



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.05.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

W.P. (MD) No.15863 of 2012

and

WMP.No.7465 of 2016

WEB COPY

- 1.A.Ravi
- 2.N.Mayilsamy
- 3.R.Dhanasekaran
- 4.R.Subha
- 5.V.Palanisamy
- 6.P.Sumathi
- 7.P.Sadhasivam
- 8.P.Subramanian
- 9.M.Vijayalakshmi
- 10.K.P.Thangavelu
- 11.Annammal
- 12.S.Palaniammal
- 13.S.Santhi
- 14.A.Subbramani
- 15.T.Manickavasagam
- 16.Pappathi @ Palaniammal
- 17.M.Karthikeyan
- 18.P.Dhanalakshmi
- 19.B.Chandrasekaran
- 20.N.Marappan
- 21.M.Sivasamy
- 22.K.Rajeswari
- 23.R.Pappannan
- 24.K.Muthusamy
- 25.S.Ramamoorthy
- 26.R.Balusamy
- 27.P.Kumudham
- 28.P.Chokkalingam
- 29.K.Marappan
- 30.R.Rasu
- 31.G.Devi
- 32.S.Mani
- 33.A.Veerakumar
- 34.M.Amaravathi
- 35.P.Vaiyapuri
- 36.K.Varadharajan
- 37.V.Saraswathi
- 38.P.Thangavelu
- 39.G.Dhanalakshmi
- 40.P.Lakshmi



41.K.Thamilselvi
42.S.Sathiyamoorthi

...Petitioners

Vs.

1.The Special Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

2.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

3.The Sub Registrar No.II,
Registration Department,
Karur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to register the documents of the petitioners relating to the petitioners' land in Survey No.239 situated at Kadapparai Village in Karur Taluk in the office of the third respondent.

For Petitioners :Mr.R.Singaravelan (Senior counsel)
for Mr.K.Elangovan

For Respondents :Mr.A.Muthukaruppan (for R2 & R3
Special Government Pleader

O R D E R

Today the matter in WMP.No.7465 of 2016 has been posted for hearing, on the consent of both the parties, the main writ petition itself is taken up for hearing.

2.The case of the petitioners is that they are the lawful owners of the properties in Survey No.239 situated at Kadapparai Village in Karur Taluk with title and they are in the lawful possession of the properties by long back. They further state that the properties were Minor Inam lands granted to their predecessors in title by name Sri Balasubramaniasami Devasthanam, Kadapparai Village, Karur District before the Tamilnadu Minor Inams (Abolition and conversion into ryotwari) Act, 1963, Tamilnadu Act No.30 of 1963 came into force.

<https://hcservices.gov.in/hcservices> 3.The petitioners further submit that the petitioners are predecessors, who were in title obtained patta from the trustees and they were paying Melwaram to the temple. The said Act



empowered the Settlement Tahsildar to notify the Minor Inam lands under Section 1(5) of Act 30/1963. The Settlement Tahsildar-III (S.E.) Thiruchirappalli camp in his proceedings Act 30/63 Karur Taluk 2024/67 dated 31.08.1967 *suo moto* taken the matter for hearing. Therefore, as per the order dated 31.08.1967 before in the Court of Settlement Tahsildar-III (S.E.) in case No.2028/1967 their predecessors in title got the title to the property in favour of them, their Minor Inam Pattas were converted into Ryotwari Pattas as per Section 8(1) of the Tamilnadu Act 30 of 1963 and from the date of order on 31.08.1967 their predecessors in title were absolute owners of the property by the operation of the Tamilnadu Minor Inams (abolition and conversion into ryotwari) Act 30 of 1963.

4.The case of the petitioners is that this Act having overriding power over the Act 22 of 1959 the Tamilnadu Hindu Religious and Charitable Endowments Act 1959 as per Section 8(2) of the Tamilnadu Minor Inams (Abolition and conversion into ryotwari) Act which reads as follows:

"(2).Notwithstanding anything contained in Sub-Section (1) of Section 34 in the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959 (Tamilnadu Act 22 of 1959), (and in the Tamilnadu Transferred Territory) Incorporated and Unincorporated Devaswoms Act, 1959 (Tamil Nadu Act 30 of 1959), the following provisions shall apply in the case of lands in an Iruvaram Minor Inam granted for the support or maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity.

(i)Where the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession of such land."

5.The petitioners also further state that the transferees from the original Ryotwari Patta holders themselves are entitled to right to enjoy, right to possession and right to sale, mortgage and encumber the properties as per their needs and therefore the third respondent is supposed to register the documents as per law. They further come forward by saying that the petitioners legal right derived from the Tamilnadu Minor Inams (abolition and conversion into ryotwari) Act 30 of 1963 and the right to property under Article 300A of the Constitution of India.

