



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.07.2018

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND**

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)NO.1407 OF 2014

and

M.P(MD)No.1 of 2014

1. The Secretary to Government,
Development Endowment and Information
Departments,
Secretariat,
Chennai - 600 009.

2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Chennai - 34.

3. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nethaji Road, Madurai.

: Appellants/Respondents

vs.

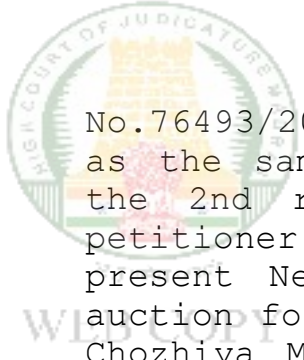
Sozhia Maruthuva Mandagapadi
Kattalai Trust,
represented by its Chairman,
Board of Trustee A.Sornavel,
Son of Arumugapandithar,
Door Nos.107 and 108,
Vani Vilas Medu,
Dindigul Town
Dindigul District.

: Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
praying this Court to set aside the order passed by this Court in
W.P(MD)No.14103 of 2012, dated 05.08.2014

Prayer in WP(MD). 14103/ 2012 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorari/Mandamus, calling for the records of the 1st
respondent dated 31.08.2012 made to proceedings G.O. No.297
confirming the order dated 12.02.2011 in proceedings



No.76493/2010/M1 on the file for the 2nd respondent, quash the same as the same is arbitrary, ultra vires and consequentially direct the 2nd respondent to accord sanction and permission to the petitioner to sell the property comprised in Old T.S.No.33 at present New T.S.No.43, Dindigul Town to the Highest Bidder in auction for the necessity and beneficial interest of 13 Vaigaiara Chozhiya Maruthuva Mandagapadi Kattalai Trust, Meenakshi Naicken Patti, Dindigul District as contemplated under Sec. 34 of Act 22/59 for the purpose of utilising the sale proceeds to construct a multi storeyed complex in the property comprised in T.S.No.43/1,2, Dindigul Town.

For Appellants : Mr.VR.Shanmuganathan
Special Govt.Pleader
For Respondent : Mr.Anwar Sameem
for Mr.T.Antony Arul Raj

JUDGMENT

[Judgment of the Court was made by **K.RAVICHANDRABAABU, J.**]

The present Writ Appeal is directed against the order made in W.P(MD)No.14103 of 2012, dated 05.08.2014.

2.The appellants are the respondents in the Writ Petition. The Writ Petitioner, a Trust, sought the following relief:

(1) for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 31.8.2012 made in proceedings in G.O.No.297 confirming the order, dated 12.2.2011 in proceedings No.76493/2010/M1 on the file of the second respondent and to quash the same, as the same is arbitrary, ultra-vires and:

(2)consequently to direct the second respondent to accord sanction and permission to the Petitioner to sell the property comprised in Old T.S.No.33 at present New T.S.No.43, Dindigul Town to the Highest Bidder in auction for the necessity and beneficial interest of 13 vaigaiara Chozhiya Maruthuva Mandagapadi Kattalai Trust, Meenakshi Naicken Patti, Dindigul District as contemplated under Section 34 of Act 11/59 for the purpose of utilizing the sale proceeds to construct a multi-storeyed complex in the property comprised in T.S.No.43/1, 2, Dindigul Town.

before the Writ Court.

3.The Writ Court disposed the Writ Petition in the following

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

"18.In the result, the writ petition is disposed



of in the following terms:

1)The order declining to grant sanction to sell the property under Sub-Section 1 of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 also should be published in the manner provided in Sub-Section 3 of Section 34 and Rule 3 of the Alienation of Immovable Trust Property Rules, 1960;

2)The order declining to grant sanction to sell the property under Sub-Section 1 of Section 34 is appealable to the Court under Sub-Section 4 of Section 34 of the Act;

3)The order declining to grant sanction to sell the property under Sub-Section 1 of Section 34 is not revisable by the Government under Section 114 of the Act;

4)The petitioner shall be at liberty to file an appeal to the Civil Court under Sub-Section 4 of Section 34 of the Act, as against the order of the Commissioner dated 12.02.2011.

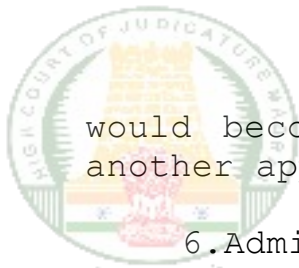
5)The order of the Commissioner dated 12.02.2011 declining to grant sanction to sell the property shall be published in a manner provided under Sub-Section 3 of Section 34 and the Rules, stated supra, within one month from today;

6)The petitioner will be at liberty to file an appeal under Sub-Section 4 of Section 34 to the Civil Court, within three months from the date of such publication;

7)The Civil Court shall issue notice to all the interested persons, permit the parties to let in evidence and then decide the matter in accordance with law, expeditiously.''

4.Now, the present Writ Appeal is filed by the official respondents before the Writ Court only aggrieved against the findings rendered by the Writ Court holding that the order declining to grant sanction to sell the property under sub-section (1) of Section 34 is appealable to the Court under Sub-Section 1 of Section 34 of the 'Act' and that the said order is not revisable by the Government under Section 114 of the said 'Act'. In effect, the appellants are aggrieved against the observations made at paragraph 18 sub-clause(1)(2) and (3) of the above order alone.

5.Though the question raised in this Writ Appeal is with regard to the maintainability of the appeal under Section 34(4) as against the order declining to grant sanction to sell the property under sub-section 34(1) of the Act, We are not inclined to decide the question in the present matter and decide the same, in view of the following facts and circumstances, which would show that such exercise of deciding the above question



would become only academic, which we would like to relegate to another appropriate proceedings.

6. Admittedly, the Writ Petitioner, who challenged the impugned proceedings declining to grant sanction to sell the property, has not filed any Writ Appeal against the order of the Writ Court directing them to approach the Civil Court. On the other hand, it is admitted by the learned counsel for the respondent/Writ Petitioner that as directed by the Writ Court, a civil suit is filed and the same is pending at numbering stage itself. The learned counsel for the Respondents/Writ Petitioners further submitted that now the Trust Board itself is not in existence and the Scheme is also cancelled and hence nothing survives in this matter.

7. When such being the admitted position on facts, We do not think that this is the case where we need to look into the above question raised with regard to the maintainability of an appeal under Section 34(4) of the said 'Act' as against the order declining to grant sanction to sell the property, as such exercise would be only academic, owing to the facts and circumstances as stated supra. Therefore, by leaving the said question open to be raised and agitated in any other appropriate proceedings, this Writ Appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-III)

+1cc to Mr. T. Antony Arul Raj, Advocate SR.No.75624

+1cc to SPECIAL GOVERNMENT PLEADER, SR.No.75892

VSN

MK/RP/SAR 3/13.08.2018/4P/3C

JUDGMENT MADE IN
W.A (MD) NO.1407 OF 2014
and
M.P (MD) No.1 of 2014
30.07.2018