

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH  
and  
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.4515 of 2019

S.J.Srinivasan

... Petitionerin person

.Vs.

1. The Inspector General of Registration- Tamil Nadu,  
100 Santhome High Road,  
Chennai-600 028.
2. The District Registrar-North Chennai (Admn.)  
I Floor, Kuralagam, Esplanade Road,  
Chennai-600 104.
3. The Sub-Registrar-Ponneri,  
9/5 Taluk Officer Road,  
Ponneri-601 204.
4. The Commissioner,  
HR&CE Department,  
Government of Tamil Nadu,  
Chennai-600 034.
5. The Assistant Commissioner-Tiruvallur,  
HR&CE Department,  
Government of Tamil Nadu,  
Chennai-600 034.
6. S.R.Subramaniam
7. R.Sivaramakrishnan
8. Arulmighu Kalatheeswarar Swamy Thirukoil,  
Represented by fit person Mangalam,  
Tiruvallur-601 101.

9. The Inspector of Police,  
E1-Ponneri Police Station,  
NGO Nagar Extension,  
Ponneri Chennai-601 204.

(R7 & R9 suo motu impleaded vide

Court order dt.15.11.2019 by MSNJ & MNKJ

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus to direct the respondents to comply with their orders 1st respondent Na. Ka. No.52016 / C3/ 2017-1 dt 24.7.2018 and 5th respondent Na. Ka. No.197/ 2018-3/ B2/ dt 5.4.2018 and Report Compliance to the High Court of Madras and also initiate appropriate Disciplinary Proceedings against The Registering Officers for the Illegal Act of Registering Lands belonging to Temple without any authorization of HR and CE Commissioner and without verifying the Bonafide of The Executants and the HR and CE Personnel who had colluded with the Private Persons all these years and issue further/ other orders.

For Petitioner .. Mr.S.J.Srinivasan

For Respondents .. Mr.R.Vijayakumar,  
AGP., for RR1 to 3 and 9  
Mr.A.K.Sriram for R8  
Mr.M.Karthikeyan, Spl.G.P (HR&CE)  
for R4 and R5  
No appearance for R6 and R7

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This public interest litigation has been filed by the petitioner, who appears before us as party-in-person seeking an appropriate direction to the respondents to comply with the order of the first respondent dated 24.07.2018 and also the earlier one passed by the first respondent dated 05.04.2018 so as to take back the properties of the temple.

2.We have heard the petitioner, who appears as party-in-person and the learned Additional Government Pleader appearing for respondents 1 to 3 and 9, learned counsel appearing for the eighth respondent and the learned Special Government Pleader (H.R. & C.E.) appearing for respondents 4 and 5. Despite service of notice and name of the seventh respondent having been printed in the cause list, there is no representation on behalf of the seventh respondent. In fact, in order to give an opportunity, the matter was adjourned on the last hearing. Even today, there is no representation on behalf of the seventh respondent. Therefore, we have decided to proceed with the matter on merits.

3.The fundamental facts are not in dispute. The eighth respondent-temple is the sole and absolute owner of the properties to an extent of 18.71 acres being agricultural lands comprised in Survey Nos.344/2, 370/2, 382/5, 383/1, 383/1, 342/2, 362/1 and 363 of Amur Village, Ponneri Taluk, Thiruvallur District-601 204.

4.Strangely, the sixth respondent, claiming to be a hereditary Trustee of the eighth respondent temple, which has already been represented by a fit person, leased out the entire extent of 18.71 acres in favour of the seventh respondent, who is none other than his grandson. This lease deed has been registered under Document No.6748/2013 dated 20.05.2013. Needless to state that the sixth respondent has never been recognized as hereditary trustee.

5.Based upon the said lease deed, the seventh respondent, who did the consequential act, which was meant to be carried out. Accordingly, the aforesaid lands were leased out to several persons, who are not before us.

6.Now, proceedings have been initiated under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 against the alleged encroachers, of whom, we do not wish to say anything more, except directing the Joint Commissioner, Hindu Religious and Charitable Endowment, Vellore, to conclude the abovesaid proceedings within a period of three months from the date of receipt of a copy of this order. We are also conscious of the fact that the so called sub lessees are not before us. Therefore, we do not wish to say anything more except giving the abovesaid directions.

7.Now there are two more issues, which we are concerned with. One is on the follow up that is required to be taken apart from the proceedings initiated under Section 78 of the Act and the other is the role to be played by respondents 2 and 3.

