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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.4366 of 2018

and

W.M.P. Nos. 5362 and 5363 of 2018

Shahitha Banu

... Petitioner

-vs-

1. The Joint Commissioner (enquiry),
Commissioner's Office,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.
3. The Revenue Divisional Officer,
Thiruvannamalai District, Thiruvannamalai.
4. Arulmigu Arunachaleswarar Temple,
Represented by its Joint Commissioner / Executive
Officer, Thiruvannamalai - 606 601. ... Respondents

(R4 Impleaded as per order dated 03.10.2019 in
W.M.P. No. 28896 of 2019 in W.P. No. 4366 of
2018 by PDAJ)

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of Writ of
Certiorari calling for the records of the first respondent in
its impugned order bearing No.Na.Ka.4795/2011/V2/dated
22.06.2011 and quash the same.

For Petitioner : Mr.K.Chandrasekaran
for M/s.A.Ashwin KVM Associates

For Respondents : Mr.NRR.Arun Natrajan
Spl. Govt. Pleader for R1 to R3
Mr.A.K.Sriram for R4



O R D E R

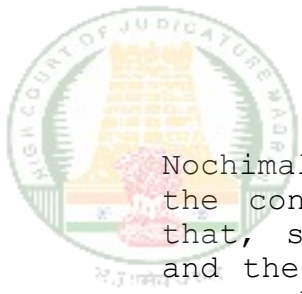
The prayer sought for herein is for a Writ of Certiorari calling for the records of the first respondent in its impugned order bearing No.Na.Ka.4795/2011/V2/dated 22.06.2011 and quash the same.

2. According to the petitioner, the landed property in Survey Nos.2421/5 and 2421/6 measuring 0.04 cents and 1.17 acres respectively at Block No.37, Ward No.1 at Nochimalai Village, Thiruvannamalai, Thiruvannamalai District, originally belonged to one Arunachala Gurukkal, who mortgaged the same to one Mottaiyammal and Annamalai on 17.05.1938. Under a Registered Made Over Deed, dated 08.03.1943, the said Mottaiyammal and Annamalai assigned the same in favour of Amirthagadesa Gurukkal. Since then, the said Amirthagadesa Gurukkal and his legal heirs were in possession and enjoyment of the property.

3. On 27.08.1968, patta was issued in the name of Amirthagadesa Gurukkal bearing Patta No.165. The limitation for redemption of the land from mortgaging by the legal heirs of the Arunachala Gurukkal under the amended Article 61, came to an end on 16.05.1982. Thereafter, on 11.11.1999, a Suit in O.S. No. 1375 of 1995 filed by the legal heirs of Arunachala Gurukkal was dismissed for default. On 08.05.2007, the legal heirs of Amirthagadesa Gurukkal appointed one Mahalakshmi as their power agent through a registered Power of Attorney. From whom, the petitioner had purchased the said property on 28.06.2007. Thereafter, the patta was mutated in the name of the petitioner on 10.07.2008. Then, the petitioner entered into an agreement of sale with one Pannerselvam on 27.09.2007, subsequently, he cancelled the said agreement on 29.11.2007.

4. At that juncture, one Gandhi had given a representation to the Government / H.R.&C.E., Department on 15.12.2008, as if that the petitioner is exploiting the property belongs to the Temple called Udayavar Temple and in order to take action on the said representation, since the said Gandhi filed a Writ Petition in W.P. No. 197 of 2011, an order has been passed by this court on 06.01.2011, whereby, it was directed that, the first respondent shall dispose the said representation after conducting an enquiry within a time frame.

