

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3843 of 2014

P.Subramanian

...Petitioner

vs.

1. The Secretary to Government
Revenue Department
Fort St. George, Chennai - 9
2. The District Collector
Coimbatore District
Coimbatore - 18
3. The Tahsildar
Annur Taluk, Annur
Coimbatore - 641 653
4. The Executive Engineer
Building Construction and Maintenance
Public Works Department
Town Hall
Coimbatore - 1
5. The Assistant Engineer
Building Construction and Maintenance
Section - II
Public Works Department
Annur
Coimbatore - 641 653
6. The Commissioner
HR & CE Department
Uthamar Gandhi Salai
Chennai - 600 034

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7. The Assistant Commissioner
HR & CE Department
Dr.Balasundaram Salai
Coimbatore - 18

8. The Executive Officer
A/M. Chinnamman Periyamman Temple
Stahy Road
Annur
Having Office at
A/M.Manneeswaraswamy Thirukoil
Othimalai Road
Annur, Coimbatore District - 641 653

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents 2 to 5 from proceeding with any construction whatsoever in the lands belonging to the Chinnamman Periyamman Temple, in Survey No.83/3, Annur Village, Coimbatore District without obtaining the necessary sanction from the 6th respondent in terms of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and after full and final compensation been paid.

For Petitioner : Mr.V.S.Usha Rani

For Respondent : Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 to R5

Mr.M.L.Mahendran
Government Advocate R6 and R7

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioner seeks for a Writ of Mandamus forbearing the respondents 2 to 5 from proceeding with any construction in the lands belonging to the Chinnamman Periyamman Temple, in Survey No.83/3, Annur Village, Coimbatore District without obtaining the necessary

sanction from the 6th respondent in terms of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

3. The petitioner is a worshiper of the said temple and he is aggrieved by the action of the respondents 2 to 5 in entering upon the land belonging to the temple and attempting to construct Taluk office in the temple property. It is not in dispute that the land comprised in S.No. 83/3, Annur Village, Coimbatore District measuring an extent of 3.80 cents is a temple property. Therefore, unless and until the Government transfers the ownership and the same is vested with the Revenue Department, they would have no power to enter upon the land. Initially, one R.Eswaran filed a writ petition before this Court in W.P.No.26584 of 2013 with a prayer to forbear the respondents from acquiring the lands in Survey Nos.83/1, 83/3, 85/1, 85/3 and 242 of Annur Village for the purpose of construction of the Taluk Office. The said writ petition was dismissed on 25.09.2013 and the writ appeal filed against the said order in W.A.No.170 of 2014 was dismissed by the Hon'ble Division Bench by judgment dated 13.03.2014. Therefore, it has become clear that no person can resist the acquisition of the land for the purpose of construction of Taluk office.

4. The petitioner seeks for a direction to respondents 2 to 5 not to proceed with further construction without following the procedure under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and without obtaining necessary sanction from the 6th respondent under Section 34 of the Act and payment of the land value.

5. From the counter affidavit of the District Collector it is seen that the Commissioner, HR & CE has granted permission, vide proceedings dated 07.11.2013 and has fixed the land value and sent a report to the Secretary to the Government, Tourism, Culture and Hindu Religious and Charitable Endowment Department recommending for allotment of 3.80 acres of temple land in S.F.No.83/3 of Annur Village to Revenue Department for construction of Taluk Office. The said proposal is pending with the concerned Secretary who in-turn has to forward the same to the first respondent so that the amount can be deposited to the HR & CE Department and the construction activity can be proceeded with. It is further seen from the Counter Affidavit that the Commissioner, Hindu Religious and Charitable Endowment Department has already sent a report to the Principal Secretary to the Government, Tourism, Culture and Hindu Religious and Charitable Endowment Department recommending allotment of 3.80 acres of temple land to Revenue Department with a land value of Rs.4,97,04,400/-

based on the guideline value.

6. The learned Special Government Pleader vehemently opposed the prayer made by the petitioner that the construction activity should not be proceeded with unless the amount is remitted to the HR & CE Department, by contending that the building constructed in the temple land is for a Taluk Office and would subserve public interest. It is his further contention that payment of money towards the value of the land is an interdepartmental issue and the petitioner cannot dictate terms to the Government and it is for the Government to consider the same.

7. Admittedly the land is a temple land and the HR & CE Department has granted permission/approval to transfer the land to the Revenue Department on payment of the land value, which has been calculated as per guideline value and communicated to the Government. Therefore, it is but appropriate for the Government (concerned Department) to make the remittance towards the land value and then enter upon the land and proceed with the construction, failing which the interest of the temple will not be protected. It is not known under what circumstances the land was vested with the temple. It could have been a gift or a settlement by a donor/worshiper. Thus, the HR & CE Department is the custodian of the land and cannot become the owner, as the ownership would vest with the temple / deity. However, the HR & CE Department has taken a decision agreeing to transfer the land to the Revenue Department on payment of the land value. Therefore, this Court is of the view that the land value has to be remitted before any construction is made or proceed with in the said land for the construction of the Taluk Office.

8. The learned Special government Pleader submitted that payment of the land value is purely a interdepartmental issue and the petitioner has no jurisdiction to interdict. The said contention is liable to be rejected in view of the decision of the Hon'ble Supreme Court in A.A.Gopalakrishnan vs. Cochin Devaswom Board and Others [(2007) 6 MLJ 751 (SC)], wherein it was held that the properties of temples, deities, church, mosques, religious denominations etc., have to be protected and it is also the duty of Court to protect and safeguard the properties of religious and charitable institutions. Therefore, in the instant case, it is not as if the Commissioner, HR & CE has resisted the construction of Taluk Office in the temple land. In fact, he has recommended for allotment of 3.80 acres of temple land for the construction of Taluk Office indicating the land value to be remitted.

9. Taking into consideration the fact that the land is being utilized for public purpose and bearing in mind that the land is a temple land, interest of both have to be balanced. Therefore, there will be a direction to the first respondent to consider the proposal of the 6th respondent, sent to the Secretary to Government, Tourism, Culture and Hindu Religious and Charitable Endowment Department, vide proceedings dated 07.11.2013 and remit the land value as per the proposal and thereafter, proceed further with the construction of the Taluk Office, and until the land value is remitted no construction shall be proceeded with.

10. The writ petition is disposed of with the above direction. No costs.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

gpa

To

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1CC to Mrs.V.S.Usharani, Advocate 7840

1CC to Government Pleader, SR 7880

W.P.No.3843 of 2014

GGK [CO]
PSI 27.02.2015

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