



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.09.2019**

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMSAMY**

W.A(MD)NO.706 OF 2015

and

WP(MD)NO.10869 OF 2008

1.Vincent Sundar

2.Devaraj

3.Mary Stella

4.Revathi

5.Dennison

:Respondents 3,4 and 6 to 8/
Appellants

.vs.

1.Arulmighu Mahadevar Temple,
represented by its Fit Person,
K.S.S.Manian,
Thikurichi,
Thikurichy Post,
Vilavancode Taluk,
Pacode Village,
Kanyakumari District.

2.The District Collector,
Kanyakumari District,
Nagercoil.

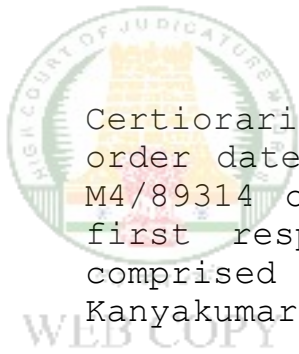
: Petitioner and first respondent
/Respondents

(Respondents 2 to 5 in the Writ Petition died and the Writ
Petition as against them was dismissed on 17.3.2015)

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.10869 of 2008, dated 25.3.2015.

Prayer in WP(MD). 10869/ 2008 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of



Certiorarified Mandmaus, calling for the records relating to the order dated 21/11/2005 passed by the first respondent in Roc. No. M4/89314 of 2005 and quash the same and consequently direct the first respondent to retransfer patta in respect of the land comprised in R.S.No. 697/10, pacode village, vilavanndoe taluk, Kanyakumari district.

For Appellant	:Mr.K.N.Thampi
For Respondent-1	:Mr.H.Arumugam
For Respondent-2	:Mr.A.K.Baskarapandian
	Special Govt.Pleader

JUDGMENT

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

This Writ Appeal is by the respondents 2 to 8 against the order passed in W.P(MD)No.10869 of 2008, dated 25.3.2008.

2.The first respondent herein was the Writ Petitioner and sought for quashing the order passed by the District Collector, dated 21.11.2005 to direct the first respondent to re-transfer the patta in respect of the land comprised in R.S.No.697/10, Pacode Village, Vilavancode Taluk, Kanyakumari District.

3.The proceedings impugned herein in this Writ Petition was the order passed by the District Collector, Kanyakumari District pursuant to the direction issued in a Public Interest Litigation filed by one Balakrishnan, who sought for appropriate action for securing the lands belonging to the temple and for other reliefs.

4.The said Writ Petition was disposed of by order, dated 14.06.2004 directing the District Collector to look into the matter. However, no action was initiated and hence a Contempt Petition No.868 of 2005 was filed. When the case came up for hearing on 25.01.2005, it was reported by the learned Government Advocate that on 21.11.2005 the District Collector, Kanyakumari District has passed orders and recording the same, the Contempt Petition was closed. The Writ Petitioner/Temple had filed the Writ Petition on the ground that the lands in question belong to the temple and the respondents 2 to 8 in the Writ Petition cannot seek for mutation of patta in their names. However, it is contended that it was never in dispute that the lands were owned by the temple and in this regard, reliance was placed in the judgment of the Additional District Munsif, Kuzhithurai O.S.No.356 of 1965, dated 19.12.1966, which judgement was affirmed in A.S.No.46 of 1967, on the file of the District Court, Kanyakumari District. It is further submitted that the fit person of the first respondent/Temple appeared before the District Collector and requested for time and since there was an outer time



limit fixed by the Court in the Contempt Petition, the matter was closed. The learned Single Judge who considered the matter, pointed out that the first respondent/temple is required to be heard in the matter and the order passed by the District Collector was only by perusal of the files. Therefore, the order passed by the District Collector, dated 21.11.2005 was set aside and the matter was remanded back to the District Collector, for fresh consideration. Aggrieved by the same, the appellants are before us.

