



W.P.(MD) No.5662 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.04.2024

Pronounced on : 30.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.5662 of 2020
and
W.M.P.(MD) Nos.4938 and 4939 of 2020**

V.Venkatesh

... Petitioner

/vs./

- 1.Special Officer,
District Revenue Officer (Temple Lands),
B1, Road,
Ellis Nagar,
Madurai 625 016.
- 2.Hindu Religious and Charitable Endowments Board,
rep. by its Executive Officer,
Arulmigu Jenagai Mariamman Temple,
Sholavandan, Vadipatti Taluk,
Madurai District 625 214.
- 3.Arulmigu Ayyur Vinayagar Koil,
rep. by its Thakkar,
Ayyur Village,
Vadipatti Taluk, Madurai District 625 218.



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4.The Allanganalur Sub Registrar,
8-3-4/62, Community Hall,
Market Street,
Alanganallur,
Madurai 625 501

5.P.Mayil

6.K.C.Muthu

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in relation to the proceedings dated 21.03.2017 in Na.Ka.No.A/185/2015 of the 1st respondent and quash the same and consequentially direct re-transfer of patta to the name of the 6th respondent and further direct the 4th respondent to remove and cancel the entry in the encumbrance dated 17.08.2019 in document No. 31 of 2019.

For Petitioner : Mr.A.R.M.Ramesh for
M/s.R.Meenakumari

For R1 & R4 : Mr.P.T.Thiraviam
Government Advocate

For R2 & R3 : Mr.M.Muthugeethayan

For R5 & R6 : No appearance



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ORDER

The petitioner is aggrieved by the impugned order passed by the first respondent in his proceedings bearing Na.Ka.No.A/185/2015 dated 21.03.2017.

2.By the impugned order, the patta entry has been mutated in favour of the third respondent temple. The specific case of the petitioner is that the petitioner is a *bona fide* purchaser of the subject land from the sixth respondent by virtue of a sale deed dated 11.11.2013.

3.It is submitted that the impugned order has been passed on the strength of the statement of the fifth respondent, who was the power of attorney holder of the legal heirs of the deceased Chinnan, who sold the property to favour of the sixth respondent (the vendor of the petitioner). It is submitted that since the impugned order has been passed in gross violation of principles of natural justice, it is liable to be quashed.

4.The learned counsel for the third respondent temple on the other hand would submit that the subject land is an Inam land. He has drawn attention to the



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proceeding of the Settlement Tahsildar – II, Madurai, dated 25.09.1968, which reads as under:-

“ORDER

This is an enquiry under Section of Madras Minor Inam Abolition Act 30 of 1963 in respect of the claim for ryotwari patta for the inam lands S.No.122/9, confirmed in TD.No.311 in the village of 87, Urseri, Nilakottai Taluk. The grant was made for the support of the pagoda of Shivinayager situated in Urseri village. The above inam Land was notified and taken over by Government on 15.02.65 abolishing the Minor Inam character and converting into ryotwari with effect from the coming into effect of the Act 30 of 1963. The powers of the Assistant Settlement Officer under section 11 read with section 8 or 9 of the Act, are exercised by me on delegation as per Notification No.II-I, 3234/66, published in the Fort St.George, Gazette dated 18.7.66.

2.As nobody applied for patta, suo motto enquiry is taken up as per rule 9(3) of the rules framed under the Act. Notices of enquiry were got served on the occupants of the inam lands and also got duly published in the village as per rules. The occupants of the lands, the Karnam appeared and they were heard.

3.My enquiry shows the following: The temple is in existence at S.No 122/16 of Mirsari village. No one has been appointed as its trustee. Viswalingan Pillai, S/o Nagu Pilai is the descendant of the original service doer. The continuous of render service regularly and looks to the upkeep of the temple. He is in possession of the land by hereditary right.

4.From the evident on record, I am satisfied that this is an Iruvaram grant made for the support of the temple and the deity Sri Vinayagar is entitled to patta under section 8(2)(ii) of the Act for S.No.122/9 through the poosari of the temple. Ryotwari patta will issue accordingly under section 11 (2) of the Act.”



