

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

**W.P.No.7697 of 2004
and
WP.MP.No.9108 of 2004**

Order Reserved on **31.07.2014** Judgment Pronounced on **09.12.2015**

Eternal Word Trust
A registered Charitable Trust,
No.11 F, Murugesan Nagar,
Villivakkam,
Chennai 600 049.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St. George,
Chennai 600 009.

2.The Commissioner (Land Reform),
Collector's Office Complex,
Villupuram 605 602,
Villupuram District.

3.The Assistant Commissioner (Land Reforms),
Room No.22, Collector's Office Complex,
Villupuram 605 602,
Villupuram District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the third respondent in A4/101/02 (Nisi) dated 05.03.2004, quash the same.

For Petitioner : Mr.P.N.George Graham
for M/s.Devadason and Sagar

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

ORDER

The short facts of the case are as follows:

The petitioner has submitted that the writ petitioner trust is a public charitable trust. The trust came into existence on 05.04.1999 pursuant to a deed of declaration of trust registered as document No.528/99 on the file of Joint Sub-Registrar to Madras North. The Trust owns the following properties:-

- i. 2.76 acres of land in survey No.5/2, No.37 Napalur Villabge, Thiruthani Taluk, Thiruvallur District;
- ii. 5.05 acres of land in survey No.5/1, No.37 Napalur Village, Thiruthani Taluk, Thiruvallur District;
- iii. 2.74 acres of land in survey No.6, No.37 Napalur Village, Thiruthani Taluk, Thiruvallur District;
- iv. 3.50 of land in survey No.6, No.37 Napalur Village, Thiruthani Taluk, Thiruvallur District;
- v. 2.93 of land in survey No.4, No.37 Napalur Village, Thiruthani Taluk, Thiruvallur District;

The total area is 16.98 acres of land.

2. She has further submitted that the trust has established 2 orphanages at

- i. Eternal Word Children's Home for Boys at Children's Home Street, Saraswathy Nagar, Chennai 600 062.
- ii. Eternal Word Children's Home for Girls at Ziam Street, Saraswathy Nagar, Chennai 600 062.

580 number of children are being brought up by the orphanages administered by the Trust. Though the Trust deed provides for several charitable objects including establishment of educational institutions and hospital, as on date the trust is administering and managing the orphanages above mentioned only. She submits that the petitioner trust is a person owning lands within the meaning of Section 3(36A) of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act, 1961. She petitioner received a letter dated 04.02.2002 sent by the third respondent for an enquiry on 18.02.2002 to enquire about the lands purchased by the petitioner. On that day the petitioner's representative appeared and had sought time for filing objections. On the subsequent hearing on 29.07.2002 the petitioner was represented by counsel and again granted time for filing objections. On 19.08.2002 the petitioner submitted their objections. On 02.09.2002 enquiry was conducted and the petitioner was represented by its counsel.

3. She has further submitted that the third respondent sent a letter dated 13.11.2002 requesting the petitioner to file returns without passing orders apropos the enquiry conducted on 02.09.2002. The petitioner sent a reply dated 09.01.2003 to the third respondent informing about the objections and also the enquiry held previously. The third respondent on 31.12.2003 sent another letter requiring the petitioner to file returns under Section 37B of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961. The petitioner sent a letter through its counsel on 10.02.2004 requesting the third respondent to drop the proceedings as the petitioner is not liable to file return as per the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961. Section 37B of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961 came to be introduced by Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Amendment Act 1987 Act 29 of 1987 Section 37B which came into operation. On a proper reading of Section 37B of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961 it could be seen that any public trust whether created before 01.03.1972 or after 01.03.1972 wants to hold land in excess of ceiling area, then the trust has to obtain the permission of the State Government.

4. She has further submitted that under Section 37B of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961 deals with two

situations. Trusts in existence as on 01.03.1972 holding properties in excess of ceiling area have to apply to the State Government to hold the land which is in excess of ceiling area. In the case of Trusts which come into existence after 01.03.1972, the trust has to obtain prior permission to purchase lands in excess of this ceiling area. She submits that on a mistaken interpretation of Section 37B of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961 the respondents are insisting that the petitioner should have obtained the permission of Government to acquire and hold lands and that if the permission is not obtained proceedings would be taken under Section 20A of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961 against the trust.

5. She has further submitted that Section 37B of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961 does not contemplate prior permission from State Government to purchase lands within the ceiling limits. Such an interpretation adopted by the respondents is contrary to the intent and purpose of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961. She submits that if it is to be held that on proper interpretation of Section 37B, of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act 1961, that a public trust created after 01.03.1972 should obtain prior permission to acquire land, then Section 37B of the Tamil Nadu Land Reforms

(Fixation of Ceiling and Land) Act 1961, itself is liable to be declared as unconstitutional. If the interpretation given by the respondents is correct, then a trust cannot be created by bequeathing of immovable property to the trust creation of Public trust for charity is always considered to be a Pious Act recognized by all religious and all civilized societies. There cannot be a law, which prohibits creating public trust by endowing immovable property. The respondents are insisting that the petitioner should obtain permission for holding 19 acres of land and should also file returns. The respondents are threatening to appropriate the land if such permission is not obtained. The impugned order dated 05.03.2004 passed by the third respondent in A4/101/02 (Nisi) which is liable to be quashed. Hence, this writ petition has been filed.

