



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)Nos.1273 and 1274 of 2019
and
C.M.P. (MD)Nos.10849 and 10851 of 2019

Sahaja Nalvazhvu Sangam
Aanur Village, Thumbivadi Panchayat
Aravakuruchi Post
Karur District
Represented by its President,
C.GAnesh Kumar

... Appellant
in W.A.(MD)No.1273 of 2019

Shri Ram Chandra Mission
Thumbivadi Village,
Aravakuruchi Taluka,
Karur,
Represented by Govind.R

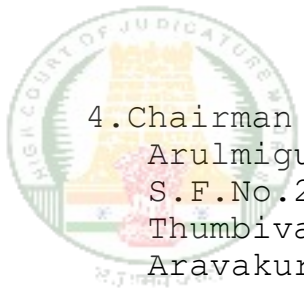
... Appellant
in W.A.(MD)No.1274 of 2019

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

2.The Additional Commissioner
Hindu Religious and Charitable
Endowments Department, Trichy.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department, Karur.



4.Chairman and Board of Trustees of
Arulmigu Anuramman Temple,
S.F.No.27, Aanur Village,
Thumbivadi Panchayat,
Aravakurichi Taluk, Karur District.

5.Chairman and Board of Trustees of
Arulmigu Janyankondamman Temple,
Sengalapuram Village,
S.F.No.27, Aanur Village,
Thumbivadi Panchayat,
Aravakurichi Taluk, Karur District.

..Respondents in both appeals

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letter Patent Act, to set aside the order made in W.P.(MD)Nos.1614 and 1615 of 2019, dated 22.02.2019, respectively.

Prayer in WP(MD).Nos. 1614 and 1615 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records and to quash the proceedings of the 3rd respondent in N.A.No.97/2018/A2 dated 23/08/2018 consequent to the proceedings of the 1st respondent in N.A.No.40537/2018/R3 dated 28/07/2018 in empowering the 4th and 5th respondents to take action in recovering the possession of the properties situated in S.F.No.26 &28 comprising of 19.89 acres.

For Appellants : Mr.Karthik Ranganathan
(in both appeals)

For Respondents : Mr.A.K.Baskarapandian
(in both appeals) Special Government Pleader
(for R1 to R3)

Mr.H.Arumugam
for Mr.J.Senthil Kumariah
(for R4 and R5)

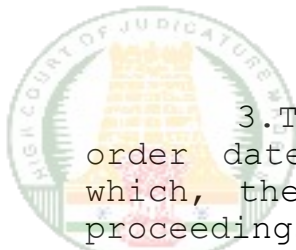
COMMON JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.Karthik Ranganathan, learned counsel appearing for the appellants, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.H.Arumugam, learned counsel appearing for the respondents 4 and 5.

2.By consent of both parties, these writ appeals are taken up for final disposal.

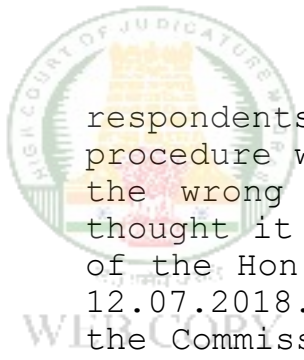
<https://hcservices.ecourts.gov.in/hcservices/>



3. These appeals are filed by the writ petitioners against the order dated 22.02.2019 in W.P.(MD)Nos.1614 and 1615 of 2019, by which, the writ petitions filed by the appellants challenging the proceedings of the first respondent dated 28.07.2018 and consequential proceedings of the third respondent dated 23.08.2018 were dismissed. The appellants before us had filed these writ petitions challenging the impugned proceedings therein on the ground that the action of the Assistant Commissioner of HR & CE Department, empowering the respondents 4 and 5 to take action for recovery of possession of the properties is without jurisdiction. Further, it was contended that the Assistant Commissioner of HR & CE Department, Karur, erred in passing the proceedings dated 23.08.2018 for recovery of the properties claimed by the appellants by relying upon the communication from the HR & CE Department and from the first respondent dated 28.07.2018 and that there is a clear misreading of the said communication as the Commissioner of HR & CE Department had only asked the Additional Commissioner of HR & CE Department, Trichy, to enquire regarding the status of the property and file a report. In other words, the contention of the appellants before the Writ Court was that the third respondent exceeded his jurisdiction, assumed jurisdiction and acted contrary to the directions of the head of the Commissioner of HR & CE Department. It appears that the writ petitions were dismissed at the admission stage. Consequently, the stand taken by the respondents were not placed in the form of any counter affidavit. In fact, some of the observations made by the learned Writ Court in paragraph No.6 of the impugned order, in our prima facie opinion would enure in favour of the appellants. We say so, because the writ court has made an observation that the communication of the third respondent, dated 23.08.2018 (impugned in the writ petition) may not take away the appellants' right. The other observations which also may enure in favour of the appellants is that the Civil Court alone is competent to decide the question of title. Though such observations were made by the writ court, ultimately, the writ petitions have been dismissed.

