In the High Court of Judicature at Madras

Dated : 06.2.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.294 of 2019 & CMP.No.2896 of 2019

AVC Education Committee,
rep.by its Secretary,
Mayiladuthurai ...Appellant

Vs

1.The Commissioner, Hindu Religious and Charitable Endowment Board, Chennai-34.

2.The Joint Commissioner, Hindu Religious and Charitable Endowment Board, Mayiladuthurai, Nagapattinam District.

3.Dharmapuram Aadheenam Mutt, rep.by its Manager, Dharmapuram, Mayiladuthurai-1. Nagapattinam Dist. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 20.12.2018 in W.P.No.18777 of 2017.

WP.NO.18777/2017:

Writ Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Cerriorarified Mandamus calling for the records of the First Respondent Passed in RC No. 29328/ 2007 R.1 dated 19.05.2017 signed on 24.05.2017 and quash the same and consequently direct the First Respondent to consider the representation of the Petitioner dated 1.03.2017 pursuant to the application of the Third Respondent dated 1.4.2001 submitted to the First Respondent.

For Appellant : Mr.K.M.Vijayan, SC for M/s.K.M.Vijayan Associates
For Respondents 1 & 2 : Mr.M.Maharaja, SGP (HR & CE)

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the writ petitioner/appellant is directed against the order in W.P.No.18777 of 2017, which was dismissed vide order dated 20.12.2018.

2. The appellant filed the said writ petition challenging the order passed by the first respondent herein dated 19.5.2017, whereby the permission sought for by the appellant to grant sanction to the third respondent Mutt to alienate an extent of 17.40.50 acres of the land belonging to the Mutt was rejected.

3. Among other things, the first respondent, in the proceedings dated 19.5.2017, stated that Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (for brevity, the Act) provides that any sale of immovable property belonging to a religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary, vital and pertinent to safeguard the interest and welfare of the institution. The first respondent further recorded that what is contemplated under Section 34 of the Act is prior sanction of the Commissioner and not the post facto approval or ratification and that there is no provision in the Act to ratify any sale or alienation of immovable property of this nature belonging to a religious institution made without the prior sanction of the Commissioner, which also requires approval of the Government. The first respondent also referred to the decision of a Division Bench of this Court in the case of T.Subbaraman and Others Vs. Sri Vedantha Desikar Devasthanam, Mylapore, Madras [reported in 2007 (5) MLJ 87] wherein it was held that a writ cannot be issued to compel the devasthanam to alienate or direct the Commissioner or the State Government to accord their approval for sale of property by religious institutions unless the mandatory requirements of Section 34 of the Act are satisfied. With these reasons, the first respondent rejected the application submitted by the appellant.

4. Before the learned Single Judge, the contention raised by the appellant was that an application was made by the third respondent Mutt under Section 34 of the Act on 01.4.2001, that on 12.4.2001, an agreement was entered into between the appellant and the third respondent Mutt, that possession of the land was handed over, that one and half times of the market value of the land had been paid to the Mutt and that it was lying in deposit. The second respondent, by proceedings dated 09.6.2011, recommended the said application submitted by the third respondent Mutt for being considered by the first respondent. It was further submitted that the appellant utilized the land for putting up construction for establishing a polytechnic college thereby serving the need of the local public and that it is, in fact, doing service to the local people by providing quality education.

5. It was again submitted that the first respondent, vide order dated 31.7.2012, rejected the said application filed by the third respondent. The appellant challenged the said order dated 31.7.2012 by filing W.P.No.30899 of 2012 seeking a further direction to consider the said application dated 01.4.2001. The said writ petition was allowed by order dated 01.2.2017 thereby setting aside the order dated 31.7.2012 and a further direction was issued to the first respondent to consider the grounds raised by the appellant as well as the third respondent Mutt on merits and in accordance with law by fixing a time frame for complying with the direction.

6. Thereupon, the appellant filed their representation dated 01.3.2017 before the first respondent along with a memo of calculation. The first respondent, by order dated 19.5.2017, rejected the said representation dated 01.3.2017.

7. It is submitted by the learned Senior Counsel that had the said application submitted by the third respondent Mutt dated 01.4.2001 been considered promptly, the appellant would not have been put to a difficult situation and that for no valid reason, the said application dated 01.4.2001 was kept pending for nearly 12 years and came to be rejected only on 31.7.2012, which was set aside by this Court in W.P.No.30899 of 2012 vide order dated 01.2.2017 and that the matter was remanded to the first respondent for a fresh consideration.

8. Thus, it is the submission of the learned Senior Counsel that had the said application dated 01.4.2001 been taken up at earlier point of time, the appellant would have been in a better position to canvass their contentions.