6.The third respondent has filed counter affidavit on behalf of the respondents 1 to 3 stating that the Eternal Word Trust came into existence on 05.04.1999 pursuant to a deed of declaration of trust registered as document No.528/1999. The main objects of the trust are as follows:-

- i) To build multi-purpose community centers, Hospitals, Schools and to carry on Charitable work among the poor and needy irrespective of caste, community or creed;

- ii) To promote health work, provide hospital facilities and to provide medical relief among the poor in India;
- iii) To make grants or otherwise assist institutions involved in education, especially those Institutions catering to the poor in remote parts of India and also for upgrading the Primary Schools, High Schools and Schools and Higher Secondary Schools, Day care Centres in different parts of India;
- iv) To strengthen and expand the community development undertaken by various bodies and enlarge their institutional capacity for community service;
- v) To assist institutions serving the handicapped especially the blind, deaf and the dumb, the polio affected and the mentally retarded, to extend its services to those victims, who are not able to get placements in specialized Institution;
- vi) To provide scholarship and assistance to those students especially the handicapped to take up technical training and to become self-employed by equipping them to do so; and

- vii) To supply educational books to the poor and run literacy classes for the neglected people.

7.The third respondent has further submitted that the Trust acquired an extent of 16.98 acres of land in Navaloor Village, Thiruthani Taluk, Thiruvallur District as indicated:-

<u>S.No.</u>	<u>Extent</u>	<u>Document No. and Date</u>
5/2	2.76 acres	1793/2001 .. 12.9.2001
5/1	5.05 acres	932/2001 .. 9.5.2001
6	2.74 acres	506/2001 .. 13.3.2001
6	3.50 acres	506/2001 .. 13.3.2001
4	2.93 acres	1794/2001 .. 12.9.2001
Total	----- 16.98 acres -----	

8.It is submitted that according to Section 5(3-C) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 (Tamil Nadu Land Act herein after referred to as the said Act, 58/61, any Public Trust which has been created after 1.3.72 shall acquire land on and after 1.3.72 after obtaining permission to hold or acquire land under Section 37B of the said Act from the Government. Any acquisition of land made in contravention of certain provisions is null and void under Section 20-A of the said Act and the land so

acquired shall be transferred to the Government as a measure of penalty for contravention of the provisions with effect from the date of such acquisition declaration made by the Assistant Commissioner having jurisdiction over the area. It is submitted that Section 37-B of the said Act provides the public trust to acquire lands for educational and hospital purpose. But the trust has to apply before the Government and avail such provision by obtaining permission to hold or acquire land under Section 37-B of the said Act from the Government. It is submitted that notices were issued to the Trust by the Assistant Commissioner (Land Reforms), Villupuram to avail the provisions under Section 37-B of the said Act. The trust, without making application to the Government for availing the provisions under Section 37-B of the said Act, has chosen to file this writ petition before this Court against the notice issued by the Assistant Commissioner (Land Reforms) Villupuram in A4/101/2002 dated 05.03.2004.

9.The third respondent has further submitted that the reading of the trust deed reveals that no part of the income of the trust shall be distributed among the trustees by way of profit or dividend. As such, the trust is not a private charitable trust owning lands within the meaning of Section 3(36-A) of the said Act. According to Section 5(3-C) of the said Act, no public trust which has been created after 01.03.1972 shall acquire land on and after 01.03.1972

after obtaining prior permission from the Government. Any acquisition of land made in contravention of certain provisions is null and void under Section 20-A of the said Act and the land so acquired shall be deemed to have been transferred to the Government with effect from the date of such acquisition. It is submitted that the trust ought to have applied before the Government for obtaining permission under Section 37-B of the said Act at least on receipt of notices from the Assistant Commissioner. But it has not availed the provision made under Section 37-B of the said Act and not made an application before the Government to obtain permission to hold or acquire the land under Section 37-B of the said Act. As such, the trust has no locus standi to question the notices issued by the Assistant Commissioner.