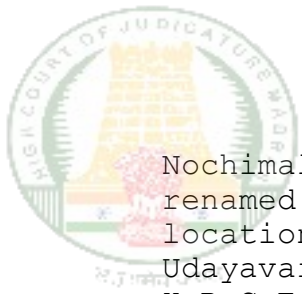
5. Accordingly, the first respondent has passed an order on 22.06.2011 on the said representation of the said Gandhi, whereby, the first respondent has declared that, the property in question belongs to the Temple called Udayavar Temple at



Nochimalai Village and the said Temple would be brought under the control of the H.R&C.E., Administration and also declared that, since the said property belongs to the Temple concerned and the same had been sold to various third parties without the approval of the H.R&C.E., Department, direction was given to bring back the property under the control of the administration of the H.R&C.E., Department. These declarative orders since have been passed by the first respondent on 22.06.2011, felt aggrieved over the same, the present Writ Petition has been filed with the aforesaid prayer challenging the said order.

6. Heard Mr.K.Chandrasekaran, learned counsel appearing for the petitioner, who having traced the title over the property in favour of the petitioner, by stating the aforesaid transactions right from 1938, till date, would submit that, the property therefore belongs to the petitioner and if at all, any third party complaint or representation given by the said one Gandhi, as if that the petitioner is exploiting the Temple property and even if a direction is given by this court to conduct an enquiry, the needful action should have been done by the first respondent to issue notice to the petitioner, being the owner of the property and after hearing the petitioner, then only, decision could have been taken. However, without any such notice to the petitioner and without hearing the petitioner, according to the petitioner, an enquiry was conducted unilaterally on the part of the first respondent merely based on some documents or representations given by the said third person Gandhi and accordingly, the present impugned order has been passed on 22.06.2011, as if that the land in question belongs to the Temple called Udayavar Temple and therefore, the said property should be retained by the H.R&C.E., Department.

7. The learned counsel appearing for the petitioner would submit that, if at all the H.R&C.E., Department is having any valid documents to trace the title, that the property in question belongs to the Udayavar Temple, that should have been placed before the Enquiry Officer, i.e., first respondent at the time of enquiry and an opportunity of being heard should have been given to the petitioner to respond to those documents to be produced in this regard by the H.R&C.E., Department and then only, the decision could have been arrived at by the first respondent. However, no such attempt has been made. However, during the pendency of this Writ Petition, an affidavit has been filed by the second respondent, stating that, there was a document called a partition deed document dated 02.03.1902 and that have been taken into account for the purpose of identifying the four boundaries of the land in question which according to the H.R&C.E., Department belongs to the Udayavar Temple at



Nochimalai Village and that Temple over the years has been renamed as Arulmigu Amutheeswarar Temple and the boundaries and location of the Arulmigu Amutheeswarar Temple and the earlier Udayavar Temple since are one and the same, according to the H.R&C.E., Department, they claimed to have come to the conclusion that, the property in question belongs to the said Temple called Udayavar Temple.

8. If these are the materials that has been relied upon by the first respondent, that should have been placed during the enquiry on behalf of the H.R&C.E., Department and those documents, i.e., the copy of those documents should have been served on the petitioner to respond. Without having provided any such opportunity to the petitioner to respond to those documents relied by the Joint Commissioner, i.e., first respondent, since the impugned order has been passed, where none of these documents have been taken into account or nothing has been stated in the impugned order that, those documents have been relied upon, based on which only they come to the conclusion that, the property belongs to the Temple and therefore, the entire impugned order is vitiated for more than one infirmity as has been set out above. Therefore, the learned counsel appearing for the petitioner would ultimately submit that, if at all, the claim of the petitioner as well as the H.R&C.E., Department over the property in question is to be construed, that can be construed only as a title dispute which should be normally decided by the competent Civil Court by appreciating the evidence to be let in by both parties. Therefore, this kind of complicated title issues, the H.R&C.E., Department by exercising his power as provided under Section 63 of the H.R&C.E., Act, 1959 cannot conduct an enquiry, because claiming title over the immovable property, if the H.R&C.E., Department is a party of the one side, normally that kind of issue can be relegated to the Civil Court. Hence, the learned counsel seeks indulgence of this Court to set aside the impugned order and give liberty to the petitioner to approach the Civil Court for getting appropriate declaratory relief, so that, the issue can be given a quietus.