5.We heard Mr.K.N.Thampi, learned counsel appearing for the appellants and Mr.H.Arumugam, learned counsel appearing for the first respondent and Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the second respondent.

6.It is submitted by the learned counsel for the appellants that the writ Petition filed by the third party-temple is not maintainable, especially, when the temple claims right over the property and in the event of any dispute regarding the title, the Writ Court cannot decide the same and in this regard, the learned counsel for the appellants placed reliance on the decision of **Kuppuswami Nainar v.s. The District Revenue Officer, Thiruvannamalai and others reported in 1995(1) MLJ 426, Parvatibai Subhanrao Nalawade .vs. AnwarAli Hasanali Makani and others reported in (1992) 1 Supreme Court Cases 414** and the case of **M.E.A Mohamed Ali and others .vs. The District Revenue Officer, Ramnad Collectorate, Ramanathapuram and others reported 2005(4) CTC 9**. However, it is submitted by the learned counsel for the appellants that the first respondent-temple having appeared before the District Collector, should have produce all the relevant documents and without doing so, now the appellants cannot make a claim to set aside the order.

7.Further, it is submitted that when the Public Interest Litigation was presented for early disposal by the District Collector, it is all the more necessary that the first respondent temple should be diligent enough in the matter and participate in the hearing. Further, the learned counsel referred to the Kanam deed, dated 25.5.1965. The sale deeds executed in favour of the appellants on 13.8.87, 25.10.1989, 19.3.1992, 30.11.1992 and 28.1.1999 and the tax-receipts, dated 5.5.1999 and 23.7.2002 and the computer patta, dated 22.09.2003. Thus, by placing reliance upon those documents, it is submitted that the appellants have valid title over the property and if at all the temple disputes the same, they have to approach the competent Civil Court. When there is a dispute of title over the property, the Revenue Authorities cannot adjudicate the same and the party claiming title of the other persons should approach the competent Civil



Court to declare his title over the property.

8.However, the dispute in the present case is slightly different. It is so because, in the earlier litigation filed by way of Public Interest Litigation, this Court while disposing of the Public Interest Litigation, a direction was made only to the District Collector and not to the Revenue Authorities or to the authority, who grants patta. Therefore, what is ordered in the Public Interest Litigation in the form of Writ Petition, is for issuance of a direction, dated 14.6.2004 for a full-fledged enquiry to see as to whether any of the temple lands were un-authorizedly taken over for transfer, utilization etc. Therefore, it is all the more necessary that the District Collector should act with utmost caution and examine all the documents. The judgment made in O.S.No.356 of 1965 was pressed into service by the learned counsel for the first respondent/temple to show that the land has always been owned by the temple and the lands which have been focussed in the present appeal, had never been disputed by the appellants, who is the plaintiffs in the above suit.

9.In the considered view of this Court, all these documents should be examined by the District Collector and if at all, if there is any dispute regarding the title, it is for the said authorities to refer the matter to the Revenue Authorities and at this stage, this Court cannot conduct a roving enquiry, especially in matters where proceedings were initiated pursuant to the direction issued in a Public Interest Litigation. Therefore, the facts of the present case is set up on a different plain and requires a different consideration. We do not find any ground to interfere with the order passed by the learned Writ Court.

10.Accordingly, this Writ Appeal fails and the same stands dismissed. After we have dictated the judgment, the learned counsel for the appellants submitted that an outer time limit may be fixed to enable the District Collector to conclude the proceedings. We find that the Writ Court has granted 12 weeks time and the time granted by the Writ Court shall run from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To **www.123**

WEB COPY

The District Collector,
Kanyakumari District,
Nagercoil.

+1 CC to M/s.K.NTHAMPI, Advocate (SR-86043[F] dated 10/09/2019)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-86220[F] dated 10/09/2019)

JUDGMENT MADE IN
W.A(MD) No. 706 of 2015
09.09.2019

KM/(26.09.2019) 5P 4C