BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.01.2020
CORAM:
THE HONOURABLE MR.JUSTICE S.S. SUNDAR
W.P.(MD).No.17600 of 2015

M.Krishnan .. Petitioner

Vs.

1.The District Collector,
Ramanathapuram District.

2.The Additional Director of Town Panchayat,
Sivagangai District.

3.The Executive Officer,
Sayalkudi Town Panchayat,
Sayalkudi,
Kadali Taluk,
Ramanathapuram District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the 3rd respondent to collect property tax from the petitioner for the Shops at Nos.76, 76A to 76S at Aruppukottai salai, Sayalkudi, Ramanathapuram District, which the petitioner is ready to remit and further direct the 3rd respondent to issue receipts for the said tax remittance.

For Petitioner : Mr.K.R.Laxman
For Respondents : Mr.A.Thiyagarajan for R1 and R2
Government Advocate
Mr.Aayiram K.Selvakumar for R3

ORDER

This writ petition is filed for the issuance of Writ of Mandamus, directing the 3rd respondent to collect property tax from the petitioner for the Shops at Nos.76, 76A to 76S at Aruppukottai salai, Sayalkudi, Ramanathapuram District, which the petitioner is ready to remit and further direct the 3rd respondent to issue receipts for the said tax remittance.

2.It is stated that the petitioner is the hereditary trustee for Shri Kamatchi Amman Karuppanasamy Temple, situated at Sayalkudi, Ramanathapuram District. According to the petitioner, the temple was constructed by his great grandfather by name Muthuvijayan. The said temple is also for the purpose of worshiping the diety by petitioner's family members. It is the case of petitioner that after the death of Muthuvijayan, the Administration of temple devolved on his legal heirs and at present the petitioner is in charge of temple as trustee on behalf of his family.

3.It is contended by the petitioner that the property namely shopping complex consisting of about 20 shops adjacent to the temple was constructed by the petitioner. The property in which the said complex has been constructed forms part of the temple premises which is situated in a prime location in the petitioner's town. It is also the case of petitioner that the income from the temple shops are collected by the petitioner in his capacity as a trustee and that it is accounted and utilised for the purpose of temple activities and developments. It is contended by the petitioner that the complex put up by the petitioner have been approved by the third respondent and that the shopping complex was subject to property tax assessment by the third respondent. Though the property tax has been collected from the petitioner till 2007, it is contended by the petitioner that he faced several difficulties due to political pressure and pressures from the H.R. & C.E. Department.

4.The petitioner appears to have filed a petition before the Deputy Commissioner/Joint Commissioner under section 63(a) of the H.R.& C.E. Act to declare the temple as a private temple. Though the Joint Commissioner rejected the application filed by the petitioner, it appears that a statutory suit filed under Section 70 of H.R. & C.E. Act has been filed to set aside the order of Commissioner of H.R. & C.E Board confirming the order of Joint Commissioner declaring that the temple is a religious institution comes under the purview of Tamilnadu H.R. & C.E. Board. The petitioner has produced before this Court, the judgment of Sub Court, Paramakudi in O.S.No.272 of 2001. The decree in the statutory suit support the case of petitioner. The declaration is granted in favour of petitioner declaring the status of the temple as a private temple which does not comes under the purview of Tamil Nadu H.R. & C.E Act, 1959. The order of Joint Commissioner and the Commissioner of H.R. & C.E. Board rejecting the application filed by the petitioner under section 63 (a) of the Act has been set aside by the civil Court. Consequential injunction has been granted by the Civil Court. Against the judgment and decree of Civil Court passed by the Sub Court, Paramakudi in O.S.No.272 of 2001, dated 06.09.2002 none of the respondents is able to point out any further appeal by the H.R. & C.E. Department so as to take control over the temple. In terms of the Civil Court's decree, the declaration of the status of the temple known as Shri Kamatchi Amman Karuppanasamy Temples as a private temple has become final. In such circumstances, the third respondent cannot on the basis of representation from H.R. & C.E. Department or representation from third parties create any cloud over the title or the status and character of the temple. It is not in dispute that the properties namely shopping complex has been assessed in the name of temple for a period of time.