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5.The learned counsel for the third respondent would further submit that the first sale deed dated 29.05.1961 also states that the land was an Inam land. He refers to the details of the property in the first sale deed by the service provider, namely, Viswalingam in favour of Chinnan, which reads as under:-

“கிரைய சொத்து விபரம்:

மதுரை டி, அலங்காநல்லூர் டி நிலக்கோட்டை தாலுகா, ஜாரி அய்யூர் கிராமம், **இனாம் சர்வே 58** நிர் ஏக்கர்/செண்டு 4 மட்டும் இதற்குமால் : சு.முத்துச்சாமி பிள்ளை, மு.ராமபிள்ளை, பெ.மு.முத்தழகு பிள்ளை இவர்கள் புஞ்சைக்கும் (வடக்கு), குருநாதபிள்ளை மகன் மாயாண்டி பிள்ளை வகையறா புஞ்சைக்கும் தெப்பக்குளத்துக்கும் (கிழக்கு), நாகப்பிள்ளை வகையறா புஞ்சைக்கும் (தெற்கு) உருமண கவுண்டர் முத்துச்சாமி பிள்ளை வகையறா புஞ்சைக்கும் (மேற்கு) இதற்குள்பட்டது. மேற்படி சொத்து அய்யூர் கிராமம் பஞ்சாயத்து போர்டு எல்லைக்குள்பட்டது.”

6.That apart, it is submitted that the subsequent sale by the fifth respondent in favour of the sixth respondent vide a sale deed dated 20.09.2010 on the strength of Power of Attorney dated 16.09.2010 by the legal heirs of Chinnan does not mention about the nature of the property that it is an Inam property. It is therefore submitted that the subsequent sale by the sixth respondent in favour of the petitioner on 11.11.2013 was also void and contrary to the provisions of



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Section 41 r/w 34 of HR & CE Act, 1959. It is submitted that any alienation of the temple property would be hit by Section 34 of the HR & CE Act, 1959.

7.It is submitted that the third respondent was not only entitled to resume the land but also entitled for grant of the Inam granted for performance of any charity of service in terms of Section 41 of the Act.

8.It is therefore submitted that although the impugned order has been passed mutating the patta in favour of the third respondent, no prejudice can be said to have been caused to the petitioner, as the sale in favour of the petitioner on 11.11.2013, which is traceable to the first sale on 29.05.1961 and the subsequent sale on 20.09.2010 are hit by Section 34 of HR & CE Act, 1959. It is submitted that even otherwise no purpose would have been served even notice was issued, as the sale is hit by Sections 34 and 41 of HR & CE Act, 1959.

9.The learned counsel for the third respondent would further submit that there is also no point in relegating the parties to workout their remedy before the Civil Court, as Section 108 of HR & CE Act, 1959 clearly bars legal proceedings.



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It is further submitted that the proceeding of the Settlement Tahsildar – II, Madurai dated 25.09.1968 has attained finality, as no further appeal was filed before the competent authority or before the Inams Tribunal under the provisions of Act 30/1963. It is therefore submitted that there is no merit in the present writ petition, as the sale starting from 29.05.1961 was void and *ab initio*.

10. That apart, it is submitted that only the patta was granted under the provisions of Act 30/1963, the Revenue Authorities under the Tamil Nadu Patta Passbook Act, 1983, or under the erstwhile Board Standing Orders could be issued. There can be mutation of records only if patta was granted to Viswalingam Pillai. In this connection, the learned counsel for the third respondent has drawn attention to the decision of the Division Bench of this Court in ***Palaniappa Pandaram and 10 others Vs. The Special Commissioner and Commissioner Land Administration and 3 others*** reported in ***1996 (I) CTC 217***, wherein it has been held as under:-

4. Heard the learned counsel on either side. The order of the learned single Judge is well merited one not warranting any interference. As noticed by the learned single Judge, the statutory authority has issued a ryotwari patta under a special enactment in favour of the deity. The nature of the grant which has been confirmed also is in favour of the temple. The proceedings by which the patta



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was issued in favour of the deity was subject to a statutory right of appeal before the concerned Sub-Court constituted as a Tribunal and thereafter a further appeal to a Division Bench of this Court and subject to such remedies as notices above, the order granting patta is rendered final under the statute. Of course, this court as well as the Apex Court have declared the position that even thereafter, the parties are at liberty to vindicate their respective claims before a civil court, if they so desire. So far as the facts on hand before us are concerned, the order granting patta in 1969 in favour of the deity remains in full force and effect and has not been also challenged. If that be the position, it was most improper on the part of the appellants who claim to be pujaris/service holders and also on the part of the Tahsildar, to order for the transfer of patta in favour of the appellants relying upon a provision which in our view is totally irrelevant. Section 21 of the Act has relevance only to service inams and the grant of the nature in favour of the deity and for the support of the Pagoda cannot be said to be service inam. **If the inam is really a service inam, patta would have been granted only in favour of the service holders subject to the condition of performance of the service. It is only in such cases, there is scope for having recourse to section 21 and not to a case like the one concerned before us. That apart, the Regular Tahsildar of the Taluk under the Revenue side has no power to deal with claims under the special enactment in question.** The patta granted in favour of the temple cannot be interfered with by the Tahsildar or any of the ordinary revenue authorities exercising their powers under the Revenue standing Orders and that the patta granted under the said special enactment under a particular provision can, if at all, be interfered or modified only by the statutory authorities provided under the statute itself in the manner and to the extent provided therein. The District Revenue Officer has only set right to grave irregularity and the illegality committed by the appellants in connivance, as we are constrained to observe, with the Tahsildar, Perundurai relying upon some irrelevant provisions for surreptitiously getting a transfer of patta in the name of the appellants, thereby denying the temple and the deity the lands and the title to a large extent and very valuable property. We are



