



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :29.01.2018

Pronounced on :07.02.2018

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CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)Nos. 1665 to 1669 of 2018

and

WMP(MD)Nos.1762 to 1776 of 2018

S.Kalaivani	...	Petitioner in WP(MD)No.1665 of 2018
D.Gobikrishnan	...	Petitioner in WP(MD)No.1666 of 2018
R.Selvarani	...	Petitioner in WP(MD)No.1667 of 2018
C.Vijayalakshmi	...	Petitioner in WP(MD)No.1668 of 2018
P.Uthiraj	...	Petitioner in WP(MD)No.1669 of 2018

Vs.

1.The Principal Secretary,
Tourism, Culture and
Hindu Religious and Charitable
Endowments Department,
Fort Saint Gorge,
Chennai.

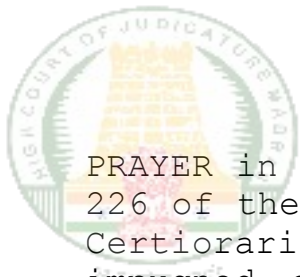
2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Pudukottai,
Pudukottai District.

3.The Joint Sub-Registrar No.I,
Sub Registrar Office,
Pudukottai,
Pudukottai District.

4.The Executive Officer,
Sri Pragathmbal Temple,
Thirugokarnam,
Pudukottai District.

5.The District Collector,
Pudukottai District,
Pudukottai.

... Respondents in all WPs



PRAYER in WP(MD)No.1665 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.2068/2013, A2 dated 16.07.2013 in respect of the lands in Survey No.63/8, 63/9, 64/6, 64/7, 64/8, 64/9, 66/1, 66/2, 67/1, 72/3, 72/4, 72/5, 73/3, 73/4 & 73/5, 9A Natham Pannai Village, Pudukottai Taluk and District and quash the same as illegal and arbitrary and consequently directing the respondents to grant sanction recognizing the ownership of the petitioner over the said land within a time frame fixed by this Court.

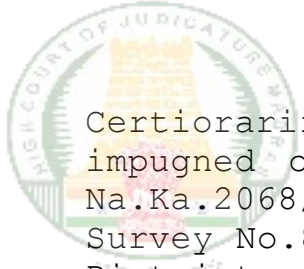
PRAYER in WP(MD)No.1666 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.2068/2013 A2 dated 16.07.2013 in respect of the lands in Survey No.66/7, 67/3, 67/7, 69/3, 69/6, 69/8, 70/1, 70/8, 71/3, 72/6 & 73/8, 9A Natham Pannai Village, Pudukottai Taluk and District and quash the same as illegal and arbitrary and consequently directing the respondents to grant sanction recognizing the ownership of the petitioner over the said land within a time frame fixed by this Court.

PRAYER in WP(MD)No.1667 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.2068/2013 A2 dated 16.07.2013 in respect of the lands in Survey No.19/18, 12, 10, 19, 5, 13, 20, 9, 11, 14, 17 & 8, 18/7, 8, 5, 2, 3 & 4, 9A Natham Pannai Village, Pudukottai Taluk and District and quash the same as illegal and arbitrary and consequently directing the respondents to grant sanction recognizing the ownership of the petitioner over the said land within a time frame fixed by this Court.

PRAYER in WP(MD)No.1668 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.2068/2013 A2 dated 16.07.2013 in respect of the lands in Survey No.76/1 to 11, 77/2 to 77/15, 79/1 to 9, 82/1 to 11, 9A Natham Pannai Village, Pudukottai Taluk and District and quash the same as illegal and arbitrary and consequently directing the respondents to grant sanction recognizing the ownership of the petitioner over the said land within a time frame fixed by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

PRAYER in WP(MD)No.1669 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of



Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.2068/2013 A2 dated 16.07.2013 in respect of the lands in Survey No.85/2 & 3, 9A Natham Pannai Village, Pudukottai Taluk and District and quash the same as illegal and arbitrary and consequently directing the respondents to grant sanction recognizing the ownership of the said land within a time frame fixed by this Court.

For Petitioner : Mr.B.Saravanan
 For Respondents : Mr.Ayiram K.Selvakumar
 Additional Government Pleader,
 in all WPs

COMMON ORDER

The orders passed by the second respondent in proceedings dated 16.07.2013 are under challenge in these writ petitions. Further direction is sought for to grant sanction recognizing the ownership of the petitioners over the said land within the time limit fixed by this Court.

2.Since the issue involved in these writ petitions is one and the same, they are disposed of by way of a common order.

