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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.16 of 2013

and

M.P.No.2 of 2013

PKD Trust,
rep. by its Managing
Trustee Sri.P.K.Duraisamy,
S/o.Late Krishnasamy,
172, Dr.Rajendran Prasad Road,
Coimbatore-641 012.

... Petitioner

(name of the petitioner-trust
was amended as per order
dated 09.12.2015 in M.P.No.2/2015
in W.P.No.16/2013)

Vs.

1.The District Collector,
Coimbatore District,
Coimbatore.

2.The District Revenue Officer,
Coimbatore District,
Coimbatore.

3.The Revenue Divisional Officer,
Coimbatore District,
Coimbatore.

4.The Joint Commissioner,
Hindu Religious &
Charitable Endowment Dept,
Coimbatore.

5.Dhandapani

6.Assistant Commissioner/
Executive Officer, (Incharge),
Arulmighu Vinayagar Temple,
Eachanari, Coimbatore-641 021.

... Respondents

(R5 impleaded as per order dt 29/01/2013
in M.P.3/2013 in W.P.16/13)



(R6 impleaded as per order dt 16/02/2016
in M.P.1/2015 in W.P.16/2013)

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the 1st respondent in its proceedings Na.Ka.No.16536/2012/E1, dated 22.12.2012 and its consequential proceedings in Na.Ka.No.16536/2012/E2, dated 27.12.2012 and to quash the same as illegal, unsustainable and arbitrary and further to direct the respondents 1 to 3 herein to transfer revenue records relating to the lands comprised in S.F.Nos.636/1A1, and 636/1A12 Kurichi Village, Coimbatore South Taluk to the name of the petitioner-Trust herein and forbear the respondents 1 to 4 and 6 herein from in any way interfering with the administration and management of the petitioner Trust.
Prayer amended as per order dated 26.02.2016 in WMP.6564/2016 in WP.16/29013.

For Petitioner : Mr.R.Muthukumaraswamy, Senior Counsel,
for M/s.K.S.Karthik Raja

For respondents : Mr.S.Pattabiraman, GA (For R1 to R3)
Mr.P.Sanjay Gandhi (For R4)
(R5 died)
Mr.R.T.Duraisamy (For R6)

ORDER

Originally the writ petition was filed by the petitioner-Trust viz., Eachanari Vinayagar Narpani Trust. Subsequently, the name of the petitioner-Trust was amended as PKD Trust by order dated 09.12.2015 in M.P.No.2 of 2015.

2.This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, originally to call for the records of the 1st respondent herein in his proceedings Na.Ka.No.16536/2012/E2 dated 27.12.2012 and to quash the same and consequently, to forbear the respondents 1 to 3 from in any manner interfering with the administration and management of the Trust.

3.Subsequently, the petitioner filed a petition in W.M.P.No.6564 of 2016 seeking to amend the prayer made in the writ petition to the following effect_

"to call for the entire records of the 1st respondent in its proceedings Na.Ka.No.16536/2012/E1, dated 22.12.2012 and his consequential proceedings in Na.Ka.No.16536/2012/E2, dated 27.12.2012 and to quash the same as illegal, unsustainable and arbitrary and further to direct the respondents 1 to 3 herein to transfer revenue records relating to the lands comprised in S.F.Nos.636/1A1,



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Kuruchi Village, Coimbatore South Taluk to the name of the petitioner-Trust herein and forbear the respondents 1 to 4 and 6 herein from in any way interfering with the administration and management of the petitioner-Trust. "

The said petition was allowed on 26.02.2016 and consequently, the prayer of the petitioner was amended.

4.The brief facts of case of the petitioner, are as follows:-

4.1.The petitioner-Trust is a Public Charitable Trust created on 11.12.1980 by virtue of a registered Trust Deed vide Doc.No.647 of 1980. Originally, the petitioner Trust was registered in the name of Eachanari Vinayagar Narpani Trust. However, during the year 1993, name of the petitioner-Trust was changed into PKD Trust. The Managing Trustee P.K.Duraisamy along with others namely one Sri.K.Nataraja S/o.S.Kandasamy Gounder and Sri.C.N.Selvakumar S/o.Late Nataraja Gounder founded the petitioner-Trust for charitable purposes.