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constrained to observe that the Tahsildar, Perundurai, has not only exceeded his limits, but has passed the order dated: 21.1.1994 in gross abuse of his powers.

5. Consequently, we see no merit whatsoever, in the writ petition as well as in the writ appeal as noticed supra. As long as the Settlement Tahsilddar's order of patta granted in favour of the deity and the temple stands, the appellants cannot have any rights in derogation of the rights of the deity or the temple and therefore, there is no legal right for the appellants to be enforced under Article 226 of the Constitution of India. The appeal, therefore, fails and shall stand dismissed with costs of Rs 1,000/-."

11. The learned counsel for the third respondent has also drawn attention to the decision of the Hon'ble Supreme Court in ***Joint Commissioner, Hindu Religious and Charitable Endowments, Admn. Department Vs. Jayaraman and others*** reported in ***(2006) 1 Supreme Court Cases 257***. Specific reference was made to paragraph Nos.10 to 13, which reads as under:-

"10. The claimants had themselves applied under Section 63(b) of the H.R & C.E. Act and had got themselves appointed as trustees. They had themselves held out and accepted that H.R & C.E. Act applies to the trust concerned. There is no case that the temples are not public temples and are not under the control of the H.R & C.E. Department in terms of H.R & C.E. Act. At best, the contention is only that the lands were conveyed in trust not to the temples or to the deities, but to the poojaries of the temples but with an obligation to utilize the income from the properties for the poojas and the up-keep of the temples. This certainly brought in the H.R & C.E. Act and the control of the authorities thereunder, even in respect of the administration of the trust by the claimants. The claimants were really estopped from raising a



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contention that the H.R & C.E. Act had no application or that they did not need the permission of the Commissioner under the Act for alienation either under [Section 34](#) or under Section 41 of the H.R & C.E. Act. The claimants were disentitled to by-pass the provisions of the H.R & C.E. Act and to secure an order from the District Judge without notice to the H.R & C.E. Department by moving an application under [Section 34](#) of the Indian Trusts Act. The order thus obtained cannot bind the trust or the properties, or the deities or the H.R & C.E. Department. Similarly, no reliance can be placed on the so-called patta obtained by the claimants from the Settlement Tahsildar without notice to the H.R & C.E. Department.

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

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



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13. In the circumstances, we allow this appeal and setting aside the order of the High Court in Civil Revision Petition (NPD) No. 1684 of 2002 and that of the Principal District Judge, Dindigul in Trust Original Petition No. 44 of 2001, dismiss Trust Original Petition No. 44 of 2001 filed by the claimants. Consequently, the permission granted for the sale would also stand set aside and the sale effected by the claimants pursuant to such permission will be deemed void and would confer no right on the purchasers thereunder or on any one claiming under or through them. It is also clarified that the revised order of the Settlement Tahsildar under Act 30 of 1963 and the revised patta granted are not binding on the deities or on the H.R & C.E. Department. The appellant would be entitled to its costs both here and in the High Court."

12.By way of rejoinder, the learned counsel for the petitioner would submit that the proceeding of the Settlement Tahsildar – II, Madurai, dated 25.09.1968 is not in the public domain. He would further draw attention to the Adangal to show that the property was under the possession of Viswalingam Pillai, the original vendor under sale deed dated 25.09.1961 to Chinnan. It is further submitted that the proceeding of the Settlement Tahsildar – II, Madurai is only on 25.09.1968 and therefore, even on this count, the impugned order is un-sustainable, as the petitioner is a *bona fide* purchaser. That apart, it is submitted that an usual practise has been adopted by the first respondent by relying on the statement of the fifth respondent, the power of attorney of the legal heirs of Chinnan, who sold



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the property to the sixth respondent by sale deed dated 20.09.2010. It is therefore submitted that whichever way one looks the impugned order has to be set aside.

13.I have considered the arguments advanced by the learned counsel for the petitioner, learned Government Advocate (Crl.side) for the respondents 1 and 4 and the learned counsel for the respondents 2 and 3.

