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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.11.2021

Judgment Pronounced on : 17.11.2021

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A. Nos.1243 of 2014 & M.P.Nos.1 & 2 of 2014

and

W.A. No.635 of 2014 & M.P.No.1 of 2014

and

W.A. No.812 of 2014 & M.P. No.1 of 2014

W.A. No.1243 of 2014:

Fit Person,
Arulmigu Vettaikurumagan Thirukoil,
Nambalakottai,
Gudalur Taluk,
Nilgiri District.

... Appellant/ Third Party

Versus

1.Nilambur Kovilakam Common Properties,
rep.by its Executive Officer,
T.N.Ashokavarnan,
Thirumalpad, Residing at Madasseri Kalam,
Pathriyal - 676 123,
Malappuram District, Kerala.

2.The Revenue Divisional Officer,
Gudalur - 643 212,
The Nilgiris.

3.Mr.M.Narayanan,
President,
The Nilgiris District Mandadan (Moundadan)
Chetti Community Association,
Cherumulli Post, Gudalur Taluk,
The Nilgiris.

... Respondents/ Petitioner/
Respondents 1 & 2

W.A. No.635 of 2014 :

Revenue Divisional Officer,
Gudalur,
The Nilgiris.

... Appellant/ 1st Respondent

Versus



1.Nilambur Kovilakam Common Properties,
Rep.by its Executive Officer,
T.N.Ashok Varman Tirumalpad.

2.Narayanan,
President,
Nilgiris District Moundader Chetty Community Association,
Cherumulli. (Given up)

3.The Assistant Commissioner,
H.R.& C.E Department,
Coimbatore. ... Respondents/ Petitioner / 2nd Respondent

[R3, impleaded as party respondent vide order
of this Court dated 09.09.2014, made in M.P.No.2/2014]

W.A. No.812 of 2014 :

The Nilgiris District Mandadan (Moundadan)
Chetti Community Association,

Reg.No.137 of 2000,

Rep.by its President Mr.Narayanan,
Cherumulli Post, Gudalur Taluk,

The Nilgiris - 643 212. ... Appellant/ 2nd Respondent

Versus

1.Nilambur Kovilakam Common Properties,
Rep.by its Executive Officer,
T.N.Ashok Varman Tirumalpad,
Residing at Madasseri Kalam,
Pathriyal - 676 123,
Malappuram District, Kerala.

2.The Revenue Divisional Officer,
Gudalur - 643 212, The Nilgiris.

3.Sri Sivan Malai Valarchi matrum
Samuga Nala Arakkattalai, (Reg.No.36/2012)
Rep.by its Secretary R.Natarajan,
12/905 - C, Devarsholai Road,
Gudalur - 643 211. ... Respondents/ Petitioner/ 1st Respondent

[R3, impleaded, vide Court order dated 21.10.2021,
made in M.P. No.2 of 2014]

Common Prayer : Writ Appeals have been filed under Section 15
of Letter of Patent against the order dated 23.10.2013 passed in
W.P.No.4135 of 2013.

Prayer in WP.4135/2013: To issue a Writ of Certiorarified
Mandamus Calling for the records of the respondent connected
with Rc.B1. No.6048 of 2009 dated 14.11.2011 and quash the same
and consequently to direct the respondent to restore possession



to petitioner of the Vettaikurumakkan Temple Nambalakotta, situated in S.No.666/1 of Cherumulli Village, Gudalur Taluk, the Nilgiris.

In W.A. No.1243 of 2014:

For Appellant : Mr.K.Ashok Kumar
For R1 : Mr.Arun Anbumani,
for Mr.A.U.Ilango
For R2 : Mr.V.Manoharan, (Govt., Advocate)
For R3 : Mr.P.V.Ravichandran

In W.A. No.635 of 2014 :

For Appellant : Mr.V.Manoharan (Govt., Advocate)
For R1 : Mr.Arun Anbumani,
for Mr.A.U.Ilango
For R2 : Mr.P.V.Ravichandran
For R3 : Mr.Harsha Raj, (HR & CE)
Counsel for Government of Tamilnadu

In W.A. No.812 of 2014 :

For Appellant : Mr.P.V.Ravichandran
For R1 : Mr.Arun Anbumani,
for Mr.A.U.Ilango
For R2 : Mr.V.Manoharan, (Govt., Advocate)
For R3 : Mr.C.K.Chandrasekar