4-2.In the year 1983, from and out of the funds generated by the Trust, land measuring to an extent of Acre 1.80 in S.No.636/1A in Kuruchi Village, Coimbatore District were purchased in the name of the petitioner-Trust, from one Abdul Pari, and it was registered as Doc.No.4300 of 1983 on the file of the Joint Sub-Registrar-I, Coimbatore. Patta, Kist and other revenue records stand in the name of the petitioner-Trust. The petitioner is in peaceful possession and enjoyment of the said land till date. A kalyana mandapam has also been constructed on the said land and the mandapam is used by the petitioner-Trust for the benefit of the members of the public. The property purchased by the petitioner-Trust is adjacent to the famous temple known as 'Arulmigu Eachanari Vinayagar Temple', at Eachanari. The Managing Trustee P.K.Duraisamy is an ardent devotee of the said temple and he has been involved himself in every possible way to improve the said temple. His right to manage the said temple as Hereditary Trustee has been recognized under Section 63(b) of the H.R. & C.E. Act. The above said property purchased by the petitioner-Trust belongs only to the petitioner-Trust. The said temple has no right whatsoever in respect of the property belonging to the petitioner-Trust. The petitioner-Trust is an independent juristic person. Similarly, the said temple is an independent juristic person and the two entities are different and they have nothing to do with each other.

4-3.The petitioner-Trust is also conducting a school by name Vani Vidhyalaya on another property, wherein education is provided to students from LKG to V class. There are almost 300 students studying in the said school, which is being conducted for the past 13 years. With a view to prejudice the petitioner-Trust, some of the members of the



Trust, forming themselves into a group, appear to have given a petition to the District Collector, Coimbatore making false and derogatory allegations against the Managing Trustee P.K.Duraisamy; but, copy of the said petition was not given to him. Based on the said petition, Officials of the HR & CE Dept visited the petitioner-Trust and conducted an enquiry with regard to the affairs of the Trust, to find out as to whether the petitioner-Trust is an independent body. The petitioner provided all the relevant details to the Officials of the HR & CE Dept, who conducted enquiry during the month of May, 2012. The HR & CE Department has forwarded some reports to the District Collector; but, the details of the same have not been divulged to the petitioner. The petitioner had been receiving information through some of the villagers that attempts are being made to mislead the respondents 1 to 3 to take control of the petitioner-Trust and its properties by furnishing erroneous details. Further, the petitioner came to know that some prejudice was said to be created against the petitioner on account of the name of the petitioner being changed to "P.K.D. Trust" by means of a resolution which was passed on 11.06.1993. The change of name of the petitioner-Trust has nothing to do with the functioning of the Trust and its objectives. In the petition given against the petitioner, it was made out as though the Managing Trustee P.K.Duraisamy is treating the properties of the Trust as his own by changing the title in his individual name. At no point of time, the properties of the Trust were treated as individual properties of any other trustees and it is the Trust which has been exercising independent rights over its properties.

4-4. Due to persistent rumors in the locality, the Managing Trustee P.K.Duraisamy sent a detailed representation on 10.12.2012 to the respondents 1 to 3, but it ended in vain. The Managing Trustee P.K.Duraisamy, apprehending that the respondents 1 to 3 may interfere with the administration and management of the Trust at any time, again contacted the 1st respondent on 26.12.2012 and DRO on 28.12.2012. The respondents 1 to 3 informed the petitioner that they received a petition relating to the ownership of the land possessed by the petitioner and that based on the petition, mutation of records would be carried out in favour of the Arulmigu Eachanari Vinayagar Temple at Eachanari and the management of the Trust would be taken over. While so, on 22.12.2012, to the shock and surprise of the petitioner, the 1st respondent has passed an order, wherein the 1st respondent has given directions as follows_

i) the Joint Commissioner HR & CE, Coimbatore to remove any right of Hereditary Trusteeship in Arulmigu Eachanari Vinayagar Temple at Eachanari.

ii) the Tahsildar, Coimbatore (South), to remove the name "P.K.Duraisamy" in the Village Chitta,

iii) the Tahsildar to prefer a complaint to the police department and initiate criminal action against the petitioner



on the allegation that he has purchased lands in his name utilizing the public funds and
iv) the 1st respondent has recommended for the filing of a Scheme Suit for the representation of the supporters of one Dhandapani (5th respondent).

4-5. Aggrieved over the same, the petitioner filed the present writ petition for the relief as stated supra.

