IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.1.2018	Delivered on 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.1535 and 1536 of 2014

W.A.No.1535/2014 :-

K.G.Krishnan ... appellant/Petitioner

versus

1.S.Vaidyanathan

2.The Special Commissioner and
Secretary to Government,
Tamil Department Culture and Hindu Religious
& Charitable Endowment Department,
Fort St.George,
Chennai 600 009

3.The Special Commissioner and Commissioner
Hindu Religious and Charitable Endowment
Nungambakkam High Road,
Chennai 34 ... respondents

Appeal filed against the order passed by this Court dated 26.11.2013 passed in W.P.No.6987 of 2008.

WP.6987 of 2008 Prayer: Writ of Certiorari, to call for the records of the 1st respondent herein in The Section Officer, VR Section, High Court, Madras.(2 Copies) far as the impugned order passed by the 1st respondent secretary to Govt. vide its G.O [Pa] No. 429 Tamil Developmet Charitable Endowment and Information Department dated 31.12.2007 and quash the same.

W.A.No.1536/2014 :-

K.G.Krishnan ... appellant

versus

1)The State of Tamilnadu
Commissioner and Secretary to Government,
Commercial Tax and religious Endowment,
Fort. St.George , Chennai-9.

2.The Commissioner
Hindu Religious and Charitable Endowment,
Nungambakkam High Road,
Chennai 34.

3.The Temple Administration Board,
Nungambakkam High Road,
Chennai 34.

4.The Deputy Commissioner,
Hindu Religious and Charitable Endowment
Tirunelveli District.

5.S.Vaidyanathan

6.R.Subramaniyan ... Respondents

Appeal filed against the order passed by this Court dated 26.11.2013 passed in W.P.No.10900 of 2007.

WP. 10900 of 2007 Prayer to issue a Writ of Certiorarified Mandamus or any other Writ or appropriate order or direction, calling for the records of the 1st respondent dated 27.8.2002 and made in G.O.Ms.No. 195 and followed by the proceedings of the 4th respondent dated 19.4.2004 and made in Na.Ka.No.10659/92/E-3 and quash the same as illegal and without jurisdiction and further to direct the 2 to 4 respondents to recover the lands an extent of 3.93 acres comprised in Survey Nos.49/1 49/3 52/1 52/3 53/1 at Kadayanallur Town from the 6th respondent and pass such further or other orders as this Hon'ble court.

For appellant : Mrs.R.Devi,
for Mr.R.Parthasarathy
in both Writ Appeals

For Respondents : Mr.M.Maharaja, Spl.G.P. (HR & CE)
for respondents 2 and 3 (W.A.No.1535/2014)

and for respondents 1, 2, 4 (W.A.No.1536/2014)

No appearance for 1^{st} respondent (W.A.1535/14)
No appearance for R-5 and R-6 (W.A.1536/14)

COMMON JUDGMENT

K.K.SASIDHARAN, J.

Introductory :-

This is a classic case of a sale of temple land to a near relative by the Trustee, in violation of the provisions of the Hindu Religious and Charitable Endowment Act, which mandates that prior permission of the Commissioner must be taken for assigning the temple land.

Details of appeals :-

2. The intra court appeal in W.A.No.1535 of 2014 is directed against the order dated 26 November 2013 in W.P.No.6987 of 2008, setting aside the order passed by the Government, by rejecting the revision petition filed by the first respondent challenging his suspension from the position of Trustee of Arulmighu Annamalai Nathar Temple, Courtallam, on account of the sale of the temple property to his brother's son without obtaining permission from the Commissioner, Hindu Religious and Endowment Department.

3. The appeal in W.A.No.1536 of 2014 is against the order dated 26 November 1983 in W.P.No.10900 of 2017 virtually dismissing the Writ Petition filed for quashing the Government Order in G.O.Ms.No.195 dated 27 August 2002 and the consequential order dated 19 April 2004 directing execution of the sale deed in the name of the purchaser of the temple land notwithstanding the civil court decree dated 1 June 2001 in O.S.No.252 of 2000 canceling the sale and the observation that the sale deed has already been cancelled by the civil court.

Brief facts:-

4. The first respondent in W.A.No.1535 of 2014 (hereinafter referred to as the Trustee), assumed office as the hereditary trustee of Arulmighu Annamalai Nathar Temple, Kadyanathur Village, Tenkasi Taluk, Tirunelveli District. The assumption of office on 31 December 1996 was after the death of his father Thiru.V.Subramania Iyer. His father in his capacity as the Trustee, sold the temple property in public auction without taking permission from the Commissioner, HR & CE Department, which is a statutory requirement. The purchaser was none other than his grandson. The sale was not approved by the HR & CE Department. The Trustee after assuming office on 31 December 1996, executed sale deed in favour of the auction purchaser, without obtaining permission from the Competent Authority. The Joint Commissioner, HR & CE Department, Tiruneveli, issued notice dated 3 June 1999, to the Trustee to show cause as to why action should not be taken for assigning the temple property without permission. The Joint Commissioner after considering the explanation, suspended the trustee and appointed a Fit Person to

the temple. Those two orders were unsuccessfully challenged before the Commissioner, HR & CE Department. The orders dated 24 September 1999 were later challenged before the Government. The revision petitions were dismissed. The said order was set aside by the learned Single Judge on the ground of violation of principles of natural justice. The order is under challenge in W.A.No.1535 of 2014.