8.In the status report filed by the Joint Commissioner, HR & CE Department, it has been stated that a fit person has already been appointed by the proceedings dated 25.02.2019 and the alienation by the sixth respondent in favour of the seventh respondent is one without authority of law apart from lack of factual basis. Due intimation has been given to respondents 2 and 3 to cancel the lease deed with a request not to entertain any registration of document pertaining to the lands mentioned about the eighth respondent. The following paragraphs would be relevant.

"6.I submit that in order to stream line the Administration of the temple and to remove the

encroachments in the properties of the suit temple, the Assistant Commissioner, Tiruvallur had appointed an official fit person for the suit temple in his RC.No.457/2019/A2, dated 25.02.2019.

7.The said fit person had assumed charge on 01.03.2019. The said fit person also sent a letter dated 15.04.2019 to the Sub-Registrar with a request to not to register any document connected with the properties of the said suit temple. The said fit person had also erected notice boards in the properties of the suit temple briefing "that the properties are belonging to the suit temple and no trespassing be made".

8.....

9.On this letter, the fit person/Executive Officer had sent a report dated 16.04.2019 to the Assistant commissioner. In this report he had briefed the matter in detail and informed that the said request of the petitioner has to be rejected. Based on this report the Assistant Commissioner had sent a report in RC No.148/2019/B2, dated 28.04.2019 to the Joint Commissioner.

10.It is submitted that in the mean time the present writ petition is filed by the petitioner herein.

11.From the foregoing submissions, I submit that this department had taken effective and timely action to protect the properties belonging to the suit temple.

12.I further submit that an official fit person was also appointed by the Assistant commissioner duly following the provisions of the Act. The said fit person also taking field action by erecting notice boards in the properties belonging to the temple.

13.I further submit that the request of the 3<sup>rd</sup> party Thiru S.R.Subramaniyan is also perused by the fit person. The fit person had reported that "the said request of the petitioner has to be rejected". A report was also sent by the Assistant commissioner to the Joint Commissioner.

14.I submit that in the above circumstances, a direction is being issued by the commissioner in RC No.9417/2019/D3, dated 21.11.2019 to the fit person to take immediate action for filing necessary suit, to cancel the registration made by registration department, by impleading all the necessary parties. The Joint commissioner Vellore and Assistant Commissioner, Tiruvallur are also

directed to follow up the same. It is further instructed to fence the lands belonging to the temple and the EO is also directed to lease out the lands by public auction, so as to augment the income of the temple."

9. In the counter affidavit filed by the second respondent, it has been stated as follows:

"5. It is submitted that on receipt of the petition dated 21.11.2017, the Inspector General of Registration, Chennai, in his Lr.No.Ka.No.52016/C3/2017-1 dated 24.07.2018 directed the Sub Registrar, Ponneri to take action to file FIR against the concerned persons and accordingly, the Sub Registrar, Ponneri has filed the FIR No.488 on 19.10.2018. It is pertinent to submit that the petitioner herein was also informed by the Inspector General of Registration, Chennai in his Lr.No.52016/F3/C3/2017-2 dated 24.07.2018 that there is no provision to cancel the registration of the said lease deed and he was informed to seek his remedy through the concerned Court of law.

6. It is submitted that this respondent has also instructed the Sub Registrar, Ponneri in Lr.No.1650/B/2018 dated 17.10.2019 not to permit any registration of documents in respect of the abovesaid properties on the basis of Document No.6748/2013 since the Assistant Commissioner HR & CE Department, Thiruvallur in his Lr.No.197/2018-1/B2 dated 05.04.2018 informed that the property involved in the said document belongs to Shri Kalatheeswarar Temple, Thiruvallur.

7. It is submitted that the registering authorities have no power to cancel any registration of the documents unless specific orders are passed by this Hon'ble Court. It is submitted that in the present case also, the petitioner was informed by the Inspector General of Registration, Chennai, vide his letter No.52016/C3/2017-1 dated 24.07.2018 that there is no provision to cancel the registration of the said lease deed and he was informed to seek his remedy through the concerned court of law.

8. However, it is submitted that this respondent in pursuance to the Inspector General of Registration Circular No.41530/U1/2017 dated 31.07.2018, has passed an order under Section 68(2) of the Registration Act directing the Sub Registrar, Ponneri, to add the following note in the indexes II of the said document No.6748/2013, so as to get

it reflected in the Encumbrance Certificate of the property concerned.