5. The 1st respondent has filed a counter, stating that the alleged Managing Trustee of the petitioner-Trust namely P.K. Duraisamy mobilised the funds from the public for the Eachanari Vinayagar Temple, for which he created the Eachanari Vinayagar Narpani Trust in the year 1980. After some time, he slowly changed the face of the Trust from public charitbale Trust to his personal and family Trust by inducting his family members. In the year 1983, a land to an extent of 1.80 acres in S.F.No.636/1A in Kuruchi Village, Coimbatore District was purchased from Abdul Pari Registered Document No.4300 of 1983 for Eachanari Vinayagar. In the year 1991 instead of ceasing the property belonging to Eachanari Vinayagar temple, the Competent Authority and Assistant Commissioner (Urban Land Tax) had initiated action against the previous owner, namely Abdul Pari in respect of the property in S.F.No.636/1A. In appeal, the order of the Competent Authority and Assistant Commissioner (Urban Land Tax) was set aside by the Principal Commissioner and Commissioner of Land Reforms, Chennai in proceedings No.J2/34521/94, dated 11.10.1995 and the ceased land was illegally, intentionally and malafidely, realised in favour of P.K. Duraisamy instead of Eachanari Vinayagar Narpani Trust. After receiving several complaints from the public, the 1st respondent had conducted a thorough enquiry and the petitioner was called for enquiry and a notice was issued on 03.12.2012 and the same was refused by the petitioner. The property in S.F.No.636/1A to an extent of 1.80 acres in Kuruchi Village, Coimbatore District was purchased out of the funds generated from the public. The petitioner purchased the property for temple vide Sale Deed Registered Document No.4300 of 1983. The subject property is located adjacent to the temple. The temple and kalayana Mandapam are functioning in the same campus. There are lot of allegations regarding the mismanagement of Trust and misuse of the Trust funds. The petitioner's trust have encroached some Government poramboke land for a long period and carried out its functions and activity in the same place. There are allegations that the trust's accounts are also not maintained properly. The Tahsildar, Coimbatore was directed to restore/change the records in the name of Vinayagar Narpani Trust. Similarly, the Tahsildar was directed to file police complaint, for changing revenue records in personal name from the Trust name. The petitioner had been given reasonable opportunity to explain his case. Before passing the order, the petitioner's representations were duly considered by the 1st respondent. The 1st respondent has passed the impugned



order, after going through all relevant records and proper enquiry and also after affording to the petitioner. Thus, the 1st respondent sought for dismissal of the writ petition.

6. When the writ petition is pending, the Executive Officer of the Temple got impleaded himself as 6th respondent in the writ petition, by filing impleading petition in M.P.No.1 of 2015. The 6th respondent has stated in his affidavit that what was challenged by the petitioner in this writ petition is not the original impugned order dated 22.12.2012. Actually, the 1st respondent has passed the order on 22.12.2012. Now, the petitioner has challenged the order dated 27.12.2012, which is only a letter informing the 5th respondent about the order dated 22.12.2012 passed by the 1st respondent. Therefore, the order dated 22.12.2012 passed by the 1st respondent is still valid in law.

7. In view of the said statement made in the counter by the 6th respondent, the petitioner had filed a petition in W.M.P.No.6564 of 2016 seeking to amend the prayer sought for in the writ petition and the amendment of the prayer was allowed by this Court by order dated 26.02.2016, as observed in the earlier paragraph.

8. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner submitted that HR & CE Department in its proceedings in Na.Ka.No.9758/75/A3, dated 05.12.1975 appointed P.K.Duraisamy as a Trustee of the Temple under Section 49 and Sections 19 (11) and 20(1) of the HR & CE Act. On expiry of period mentioned in the proceedings dated 05.12.1975, the HR & CE Department again its proceedings in P.M.No.18543/78, dated 20.01.1979 appointed P.K.Duraisamy and two others as Trustees of the Temple under Section 47(1) of the HR & CE Act. The said P.K.Duraisamy along with K.Natarajan and C.N.Selvakumar as founders, established a family Trust known as Eachanari Vinayagar Narpani Trust on 11.12.1980. The HR & CE Department by its proceedings in Na.Ka.No.9242/79/B1, dated 05.09.1981 appointed P.K.Duraisamy as the Chairman of Board of Trustees of the Temple under Section 48(2) of the said Act. The said P.K.Duraisamy was declared as Hereditary Trustee of the Temple in O.S.No.998 of 1988 by the I Additional Sub-Judge, Coimbatore, vide judgment and decree dated 23.04.2008. Aggrieved over the same, an appeal was filed by the HR & CE Department in A.S.No.683 of 2009, which was also dismissed by this Court by judgment dated 29.04.2011. Thereafter, no further appeal was filed by the HR & CE Department. Thus, the petitioner's right to maintain the temple as Hereditary Trustee has been recognized by the HR & CE Department. In the meantime, apart from the affairs of the Temple, on 11.12.1980 the petitioner has created a Trust viz., Eachanari Vinayagar Narpani Trust (which was later changed as P.K.D.Trust in the meeting of the Board of Trustees held on 11.06.1993). The Eachanari Vinayagar Narpani Trust represented by its Managing