9. Per contra, Mr.NRR.Arun Natarajan, learned Special Government Pleader appearing for the first to third respondents by relying upon the averments made in the affidavit filed in support of the second respondent would contend that, there has been an earliest document of the year 1902, under which, a gift deed was executed by one Thirukanji Gurukkal and if we trace the recitals made in the said deed executed in the year 1902, the four boundaries mentioned therein makes it clear that, there was a Udayavar Temple in that locality.



10. The said Udayavar Temple how has become Amutheeswarar Temple also has been explained by the H.R&C.E., Department by comparing the four boundaries mentioned in those documents, which is the ancient document available in this regard.

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11. In this context, the learned Special Government Pleader heavily relies upon the following averments made in the affidavit of the second respondent, which reads thus:

"2. It is submitted that in pursuance of the order passed by this Hon'ble Court, the second respondent had inspected Nochimalai village where the said temple is located and it was found that at present there is a Shiva Temple namely Arulmigu Amutheeswarar Samedha Akilandeshwari. It was also learnt that Arulmigu Amutheeswarar Samedha Akilandeshwari was previously known as 'Udayavar temple'.

This respondent has been presented with a partition deed Document No.347 dated 02.03.1902 (copy enclosed) which was executed among the legal heirs of one Thirukanji Gurukkal who belonged to Thiruvannamali, namely Thiru.Kanagasabapathi (1). Thiru.Venkatraya Gurukkal (2) and Thiru.Arunachala Gurukkal in Document No.347, the said partition deed refers to the boundaries of Udayavar temple, wherein, paragraph 4 of the partition deed reads as follows:

"திண்டிவனம் ரோட்டு வீதியில் வடபுறவாடையில் வீதிக்கு வடக்கு கருமன் தச்சர் மான்யத்துக்கு கிழக்கு வேடியப்பன் கோவிலுக்கு தெற்கு உடையவர் மான்யத்திற்கு மேற்கு இந்த சக்குபந்திக்குள் எரிருக்கும் ஸ்ரீ உடையவர் யல் மானேஜ்மென்ட் மிராசு பாத்தியம்."

During verification of the Revenue records in order to identify the Udayavar temple, it has been found that the four boundaries of Udayavar temple as stated above in the partition deed is similar to that of the present day temple which goes by the name of Arulmigu Amutheeswarar Temple.

Apart from this, when enquired in the Nochimalai village with regard to the existence of Udayavar temple, statement has been given by the village elders (copy enclosed) stating that the present Arulmigu Amutheeswarar Temple was originally called as Udayavar temple and the old Udayavar temple was renovated by the village people and Kumbabishekam was performed in the year



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2006. And only in 2006 after due enquiry and inspection it is confirmed that the present Arulmigu Amutheeswarar Temple is the Udayavar temple. For the Administrative purpose a fit person has been appointed to the above said temple by the second respondent in proceedings Ref.No.405/2011/E1 dated 28.10.2020 based on the notice issued by the Inspector, H.R&C.E., Department, Tiruvannamalai on 21.09.2020."

12. The learned Special Government Pleader would also submit that, if at all these factors have not been stated explicitly in the order impugned, that would not vitiate the entire proceedings culminated in the impugned order. In fact by filing this affidavit, the respondents H.R&C.E., Department has not brought any new materials to support of the decision taken by the first respondent in the impugned order. But these are all the documents which were available before the H.R&C.E., Department which were in fact relied upon by the H.R&C.E., Commissioner who passed the impugned order. However, the same has been not explicitly stated in the impugned order. Therefore, the learned Special Government Pleader would submit that, if any infirmity is found by this Court in the impugned order on the ground that, there has been no notice given to the petitioner or the documents which have been relied upon by the H.R&C.E., Department has not been stated in the order impugned and the reasons when cogently cited in the affidavit now made before this Court has not become part and parcel of the impugned order, for that reason, if the matter is to be remanded, that can be remanded to the Joint Commissioner where the petitioner also can be directed to file an application to decide the issue under Section 63(d) of the H.R&C.E., Act. Therefore, the learned Special Government Pleader would submit that, in the guise of relegating the petitioner to approach the Civil Court, the power vested with the officials of the H.R&C.E., Department under Section 63 cannot be denuded. Moreover, the learned Special Government Pleader also raised an objection that, when there is a bar under Section 108 of the H.R&C.E., Act, where filing of the suit before the Civil Court is bar, such an attempt now made by the petitioner that the petitioner can be permitted to file a Civil Suit to seek for declarative decree of the title over the property which according to the H.R&C.E., Department certainly belongs to the H.R&C.E., Department and that has been declared or clarified in the impugned order, such kind of action would certainly go against the spirit of Section 108 of the H.R&C.E., Act, he contended.