JUDGMENT

(The Judgment was made by Mr.Justice.D.Bharatha Chakravarthy)
A. The Appeals:

These three writ appeals are filed against the Order dated 23/10/2013 in W.P. No.4135 of 2013 and relate to Sri Vettaikorumagan Temple, Namabalakota, Gudalur Taluk, Nilgiris District. W. A. No.635 of 214 has been filed by the Revenue Divisional Officer, Gudalur to whom a direction is issued by the Learned Judge to entrust the temple to the private entity, the first respondent. W.A.No.812 of 2014, has been filed by a



society registered under the Societies Registration Act, which claims to represent the Mandadan Chetti community living in the area, namely "The Nilgiris District Mandadan (Moundadan) Chetti Community Association", which was the second respondent in the writ petition. W.A. No.1243 of 2014 has been filed by the 'Fit Person, Arulmigu Vettaikorumagan Thirukoil' appointed by the Hindu Religious & Charitable Endowments Department to the temple, as a third party after obtaining leave of this Court. The contesting first respondent/writ petitioner in the appeals is the Trust, namely Nilambur Kovilakam Common Properties represented by its Executive Officer T.N. Ashokavaraman Tirumalpad, which is legal representative of the family/descendants of Raja of Nilambur. In the Writ Appeal No. 635 of 2014, filed by the Revenue Divisional Officer, Gudalur, the Assistant Commissioner, HR & CE department, Coimbatore as the Third respondent. In Writ Appeal No. 812 of 2014, Sri Sivan Malai Valarchi Matrum Samuga Nala Arakattalai, a society registered under the Societies Registration Act, was impleaded as the third respondent.

2.For the sake of convenience, the three appellants are referred to as "The RDO", "The Fit Person" and "The Mandadan Association" in this judgment. The contesting first respondent/writ petitioner is referred to as " Nilambur Kovilakam". The department is referred to as "HR&CE" and the Sivan Malai Valarchi Matrum Samuga Nala Arakkatalai as the "Devotees Trust".

B. Facts Leading to the present Appeals :

3.Originally, the entire Gudalur Taluk of the Nilgiris District was part of the Janmam estate, namely Gudalur Janmam Estate. The Gudalur Janmam estates were the eastern most part of the Nilambur Kovilakam, part of the Malabar State originally ruled by the Raja of Nilambur. There is a temple, known as Vettaikorumagan Temple or Vettarayasamy Temple in which the main deity "Betarayasvami" or 'Vettarayaswami", the "Lord of the Hunt" and the deity is represented in the form of a Sword. The temple structure is like any other Kerala Hindu Temple Architecture and is situated on an extent of land admeasuring 0.35.0 Hectare or Acre 0.86 cents in Cherumulli Village S. No. 666/1, Gudalur Taluk, Niligiris District.

4.By an Order bearing ref: 3222, etc., dated 21/12/1936, in exercise of its powers under Section 84 of The Madras Hindu Religious Endowments Act,1926 the said temple along with 8 other temples under the Nilambur Kovilakam were declared as public Temples. Of the said orders being passed on the same day, two orders relating to other temples bearing ref:3223 and 3224 alone are on record before us and the original order in No.3222 in



respect of the subject matter Nambalakota Temple is not on record. It appears that all these orders were passed by the Board exparte since the Trustee of the Nilambur Kovilakam did not appear before it on the day of hearing. Thereafter, M.P. No. 24 of 1937, has been filed by the Nilambur Kovilakam and when the hearing took place, the other side remained exparte and therefore they were set exparte and by an order dated 02/07/1937, the Nambalakota Temple alone was declared as Private Temple. The Trustees of the Temple, and the contesting parties namely, the then representatives of the Mandadan Association others being absent for the hearing, the above declaration was made by the Board. The order reads thus :-

"... 2.The Temple of Sri Vettarayasamy at Nambalakode Village, Gudalur Taluk, Nilgiris District is not a temple defined under the Act. ...The Matter re-opened. Accepting the Memorandum filed by the agent to the Rajah of Nilambur, the Vettaikorumakan Temple - Nambalakottu is declared as private and other temples are declared as Public. The latter temples will be treated as Excepted temples." (emphasis supplied)