Trustee P.K.Duraisamy purchased land measuring to an extent of 1.80 acres in S.F.No.636/1 situated at Kuruchi Village, Coimbatore Taluk, from one Abdul Pari under Sale Deed dated 06.10.1983 registered as Doc.No.4300/83 on the file of the Joint Sub-Registrar-II, Coimbatore, and necessary mutations were also carried out in the revenue records. On 23.08.1990, the Trust applied for planning permit and Building Permit to construct a Kalyana Mandapam in the said land in S.F.No.636/1A and on 07.09.1990 Kuruchi Town Panchayat granted approval for the proposed construction. Thereafter, the Trust constructed a kalyana mandapam viz., Lakshmi Kalyana Mandampam, by raising loan from the State Bank of India and Indian Overseas Bank. The Trust has also established a Primary and Nursery School in the year 1999 with the approval of the Government of Tamil Nadu in the said land. In the meeting of the Board of Trustees of the Trust held on 11.06.1993 it was resolved to change the name of the Trust from Eachanari Narpani Trust to PKD Trust. Thereafter, on 10.04.1995, PKD Trust purchased another land measuring to an extent of 0.90 acres in S.F.No.636/1B Part, 635/1 Part and 635/2 Part under registered Sale Deed bearing Doc.No.2760/95 on the file of the Joint Sub-Registrar-I, Coimbatore. Thus, the Trust is owning a total extent of 2.70 acres of land.

9.It is further submission of the learned senior counsel for the petitioner that out of total extent of 2.70 acres, a portion of the land was acquired from the original vendor, by the Government under Urban Land (Ceiling and Regulation), Act. Hence, on 20.12.1995 the Trust gave a representation to the Secretary to Government, Revenue Department, seeking for exemption under Section 20(1)(iv) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 for total extent of 2.70 acres of land. The Secretary to Government has also granted exemption from the provisions of the said Act, for the entire extent of 2.70 acres of land held by the Trust. Since no changes were made in the revenue records in respect of the said land in favour of the Trust, the Trust addressed a letter dated 07.04.1999 to the concerned Department to restore the name of the Trust in the revenue records in respect of the said land. But, while transferring the name, instead of transferring the land from the Government to the PKD Trust, the Revenue authorities by mistake transferred the same in the individual name of P.K.Duraisamy. But, no point of time, any request was made to transfer the name in the revenue record in the individual name of P.K.Duraisamy. In this regard, the learned Senior Counsel appearing for the petitioner has also invited the attention of this Court to the letter dated 07.04.1999 sent by the Managing Trustee P.K.Duraisamy and submitted that in the said letter, a request was made only to restore the land in the name of the Trust. But, after grant of exemption under Urban Land (Ceiling and Regulation) Act, while change the land from the Government, by mistake, it was changed in the individual name of P.K.Duraisamy, instead of the Trust. Hence, the complaint was lodged to the District



Collector. But, the District Collector, without affording any opportunity to the petitioner and without properly considering the case of the petitioner, unilaterally passed the order dated 22.12.2012, in which, the District Collector has given direction to the Tahsildar to initiate criminal proceedings against P.K.Duraisamy and also to restore the original name in the revenue records in respect of the subject property. In this regard, the learned senior counsel would submit that even today, the petitioner has no objection to restore the name of the Trust in the revenue records with regard to the subject land and that no point of time, he had made request to restore his name in the revenue records in respect of the subject property.

10.The learned senior counsel for the petitioner would further submit that pending this writ petition, this Court has granted an interim order of status quo on 03.01.2013. But, inspite of the interim order of status quo, the Tahsildar lodged a complaint before the Assistant Commissioner of Police, Land Grabbing Cell, and a case was registered in Crime No.1/2013 under Section 120-B, 468, 471 & 420 IPC. However, after enquiry, the said complaint was closed, with a specific finding that the petitioner-Trust owns separate land and the Temple owns separate land. Similarly, the Assistant Commissioner, HR & CE Dept, also conducted an enquiry and he has also recorded a finding that the Trust owns separate land and the Temple owns its separate land and that the subject property is owned by the petitioner-Trust.