6.When the petitioners made attempt to register the documents before the third respondent, it was refused by the third respondent by saying that there was a ban on registering the documents in Kadapparai Village. But as per the Registration Act, the petitioners are entitled and the third respondent failed to discharge his lawful duty entrusted to him by the Tamilnadu



Government as per the Registration Act and causing revenue loss to the Government exchequer.

7.This was brought to the notice of this Court by way of filing a writ petition in W.P.No.5133 of 2009, which dealt with the same question of fact and law and after hearing the above writ petitioner as well as the respondents, this Court by order dated 28.04.2009, considering the writ petitioner's case in W.P.No.5133 of 2009, it was considered by this Court that though the Government has issued G.O.Ms.No.150 Commercial Taxes, dated 22.09.2000 and the same was quashed by a Division Bench of this Court by its judgment (**Captain Dr.R.Bellie v. Sub-Registrar**) **reported in (2007) 3 MLJ 1025** dated 30.03.2007. The said writ petition also stating that the registering authority issued a circular based on the Section 22-A of the Registration Act, 1908 and the said provision was quashed by the Hon'ble Apex Court, which was reported in **2005 4 CTC 606**. Therefore, considering the facts and circumstances of the case, this Court in the above said order directed the registering authority to register the document in favour of the said writ petitioner.

8.The petitioners also come forward by saying that the Settlement Tahsildar-III (SE), Tiruchirappalli Camp in his proceedings Act 30/63 Karur Taluk 2024/67 dated 31.08.1967 had passed the following order :-

"IN THE COURT OF SETTLEMENT TAHSILDAR III (S.E.)

TIRUCHIRAPPALLI : CAMP

CASE NO.2028 of 1967

Name of the village	:	Kadapparai
Name of the Taluk	:	Karur
Names and address of the Claimants	:	Muthusami Gn. S/o. Soliappa Gn. Arunachala gn. s/o.Muthu Gn. Muthusamy gn. Palaniappa Gn. Sons of Marappa Goundan.
Particulars of land S.F.No.:	:	239 (Kadapparai Village)
Extent of Land	:	12.80 acres
Name and address of the objectors	:	Trustee of Sri Balasubramaniasami Devasthanam.
Date of commencement of enquiry	:	24.07.1967
Date of completion of enquiry:	:	31.08.1967
Date of order	:	31.08.1967
Nature of order	:	Allowed
Remarks	:	Patta allowed u/s. 8(1) of the Act



ORDER

The lands given in the schedule are T.D.Minor Devadavay Inams situated in Kadapparai Village in Karur Taluk. They have been notified u/s. 1(5) of Act 30/63. Particulars of the lands and details of the grants are furnished in the schedule.

2.Enquiry is taken up suo moto to determine if any person is prima facie entitled to Ryotwari Patta for the lands. Necessary notices have been served and published as per rules.

3.The claimants were examined as P.Ws. They produce documents and patta issued by the trustees. They produced also Devasthanam receipts for payment of Melwaram to the temple. In his objection petition the present trustee of the Devasthanam has also noted this as (Paditharam) and he has not raised any objection in this regard. He does not also produce any proof for his enjoyment in any manner in those lands. No other objection is received.

4.In the result, I hold that the Kudivaram right vests with ryots and that the persons whose names are given in Col.6 of the schedule are entitled to Ryothwari Patta for the lands u/s. 8(i) of the Act. As the Inam tenure of the lands stands abolished. I do hereby order that u/s. 11(2) (b) of the Act, that ryotwari patta be issued to them for these lands.

(Pronounced in open court)

Sd/- . K.R.Srinivasan
Settlement Tahsildar III (S.E.) Tiruchy

SCHEDULE

Case No.	S.No.	Extent	T.D.	Details of grant	Names of claimants
2028	239	12.80	896	Devadayam, Vennamalai Balasubramanias ami Devasthanam	Muthusami Gn. S/o. Soliappa Gn. Arunachala Gn. s/o.Muthu Gn. Soliappa Gn. Muthusamy Gn. Palaniappa Gn. sons of Marappa Goundan

REMARKS: Patta allowed u/s. 8(i) of the Act
/true copy/

Sd/- . K.R.Srinivasan
Settlement Tahsildar III (S.E.)
Tiruchirappalli"



9. Therefore, the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession of such land and the transferees viz., the petitioner from the original Ryotwari Patta holders are entitled to right to enjoy, right to possession and right to sale, mortgage and encumber the properties as per their needs and hence they filed the above writ petition seeking direction to the respondents to register their documents relating to the petitioners' land in Survey No.239 situated at Kadapparai Village in Karur Taluk in the office of the third respondent.

10. On the other hand, the learned Special Government Pleader appearing for the third respondent has filed counter affidavit stating that as per the entries in the Revenue 'A' Register of Kadapparai village the lands comprised in Survey No.239 (Re-survey Nos.239/1, 239/2, and 239/3) belong to (1).Arulmigu Balasubramania Swamy, (2).Kasiviswanatha Swamy, (3).Visalakshi Amman Koil. The Assistant Commissioner, Hindu Religious Endowments Department, Karur has also vide his letter No.1234/2012/A2 dated 18.07.2012 informed this respondent that the land in Survey No.239/1 belongs to Vennamalai Arulmigu Balasubramania Swamy Thirukoil. The Assistant Commissioner has also stated that some individuals have obtained patta to this land falsifying the facts.