5.In the year 1969, The Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1968 (Tamil Nadu Act 24 of 1969), (hereinafter referred to as "The Act") was passed. It was included in the Ninth Schedule to the Constitution of India by the Constitution (Thirty Fourth Amendment) Act, 1974 and the Act came into force with effect from 27/11/1974. Section 3(b) of the Act vested the entire Janmam Estate, in the Government. Liberty was given to those who cultivated or in occupation to apply to the Government for grant of Ryotwari Patta under Section 8 of the Act. Section 11 of the Act enumerates the exceptions where no Ryotwari patta can be granted. In Section 11, 'temple sites' are also mentioned as the exception where no Ryotwari patta cannot be granted. Section 3 of the Act starts with a subjective clause:-

"3.With effect on and from the appointed day, save as otherwise expressly provided in this Act : " (Emphasis Supplied)

Section 14 of Act, vests every building situated within the limits of the Janmam Estate is vested on the person who owned the building immediately before the appointed day. Building is meant to include the land on which it stands along with adjacent premises occupied as appurtenance thereto.

6.The settlement Tahsildar under the act, conducted his proceedings and by an order bearing Ref: S.R. 385/1977 dated 10/07/1977, classified the land on which the Namabalakota Temple



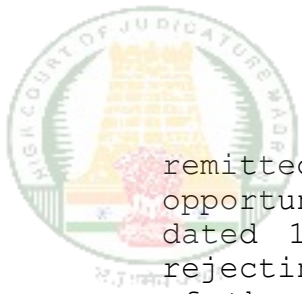
stands as 'Temple Poramboke'. The Nilambur Kovilakam approached the Janmam Abolition Tribunal -cum- The District Judge, Udagamandalam, by way of C.M.A. No.25/1988 and the same was dismissed by order dated 27/09/1994. In the year 1996, by communications dated 14/05/1996 and 12/08/1996, the HR& CE department acts upon the 02/07/1937 Orders of the Board and calls for particulars in respect of the public temples alone.

7. There appear to be no problems relating to the Temple between 1937 - 2000 and in the year 2000, disputes started arising between the Priest of the Temple and Nilambur Kovilakam, which resulted in the RDO initiating proceedings under Section 145 of the Cr.P.C. and passing an order dated 25/02/2000, on account of which the temple was kept under lock and key by the RDO. Nilambur Kovilakam challenged the order of the RDO by way of Crl.R.C. No.472 of 2000, before this Court and this Court by order dated 23/03/2001, allowed the said revision with liberty to the RDO to initiate fresh proceedings. However, no fresh proceedings were initiated. A suit was also filed by the priest in O.S. No. 61 of 2000 on the file of the District Munsif, Gudalur for a permanent injunction against the representatives of Nilambur Kovilakam stating that he is possession and enjoyment of the temple and that the same should not be disturbed. The said suit was dismissed for default by Judgment and Decree dated 29/11/2005.

8. In the meanwhile, Nilambur Kovilakam filed W.P. No.14699 of 2002 praying for a mandamus to restore possession of the Temple. By an order dated 26/03/2007, this Court directed the RDO to conduct an enquiry and pass orders. It was also further observed that in view of the dismissal of the suit filed by the Priest, fresh proceedings under Section 145 Cr.P.C., need not be resorted to. Thereafter by an Order dated 07/08/2008, possession was declined to Nilambur Kovilakam. Hence, Nilambur Kovilakam challenged the said order by way of W.P. No. 2071 of 2009 and the same was pending.

9. Whiles o, for the first time after the order in the year 1937, the Mandadan Association makes a representation dated 08/08/2007 to HR & CE requesting a copy of the 1936 order of the Board. The District Collector by his communication dated 27/02/2009, wrote to the HR&CE directing them to take over the temple under their control. Pursuant thereto, by order dated 13/04/2009, the HR&CE appointed a Fit Person to take care of the temple and he took charge and was in charge of the affairs of the temple.

10. Thereafter, by Order dated 03/01/2011 this Court partly allowed the W.P. No. 2017 of 2009, setting aside the Orders passed by the RDO on 07/08/2008 and the matter was



remitted back to the RDO to pass orders afresh by giving an opportunity to all concerned. Thereupon, the RDO passed an order dated 14/11/2011, bearing ref: Rc.B1.No.6048 of 2009, thereby rejecting the claim of Nilambur Kovilagam stating that in view of the Act vesting the land on which the temple stands in the Government, the temple cannot be handed over to Nilambur Kovilakam.