3. At the outset the writ petitioners seek recognition of their respective ownership in respect of the lands owned by them. The learned Counsel appearing on behalf of the writ petitioners made submissions that one Mr.Namasivayam, S/O. Suthangkaathan Chettiyar was the owner of the landed properties in Survey Nos.63/8, 63/9, 64/6, 64/7, 64/8, 64/9, 66/1, 66/2, 67/1, 72/3, 72/4, 72/5, 73/3, 73/4 & 73/5, 66/7, 67/3, 67/7, 69/3, 69/6, 69/8, 70/1, 70/8, 71/3, 72/6 & 73/8, 19/18, 12, 10, 19, 5, 13, 20, 9, 11, 14, 17 & 8, 18/7, 8, 5, 2, 3 & 4, 76/1 to 11, 77/2 to 77/15, 79/1 to 9, 82/1 to 11, 85/2 & 3, 9A Natham Pannai Village, Thirugokarnam Circle, Pudukottai Taluk, Pudukottai District. The lands were divided into residential plots in the name and style of Maruthupandi Nagar and the approval was granted by the Deputy Director of Town Planning, Sivagangai in proceedings Ma.Pa.No.23/86. The writ petitioners had purchased the plots and sale deeds were executed in respect of the said plots.

4.The writ petitioners state that they are the bonafide purchasers of their respective plots and the sale deeds were executed in their favour. The petitioners had obtained the required building permission from the competent authority and thereafter constructed residential buildings from and out of their hard earned money. When the writ petitioners made enquiry with the 3rd respondent about the value of the property, it was informed that the property is barred by law, as the property is classified as Service Inam and Charge has been created upon the property to do service to the 4th respondent Sri Pragathambal



Temple, Thirugokarnam, Pudukottai District. As per the documents, original owner of the property is liable to render service to the 4th respondent temple and therefore, the property cannot be sold and no sale deed can be executed as the property is Service Inam land.

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5. Under these circumstances, the learned Counsel for the petitioners states that the orders dated 16.07.2013 have been passed by the 2nd respondent, furnishing the details of the landed property including survey numbers and the extent belonging to the 4th respondent temple in as many as 33 villages including 9A Natham Panni Village. The learned Counsel for the petitioners states that the petitioners had purchased the land from and out of their hard earned money and by obtaining due building permission, constructed the residential houses and some petitioners borrowed loan from the banks and the Government. The Government authorities had sanctioned loan only after verifying all the documents and therefore there cannot be any doubt in respect of the title and ownership of the petitioners in respect of the plots purchased by them. It is contended that as per Section 41 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, any exchange, gift, sale or mortgage or any lease for a term exceeding 5 years of the whole is null and void.

6. The learned Counsel for the petitioners referred Section 38 of the Act, and cited that the orders impugned dated 16.07.2013, are directly in contravention to the provision of the Act itself and as per Sections 38 and 41 of the Act, a harmonious reading of the said provisions makes it clear that the temple authorities are entitled to compel the performances of the service of charge by the person, who is in possession of the property on which such service is charged. Section 38 (2) of the Act also makes it clear that the person in possession is entitled to claim the amount which has been paid to the person responsible in law for the performance of service of charge. So also, Section 22 A of the Registration Act, 1908, empowers the third respondent to refuse to register any documents, relating to transfer of immovable property by way of sale, gift, mortgage, exchange or lease belonging to given or endowed for the purpose of religious institutions to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable. However, the said Section 22 A was brought into force only with effect from 05.02.2009. It is stated that the 4th respondent Temple is not the owner but only service of the charge is created upon the said lands. The said fact came to the knowledge of the writ petitioners only after making attempt to sell the said properties. Therefore, the respondents have to allow the service of charge of property to sell to various persons. Now after a lapse of many years they cannot pass the impugned orders.

<https://hcservices.ecourts.gov.in/hcservices/>

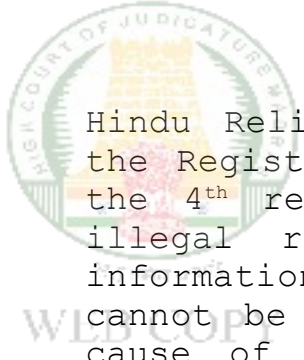
7. The learned Counsel for the petitioners urged this Court by stating that the respondents were not diligent enough to protect



the property nor made any attempt to deal with the property in accordance with law. On account of their carelessness, the petitioners are made to suffer and they had invested their hard earned money and now are in great trouble. The learned Counsel for the petitioners at the out set stated that there is no impediment for the petitioners and such similarly placed persons who purchased the lands in a particular survey number shall create fund according to the extent of the land purchased by them, so as to enable them to continue the performance of service in accordance with the terms and conditions. In this regard, the petitioners along with other similarly placed persons made representation on 02.12.2017 to the respondents 1, 2 and 4 to release the property by allowing them to sell and contribute for the creation of small fund to perform service to the 4th respondent temple. With these facts, the petitioners state that the 2nd respondent is not empowered to stop the sale of immovable property and unnecessarily preventing the writ petitioners from selling their lands purchased from the bona fide sellers. At the outset, the learned counsel for the petitioners drew the attention of this Court by stating that the petitioners have purchased their respective portion of land from and out of their hard earned money and they acquired right by virtue of the sale deed executed in their favour and they have constructed residential houses by obtaining proper building permission from the competent authority and have been in occupation for long period. Under these circumstances, the impugned order passed by the 2nd respondent is bad in law.