5. The sale of temple land in favour of a close relative of the trustee viz., brother's son, was challenged by a devotee in O.S.No.252 of 2000 before the District Munsif, Tirunelveli. The auction purchasers were made parties to the suit. The Civil Court by judgment and decree dated 1 June 2001, set aside the sale. The decree has become final. The Government, in spite of the Civil Court decree of declaration, set aside the order passed by the Commissioner, HR & CE Department, declining to grant permission to the sale, and by order dated 27 August 2002, directed the temple to execute the sale deed. The said order and the consequential direction issued by the Joint commissioner were challenged in W.P.No.10900 of 2007. The learned single Judge opined that the sale has already been set aside by the Civil Court in O.S.No.252 of 2000. Even then, the Writ Petition was dismissed on the ground that interest of third parties were involved. The Writ Petitioner who challenged the Government Order was directed to approach the appropriate authority. The order is under challenge in W.A.No.1536 of 2014.

Submissions:-

6 (a) The learned counsel for the appellants contended that the sale deed executed after the civil court decree is null and void. According to the learned counsel, the learned Judge erred in directing the appellant to approach the appropriate forum, without cancelling the Government Order, directing execution of sale deed;

(b) The learned Special Government Pleader (HR & CE Department) submitted that the Trustee has already been removed and another Trustee was appointed. According to the learned Government Pleader, action would be taken to resume the temple land on the basis of the decree in O.S.No.252 of 2000.

(c) None appeared for the Trustee.

Discussion and Conclusion:-

7. The Arulmighu Annamalai Nathar Temple at Kadayanallur Village has been administered by the trustees elected among the members of Chozha Brahmin Community, residing in Kayanallur town and other places. The father of the first respondent in W.A.No.1535 of 2014 functioned as the Trustee till his death. Thereafter, Thiru.S.Vaidyanathan, the trustee assumed office on 31 December 1996. Even before the appointment, his father sold the temple land to his grandson and two others, without

obtaining prior permission from the Commissioner.

8. The Trustee after assuming office, executed sale deed without taking permission from the HR & CE Department. The assignment of valuable temple land without authority, made the HR & CE Department to suspend the Trustee and thereafter, appoint a Fit Person to manage the Temple. The order was upheld by the Government.

9. The learned Single Judge without verifying the records, quashed the order passed by the Government on the ground of violation of the principles of natural justice.

10. We have perused the original file produced by the Government and the counter affidavit filed by the Deputy Secretary to the Government.

11. The trustee was given sufficient opportunity to produce materials in support of his revision petition. Notice was issued on 10 May 2007, pursuant to the direction in W.P.No.37113 of 2006, filed by the Trustee. The Trustee requested adjournment by two weeks to produce the documents, by letter dated 5 June 2007. The Trustee filed a statement on 2 July 2007. The Government fixed the enquiry on 2 August 2007 and issued notice to both the Trustee and the appellant, who earlier filed a Writ Petition in W.P.No.14637 of 2007 to hear him also before passing the order. The appellant appeared for the enquiry on 2 August 2007. The Trustee was called absent. The Government therefore, adjourned the enquiry to 20 August 2007 and intimated the Trustee. The Trustee appeared on 20 August 2007 and sought adjournment to 7 September 2007. The request was taken note of and the enquiry was adjourned to 7 September 2007. The Trustee appeared for the enquiry on 7 September 2007 and submitted a statement in writing. The Government on the basis of the materials available on record including the statement given by the Trustee, passed an order on 31 December 2007, dismissing the revision petition. Such being the factual position, the learned Single Judge was not correct in observing that there was violation of the principles of natural justice. We therefore set aside the order dated 26 November 2013 in W.P.No.6987 of 2008. The Writ Petition in W.P.No.6987 of 2008 is dismissed.

12. The Civil Court by its Judgment and Decree dated 1 June 2001, set aside the sale of temple land. The auction purchasers were parties to the suit. The decree has become final.

13. The auction purchasers after suffering a decree setting aside the sale in their favour, filed a petition before the Government on 21 November 2001 to direct the HR & CE Department to execute the sale deed in their favour. This is evident from

the counter affidavit filed by the Deputy Secretary to Government. There is nothing on record to show that the auction purchasers have disclosed to the Government the civil court decree dated 1 June 2001, setting aside the public auction and related sale.

14. The Government by issuing the order dated 27 August 2002, virtually acted as an Appellate Court. The decree passed by the civil court was ignored and a direction was issued to execute the sale deed.

15. The learned single Judge clearly held that the sale was set aside by the civil court and the decree has become final. Even thereafter, the learned Single Judge rejected the prayer to quash the Government Order. We are therefore of the view that the order dated 26 November 2013 is liable to be set aside.

Disposition :-

16. The Government Order dated 27 August 2002 and the consequential order dated 19 April 2004 are set aside, in view of the decree dated 1 June 2001 in O.S.No.252/2000 on the file of the District Munsif, Thenkasi. The sale deed executed on the strength of the legally unsustainable orders dated 27 August 2002 and 19 April 2002 are also set aside. The order dated 26 November 2013 in W.P.No.10900 of 2007 is set aside. The Writ Petition in W.P.No.10900 of 2007 is allowed.

17. We direct the Commissioner, Hindu Religious and Charitable Endowment Department and the Trustee/Fit person of the temple to take immediate action to resume the temple land.

18. In the upshot, we allow the intra court appeals, without liability to pay costs. Consequently M.P.No.1/2014 and C.M.P.No.17343/2017 are closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

1.The Commissioner and
Secretary to Government,
Commercial Taxes and Religious Endowment
Nungambakkam High Road,
Chennai 34.

2.The Temple Administration Board,
Nungambakkam High Road,
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3.The Special Commissioner and
Secretary to Government,
Tamil Department Culture and Hindu Religious
& Charitable Endowment Department,
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Chennai 34.

+2cc to Mr.Siva Subramanian, Advocate SR.No.22616
+1cc to Government Pleader SR.No.22481

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RK(CO)
GN(13/04/2018)