'A' Register, reference of temple is given. The Record of 1951, produced before us, Column 12 shows the land in question to be of a Temple. The alteration in the records was made in the year 1963 to add Fisheries Department in column. Further, the issue regarding exclusive right on possession and enjoyment of temple poramboke land by the temple is no longer res integra. In this regard, reliance may be placed on the decision of the Apex Court in the case of Subramanya Swamy Temple, Ratnagiri v. V.Kanna Gounder (Dead) by LRs, (2009) 3 SCC



306. Paragraphs (3), (5) and (10) are relevant and the same are quoted hereunder:

"3.The classification of 32 acres of land of Survey No. 370/1 was made as "Sri Subramanya Swamy Temple, poramboke". The said classification of temple "poramboke" in the revenue record-of-rights indicates the reason for which it has been set apart as also its occupation and use. Temple poramboke consists of unassessed wasteland by the Temple. It may also include common passage, water ponds, thrashing floor, etc. etc.

....

5. By reason of such classification, the appellant Temple obtained full right to possession and exercise right to transfer of the lands assigned in its favour. The right of the appellant to hold and possess the said land was noticed by a Bench of the Madras High Court in M.S. Krishnan v. Govt. of T.N. [(2001) 2 LW 723 (Mad)] in the following terms : (LW p. 726, para 10)

"10. ... Such a land does not cease to be a poramboke property over which the Government will have control subject only to the rights of the Temple."

10. The High Court, in its impugned judgment proceeded on the basis that there had been no assignment in favour of the Temple by the State. It committed an error in relation thereto. The paramount title of the State is not disputed. It remains vested in the State. The State, however, having regard to the possession of the appellant over 32 acres of land classified the same as "Temple poramboke". It, by reason of the said classification, not only permitted the appellant to continue to possess the land but also granted a superior right, namely, to make constructions as also to grant lease thereof subject of course to the conditions laid down as noticed hereinbefore. The principle of possessory title was, thus, completely



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overlooked by the High Court."

31. In view of the aforesaid and as we find the land in question remained under the possession of the temple, it was rightly taken to be a Temple poramboke land and therefore the G.O. could not have been issued to assign the land to the Fisheries Department, rather the Temple poramboke land can be utilized in the manner given under the Act, 1959 and Rule 13 of the Revenue Standing Order No.26. In the case on hand, the Commissioner, HR & CE Department, who is having the general power of superintendence and control over all the temples has neither been consulted nor been involved in the decision making process. It is not in dispute that by virtue of Section 34 of the Act, 1959, the Commissioner has been empowered to grant long lease of the temple property, but in consultation with the Government."

4. In *N.S.Kuppuswamy Odayar v. The Panchayat Narthangudi* (1971) 1 *MLJ* 190, it was held that the mere fact that in the re-settlement register, a particular piece of land has been described as 'Poramboke' will not by itself establish title of the government to the land in question. S.Sundararaja Iyengar in his classic work "Land Tenures in the Madras Presidency" writes as follows :

"The whole area of a Tamil village is divided into (1) warapat, (2) tirwapat, (3) tarisu, and (4) poramboke. Warapat are the cultivable lands which give waram or share of the produce, generally nanja or wet lands; tirwapat, lands which pay a tirwa or money tax, generally punjas or cultivated



wastes, and gardens; tarisu, waste divided into two classes, sheykal carambo i.e., cultivable waste and anadi carambo i.e. immemorial waste; and poramboke, lands incapable of cultivation consisting of rocks, public roads, beds of rivers, tanks and watercourses, burning grounds, the paracheri or suburbs of the village occupied by the huts of pariahs and other outcastes, the lands on which the different temples stand and the site of the village itself called nuttum.”

A learned Judge of this Court in the judgment reported in (2006) 3 MLJ 216 (Muthammal v. State of Tamil Nadu) had noted that patta was issued only for assessed lands and that is why, even Natham was called as 'poramboke'. “Puram” means “outside”. “Poke” means “revenue record”. Poramboke lands means the lands which were not assessed in the revenue records and which were outside the revenue accounts. It only means that property which fell outside the tax assessment net was referred to as “poramboke”.

5.The foregoing discussion is sufficient to conclude that the classification of the land as poramboke will not make any difference or take away the rights of the temple. There is yet another way of approaching the issue. In England, all land was deemed to vest in the Crown. The position in India was however the opposite. S.Sundararaja Iyengar in his work says thus :



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“both under Hindu and Mahomedan laws land was not vested in the king and that the proprietor had an absolute ownership and dominion therein, subject to the payment of a share of the produce which was, however, liable to variation at the will of the sovereign”.

Possession has always been held to be prima facie evidence of ownership and called as nine points in law [*Shanti Kumar Panda v. Shakuntala Devi (2004) 1 SCC 438*]. The revenue records produced by the respondents themselves show that the land has been in possession of the temple for several decades. The State itself has recognized the possession of the temple. A simple conclusion from the aforementioned precedents (Subramania Swamy Temple, Rathnagiri v. Kanna Gounder (dead) by LRs and S.Sridhar v. State of Tamil Nadu) is that mentioning of the temple in column 12 actually means that the land should be called as temple poramboke. Once a land is classified as temple poramboke, the consequence is that it has to be used only for the benefit of the temple. Yet another approach is that when the temple has been in settled possession of the lands in question beyond the limitation period, even assuming that the government had right originally, it would stand extinguished.



6.The revenue records in this case clearly admit the existence of the temple. It is not the case of the respondents that the temple was built recently. It is obvious that it has been there for several decades. Applying the principles enunciated above, I hold that patta has to be issued in favour of the temple. This has to be done as expeditiously as possible. It goes without saying that the patta shall be only in the name of the temple and that no individual can claim any right.

7.This writ petition is allowed accordingly. Connected miscellaneous petition is closed. No costs.

21.12.2023

Index : Yes / No
Internet : Yes / No
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To

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G.R.SWAMINATHAN, J.

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