11.Thus, the learned Senior counsel for the petitioner submitted that now, as the complaint has been closed and the petitioner has also no objection for transferring the name in the revenue records in respect of the subject property in the name of the Trust, a proper direction could be given to the respondents in this writ petition, by quashing the impugned orders.

12.But, in the writ petition, the Assistant Commissioner/Executive Officer (Incharge) of Arulmighu Vinayagar Temple, Eachanari, impleaded himself as 6th respondent and opposed the prayer of the petitioner. It is contended by the learned counsel for the 6th respondent that the subject property belongs to the Vinyagar Temple and no point of time it belongs to the PKD Trust. In fact, the District Collector, before passing the order, had given sufficient opportunity to the petitioner, and after considering the documents, the District Collector has come to the conclusion that the subject land belongs to the Temple and not to the Trust; that is why, the District Collector had instructed the Tahsildar to initiate criminal action as against P.K.Duraisamy. In other words, it is the submission of the learned counsel for the 6th respondent that no point of time, the subject property was standing in the name of the Trust.



13. But, by way of reply, the learned senior counsel appearing for the petitioner submitted that the Assistant Commissioner, HR & CE Dept, has conducted a detailed enquiry and rendered a finding that the temple owns separate land and the Trust owns separate land. Hence, according to the learned senior counsel for the petitioner, the 6th respondent has no locus standi to oppose the prayer of the writ petitioner.

14. Keeping in view the submissions made on either side, I have carefully gone through the entire materials available on record, particularly the Sale Deed dated 06.10.1983, through which 1.80 acres of land was purchased and the Sale Deed dated 10.04.1995, through which 0.90 acres of land was purchased by the petitioner-Trust. Both the properties were purchased in the name of the Trust by its Managing Trustee. Further, I find that pursuant to the order passed by the District Collector dated 22.12.2012, an FIR was also registered by the Land Grabbing Cell, Coimbatore and after enquiry, the said FIR was also closed as 'action dropped'. Even in the said closure report, it was recorded by the Investigating Officer that the land was purchased only in the name of the Trust. Similarly, the Assistant Commissioner, HR & CE Dept, has also recorded a finding that the land was purchased by the Trust. There is no material available before this Court to show that the Managing Trustee P.K.Duraisamy requested the Revenue Officials to restore his individual name in the revenue records in respect of the subject property. On the other hand, after obtaining exemption under the Urban Land (Ceiling and Regulation) Act, through the letter dated 07.04.1999, he made a request to the Revenue Authorities to transfer the name in the revenue records in respect of the subject property, from the name of the government to the name of the Trust. Further, there is no scope in this writ petition to adjudicate the issue as to whether the land belongs to the Temple or the Trust, because this Court is not conducting any roving enquiry, while exercising the power under Article 226 of the Constitution of India. The writ petition has been filed only to quash the orders dated 22.12.2012 and 27.12.2012, passed by the 1st respondent/District Collector. No material is produced before this Court to show that the subject lands belong to the Temple. It is seen from the records that the subject lands were purchased in the name of the Trust and they are continuously to be in the possession of the Trust and request of the Managing Trustee P.K.Duraisamy is also to restore the name of the Trust in the revenue record. Hence, I am of the opinion that the petitioner is entitled for the relief sought for in this writ petition. Hence, I am of the opinion that rejecting the contention of the learned counsel for the respondents, the writ petition deserves to be allowed.

15. Accordingly, the writ petition is allowed and the impugned orders are quashed and the respondents 1 to 3 are



directed to restore the name of the Trust in the revenue records in respect of the subject lands. If the 6th respondent still has any grievance, he has to work out his remedy only before the appropriate forum in accordance with law.

Consequently, connected Miscellaneous Petition is closed.
No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssv

To

1.The District Collector,
Coimbatore District, Coimbatore.

2.The District Revenue Officer,
Coimbatore District, Coimbatore.

3.The Revenue Divisional Officer,
Coimbatore District, Coimbatore.

4.The Joint Commissioner,
Hindu Religious & Charitable Endowment Dept,
Coimbatore.

5.Assistant Commissioner/
Executive Officer, (Incharge),
Arulmighu Vinayagar Temple,
Eachanari, Coimbatore-641 021.

+4ccs to M/s. Karthik Raja, Advocate, S.R.No.15750, 16080
+1cc to the Government Pleader, S.R.No.15706

MP(CO)
EU(02/06/2016)

W.P.No.16 of 2013
and
M.P.No.2 of 2013