



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P (MD) No.8128 of 2010

and

M.P (MD) No.1 of 2010 &

W.M.P (MD) No.14711 of 2017

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M.Gunaseelan @ Gunasekaran

... Petitioner

Vs.

- 1.The District Collector,
Collectorate Complex,
Tiruchirappalli District.
- 2.Tiruchirappalli City Corporation,
Rep. by its Executive Authority,
The Commissioner,
Tiruchirappalli - 1.
- 3.The Assistant Commissioner,
Srirangam Zone,
Tiruchirappalli City Corporation,
Srirangam.
- 4.Arulmighu Ayyanar Peramanar Temple,
Rep. by its Executive Officer,
Having office at Tenancy Premises,
Melur (via), Srirangam,
Tiruchirappalli - 6.
- 5.Government of Tamil Nadu,
Rep. by its Secretary,
Department of the Hindu Religious and Charitable Endowments,
Fort St. George,
Chennai - 600 009.
- 6.Government of Tamil Nadu,
Rep. its Secretary,
Municipal, Administration and Water Supply Department,
Fort St. George,
Chennai - 600 009



7.The Commissioner,
Tamil Nadu Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Street
previously Nungambakkam High Road,
Chennai - 600 034. ... Respondents

(RR 5 to 7 are *suo motu* impleaded vide order
dated 07.11.2019)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to grant compensation to the petitioner for dispossessing him from the Ayan Nanja lands admeasuring 3 acres comprised in T.S.No.988, Melur Village, Srirangam Taluk, Tiruchirappalli District without following due process of law.

(Prayer amended vide order dated 03.02.2011
in M.P (MD) No.2 of 2010)

For Petitioner : Ms.J.Maria Roseline

For RR 1 & 6 : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

For RR 2 & 3 : Mr.K.Dinesh
for Mr.N.S.Karthikeyan

For R - 4 : Mr.K.Vadivelu

For RR 5 & 7 : Mr.VR.Shanmuganathan,
Special Government Pleader.

ORDER

Ms.J.Maria Roseline, learned counsel on record for writ petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader on behalf of respondents 1 & 6, Mr.K.Dinesh, learned counsel representing Mr.N.S.Karthikeyan, Standing Counsel for Tiruchirappalli Corporation on behalf of respondents 2 & 3, Mr.K.Vadivelu, learned counsel on behalf of fourth respondent and Mr.V.R.Shanmuganathan, learned Special Government Pleader on behalf of respondents 5 and 7 are before this Court.

2.Read this in conjunction with and in continuation of earlier proceedings of this Court dated 07.11.2019 which reads as follows:



'Ms.J.Maria Roseline, learned counsel on record for writ petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader on behalf of first respondent, Mr.K.Dinesh, learned counsel representing Mr.N.S.Karthikeyan, Standing Counsel for Tiruchirappalli Corporation on behalf of respondents 2 and 3 and Mr.K.Vadivelu, learned counsel on record for fourth respondent are before this Court.

2.In the course of hearing, it came to light that it is necessary to implead three other parties for disposal of this Writ Petition. They are:

1.Government of Tamil Nadu, Rep. by its Secretary, Department of the Hindu Religious and Charitable Endowments, Fort St. George, Chennai - 600 009.

2.Government of Tamil Nadu, Rep. its Secretary, Municipal, Administration and Water Supply Department, Fort St. George, Chennai - 600 009 and

3.The Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department, 119, Uthamar Gandhi Street previously Nungambakkam High Road, Chennai - 600 034.

3.These three parties are suo motu impleaded as respondents 5, 6 and 7 respectively.

4.Mr.Aayiram K.Selvakumar, learned Additional Government Pleader accepts notice on behalf of respondents 5 and 6.

5.Mr.VR.Shanmuganathan, learned Special Government Pleader accepts notice on behalf of seventh respondent.

6.Registry to carry out necessary and consequential amendments in the case file before the next listing.

7.Short facts shorn of elaboration are that 'fourth respondent / Arulmighu Ayyanar Peramanar Temple' (hereinafter referred to as 'said Temple' for brevity) owns '7 acres and 40 cents of land in T.S.No.988 in Melur Village, Srirangam Taluk, Tiruchirappalli District' (hereinafter referred to as 'said land' for brevity), that in 3 acres from and out of 7 acres and 40 cents ie., said land writ petitioner is a cultivating tenant (undisputedly), that 50 cents of land from and out of this 3 acres has been taken possession by 'Tiruchirappalli



Municipal Corporation' (hereinafter referred to as 'said Corporation' for brevity) and drinking water tank has been erected therein, that the case of writ petitioner is that he has been forcibly dispossessed (dehors due process of law) qua 50 cents from and out of said land, that the case of said Temple is that proceedings qua 50 cents from and out of said land had been initiated vide Section 34 of 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter referred to as 'said Act' for brevity), but the same has not been concluded, that the said Temple had earlier filed a Writ Petition in W.P(MD) No.1862 of 2011 which was disposed of on 02.01.2014 by this Court directing the authorities concerned to decide on said Temple plea for compensation qua 50 cents from and out of said land.

8.In the aforesaid backdrop, writ petitioner submits that he has been dispossessed qua 50 cents from and out of said land dehors due process of law.

