

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.04.2018
Delivered on : 20.06.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A No.1502 of 2017 and
C.M.P.No.19801 of 2017

M/s.Hatsun Agro Product Limited
Rep. by its Assistant General Manager - Legal
Rajesh D.R.
Having Office at
Door No.1/20-A, Rajiv Gandhi Salai,
Karapakkam, Chennai - 600 097.Appellant

Vs

- 1.The Joint Commissioner,
HR & CE Department,
Coimbatore.
- 2.The Assistant Commissioner/Executive Officer
Arulmigu Subramaniaswamy Thirukoil
Sivanmalai, Tirupur District.
- 3.Marappa Gounder
- 4.Kumarasamy
- 5.Thirupathal @ Thirumathal
- 6.Selvaraj ...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 13.11.2017 made in W.P.No.28939 of 2017.

W.P. 28939/2017:

Petition filed under Article 226 of the constitution of
India praying this Hon'ble to issue a Writ of Mandamus
forbearing the respondents 1 and 2 and their officials and
persons claiming under them from in any way interfering with
the petitioner's peaceful possession and enjoyment of the
property at survey No.431/1 (Old Survey No.431/C) Udhoyur
Village Kangeyam Taluk Tirupur District to an extent of 11.43
acres along with pathway in any manner whatsoever.

For Appellant : Mr.T.V.Ramanujam
Senior Counsel for
Mr.N.C.Ashok Kumar

For Respondents: Mr.Vijaynarayanan
Advocate General
Assisted by Mr.M.Maharajan
Special Govt.Pleader (HR & CE)
for R1
Mr.V.Raghavachari
for Mr.N.Manoharan for R2
Mr.A.Prabhakar Reddy for R3 to R6

J U D G M E N T

K.K. SASIDHARAN, J.
Introductory

The appellant even before the registration of Sale Deed in its favour, filed a writ petition for issuance of a Writ of Mandamus to forbear the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Coimbatore and the Executive Officer, Arulmigu Subramaniaswamy Thirukoil, Sivanmalai, from interfering with the peaceful possession and enjoyment of the property by invoking Article 226 of the Constitution of India, treating it as a civil proceeding without approaching the jurisdictional Civil Court for appropriate relief. The writ petition was dismissed by the learned single Judge with an observation that the remedy is only to approach the concerned Civil Court. The order is under challenge at the instance of the unsuccessful writ petitioner.

The Facts

2. The land having an extent of 11.43 acres in Survey No.431/1, Udhiyur Village, Kankeyam Taluk, Tirupur District was declared as Devadayam Inam land. The Settlement Tahsildar, Coimbatore, as per order dated 10 September 1971 granted Ryotwari Inam Patta in favour of Thiru.Somasundaram and Thiru.Chandrasekaran under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. The Executive Officer, Arulmigu Subramaniaswamy Thirukoil, claimed that the land has been in the possession and enjoyment of the temple and it was a service inam. The appellant purchased the land from the respondents 3 to 6 and presented the Sale Deed for registration. The Sub-Registrar was not inclined to register the document as it was shown as Devadayam Inam land.

3. The appellant even before the completion of registration of sale by the Registering Authority filed a writ petition in W.P.No.28939 of 2017 to restrain the respondents 1 and 2 from interfering with its peaceful possession and

enjoyment of the land.

4. The learned Judge found that there is a bonafide dispute with regard to the title of the property apart from its possession. The learned Judge was of the view that the issue could be decided only by a competent Civil Court and the remedy is not a writ petition under Article 226 of the Constitution. The learned Judge while negating the plea permitted the parties to approach the Civil Court for appropriate relief. Feeling aggrieved by the order dated 13 November 2017 in W.P.No.28939 of 2017, the appellant has come up with this intra court appeal.

Summary of Submissions

5. The learned Senior Counsel for the appellant contended that Ryotwari Inam Patta was granted by the statutory authority in favour of Somasundaram and Chandrasekaran under the provisions of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. The order passed by the Settlement Tahsildar on 10 September 1971 has become final. The order was passed after hearing the objections of the temple. In view of the Ryotwari Inam patta, Somasundaram and Chandrasekaran have become the absolute owners of the property. According to the learned Senior Counsel, though the lands were classified as Devadayam inam lands, originally, it was given to the persons in possession. According to the learned Senior Counsel, the Sub-Collector, Dharapuram, has passed an order on 2 February 2018 confirming the right claimed by the appellant. The learned Senior Counsel contended that the respondents 1 and 2 have no manner of right in respect of the land in question and as such, they should be restrained from interfering with the peaceful possession and enjoyment of the property by the appellant.