4. We find that the learned Writ Court did not go into the aspect as to whether the Commissioner of HR & CE Department, was justified in issuing any direction to his immediate Subordinate Officer, namely, the Additional Commissioner of HR & CE Department, Karur and if he is entitled to do so what was the purport of the communication sent by the Commissioner of HR & CE Department. The second issue would be whether the third respondent, namely, the Assistant Commissioner of HR & CE Department, Karur, was rightly informed about the direction issued by the Commissioner to the Additional Commissioner of HR & CE Department, Trichy and whether he exceeded his brief while issuing communication dated 23.08.2018.

5. After elaborately hearing the learned counsel appearing for the parties, we propose to make an observation in this judgment, <https://hcservices.courts.gov.in/hcservices/> in the manner in which the representations given by the



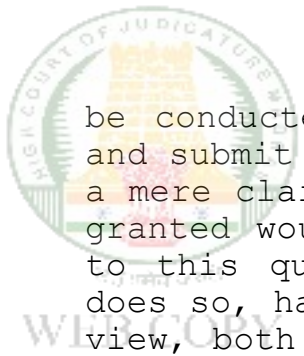
respondents 4 and 5 have been dealt with. There is a normal procedure which is followed, wherever, there is a claim made against the wrong issuance of patta. However, the respondents 4 and 5 thought it fit to adopt a different procedure to approach the office of the Hon'ble Deputy Chief Minister by giving representation dated 12.07.2018. We are able to see that from the communication sent by the Commissioner of HR & CE Department, dated 28.07.2018 as well as the communication sent by the Assistant Commissioner of HR & CE Department, dated 23.08.2018, wherein it is stated as follows:-

"பார்வை: மாண்புமிகு துணை முதலமைச்சர் நேர்முக உதவியாளரின் 12.07.2018 நாளிட்ட பரிந்துரையுடன் வரப்பெற்ற ஸ்ரீ ஆனூர் அம்மன் பயரகுல கல்வி சமய அறக்கட்டளை நிர்வாகிகள் மனு நாள்: 11.04.2018."

"பார்வை:1.மாண்புமிகு துணை முதலமைச்சர் அவர்களின் நேர்முக உதவியாளரின் 12.07.2018 நாளிட்ட பரிந்துரையுடன் வரப்பெற்ற அருள்மிகு ஆனூர் அம்மன் பயரகுல கல்வி சமய அறக்கட்டளை நிர்வாகிகள் மனு நாள்: 11.04.2018.

2.ஆணையர், சென்னை-34 அவர்களின் ந.க.எண்.40537/2018/ஆர் 3 நாள்: 28.07.2018"

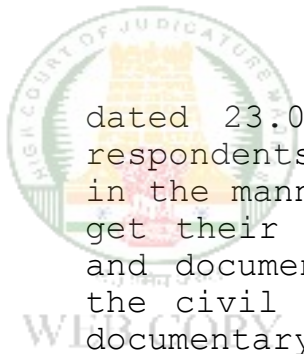
6.Normally, when the authorities do not take any action, the frustrated citizens approach the special cell of the Hon'ble Chief Minister by way of representations. Those representations are examined for its worthiness and forwarded by the Special Officer of the concerned department for appropriate action. We have come across several such communications. No where, the Special Officer who forwards the representations issues any positive direction or observation or recommendation. However, in the above said column, there is a reference to a recommendation stated to have been made by the Personal Secretary to the Hon'ble Deputy Chief Minister. The word used "பரிந்துரையுடன்". This word would definitely mean a recommendation. What is the nature and effect of the recommendation is not known to us as it has not placed before us. In any event, before a decision was taken that too where there is a rival claim for immovable property, it will not augur well for the higher authorities to make any recommendation. Without ascertaining full facts the claim made by the respondents 4 and 5 is regarding the grant of patta in favour of the appellants, which according to them, is wholly erroneous. If that is so, the Commissioner of HR & CE Department or the Additional Commissioner of HR & CE Department, Trichy or the Assistant Commissioner of HR & CE Department, Karur are not competent to cancel the patta, which is alleged to have been wrongly granted. Therefore, with reference to these issues, the recommendation could not have been made. Obviously, when the recommendation comes from higher authority, subordinate officer would be left with no option except to act on the same as if they are obligated to do so. However, the Commissioner of HR & CE Department, while issuing the communication to the second respondent/The Additional Commissioner of HR & CE Department, Trichy, dated 28.07.2018 has recorded that the complaint has been made against wrongful grant of patta and he has directed, enquiry to