"Note: As per Order 1650/B1/2018 dated 17.1.2018 of the District Registrar, Chennai (North), issued as per Section 68(2) of the Registration Act, no further registration shall be done based on this document, since as per Assistant Commissioner, Tiruvallur, HR&CE Department Letter No.197/2018-1/B2 dated 05.04.2018 the property involved in this document belongs to Shri Kalatheeswarar Temple, Tiruvallur and the document has been registered without the knowledge of the HR & CE Department".

10.As rightly submitted by the learned counsels for the petitioner and the eighth respondent, the entire execution of the lease deed cannot be sustained in the eye of law. There is no status of hereditary trustee available in the Trust. Even otherwise, there is a clear violation of the provision in Section 34 of the Hindu Religious and Charitable Endowment Act. Therefore, looking from any perspective, there is absolutely no reason as to why a registration should stand on the records when on the face of it, there is a distinct lack of title in favour of the sixth respondent and thereafter. Respondents 6 and 7 have not responded to the notice issued by the eighth respondent. The appointment of fit person is also not put to challenge. Under those circumstances, we find that there is neither any need to file a suit nor the registration to be allowed to continue. Once the document is void on the face of it and ab initio, it does not require an adjudication per se. There is no need to challenge it in the manner known to law. The issue pertaining to a document being void may be different in different circumstance. However, in the light of the discussion made, we have no hesitation in holding that the entire transactions are void. If that is the case, respondents 2 and 3 will have to cancel the document registered. We are of the view that driving the eighth respondent to file a suit would amount to helping respondents 6 and 7. Proceedings have also been initiated against the encroachers. Even respondents 2 and 3 have stated that no new document would be registered. Under those circumstances, the general principle of law which requires a party to get a declaration before the Court would not have any bearing. After all, a Court can only declare a particular act to be valid or invalid. Since we hold that very lease deed itself is invalid in the eye of law and there is no status of lessee to the sixth respondent, there is absolutely no reason to drive the eighth respondent to go for a suit. It is not only cumbersome but also academic.

11.It appears that a complaint given for the cognizable offence against respondents 6 and 7 has also been registered in Crime No.488 of 2018 on the file of Inspector of Police, Ponneri, for the offences punishable under Sections 420, 465 and 471 IPC. Therefore, we expect the said authority to file a final report within a period of three months before the jurisdictional Court. We may note that respondents 6 and 7 have not come before this Court, despite several opportunities given and there is no need for respondents 2 and 3 to hear them before cancellation.

12. In those circumstances, the writ petition stands ordered on the following terms.

(1)The document registered by the sixth respondent in favour of the seventh respondent - grandfather to grandson in document No.6748/2013 dated 20.05.2013 on the file of Sub Registrar, Ponneri, is directed to be cancelled within a period of four weeks from the date of receipt of a copy of this order.

(2)Respondents 2 and 3 shall not register any documents in future at the instance of respondents 6 and 7.

(3)The Joint Commissioner, Vellore, is directed to conclude the proceedings initiated under Section 78 of the Act within a period of three months from the date of receipt of a copy of this order.

(4) The eighth respondent is directed to maintain the records pertaining to the properties of the temple including the properties in the occupation of various persons.

(5) The Inspector of Police, Ponneri is directed to conclude the investigation and file a final report in the case registered in Crime No.488 of 2018 for the offences punishable under Sections 420, 465 and 471 IPC against respondents 6 and 7 within a period of three months from the date of receipt of a copy of this order.

13.We place on record the assistance rendered by all the learned counsel and also the petitioner/party-in-person.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector General of Registration- Tamil Nadu,  
100 Santhome High Road,  
Chennai-600 028.
- 2.The District Registrar-North Chennai (Admn.)  
I Floor, Kuralagam, Esplanade Road,  
Chennai-600 104.
- 3.The Sub-Registrar-Ponneri,  
9/5 Taluk Officer Road,  
Ponneri-601 204.
- 4.The Commissioner,  
HR&CE Department,  
Government of Tamil Nadu,  
Chennai-600 034.
- 5.The Assistant Commissioner-Tiruvallur,  
HR&CE Department,  
Government of Tamil Nadu,  
Chennai-600 034.
- 6.The Inspector of Police,  
E1-Ponneri Police Station,  
NGO Nagar Extension,  
Ponneri, Chennai-601 204.

Copy to

The Joint Commissioner, HR & CE Department, Chennai-34

+3cc to the Petitioner in Person, Sr.No.31578

+1cc to the Government Pleader, Sr.No.32156

सत्यमेव जयते

W.P.No.4515 of 2019

mg (co)

rr ii (16/10/2020)

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