9. We have heard the learned Special Government Pleader, accepting notice for the respondents on the above submissions.

10. Section 34 of the Act deals with alienation of immovable trust property. Sub-Section (1) of Section 34 of the Act states that any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to or given or endowed for the purpose of any religious institution shall be null and void unless it is sanctioned by the Commissioner, Hindu Religious and Charitable Endowment Department, as being necessary or beneficial to the institution. The First Proviso to Section 34 of the Act stipulates that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner. The Second Proviso stipulates that the Commissioner shall not accord such sanction without the previous approval of the Government. Thus, Section 34(1) of the Act provides for prior sanction and as rightly pointed out by the first respondent in the impugned order in the writ petition, there can be no ratification of a transaction or a post facto

sanction.

11. The contention raised by the appellant that only an agreement for sale was entered into and that it should be treated as a lease transaction at least for a period of five years does not merit acceptance because the Explanation under Section 34(1) of the Act states that any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

12. In this case, though the appellant is stated to have entered into an agreement dated 12.4.2001, we find that possession of an extent of 10.78½ acres was handed over by the third respondent Mutt to the appellant on 07.4.2000. This was done even prior to submission of the said application dated 01.4.2001 by the third respondent Mutt to the Commissioner under Section 34 of the Act. Further, the so-called agreement, which has been enclosed in the additional typed set of papers at pages 13 and 14 is only a possession receipt. Therefore, in effect, there had been absolute transfer of the property in favour of the appellant trust and it cannot be treated to be a lease transaction.

13. It is not made clear as to how the appellant trust had put up construction on such a property when they do not have a registered sale deed in their favour. The Planning Authorities, who had granted permission for such construction on the said property, have failed to take note of this aspect. It is also not clear as to whether at all the appellant had obtained approval before putting up the construction. Furthermore, the possession receipt dated 12.4.2001 states that handing over of the possession is subject to approval to be obtained under Section 34 of the Act. Admittedly, the third respondent Mutt had no power to hand over possession of the property before obtaining approval from the Commissioner.

14. In the light of the above factual position, the first respondent was fully justified in rejecting the said application filed by the third respondent Mutt. Therefore, the learned Single Judge rightly took note of the statutory provisions and upheld the order passed by the first respondent and recorded that the appellant had not made out any case for interference.

15. Having come to such a conclusion, we are now concerned about the innocent students, who are undergoing education in the polytechnic college established and administered by the appellant. The institution has come up during the year 2001 and in the interregnum, there is a cancellation of the approval by the All India Council for Technical Education and it is stated that subsequently, pursuant to the directions issued by this Court in various litigations initiated by the appellant, the polytechnic college continues to be functioning as on date.

16. The learned Senior Counsel for the appellant would submit that the construction has been put up only to an extent of 7 acres, that the remaining 10 acres is lying vacant, that the appellant is ready to surrender the same to the third respondent Mutt and that in respect of the extent of 7 acres of land, which had been utilized for establishing the polytechnic college, liberty may be granted to the appellant to move the proper authority seeking appropriate orders.

17. Under normal circumstances, we would not have entertained such a request. But, we are inclined to pass appropriate orders in that fashion because of the students, who are undergoing education in the polytechnic college. If appropriate orders are not passed, the resultant position would be that the respondents should take over possession of the extent of seven acres of land also, which may end in closing down the college. Therefore, we grant a limited relief to the appellant not on account of the conduct of the appellant or that of the third respondent Mutt, but bearing in mind the interests of the students, who are pursuing their education in the college established and administered by the appellant.

18. A reading of the recommendation given by the second respondent dated 09.6.2011 shows that one Mr.T.Marconi had secured information under the provisions of the Right to Information Act and also made an objection with regard to the transaction between the appellant and the third respondent Mutt. Thus, it appears that if the said Mr.T.Marconi had not brought to the notice of the Authorities, in all probabilities, the appellant would have continued to enjoy the property without any legal rights to do so.

19. For all the above reasons, the writ appeal is dismissed with the following directions :

i. The appellant is directed to surrender possession of the land to an extent of 10 acres, which is stated to be lying vacant, to the third respondent Mutt within two weeks from the date of receipt of a copy of this judgment.

ii. On taking over possession, the third respondent Mutt shall appropriately fence the property and the entire process shall be done under the personal supervision of the second respondent and a report shall be submitted by the second respondent to the Commissioner.

iii. In respect of the land measuring about 7 acres, in which, the polytechnic college is functioning, the possession shall not be disturbed for a period of three months from the date of receipt of a copy of this judgment to enable the appellant to move the proper Authority under the provisions of the Act for appropriate order and

iv. In the event the appellant is unable to do so within the time prescribed, the appellant shall surrender vacant possession of the land and apply to the third respondent trust, which shall be taken over and preserved in a manner, which would sub-serve the interests of the third respondent Mutt.

No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Commissioner, Hindu Religious and Charitable Endowment Board,
Chennai-34.

2.The Joint Commissioner, Hindu Religious and Charitable Endowment Board, Mayiladuthurai, Nagapattinam District.

+1cc to M/s.K.M.Vijayan Associates, Advocate sr.no.10110
+1cc to Government Pleader sr.no.10322

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CMP.No.2896 of 2019

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nr 05/03/2019