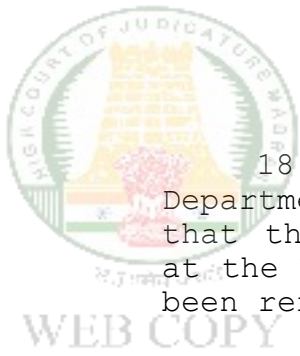
13. For all these reasons cited, the learned Special Government Pleader would contend that, the impugned order is to be sustained or in the alternative, the issue can be relegated to the Joint Commissioner before whom, let the petitioner make an application under Section 63(d) of the H.R&C.E., Act to decide the issue and accordingly, the Joint Commissioner would decide the issue by giving an opportunity to the petitioner. Therefore, the proposed relegation as sought for by the learned counsel appearing for the petitioner to permit the petitioner to go before the Civil Court may not be justifiable or required, he contended.

14. The learned Special Government Pleader also pointed out that, under Section 116 being the rule making power of H.R&C.E., Act, a rule has been framed called holding of enquiry rule, wherein Rule 20 makes it clear that, for the purpose of holding an enquiry, the provisions of the Civil Procedure Code can be applied as far as practicable and for all purposes, the proceedings to be conducted, i.e., enquiry to be conducted by the H.R&C.E., officials under the H.R&C.E., Act can be treated as a proceedings equal to the Civil Court proceedings.

15. Though such a submission was made by the learned Special Government Pleader appearing for the first to third respondents, this Court feels that, in view of the complicated question of facts with regard to the title which has to be traced for more than a century ago, the effective adjudication can only be made by the full fledged trial to be conducted by the Civil Court. Therefore, these kind of cases which are exceptional, instead of relegating the parties to go for an enquiry to be conducted by the H.R.&.C.E., Officials under the provisions of the Act, better can be relegated to the Civil Court to lay an appropriate Civil Suit for a proper declarative decree.

16. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

17. Though the petitioner has made an attempt to trace the title by relying upon the various documents and transactions right from 1938, this court finds that, prior to 1938, it is the admitted case on the part of the petitioner, that the property in question belongs to one Arunachala Gurukkal. How the said Arunachala Gurukkal got the property has not been stated by producing any documents or evidences.



18. In this context, it is the counter case of the H.R&C.E., Department that, by relying upon a document dated 02.03.1902 that the property belongs to the Temple called Udayavar Temple at the Village called Nochimalai Viillage and the said Temple has been renamed now as Amutheeswarar Temple.

19. These factual matrix based on the documents running over one century, in the considered opinion of this court, cannot be effectually adjudicated by the Commissioner or Joint Commissioner by conducting a summary proceedings as has been contemplated under Section 63 of the H.R&C.E., Act.

20. Moreover, what has been now stated by the H.R&C.E., Department through their affidavit, which has been quoted herein above, are not reflected in the impugned order. Further, admittedly, there was no notice or opportunity given to the petitioner before deciding the issue. Therefore, for all these reasons, this Court feels that, the impugned order as if, for the reasons stated therein, in the considered opinion of this court, cannot be sustained.