11. In view thereof, again, Nilambur Kovilakam filed the present Writ Petition No.4135 of 2013, challenging the said order and for returning the temple. It made the RDO who passed the impugned order alone as a party. However, thereafter, before the Learned Single Judge, the Mandadan Association, the trustees, the priest were all impleaded as Respondents 2 to 5. However, the others were given up and they did not contest the matter and only the Mandadan Association alone remained as the second respondent.

12. The Learned Judge after considering the pleadings, submissions and the materials on record, by the Judgment dated 23/10/2013, assailed in these Writ Appeals, came to the conclusion that the temple is a private temple and therefore further observed that even though the land is vested with the Government, the temple alone is to be entrusted to Nilambur Kovilakam with a rider therein that Nilambur Kovilakam cannot in any manner deal with the land and allowed the Writ Petition accordingly.

13. As stated supra, aggrieved by the above said Order, the RDO and the Mandadan Association who were the respondents in the writ petition filed the above two appeals and the Fit Person appointed by the HR & CE filed the third appeal with leave to file an appeal as the Third-party. The HR & CE and the Devotees Trust also got impleaded as respondents and the parties have filed their respective affidavits, counter-affidavits, rejoinder statements and all relevant papers. Cont. Appln. No.1088 of 2014, was filed and the temple was handed over to Nilambur Kovilakam by the RDO on 29/04/2014 subject to the final orders in these appeals.

C. The Submissions :

14. In the above factual background, we heard the parties at length. Mr. Manoharan, the Learned Additional Government Pleader appearing for the RDO, would support the Order impugned in the writ petition. His primary contentions are that an order has been passed by the Settlement Tahsildar and the appeal has been dismissed and therefore, Nilambur Kovilakam cannot pray for the return of the temple. Further, the Nilambur Kovilakam itself has recognized the rights and services of others by their



communication dated 05/05/2000 and therefore cannot claim the temple as their private temple.

15.Mr.K.Ashok Kumar, appearing for the FIT person, took us in detail through all the documents filed in the appeal and assailed the order of the Learned Single Judge. His submissions essentially are, (i) when the fit person has been appointed and he has taken charge of the temple, the order passed by the Learned Judge to return back the temple ought not to have been passed without impleading the Fit Person as well as HR & CE as the parties and as such, the order of the Learned Judge is to be set aside and the matter to be remitted back for fresh consideration after hearing all the parties; (ii) By virtue of Section 3 (b) of the Act, the Janmam is vested with the Government and even if the Janmi, namely, Nilambur Kovilakam has got any right over the temple, the same stood extinguished by virtue of Section 3 (c) of the Act; (iii) The nature of temple, whether private or public has to be determined by the various factors including permission of worship by public, keeping hundi, land on which the temple stands etc., and even if Nilambur Kovilakam has got a declaration in its favour in the year 1937, the subsequent events have to be taken into consideration and over the period the temple has become public temple; (iv) The express mention of words 'temple site' in Section 11 will negate the claim of vesting under Section 14 of the Act and as such, since no patta can be granted, the temple has to vest with the Government alone.

16.The Learned Counsel relied upon the Judgment in (i) Raghavendra Swamy Mutt -Vs- Board of Commissioners, for the proposition that finding of the Board that the temple is private can be changed if the circumstances change; (ii)Udit Narain Singh Malpaharia -Vs- Additional Member, Board of Revenue, Bihar & Another for another proposition that in a writ of certiorari, the tribunal which passed the order and the parties in whose favour the orders are passed are necessary parties; (iii) Goswami Shri Mahalaxmi Vahuji -Vs- Ranchhoddas Kalidas and others for the proposition, as to how the Court has to conclude whether a temple is private or public; (iv) Balmadies Plantations Ltd & Another -Vs- State of Tamilnadu, for bringing home the nature of the act , scheme of Ryotwari patta and vesting of land under the Act; (v) T.V. Mahalinga Iyer -Vs- State of Madras and Another, for the proposition that allowing of public worship etc., would determine the public nature of the temple; (vi) Teki Venkata Ratnam & others -Vs- Dy. Commissioner Endowments and others, for the proposition that the power of inquiry of the Assistant Commissioner under the AP HR & CE Act is that of quasi-judicial and the onus of proof to claim that a temple is private in nature is that of the claimant; (vii) M.S.V. Raja and Another -Vs- Seenii Thevar and others to press



home that the private temple owners can lose their right due to various factors; and (viii) Koya Mohideen & others -Vs- The District Forest Officer & Another, for the proposition that declaration of the nature of the land in the settlement proceedings under the Act are binding and once the land is declared as having vested in the Government, the temple cannot be private.