9.Counter-affidavit filed by second respondent ie., Tiruchirappalli Corporation makes it clear that 50 cents from and out of said land has in fact been taken possession and Tiruchirappalli Corporation has in fact erected a drinking water tank therein. What is of utmost importance is a portion of paragraph 10 of the counter-affidavit of Tiruchirappalli Corporation which reads as follows:

'10..... In view of the above facts, the second respondent Commissioner of Corporation is ready to pay sale consideration of Rs.40,00,000/- to the HR & CE Department as per the land value fixed by the District Revenue Officer, Trichy dated 26.10.2012.'

10.Section 34 of said Act is of immense significance and the same reads as follows:

'34.Alienation of immovable trust property.- (1) 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 purposes of, any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution:

Provided that before such sanction is



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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 person having interest shall be duly considered by [the Commissioner]:

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].

.....

(2) When according such sanction, [the Commissioner] may impose such conditions and give such direction, as [he] may deem necessary regarding the utilisation of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of same within a reasonable period.'

11.A perusal of Section 34 of said Act reveals that there cannot be any alienation of Temple land *dehors* sanction of the Commissioner which in turn can be accorded only after following a procedure and more particularly after prior approval of the Government.

12.To be noted, prior approval of Government is vide second proviso of Section 34 of said Act and it is in this context that this Court deemed it appropriate to *suo motu* implead the aforementioned three entities.

13.Learned Standing Counsel on behalf of Tiruchirappalli Corporation averting to counter-affidavit submits that they stand by their commitment to pay compensation at the rate of Rs.40,00,000/- (Rupees Forty Lakhs Only) per acre ie., Rs.20,00,000/- (Rupees Twenty Lakhs Only) qua 50 cents from and out of said land acquired for erecting drinking water tank. It is also not disputed that writ petitioner is in continuation of possession of remaining 2 acres 50 cents of land (from and out of said land) referred to supra in his capacity as cultivating tenant.

14.The narrowed down issues are that seventh respondent ie, Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department, should take a decision about according sanction for alienation of 50 cents from and out of said land in favour of Tiruchirappalli Corporation. If that does not happen, that would be end of the matter and



Tiruchirappalli Corporation should necessarily give back possession and if that does not happen and sanction is accorded by seventh respondent with prior sanction of the Government, then the Tiruchirappalli Corporation would pay the aforementioned compensation or any other agreed higher amount if that be the case. This in turn will lead to said Temple paying a part of compensation to writ petitioner qua 50 cents from and out of said land. If this happens, at what rate said Temple would pay compensation to writ petitioner ie., is the issue that needs to be resolved.

15. At request of all counsel before this Court, list on **15.11.2019.**

3. A very piquant situation has arisen in the instant matter. It is not only piquant, but peculiar leading to a predicament of sorts. On the one hand, it is a piece of land belonging to a Temple where writ petitioner is admittedly a cultivating tenant. On the other hand, second respondent has put up a water tank on that piece of land which this Court is informed is for drinking water purposes which is also in larger public interest. Section 34 of said Act is couched in a language wherein any alienation of Temple land *dehors* Section 34 of said Act is null and void. Therefore, Section 34 of said Act and sanction thereunder is statutorily imperative for alienation of Temple land.

4. This takes us to second proviso to Section 34 of said Act which reads as follows:

'Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.'

5. A perusal of second proviso to Section 34 of said Act makes it clear that sanction to be accorded by Commissioner under Section 34 of said Act is circumscribed by a requirement that it should be with the prior approval of the Government. In this view of the matter, this Court deems it appropriate to pass the following order:

a) Respondents 5 and 6 shall have a joint sitting and take a decision which in turn will approval of the Government within the meaning of second proviso to Section 34 of said Act.

b) If the aforesaid joint decision is in the negative, possession of 50 cents from and out of said land shall be restored as it stood prior to the erection of water tank by second respondent.



c) If the decision is in the affirmative, respondents 5 and 6 shall decide on the quantum of compensation for 50 cents from and out of said land as also apportionment of compensation as between fourth respondent / lessor and writ petitioner / cultivating tenant.

d) If the joint decision ie., approval of Government within the meaning of second proviso to Section 34 of said Act is in the affirmative, seventh respondent shall pass suitable orders.

e) Respondents 5 and 6 for the purpose of their joint meeting and taking a decision, shall put all concerned on notice, more particularly writ petitioner, second respondent and fourth respondent, give reasonable opportunity to them and then take a decision.

f) Respondents 5 and 6 shall take a decision as expeditiously as possible and in any event within a period of twelve (12) weeks from the date of receipt of a copy of this order.

6.This order is passed in the light of peculiar facts and circumstances of this case (alluded to supra) bearing in mind the principles underlying the welfare State. Therefore, this order shall not operate as a precedent.

7.Instant Writ Petition is disposed of with above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Collectorate Complex,
Tiruchirappalli District.

2.The Secretary,
Rep. by the Government,
Department of the Hindu Religious and Charitable Endowments,
Fort St. George,

<https://hcservices.hcscs.gov.in/hcscs/009>



3.The Secretary,
Rep. by the Government,
Municipal, Administration and Water Supply Department,
Fort St. George,
Chennai - 600 009

4.The Commissioner,
Tamil Nadu Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Street
previously Nungambakkam High Road,
Chennai - 600 034.

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-100439[F] dated 22/11/2019)

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-100536[F] dated 22/11/2019)

+1 CC to M/s.GP (SR-100574[F] dated 22/11/2019)

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-100658[F] dated 22/11/2019)

W.P (MD) No.8128 of 2010
21.11.2019

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