8.The Additional Government Pleader appearing on behalf of the respondents opposed the contentions by stating that the orders impugned in these writ petitions dated 16.07.2013, are not orders in the eye of law. The proceedings dated 16.07.2013 is an internal communication issued by the Assistant Commissioner to the Joint Sub Registrar I. The information was provided to the Joint Sub Registrar, Pudukottai, stating that the listed lands in the aforementioned villages belong to the temple. The Assistant Commissioner has furnished the details of the lands belonging to the 4th respondent temple.

9.On a perusal of the order impugned, 450 pages were enclosed along with the order dated 16.07.2013. However, the writ petitioners have not enclosed any of those documents, containing the details of the lands. The learned Additional Government Pleader further contended that it is only an information provided to the Joint Sub Registrar by the Assistant Commissioner and such information provided cannot be a ground for moving the present writ petitions. The informations are provided in general by stating that certain lands belong to the fourth respondent temple. In the sale deed or otherwise in respect of the lands cannot be registered by the Registration Department. It is further emphasized that it is the duty of the Assistant Commissioner of



Hindu Religious and Charitable Endowments Department, to inform the Registration Department in respect of the lands belonging to the 4th respondent. Such information are provided to avoid any illegal registration in respect of the temple lands. Such information provided between the officials of the Department cannot be a ground for moving a writ petition and there is no cause of action for the present writ petitions and they are premature in nature.

10. The learned Additional Government pleader further stated that in respect of the purchase of the lands by the writ petitioners, it is for them to adjudicate their title or ownership before the appropriate civil Court. As per the documents available with the Hindu Religious and Charitable Endowments, the Assistant Commissioner provided information to the Joint Sub Registrar -I, that certain lands are belonging to the Temple and the same has to be dealt with in accordance with law.

11. The learned counsel appearing for the writ petitioners referred paragraph 23 of the judgment of this Court, in the case of, Sudha Ravi Kumar and anr Vs. The Special Commissioner and Commissioner, Hindu Religious and Charitable Endowments Department, reported in 2017 (3) CTC 135, which reads as follows:

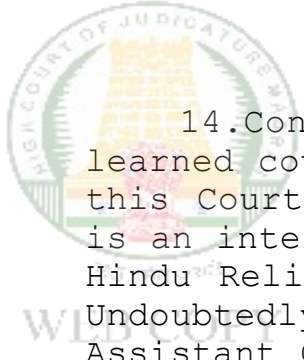
23. This contention is seriously objected to by the learned counsel for the petitioners. First of all we should state that we are not going into this issue because the constitutionality of Section 22-A of the Registration Act is not under challenge. Secondly, whether the property which is covered in the deed presented for registration is a religious endowment or not in terms of the TN HR & CE Act also cannot be gone into by us as the said dispute could be resolved only by a Civil Court on evidence. Even the registering authority is not competent to go into the said disputed question as he is not exercising any judicial or quasi judicial function. Similarly, simply because the some lands were shown as the properties belonging to the religious institution in the register maintained by the temple, it cannot be construed that the said land belongs to the said religious institution. It needs to be noted that the register of properties under Section 29 was prepared not after notice to the interested persons. It was done unilaterally by the religious institution. Similarly, the maintenance of the register by updating the same is also not done after notice to the parties who are interested in the property which is included in the register after the preparation of the original register. Thus, the preparation as well as the maintenance of the register is by the unilateral act of the religious institution and therefore likelihood of the private lands belonging to any individual being included in the



register by error cannot be ruled out. All these issues are to be resolved by the Civil Court. Therefore, in our considered view, once patta has been issued under either the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 it is for the temple to establish its title before the Civil Court. The registrar is bound to act on the basis of the ryotwari patta issued by the authority concerned and he shall not refuse to register the said deeds. As we have already pointed out the remedy for the religious institution is to approach the civil court for appropriate remedy.