11. Learned counsel further submitted that as per the Government Orders in G.O.No.1023 Commercial Taxes and Religious Endowments Department dated 05.11.1985, the Government have instructed the registering authority to obtain No Objection Certificate from the Hindu Religious Endowment Department before registering the sale deeds relating to temple lands. Therefore, the third respondent is duty bound to refer the matter to the Hindu Religious and Charitable Endowment Department and obtain their No Objection Certificate when documents relating to temple lands are presented for registration. He further submits that as per the Government Order, the registering authority has to keep such documents pending, registration being suspended. Therefore, the matter is pending before the Hindu Religious and Charitable Endowment Department and await No Objection Certificate from them. Therefore, the Registering Officer following should follow the procedures laid down in the Government Order, which can not be construed as refusing to register a document as contended by the petitioners. Hence, it is clear that the petitioners have not presented documents for registration before this respondent in respect of the instant property and this respondent should follow the procedures laid down in the said G.O.No.1023 dated 05.11.1985, if documents relating to the instant property are presented for registration. Since the Hindu Religious and Charitable Endowment Department has placed objection that the instant land is temple land. Therefore, the third respondent is duty bound to follow the



instructions contained in G.O.No.1023 dated 05.11.1985 and hence, the respondent sought for dismissal of the writ petition with costs.

12. Heard Mr.R.Singaravelan, learned senior counsel for Mr.K.Elangovan, learned counsel appearing for the petitioners and Mr.A.Muthukaruppan, learned Special Government Pleader appearing for the respondents 2 and 3.

13. When this Court by order in W.P.No.5133 of 2009 dated 28.04.2009 quashed the said G.O.No.1023 dated 05.11.1985 and issued a direction to register the documents pertaining to the Survey No.239, these petitioners are entitled for registering the documents. Therefore, once this Court and the Hon'ble Division Bench of this Court quashed the said G.O., the registering authority viz., the third respondent is bounden duty to register the documents submitted by the petitioners in respect of the properties in Survey No.239 situated at Kadapparai Village in Karur Taluk. But, the third respondent is trying to pull out all petitioners from the post by getting No Objection Certificate from the Hindu Religious and Charitable Endowment Department. Therefore, they prayed this Court to direct the third respondent to register the documents in respect of the properties in Survey No.239 (Re-survey Nos.239/1, 239/2, and 239/3). On the other hand, the learned Special Government Pleader appearing for the respondents 2 and 3 vehemently opposed in the prayer sought for by the petitioners. Since as per the above G.O.No.1023 dated 05.11.1985, the third respondent ought to have obeyed the G.O. and whenever the document presented for the Survey No.239 at Kadapparai Village, Karur Taluk, that is bounden duty, directing certain persons, who sought for registering the document should obtain No Objection Certificate from the Hindu Religious and Charitable Endowment Department. Therefore, the third respondent prays this Court to dismiss the above writ petition.

14. On perusal of the documents produced before this Court, the G.O.No.1023 dated 05.11.1985 and the order passed by this Court in W.P.No.5133 of 2009 dated 28.04.2009, it is made clear that the said G.O.No.1023 dated 05.11.1985 was quashed by the Hon'ble Division Bench dated 30.03.2007 itself. Therefore, the third respondent have no right to refuse to register the documents by quoting the above G.O.No.1023 dated 05.11.1985.

15. The third respondent without applying his mind and without seeing the judgment of this Court reported in **(2007) 3 MLJ 1025** wherein the said G.O.No.1023 dated 05.11.1985 was quashed and the said alleged G.O. quoted by the third respondent is not alive as on date and there was no appeal filed against the said order in W.P.No.5133 of 2009 dated 28.04.2009 and the order of the Hon'ble Division Bench reported in **(2007) 3 MLJ 1025**. Therefore, both the



orders are final and the third respondent is duty bound to register the documents without any further delay. Therefore, I am of the considered view, I fully agree with the arguments of the learned senior counsel Mr.R.Singaravelan, appearing for the petitioners and perused the order of the Division Bench of this Court and also learned single Judge of this Court. The writ petition is deserves to be allowed.

16. Accordingly, I am inclined to direct the third respondent to register the documents, if any presented by the petitioners in respect of Survey No.239, Kadapparai Village, Karur Taluk, without any further delay.

17.Hence, this writ petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Special Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

2.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

3.The Sub Registrar No.II,
Registration Department,
Karur.

+1 CC to Mr.D.SELVANAYAGAM, Advocate, SR No.26602

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and
WMP.No.7465 of 2016
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SH/SS-3/SAR-I:19.08.2016:8P/5C