14.The sale by the said Viswalinga Pillai to the said Chinnan was made on 29.5.1961. This sale was in breach of Section 34 of the HR & CE Act, 1959. Further, by virtue of Section 30 of the Act 30 of 1903, the inam lands stood vested with the Government.

15.Section 3 of the Act 30/1963 reads as under:-

“3.Vesting of minor inams etc., in Government:- With effect on and from the appointed day and save as otherwise expressly provided in this Act:-

(a) clause (b) of sub-section (1) of sub-section (2) of section 17 of the Abolition Act and clause (b) of sub-section (1) and sub-section (2) of section 14 of the Inam Estates Abolition Act, sections 2 and 12 of the Madras City Land Revenue Act, 1851 (Central Act XII of 1851), the Pudukkottai (Settlement of Inams) Act, 1955 [Tamil Nadu Act XXII of 1955], [section 22 of the Tamil Nadu (Transferred Territory) Incorporated and Unincorporated Devakswoms Act, 1959 [Tamil



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Nadu Act 30 of 1959), clause (i) of section 3 of the Tamil Nadu (Transferred Territory) Ryotwari Settlement Act, 1964, the Service Inams Proclamation, dated the 13th May 1893, and all other enactments applicable to minor inams) as such shall be deemed to have been repealed in their application to minor inams;

(b) every minor inam including all communal lands and porambokes, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams [tanks and ooranies (including private tanks and ooranies) and irrigation works], fisheries and ferries, situated within the boundaries thereof, shall stand transferred to the Government and vest in them free of all encumbrances, and the Madras City Land Revenue Act, 1851 (Central Act XII of 1851) except sections 2 and 12, the [Madras City Land Revenue (Amendment) Act, 1867, (Madras Act VI of 1867), the Tamil Nadu Revenue Recovery Act, 1864 [Tamil Nadu Act II of 1864), the Tamil Nadu Irrigation Cess Act, 1865 (Tamil Nadu Act VII of 1865), [the Tamil Nadu (Transferred Territory) Ryotwari Settlement Act, 1964 and all other enactments applicable to ryotwari lands] shall apply to the minor inam;

(c) all rights and interests created by the inamdar in or over his inam before the appointed day, shall, as against the Government, cease and determine;”

16. There is no dispute that the land in question was land in respect of which patta was granted to the said Chinnan on 05.07.1984, which was after patta was granted to the said deity of Sri Vinayagar ie., the 3rd respondent on 25.09.1968 under Section 8(2)(ii) of the said Act.

17. The said Viswalinga Pillai was merely a descendant of a service



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provider of the Temple. Viswalinga Pillai did not have valid Patta from the Settlement Tahasildar or from any other authority. Thus, the sale by the said Viswalinga Pillai to the said Chinnan on 19.05.1961 was in violation of Section 34 of the H.R.N.C. Act, 1959.

18.The subsequent sale by the legal heirs of said Chinnan in favour of the 6th respondent on the strength of Power of Attorney dated 16.9.2010 in favour of the 5th respondent on 20.9.2010 and the further sale to the petitioner by the 6th respondent on 11.11.2013 were also in breach of section 34 of the H.R.N.C Act, 1959.

19.Therefore, the cancellation of the patta issued in the name of Chinan 05.07.1984 does not warrant interference. The petitioner is also not able to establish any rights, which would override the restrictions contained in Section 34 of the H.R.N.C.Act, 1959. The cases cited by the learned counsel for the 3rd respondent also make it clear that the petitioner has practically no legal rights over the property in the light of Section 34 of the H.R.N.C Act, 1959, as things stand now.



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20.Unless Patta that was issued on 05.07.1984 in favour of the said Chinnan was a settlement patta under the provisions of Act 30 of 1963, the petitioner cannot perfect his title over the property even if the petitioner is a bonafide purchaser. By setting aside the impugned order and remitting the case back to the respondent will also serve no useful purpose, as it would be an empty formality.

21.As no useful purpose would be served by setting aside the impugned order dated 21.03.2017 of the 1st respondent even though, the impugned order has been passed behind the back of the petitioner, status ante cannot be ordered in favour of the petitioner.

22.Embargo under section 108 of the H.R.N.C Act, 1959 will not inhibit the right of the petitioner to approach a Civil Court to file a civil suit for declaration under Section 9 of the CPC. to establish the rights. Therefore, at best, liberty can be given to the petitioner to file a civil suit.



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23. Therefore, this writ petition is dismissed with liberty to the petitioner to file a civil suit if the petitioner is so advised. Therefore, this Writ Petition is dismissed with the above liberty. No cost. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
To

30.04.2024

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C.SARAVANAN, J.

mm

**Order made in
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