12. In respect of the above judgment, the same cannot be applied in respect of the facts and circumstances of the present writ petitions on hand. The issues dealt in the above paragraph is an unambiguous. The constitutional validity to Section 22A of the Registration Act was not under challenge. Secondly, the property itself covered in the deed presented for registration as the religious endowments were not in terms of the Tamil Nadu Hindu Religious and Charitable Endowments Act also cannot be gone into. The relief as such sought for can be decided only by the Civil Courts on evidence, However, it is observed that the Registering authority is not competent to go into the such disputed questions, as he is not exercising any judicial or quasi judicial functions. Similarly, simply because of some lands are shown as belonging to the temple in the Register maintained by the Temple, it cannot be considered that the said lands belong to the said religious institution.

13. With these observations, this Court has to consider the facts and circumstances of the present cases. In the present cases, the writ petitioners claim that they are the bona fide purchasers. However, they are not disputing the service of charge created upon the said lands in favour of the 4th respondent temple. In paragraph 12 of the affidavit filed in support of the writ petitions, "in respect of the aforementioned landed property, the 4th respondent temple is not the owner but only service created upon the said lands. The said fact, came to my knowledge only after my attempt to sell the said land and hence, it is clear that the respondents allowed the service charged property be sold to various persons and they woke up one fine morning and informed the 3rd respondent that the landed property is a service charged one and accordingly the further, the future sale has been barred." Thus, it is for the respective parties to adjudicate the issue by producing documents and by adducing evidence before the civil court. Thus, the judgment cited by the learned Counsel for the petitioners is of no avail to them.



14. Considering the arguments as advanced by the respective learned counsel appearing for the petitioners and the respondents, this Court is of an opinion that the order issued on 16.07.2013, is an internal communication sent by the Assistant Commissioner of Hindu Religious and Charitable Endowments Department, Pudukottai. Undoubtedly, being the competent authority, it is the duty of the Assistant Commissioner, to provide information to the Registration Department, in respect of the lands owned by the temple. Thus, the Assistant Commissioner, has performed his duties and responsibilities as warranted. Such information are provided to the Registration Department in order to prevent any illegal or irregular registration in respect of the temple lands or the Government lands. Such information cannot be said to be illegal. Further internal communications between the Assistant Commissioner and the Joint Sub Registrar would not provide any cause of action for the writ petitioners to move any writ petition. It is not made clear whether any order has been passed against the writ petitioners. This apart, in the said communications dated 16.07.2013, 450 pages are shown as enclosure, none of those details are provided in these writ petitions.

15. Under such circumstances, this Court is not in a position to entertain the writ petitions, since the writ petitioners have not established any legal right or cause of action for considering the relief as such sought for in these writ petitions. The relief sought for to quash the orders dated 16.07.2013 and to direct the respondents to grant sanction recognizing ownership. Recognizing the ownership or title can never be granted by the respondents. If the petitioners are bona fide purchasers and if they are having any apprehension in respect of their title or if there is any intervention in respect of their possession, it is for them to establish their, title or ownership before the competent authorities.

16. Under these circumstances, the authorities competent have to take proper action in this regard for settling the issues. Even in case of possessing documents in favour of the temple by the Department of Hindu Religious and Charitable Endowments, it is for them to institute appropriate proceedings for taking possession in accordance with law. If the writ petitioners are of the opinion that they are having valid title or ownership of the lands, it is for them also to agitate the matter in the manner known to law. At the outset, it is for the respective parties to establish their title or otherwise of the lands in dispute.

17. However, this Court is of an opinion that under Article 226 of the Constitution of India, this Court cannot go into the details in respect of the ownership or title as raised. Ownership <https://hservices.e-courts.gov.in/hservices/> be decided in the present writ proceedings. As far as the writ petitioners are concerned, if any action is taken by the authorities, then they are at liberty to agitate the same in

the manner known to law.

18. Apart from the above said observations, the communication dated 16.07.2013 was issued a long back and now the present writ petitions are filed only on 25.01.2018 after a lapse of about 4 ½ of years, thus, the writ petitions itself are liable to be dismissed on the ground of laches. The proceedings dated 16.07.2013 as sought to be quashed by filing the writ petitions on 25.01.2018, deserves no merit consideration and it is for the respective parties to adjudicate, the dispute in relation to their ownership, title, rights or otherwise, in the manner known to law.

19. In the result, the writ petitions stand dismissed. However, there shall be no orders as to costs. Consequently, WMP(MD) Nos.1762 to 1776 of 2018 are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Tourism, Culture and
Hindu Religious and Charitable
Endowments Department,
Fort Saint Gorge, Chennai.
2. The Assistant Commissioner,
Hindu Religious and Charitable
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Pudukottai, Pudukottai District.

<https://hcservices.ecourts.gov.in/securemail>

+5ccs to M/S.B.Saravanan, Advocate SR.No. 47087 to 47091



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orders made in
W.P (MD) Nos. 1665 to 1669 of 2018
07.02.2018

dsk

JM/SKN RSK/SAR 1/20.02.2018/9P/11C