21. But at the same time, it cannot be concluded that, the property belongs to the petitioner as her title is perfected right from 1938, because in 1938, though it was claimed that, the Arunachala Gurukkal mortgaged the property to one Mottaiyammal and Annamalai, before which, under which deed or assignment or order, the property was entrusted to Arunachala Gurukkal by any authority like the Temple Authority or Governmental Authority has to be explained only by the petitioner.

22. Therefore, in this context, it is better to relegate the parties to approach the competent Civil Court, wherein, there will be a chance of letting in evidence by both parties by producing all those documents which are ancient documents of more than 100 years old. If those documents are produced before the Civil Court and in support of the evidence let in, the Civil Court can very well go into the issue and ultimately decide the title over the property by making a declarative decree.

23. Instead, if we relegate the parties to go before the Commissioner or Joint Commissioner once again for agitating the issue, the Commissioner or Joint Commissioner as the case may be, can only conduct the summary proceedings within the four corners of Section 63 of the Act, which, in the considered



opinion of this Court, cannot be equated with a full fledged trial of the Civil Court.

24. Therefore, these kind of situations which are only exceptional to the bar under Section 108 of the H.R.&C.E., Act as relied upon by the learned Special Government Pleader may not stand in the way. The reason being that, primarily Section 108 makes a bar that, the suits or legal proceedings in respect of the administration or management of the religious institution.

25. Even though, it has been further extended with the words, any other matter or dispute for determining or deciding also the suits are bad any other matter or dispute which has been mentioned in Section 108 not necessarily to point out with regard to the complicated question of facts for the purpose of declaring the title over the immovable property. Therefore, the said bar under Section 108 shall not stand in the way in the present circumstances of the case to relegate the petitioner to go before the Civil Court to file an appropriate suit to get the declarative decree.

26. In that view of the matter and for the reasons stated above, this court feels that, this Writ Petition can be disposed of with the following orders:

"(i) that the impugned order is quashed, however as a sequel, neither the petitioner nor the respondents / H.R.&C.E., Department can claim any right over the property for exploiting the same in any manner including the creation of any third party right. Instead, it is open to the petitioner to approach the competent Civil Court by filing a suit for declaratory decree as indicated above and in such case, the petitioner shall array the necessary officials as well as the Temple concerned, i.e., Udayavar Temple at Nochimalai Village formally known as Amutheeswarar Temple as one of the party defendants and accordingly, the suit can be laid and be conducted.

(ii) Once the Suit is tried and decided by the Civil Court and the Civil Court declares the title over the property either in favour of the petitioner or in favour of the respondents / H.R.&C.E. Department / Temple concerned, it is needless to mention that, the parties would abide by them. It is further made clear that, till such a declarative decree is made by the Civil Court, the property in



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question shall not be exploited by both parties and no third party right can be created. The petitioner as well as the respondents / H.R.&.C.E., Department are at liberty to oversee and supervise that the property in question is not exploited by the other party.

(iii) Though, in this case, the parties were permitted to approach the Civil Court as indicated above, this has been made only having taken note of the peculiar facts and circumstances and treated it as one of the exceptional case. Therefore, it is not a routine process that, each and every dispute which is to be resolved in respect of the property pertaining to the H.R.&.C.E., Department, such kind of relegation is possible, to drive the party to go to the Civil Court.

27. With these observations and directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Joint Commissioner (enquiry),
Commissioner's Office,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.
3. The Revenue Divisional Officer,
Thiruvannamalai District,
Thiruvannamalai.



4. Arulmigu Arunachaleswarar Temple,
Represented by its Joint Commissioner / Executive
Officer, Thiruvannamalai - 606 601.

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+1cc to M/s.A.Ashwin Kumar, Advocate, S.R.No.59869

+1cc to M/s.Kailasam & Associates, Advocate, S.R.No.60418

W.P. No.4366 of 2018

and

W.M.P. Nos. 5362 and 5363 of 2018

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