



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 20.06.2024****CORAM :**

**THE HON'BLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**WP(MD)No.6966 of 2023
and
WMP(MD)No.6573 of 2023**

M/s.Arulmighu Thiru Neelakanda
Nayanar Mayandi Swamigal Trust,
T.S No.1914 and 1916,
Mayandi Nagar,
Adappan Vayal 2nd Street,
Pudukottai Town and District,
Rep.by its President R.VR.Sekaran

... Petitioner

vs.

- 1.The District Collector / Chairman,
Local Planning Authority,
Pudukottai District, Pudukottai.
- 2.The District Revenue Officer,
Pudukottai District, Pudukottai.
- 3.The Revenue Divisional Officer,
Pudukottai Revenue Divisional Office,
Pudukottai District.



4.The Tahsildar, Pudukottai Taluk,
Pudukottai District.

5.The Commissioner,
Pudukottai Municipality,
Pudukottai District.

6.The Member Secretary /
Assistant Director,
Town and Country Planning
Department,
Office of the Town and Country
Planning Department,
Pudukottai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings issued by the fifth respondent dated 15.09.2021 vide AE Ka.No.08/2021/TPI and quash the same as illegal and consequently direct the respondents 1 to 6 to grant plan approval in respect of the Annadhanam Mandapam to the Arulmighu Thiru Neelakanda Nayanar Mayandi Swamigal Trust situated at T.S Nos.1914 and 1916 situated Mayandi Nagar, Adappan Vayal 2nd Street, Pudukottai Town and District.

For Petitioner : Mr.Sricharan Rangarajan, Senior Counsel
for Mr.H.Mohamed Ashick



For Respondents : Mr.R.Baskaran,
Additional Advocate General assisted by
Mr.S.Kameshwaran, Government Advocate
for R5

Mr.N.Satheeshkumar,
Additional Government Pleader
for R1 to R4 and R6

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Additional Advocate General for R5 and the learned Additional Government Pleader for R1 to R4 & R6.

2.The petitioner is a registered religious Trust. Its object is to undertake the maintenance and management work of Shri Mayandi Swamigal Madalayam and to offer Annadhanam during the Tamil month of Thai. The petitioner submitted an application on 13.03.2019 seeking permission for construction of Annadhanam Mandapam within the temple premises in Survey No.1916 to the Commissioner, Pudukottai Municipality. On 27.04.2019, the fifth respondent forwarded the application to the District Collector, Pudukottai for grant of approval. The District Collector in turn



forwarded the same to the concerned revenue authorities to inspect the property and to take necessary action. The Tahsildar, Pudukottai vide proceedings dated 14.10.2019 recommended grant of no objection for the construction. The Revenue Divisional Officer, Pudukottai and the District Revenue Officer sent report to the District Collector on 22.10.2019 on the same lines. The Inspector of Police, Thirukokaranam Police Station as well as the Superintendent of Police, Pudukottai have also endorsed that there is no scope for arising of law and order problem.

3.The petitioner proceeded with the construction on the basis of the aforesaid proceedings. The Municipality also assessed the property to tax and issued receipts. At this stage, one Senthilkumar filed WP(MD)No.14428 of 2021 for directing the authorities to take action for removal of the building on the ground that it is an unauthorized construction. The writ petition was disposed of on 13.08.2021 with a direction to the Commissioner, Pudukottai Municipality to take action as per law. Pursuant to the said direction, notice was issued on 15.09.2021 demanding explanation as to why the mandapam should not be demolished. The petitioner offered their explanation. Thereafter, the petitioner submitted a fresh representation for issuance of



plan approval to regularise the construction. Anticipating that coercive action will be taken, the show cause notice dated 15.09.2021 is questioned in this writ petition.

4.The learned Senior Counsel appearing for the petitioner at the very outset submitted that the petitioner will execute a registered document settling the entire building put up by them in favor of the temple. The petitioner will only carry on charitable activities such as Annadhanam in the temple. They will not have any claim or right on the Mandapam. The Mandapam shall be managed only by the temple authorities. The possession will be only with them. The petitioner will offer Annadhanam only with the permission of the temple authorities. This undertaking given by the petitioner through the learned Senior Counsel is placed on record.

5.The learned Senior Counsel reiterated the contentions set out in the affidavit filed in support of this writ petition. Relying on a catena of case-laws, he called upon this Court to set aside the impugned order and grant relief as prayed for.



WEB COPY

6.The respondents strongly contested the prayer. According to them, the land on which the construction has been put up stands classified as "Arasu Poramboke". Such a land vests only with the government. The petitioner is a private entity and they cannot have any right over the same. Even the temple cannot have any claim. The respondents proposed to resume the land. Hence, the respondents pressed for dismissal of this writ petition.

7.We carefully considered the rival contentions. The learned Additional Advocate General made available the relevant extracts from the revenue records. In the Settlement Register, the name of the pattadhar in respect of S.F Nos.1914 and 1916 has been mentioned as "Arulmighu Thiruneelakanda Nayanar Mayandi Swami Kovil". In 2015, the entries had been changed. It is true in the Town Survey Register also in the remarks column, the name of the temple has been mentioned. T.S Numbers are 1914 and 1916. Of course, the land has been classified in the settlement register as well as in the Town Survey Register as "Sarkar Poramboke". In the "A" Register, in the remarks column, it is mentioned as "Temple".



WEB COPY

8.The entire case of the respondents is based on the aforesaid classification of the land as "Sarkar Poramboke". One of us (R.M.D, J) 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 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.

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 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."

SLP (C) Diary No.8977 of 2024 filed against the said order suffered dismissal on 16.05.2024 not only on the ground of limitation but also on merits.

9.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”.

10.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 :

"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. In this case, we have to come to such a conclusion in view of the entries not only in the Town Survey Register but also in the Re-settlement register as well as the "A" Register.

11.The conclusions set out above aid the temple concerned and not the petitioner-Trust. We are however inclined to intervene only for the reason that the petitioner had undertaken to give up all their rights by executing a registered document in favour of the temple. In this



case, all the revenue authorities have recommended in favour of the construction of the Annadhanam Mandapam. According to the jurisdictional police, there is no potential for law and order issues. In this view of the matter, directing demolition will not serve any purpose. The local body had also assessed the building to tax. Hence the impugned proceedings stand quashed. The respondents 5 and 6 are also directed to formally regularise the construction by granting plan approval.

12.The writ petition is allowed accordingly. No costs. Connected miscellaneous petition is closed.

(R.M.D, ACJ.) & (G.R.S, J.)
20.06.2024

Index : Yes / No
Internet : Yes / No
SKM

To

1.The District Collector / Chairman, Local Planning Authority,
Pudukottai District, Pudukottai.



- 2.The District Revenue Officer, Pudukottai District, Pudukottai.
- 3.The Revenue Divisional Officer, Pudukottai Revenue Divisional Office,
Pudukottai District.
- 4.The Tahsildar, Pudukottai Taluk, Pudukottai District.
- 5.The Commissioner, Pudukottai Municipality, Pudukottai District.
- 6.The Member Secretary / Assistant Director,
Town and Country Planning Department,
Office of the Town and Country
Planning Department, Pudukottai District.



WEB COPY



18

WP(MD) No.6966 of 2023

THE HON'BLE ACTING CHIEF JUSTICE
and
G.R.SWAMINATHAN, J.

SKM

WP(MD)No.6966 of 2023
and
WMP(MD)No.6573 of 2023

20.06.2024