10. The third respondent has further submitted that Section 5(3-C) of the said Act prohibits purchase of lands by the Public Trust after 01.03.1972. But Section 37-B of the said Act provides permission of the Government for acquisition of lands by the Public Trust for educational and hospital purposes. The petitioner has prayed that the impugned order be set aside. In this connection, it has been submitted that it is not an order but it is only a notice issued to the petitioner by the Assistant Commissioner (Land Reforms), Villupuram instructing the petitioner to apply before the Secretary to Government, Revenue Department for availing the provisions contained under

Section 37-B of the said Act for the land acquired by the trust after 01.03.1972. In the above notice, petitioner was also intimated that action would be initiated against the holdings of the trust under Section 20-A of the said Act, if the trust fail to avail the provisions by applying to the Government for obtaining permission under Section 37-B of the Act. Further, the trust has not made any application before the Government for the grant of permission under Section 37-B of the said Act so far. The Assistant Commissioner (Land Reforms), Villupuram has also not passed any statutory order against the holdings of the landowner trust so far.

11.The third respondent has further submitted that Section 5(3-C) of the said Act, prohibits the purchase of lands by the Public Trust after 01.03.1972 subject to the provisions of Section 37-B of the said Act. Regarding the grant of permission under Section 37-B of the said Act, the interpretation regarding prospective of “retrospective” it has been submitted that writ appeals are pending before the Division Bench of this Court in WA.No.3454, 3455, 3458 to 3460, 3462 to 3467, 3471, 3508, 3515, 3527, 3542 and 3553 of 2002 along with WP.No.44540 of 2002 etc. (batch cases). The land owner trust without exhausting the remedy provided by the lower courts, has directly filed this writ petition. In the above circumstances, it is prayed this Court to dismiss the writ petition.

12.The learned counsel appearing for the petitioner has submitted that the petitioner Trust has been established during 1999 after duly obtaining the registration from the Sub-Registrar Office at North-Madras. The Trust owns lands to an extent of 16.98 Acres at Thiruvallur District. The Trust has also established two orphanages at Chennai and uplifted 580 poor children. The Trust is providing education and health facilities. The Trust owning lands within the meaning of Section 3 (36A) of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act, 1961. Under these circumstances, the third respondent, namely, Assistant Commissioner had issued a letter to the petitioner, on 04.02.2002, for an enquiry about the lands purchased by the petitioner Trust. The petitioner had submitted explanation and their counsel also appeared and submitted the legal and factual position of the Trust. Thereafter, the third respondent sent a communication, dated 30.11.2002 and requested the petitioner to file returns without passing any written orders. Thereafter, the third respondent issued another letter requiring the petitioner Trust to file returns under Section 37B of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act, 1961. Under these circumstances, the petitioner's counsel sent a letter and requested the third respondent to drop the proceedings as the petitioner is not liable to file any return as per the Act.

13.Further, the learned counsel has submitted that the as per Section 37B of the Tamil Nadu Land Reforms Act, any public institution which has been created after 01.03.1972 shall acquire land on and after 01.03.1972 after obtaining permission to hold or acquire land from the Government. In the instant case, the petitioner Trust has been established during 1999 and as such permission is not required to purchase the land in excess of the ceiling area. Therefore, prior permission from the Government to purchase the land within the ceiling limits does not contemplate as per the Act. Hence, the learned counsel has prayed this Court to set aside the impugned order of the third respondent.

14.The learned Additional Government Pleader appearing for the respondents has submitted that on 19.02.2002, on behalf the Trust, the Managing Trustee's husband and two others appeared before the third respondent and gave an undertaking that they will furnish copies of the sale deeds along with form 38. But, the same had not been complied with. Hence, the third respondent had issued a notice informing the petitioner that further action as per Section 20(A) of the Tamil Nadu Land Reforms (Fixation of Ceiling and Land) Act, 1961 will be initiated. The petitioner had acquired an extent of 16.98 Acres of land in Navalur Village in Thiruvallur District. As per Section 37B of the Tamil Nadu Land Reforms Act, any public institution which

has been created after 01.03.1972 shall acquire land on and after 01.03.1972 after obtaining permission to hold or acquire land from the Government. Any acquisition of land made in contravention of certain provisions is null and void under Section 20A of the Act. The land so acquired shall be transferred to the Government. If any public institution Trust is intended to acquire land for education purpose or hospital purpose, the Trust has to obtain permission from the Government as per Section 37B of the Act. Therefore, the third respondent being a competent authority had issued a notice and sought further clarification. The said notice had been issued based on the undertaking given by the persons, who are attached to the petitioner Trust. The third respondent had issued an impugned notice and instructed the petitioner to apply before the Secretary to Government for obtaining permission.

15. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on record and on perusing the typed set of papers, this Court is of the view that the third respondent had issued notice to the petitioner Trust and directed them to make necessary application with proper documents to the Secretary of Government, Revenue Department. Hence, the third respondent's notice is not a final order and only a primary notice and as such the petitioner will not be prejudiced by the said impugned

notice. Hence, the writ petition is liable to be dismissed.

16. In the result, the writ petition fails and it is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

09.12.2015

Index: Yes / No
Internet: Yes / No

vs / krk

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C.S.KARNAN, J.

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