be conducted by the Additional Commissioner of HR & CE Department and submit a report. However, what has to be looked into is whether a mere claim made by a person alleging that patta has been wrongly granted would be sufficient to commence an enquiry. If the answer to this question is in the affirmative whether the authority who does so, has jurisdiction to commence an enquiry. In our considered view, both the questions should be answered in the negative because without notice to the opposite party, no inference could have been drawn by the HR & CE Department. Even if it is so, the HR & CE Department cannot cancel the patta and therefore, commencing an enquiry by the Assistant Commissioner of HR & CE Department, Karur is a fait accompli. Hence, the HR & CE Department cannot be permitted to commence any enquiry as has been done by the communication impugned in the writ petitions.

7. We now move on to consider the validity of the proceedings of the third respondent/The Assistant Commissioner of HR & CE Department, Karur, dated 23.08.2018. The communication clearly shows that Assistant Commissioner of HR & CE Department has exceeded his jurisdiction, he has written certain things, which he was not authorised to do. Going by the communication of the Commissioner of HR & CE Department, dated 28.07.2018, the Assistant Commissioner of HR & CE Department has no jurisdiction to direct cancellation of patta granted in favour of the appellants. Therefore, the communication of the third respondent, dated 23.08.2018 is without jurisdiction. Added to these, respondents 3 and 4 have already approached the Civil Court by filing a suit in O.S.No.118 of 2018 for declaration, consequential injunction and recovery of possession. The suit is now pending before the Principal District Court, Karur. In our opinion, this is the correct remedy chosen by the respondents 4 and 5. In the interregnum, the HR & CE Department cannot tinker with the proceedings and a parallel line of enquiry cannot be commenced, which, we have already held to be without jurisdiction. Apart from that, we find that there are two civil suits filed by the appellants, namely, O.S.No.105 of 2018, pending on the file of the Principal District Munsif Court, Karur and O.S.No.322 of 2018, pending on the file of the Additional Sub Court, Karur. Thus, when the parties are before the civil court, the HR & CE Department should keep its hands off and await the result of the civil proceedings. As observed earlier certain observations made by the writ court enure in favour of the appellants. Having observed so, we are of the view that the writ court ought to have interfered with the impugned communications directed the parties to agitate their rights before the civil court. This is more so, because if the impugned communications are allowed to stand, it would affect the trial of the civil suit.

8. Thus, for the reasons aforesaid, these appeals are allowed and the orders passed in the writ petitions stand set aside, consequently, the communication of the first respondent dated 28.07.2018 and consequential communication of the third respondent



dated 23.08.2018 are quashed and the appellants as well as the respondents 4 and 5 are at liberty to contest the respective suits in the manner known to law and prove their title to the property and get their claims adjudicated before the civil court based on oral and documentary evidence placed before it. We make it clear that the civil court shall decide the suit/suits based on the oral and documentary evidence placed before it and not be in any manner influenced by any communication that had already been sent by the HR & CE Department or any other authority.

9.The learned counsel appearing for the appellants submitted that at the instance of the respondents 4 and 5, a petition has been filed before the Principal District Court, Karur for joint trial of all the three suits, if it is so, the same may be considered by the Principal District Court, Karur.

10.Accordingly, these Writ Appeals stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

sjj

To

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

2.The Additional Commissioner,
Hindu Religious and Charitable
Endowments Department, Trichy.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department, Karur.

+1 CC to M/s.J.SENTHIL KUMARIAH, Advocate (SR-99370[F] dated 19/11/2019)

+2 CC to M/s.KARTHICK RANGANATHAN, Advocate (SR-99400 & 99401[F] dated 19/11/2019)

W.A. (MD) Nos.1273 and 1274 of 2019
18.11.2019