6. The learned Advocate General appearing on behalf of the first respondent contended that the extract of the Settlement Register and the patta granted in the name of the service holder clearly shows that the land in question is a Devadayam Inam land. It was given only to the temple. According to the learned Advocate General, the fact that the name of the service holders were also mentioned in the patta would not go to show that it is their private land giving them right of assignment. The learned Advocate General contended that it was only to prevent the appellant from putting up construction without authority, a representation was given by the second respondent to the Sub-Collector, Dharapuram. The Sub-Collector has no right or authority to pass an order determining the title or possession. The learned Advocate General contended that the second respondent has already initiated proceedings before the Inam Appellate Tribunal in C.M.A.No.7 of 2017. The Tribunal is

now seized of the matter. The learned Advocate General contended that the appellant has no right to maintain a writ petition in view of the background facts relating to the ownership of the land in question and the absence of a registered Sale Deed in its favour.

7a). The learned counsel for the second respondent contended that the land in question has been in the possession and enjoyment of the temple. Since it was a service inam, the persons whose names were included in the patta do not have any right to assign the land. According to the learned counsel, even in the affidavit filed in support of the writ petition, it was clearly mentioned that the land in question is a Devadayam Inam land. The Settlement Tahsildar has no authority to grant Ryotwari Inam patta in favour of Somasundaram and Chandrasekaran. The issue is now pending before the Principal Subordinate Court, Tirupur in its capacity as the Inam Appellate Tribunal.

b) The learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in Subramania Gurukkal (Dead) through Muthusubramania Gurukkal and others v. Shri Patteswaraswami Devasthanam, Perur by its Executive Officer and others [1993 Supp (4) SCC 519] and Joint Commissioner, Hindu Religious and Charitable Endowments, Admin. Department v. Jayaraman and others [(2006) 1 SCC 257], in support of his contention that Devadayam Inam land is the property owned by the temple and the same cannot be alienated by the priest or persons who were doing service to the temple.

Discussion

8. The appellant purchased the subject land from the respondents 3 to 6. Even according to the appellant, the land was originally classified as Devadayam Inam land. The Settlement Tahsildar, Coimbatore, appears to have initiated proceedings for granting Ryotwari Inam patta. The extract of the Settlement Register and the patta dated 21 November 1983 shows that it was given to the service holder in the said capacity. In any case, the nature of the land was clearly admitted as Devadayam Inam land.

9. The respondents 3 to 6 assigned the property to the appellant on the strength of the Ryotwari Inam patta granted in favour of their predecessor-in-interest by the Settlement Tahsildar pursuant to the order dated 10 September 1971. The Sale Deed executed in favour of the appellant is yet to be registered by the Registrar. Since the value of the property is more than Rs.100/-, the title would pass on to the appellant only after the registration of sale deed. It is a matter of record that even before the registration of Sale Deed, the appellant filed a writ petition for issuance of a Writ of

Mandamus to restrain the respondents 1 and 2 from interfering with its peaceful possession and enjoyment of the property.

10. There are certain vital issues to be decided in the matter, which requires adjudication by appreciating evidence. The second respondent made a claim that the land is Devadayam Inam land and as such, the service holders have no right to assign the land. The respondents 3 to 6 are relying on the patta granted by the Settlement Tahsildar, Coimbatore, to sustain their plea of absolute ownership. The second respondent has already filed an appeal before the Principal Sub-Court, Tirupur in C.M.A.No.7 of 2017. It is for the Principal Sub-ordinate Judge, to decide the issues raised by the second respondent in its capacity as the Inam Appellate Tribunal after giving opportunity to all concerned.

11. The appellant placed reliance on the order dated 2 February 2018 on the file of the Sub-Collector, Dharapuram to prove its title and possession. The Sub-Collector is not an authority to adjudicate the question of title or possession. The second respondent has produced the representation submitted to the Sub-Collector. It was given only to restrain the appellant from putting up construction. While considering the said representation, the Sub-Collector made certain observations by exceeding the brief. The observation made by the Sub-Collector in the order dated 2 February 2018 has no statutory force and it is not binding on the Principal Subordinate Judge. The Tribunal must decide the matter independently on merits and as per law.

12. The issue regarding the right of the service holder to assign the land should be considered in the light of the law declared by the Hon'ble Supreme Court. The Hon'ble Supreme Court has interpreted the term "Devadayam Inam Lands" and indicated the nature and scope of the order giving Ryotwari Inam patta in favour of the service holders.

13. The Supreme Court in *Subramania Gurukkal v. Shri.Patteswaraswami Devasthanam* [1993 Supp (4) SCC 519] , considered the provisions of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 and observed that in case, the Inam Fair Register shows the land as "Devadayam", the deity should be declared as a grantee. The Supreme Court said:

"20. As a general proposition of law that the entries in the Inam Fair Register have to be given due importance, cannot be denied. An analysis of the entries in the relevant Inam Fair Register shows that column 8 describes as "Devadayam" and column 10 states "permanent". In the light of these entries the ratio laid down

in Buddu Satyanarayana v. Konduru Venkatapayya [1953 SCR 1001 : AIR 1953 SC 195] , will have to be applied. Construing the similar entries it was held that the deity was the grantee. The same principle applies here."