5.The learned counsel for the first respondent produced before this Court a representation from one Muniyasamy in the name of Shri Karuppasamy Koil Educational Trust. The representation also in a letter pad showing the title "Arunthathiyar Hindu Sakiliyar Uravinmurai. The order passed by this Court in Writ petition No.36681 of 2003, dated 06.06.2011 is annexed to the representation. The person who gave the representation is also the writ petitioner in the writ petition filed by him for issuing a writ of Mandamus forbearing the respondents 2 to 4 by changing the registeration in the name of 5th respondent in respect of land and buildings in places in S.No.135/4 of Sayalkudi, having an extent of 0.14.5 hectares belonged to Shri Karuppanasamy temple. The 5th respondent therein is the present writ petitioner. No notice appears to have been issued to the 5th respondent. No appearance for respondents 4 and 5 in the writ petition. The writ petition was dismissed after recording the statement of the first respondent in the writ petition to the effect that the property claimed to be the property of temple is the temple poramboke which vest with Government and that patta cannot be issued to any individual. Since it is stated in the order that no patta should be given to the individual person, the person who gave representation to the third respondent has relied upon the said order of this Court to presume that the petitioner has no right in his individual capacity to claim ownership. This Court did not entertain the writ petition. The observations of this Court cannot be taken as no issue was decided on merits.

6.The petitioner was not heard. The dispute in relation to the property cannot be decided by this Court. The petitioner in this case has established the character of temple as a private temple as declared by the Civil Court in a statutory suit filed by the petitioner. Once the character of temple is recognized as a private temple the property of temple cannot be a public property as it was presumed by the third respondent. The third respondent has not filed any counter. It is only on the basis of the objection raised by some third parties it appears that the third respondent refused to assess the property tax in the name of petitioner. When the fact that the petitioner has been assessed to property tax in his individual name, the third respondent has recognized the title of petitioner without any reservation earlier. In such circumstances, the third respondent is not competent to decide title on the basis of the representation or claim of third parties to presume ownership in favour of some body else. If the temple is constructed in a poramboke land, it is a very good reason to infer that the temple is a public temple. The authorities can file an appeal against the decree in the statutory suit.

7.The Executive Officer appears to be biased and hence refused to take or collect property tax for the building owned by the temple. The third respondent is not competent to decide title or enjoyment. The third respondent cannot deprive the local body also the right to collect property tax from every building. It appears that the third respondent has taken some personal interest to deprive the local body, its statutory entitlement to collect tax. As an Executive Officer of Local body, it is not known how the third respondent could behave like that. The District Collector shall take appropriate action against the third respondent in this matter after giving sufficient opportunity to the third respondent and the petitioner. The prayer in the writ petition is to direct the third respondent to collect property tax from the petitioner for the shops which are already assessed in the name of petitioner for a long period of time. This Court is unable to accept the reason, which is stated by the learned counsel appearing for the third respondent relying upon a stale claim of an individual.

8.In such circumstances, the District Collector as observed earlier is directed to take action against the third respondent for his irresponsible Act and conduct, thereby causing loss to the local body. If the H.R. & C.E. Department has filed an appeal or proposed to file appeal against the decree in O.S.No.272 of 2001 on the file of the Sub Court, Paramakudi, the status of the temple and the character of properties as declared by this Court shall be decided accordingly by the respondents. Subject to the above directions, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The District Collector, Ramanathapuram District.

2.The Additional Director of Town Panchayat, Sivagangai District.

3.The Executive Officer, Sayalkudi Town Panchayat, Sayalkudi, Kadali Taluk, Ramanathapuram District.

+1 CC to Mr.K.R.LAXMAN, Advocate (SR-3400[F] dated 28/01/2020)

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28.01.2020

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