

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.A.No.714 of 2018 and CMP.No.6877 of 2018

The Administrator/President,
Arya Kshatriya Rajakula Nandhavana
Madalaya Paripalana Sangam,
Tiruvannamalai. ... Appellant/Petitioner

Vs

1. The Commissioner,
Department of Hindu Religious &
Charitable Endowments,
Nungambakkam, Chennai-34.
2. The Assistant Commissioner,
Department of Hindu Religious &
Charitable Endowments,
Tiruvannamalai.
3. Joint Commissioner,
Department of Hindu Religious &
Charitable Endowments,
Villupuram.
4. Fit Person/Executive Officer,
Arulmigu Kamachi Amman Thirukovil,
Thirumanjana Gopura Street,
Tiruvannamalai. ... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 06.11.2017 made in W.P.No.25776/2012 by a learned Single Judge.

Prayer in W.P.25776/2012: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari, to call for the records in letter No.240/2012/A1/dated 24.08.2012 on the file of the 2nd Respondent and quash the same.

For Appellant :: Mr.V.Prakash Babu
For Respondents :: Mr.M.Maharajan,
1 to 4 Special Government Pleader (HR&CE)

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 06.11.2017 made in W.P.No.25776/2012 by a learned Single Judge.

2. The Writ Petition has been filed by the petitioner therein praying for issuance of a Writ of Certiorari, to call for the records in Letter No.240/2012/A1 dated 24.8.2012 on the file of the 2nd respondent and quash the same. The said Writ Petition was allowed by the learned Single Judge by setting aside the impugned order dated 24.8.2012 issued by the 2nd respondent by order dated 6.11.2017 with a further direction to remand the matter to the 2nd respondent for fresh consideration of the petitioner's claim vis-a-vis the assertion of the respondents/department by following due provisions of the Act, 1959 in its Letter and Spirit. The 2nd respondent is directed to afford an opportunity of personal hearing to the petitioner, receive all the materials if any being placed by the petitioner in support of their claim and thereafter proceed to pass appropriate orders in accordance with law and merits. Aggrieved over the same, the petitioner is before this Court with this Writ Appeal.

3. Heard the learned Counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents. We have also gone through the typed set of papers filed along with this Writ Appeal including the order passed by the learned Single Judge.

4. A perusal of the typed set of papers would go to show that the appellant is a Registered Society and the members of the society are belonging to Arya Kula Kshatriya Community. The Society has been managing the properties belonging to the community. One of the properties-in-question is the property comprised in T.S.No.1646/1, Door No.34/116, Chinna Kadai Street, Tiruvannamalai District in which a Choultry was put up for the benefit and charity of the community people. The said property is located close to Sri Arunachaleswarar Temple, Tiruvannamalai, which temple was frequented by the members belonging to the community for which the society was founded and whenever such visit takes place, the choultry provides the pilgrims free accommodation and other amenities.

5. On the other hand, one person, who was allowed to stay in the said property as a Watchman claimed succession of the property by adverse possession by filing an Original Suit in O.S.No.1143 of 1994 on the file of the Principal District Munsif, Tirvannamalai. The said suit was dismissed which findings was reversed by the appellate court in A.S.No.94/2001 and the Second Appeal filed against the same was also ended in favour of the appellant society. The suit filed for declaration and recovery of possession of the property-in-question was allowed by the trial court and though in the appeal the said finding was reversed, the Second Appeal filed by the appellant society was allowed. Further the matters were taken up by the Supreme Court.

6. A perusal of the judgment of the Apex Court in Civil Appeal Nos.4012-13 of 2012 arising out of S.L.P. © Nos. 14163-64 of 2012 and CC Nos.21115-21116 of 2011 dated 27.4.2012, shows that the Apex Court having understood the sanctity and nature of the property and also the alleged Will of Declaration, dismissed the appeals filed by the appellant-watchman and directed him to vacate the premises within 2 months and handover peaceful possession of the suit property to the respondent Society/appellant herein. That judgment was written by the Apex Court to safeguard the interest of the property.

7. Further, the Stone Inscription alleged to be a Will in connection with the appellant Sangam also discloses that the pilgrims can come and stay in the Chathiram and it does not create any type of succession. Any such succession claimed by anyone be a sinner and their act is equivalent to do the sin of killing a cow in Kasi. Therefore, it is undoubtedly clear that the property neither belong to any watchman nor to any caretaker.

8. The petitioner in W.P.No.25776 of 2012/appellant herein is the President of Arya Kshatriya Rajakula Nandhavana Madalaya Paripalana Sangam to whom the writ petitioner represents and tried to produce documents to contend that the property has been taken over by them and they are managing the property and Sathiram. However, on going through the contents of Stone Inscription which is said to be a Will, which discloses that the property cannot be either alienated or encumbered and it is a public property to be utilised by the pilgrims to come and stay.

9. Mr.M.Maharaja, learned Special Government Pleader (HR and C.E. Department) appearing for the respondents submitted that the claim of the appellant is subject to the reconsideration of the issue by the 2nd respondent, namely, the Assistant Commissioner, Department of Hindu Religious and

Charitable Endowments, Tiruvannamalai.

10. Accordingly, this matter is remanded to the 2nd respondent for fresh consideration and the 2nd respondent shall afford an opportunity of personal hearing to the petitioner/appellant and look into all the materials, if any, placed before him and decide the claim put forth by the appellant by going through the order of the Single Judge made in W.P.No.25776/2012 dated 6.11.2017 and the observation made by the Apex Court in Civil Appeal Nos.4012-13 of 2012 dated 27.4.2012 and also the alleged Will.

11. In that view of the matter in order to comply with the principles of natural justice, the nature of the property-in-question as to whether it is given for public charity or not, has to be ascertained. However, without emphasizing much on this aspect, as ordered by the learned Single Judge, a fresh enquiry has also to be conducted with regard to the claim of the property by the appellant and also by the department of HR & CE by following the due provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in its letter and spirit. It is also to be noted that since the property-in-question is situated adjacent to Sri Arunachaleswarar Temple, Tiruvannamalai, it is meant only for the pilgrims to come and stay and not to misuse in any other form. Therefore, we are of the fond hope that the appellant and the department will place all the materials in letter and spirit before the 2nd respondent to protect the property as per the content of the Will/declaration, who in turn, dispose of the matter without being influenced by any of the observations made by this Court.

12. With the above observation and direction, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Department of Hindu Religious &
Charitable Endowments,
Nungambakkam, Chennai-34.

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Arulmigu Kamachi Amman Thirukovil,
Thirumanjana Gopura Street,
Tiruvannamalai.

+1cc to Mr.V.PRAKASH BABU, Advocate, S.R.No.40105
+1cc to the Government Pleader, S.R.No. 40518

W.A.No.714/2018

SSV(CO)
TR(16/07/2018)



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