14. In Joint Commissioner, Hindu Religious and Charitable Endowments, Admin. Department v. Jayaraman and others [(2006) 1 SCC 257], the Supreme Court once again considered the nature and scope of "Devadayam" land and observed thus:-

"8. The grant was of government land. The grant was, even going by the case of the claimants, in favour of persons who were acting as poojaris of the temple, for the purpose of utilising its income for poojas and maintenance of the temple. Even in the extract of the fasli register, it is shown that the registered name of the inamdar is poojaris of Mariamman and Bhagavathiamman Temples and the enjoyers as Veerana Pandaram and Arunachalam Chetty. The relation between the inamdar and the enjoyer is shown as "devadayam" and in the column regarding details of inam, it is shown as for poojas to God (Sasvatham) and in the column relating to details of endowment, it is shown that the income of the land is used by the poojaris for pooja and maintenance of the temples. Prima facie, government land had been dedicated to the temples by way of grants by the Government. Even if the income therefrom had alone been dedicated to the temples, it would still be a religious trust or endowment and certainly not a private trust to which the Trusts Act, 1882 would apply. Section 1 of the Trusts Act, 1882 itself provides that nothing contained therein applies to public or private religious or charitable endowments. The endowment here was certainly not a private endowment since there is no case that the temples are private. The endowment was for a religious purpose, the conducting of poojas in the temples and the maintenance of the temples....."

15. The Supreme Court in A.A.Gopalakrishnan v. Cochin Devaswom Board and others [(2007) 7 SCC 482] underlined the need to protect the properties of deities in the following words:

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances

are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

16. The appellant initiated the writ petition by invoking Article 226 of the Constitution. The appellant wanted to decide the issue relating to possession on the basis of affidavits. In view of the contention taken by the respondents 1 and 2, there are larger issues to be decided in the matter. The appeal filed by the second respondent is also pending before the statutory authority. It would not be possible for this Court to decide the right claimed by the respondents 3 to 6 to assign the property in the light of the stand taken by the second respondent that patta was granted in the name of the service holder only and the same could not be assigned. The learned single Judge was therefore justified in dismissing the writ petition. We make it clear that while deciding the appeal, the Tribunal must address the issue with regard to the nature of the grant and as to whether the Devadayam land could be assigned by the service holders.

17. We do not find any error or illegality in the order passed by the learned single Judge warranting interference.

18. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Joint Commissioner,
HR & CE Department,
Coimbatore.

2.The Assistant Commissioner/Executive Officer
Arulmigu Subramaniaswamy Thirukoil
Sivanmalai, Tirupur District

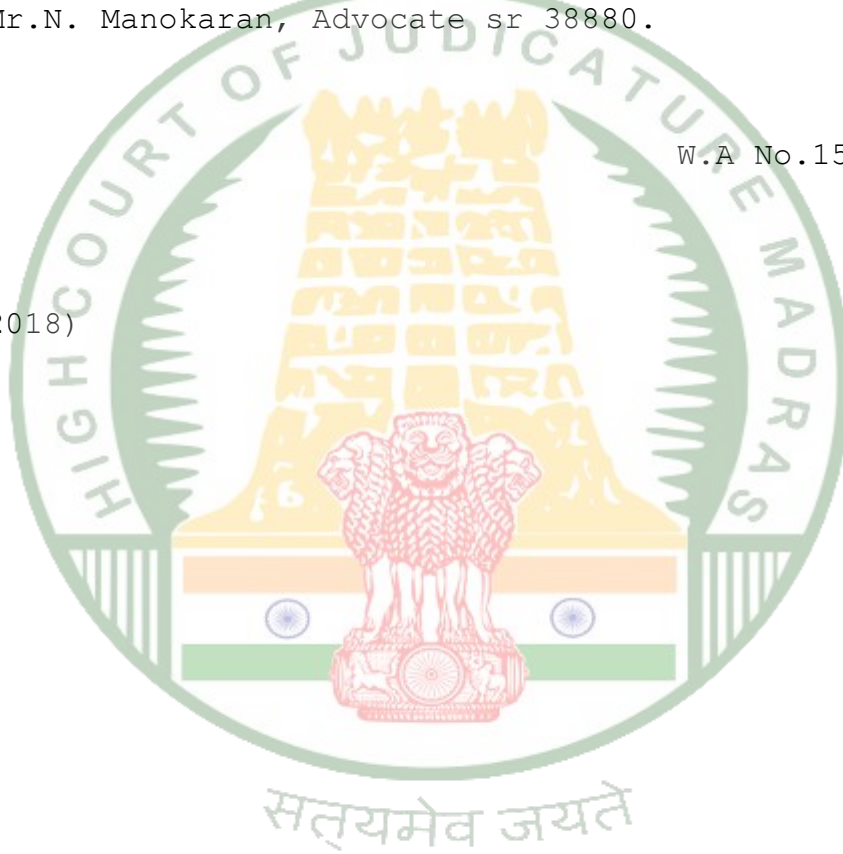
+1 CC to Govt. Pleader sr 39681.

+1 CC to Mr.N.C. Ashok Kumar, Advocate sr 38970.

+1 CC to Mr.N. Manokaran, Advocate sr 38880.

W.A No.1502 of 2017

SV(CO)
SP(02/07/2018)



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