



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.651 of 2018

and

C.M.P.(MD).No.3551 of 2018

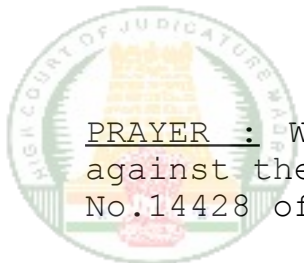
1. M.Arumugam
2. N.Kalimuthu
3. R.M.Vellaisamy
4. M.Ramachandran
5. K.Subbiah
6. M.Alagu
7. V.Arumugam

... Appellants

Vs.

1. P.Lakshmanan
represented through his power agents
S.Annamalai &
M.Thanneer Malai
2. The Superintendent of Police,
Sivagangai District, Sivaganai.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Sivagangai District, Sivagangai.
4. The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Paramakudi,
Ramanathapuram District.
5. U.Muthu Chettiar
6. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai 600 034.
7. The State of Tamil Nadu,
represented by its Secretary,
Revenue Department,
Fort St. George,
Chennai.

... Respondents



PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent, against the order dated 12.02.2018 passed by this Court in W.P.(MD). No.14428 of 2017.

Prayer in WP(MD).No. 14428/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records in Na.Ka.No.65/2017/E-1 dated 30.06.2017 on the file of the 3rd respondent and quash the same and direct the respondents 2 and 3 to take action against the 4th respondent and recover the temple lands more specifically mentioned in the annexure enclosed along with this writ affidavit.

For Appellants	: Mr.K.Prabhakar
For R1	: Mr.V.Raghavachari
For R2 to R4, 6 & 7	: Mr.VR.Shanmuganathan Special Government Pleader
For R5	: No appearance

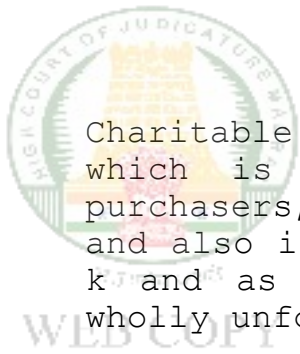
J U D G M E N T

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

By consent, the writ appeal itself is taken up for final disposal.

2. Mr.K.Prabhakar, learned counsel appearing for the appellants would submit that the appellants belong to Nattar Community and their ancestors have been residing in Poovandipatti Village for a quite long time and decision was taken before Nattars and Nagarathars in the year 2001, to sell Temple lands to an extent of about 30 acres at a price not less than Rs.30,000/- per acre and accordingly, the sale was effected. It is the further submission of the learned counsel appearing for the appellants that though some averments have been made in the writ petition against the appellants herein, they have not been arrayed as parties in the said writ petition and the learned single Judge has disposed of the Writ Petition by issuing certain directions and however, misconstruing the same, the Official respondents, without resorting to due process of law, threaten to demolish the superstructure put up by the appellants and dispossess them from the site in question and therefore, they have been constrained to approach this Court by filing the writ appeal, challenging the order dated 12.02.2018, made in W.P.(MD).No.14428 of 2010.

3. Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 2 to 4, 6 & 7 would submit that the alleged sale in favour of the forefather of the appellants are per se illegal and as such, it can be ignored also and would further add that direction No.1 of paragraph No.20 of the above said order would indicate that the third respondent in the writ petition shall conduct an enquiry under Section 78 of the Hindu Religious and



Charitable Endowments Act and take steps to recover the property which is the subject matter of the writ petition, from the purchasers, after giving opportunity to all the parties concerned and also issued further directions in this regard in Clause Nos.j & k and as such, the apprehension expressed by the appellants is wholly unfounded.

4. The learned counsel appearing for the first respondent / writ petitioner would submit that a fabricated decree has come into being in respect of the suit in O.S.No.17 of 2014 filed by the sixth respondent on the file of the Court of Additional District Munsif at Karaikudi for specific performance, and an ex-parte decree came to be passed, without discussing the pleadings and evidence let in and would further add that in the event of jurisdictional Joint Commissioner conducts an enquiry under Section 78 of the HR & CE Act, either the first respondent or the power of attorney agent of the first respondent may be permitted to intervene in this appeal.

5. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

6. It is relevant to extract Clause Nos.j and k of Paragraph No.20 of the order dated 12.02.2018 in W.P.(MD).No.14428 of 2017.

j. the 5th respondent shall instruct the appropriate Assistant Commissioner / Joint Commissioners to initiate inquiry under Section 78 to retrieve the temple lands from the encroachers and shall submit a report to that effect within four weeks;

k. The 5th respondent shall cause to issue public notices informing the public / encroachers / third parties in possession of the temple lands to voluntarily come forth and surrender the lands to avoid penal action, failing which, inform them that prosecution will be initiated against them under Section 79B of the HR & CE Act.

7. It is also relevant to extract Section 78 of the HR & CE Act., 1955.

"78. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers.- (1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment (hereinafter referred to as "the property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated."



8. In the light of the facts and circumstances, the third respondent, in the event of initiating proceedings under Section 78 of the HR and CE Act, 1959, is to decide the matter in accordance with law, and while doing so, shall afford an opportunity either to the appellants 1 to 7 or their power of attorney agents, to raise their objections. The appellants, till the disposal of the proceedings under Section 78 of the HR & CE Act, 1959, shall not create any third party rights in respect of the site and superstructures in question and shall not alter the physical features also.

9. The respondents 3 and 4 herein shall complete the said exercise within a period of twelve weeks from the date of receipt of a copy of this order and till such time, the respondents shall not interfere with the possession and enjoyment of the site and superstructures in question.

10. The Writ Appeal stands disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Sivagangai District,
Sivaganai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Sivagangai District,
Sivagangai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Paramakudi,
Ramanathapuram District.
4. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai 600 034.
5. The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai.

+1cc to M/S.K.Prabhakar, Advocate SR.No. 54278
+1cc to M/S.V.Raghavachari, Advocate SR.No. 54342

W.A. (MD) No. 651 of 2018
08.03.2018