17.Mr.P.V.Ravichandran, the Learned Counsel for the Mandadan Association, took us through the Nilgiris Gazetteer and other write-ups in Scholarly Articles and claimed that the same evidenced the right of the Mandadan community people over the temple. The appellant's predecessor society had as a matter of fact contested the proceedings in the 1930s and took us through the detailed representation and submitted that the final order was passed only because its counsel did not appear on the hearing. He submits that Mandadan's important right to worship will be affected if the temple continued to be a private temple.

18.The Learned counsel relied upon the Judgment in State of Madhya Pradesh & Ors -Vs- Pujari Utthan Avam Kalyan Samiti & Another for the proposition that worshippers are the true beneficiaries of the temple and that should be borne in mind in deciding the private or public nature of the temple.

19.Mr.Arun Anbumani, countering the arguments would submit that (a) the declaration by the statutory tribunal, namely, the Madras Religious Endowments Board, stands till date; (b) the temple continues to be the family deity of the family and the architecture of the temple etc., would show that Nilambur Kovilakam is the owner of the private temple; (c) the Subjective language of Section 3 read with Section 14, clearly vests the temple with Nilambur Kovilakam; (d) the prayers and offerings by the Mandadans and other devotees is only on the permission of the family and the family always permits the devotees and there is no discrimination of any form in the same and they will continue to be permitted; (e) as a matter of fact, from 1937 upto 2000, there was no problem whatsoever and even now after the entrustment in the contempt petition, there is no conflict whatsoever; (f) Nilambur Kovilakam has put up the temple and the land was originally Janmi land the temple is a 'building' within the meaning Section 14 of the Act; (g) Not only principles of natural justice were violated while appointing Fit Person, Nilambur Kovilakam also did not know the fact as to the appointment of Fit Person and hence they were not impleaded in the writ petition.

20.The Learned counsel relied upon the Judgments in (i) Bhinka and Others -Vs- Charan Singh, for the proposition that taking over possession during 145 Cr.P.C. proceedings would not



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confer any right; (ii) Dharampal and others -Vs- Ramshri(smt) and others, for the proposition that the determination of the rights by the Magistrate in 145 proceedings are not the final determination; (iii) Mahar Jahan and Others -Vs- State of Delhi and others, for the point that it would be the civil court and not 145 proceedings which would be appropriate; (iv) K.M.Murugan Achari and others -Vs- P.M. Neelameham and others for the proposition that any incorrect dispossession during 145 proceedings has to be remedied and the party to be put back into possession; (v) The District Forest Officer, Attur & Another -Vs- A.V. Ravichandran & Another for the proposition that in a proceedings to restore possession, the HR & CE and others are not necessary parties; (vi) The Secretary Regional Transport Authority, Theni -Vs- G. Rajadeen & others, to drive home the point that except the parties to the writ petition, others will have no locus standi to assail the order; (vii) The Commissioner, HR & CE -Vs- K. Jothiramalingam & Another, (viii) N. Sivasubramanian -Vs- The Government of Tamilnadu, (ix) Sri Devi Ellamman Paripalana Sangam -Vs- The Assistant Commissioner, HR & CE, for the proposition that there cannot be an appointment of Fit Person or Executive Officer without complying with principles of natural justice;(x) Raja Somasekar Chikka and Another -Vs- M. Paduravatamma and others, to drive home the meaning of the words " Save as otherwise expressly provided in this act" in the opening part of the section shows that the Act could specifically provide for some property of the estate not being transferred to and vesting in the government; (xi) Zamindar of Ettayapuram -Vs- Panchayat Board, Kalugumalai, to press home the point that the word 'Building' mentioned in Section 14 of the Act, can mean a temple.

21.Mr. Harsha, Learned Counsel appearing for the HR & CE, would vehemently support the appellants. It is his contention that the Endowment Board having passed an order in the year 1936 declaring the temple as Public Temple, having no powers of revision, ought not to have again passed the order in the year 1937 re-declaring the temple as Private. The aggrieved party had only a right to approach the Civil Court under Section 84 (2) of the 1926 act and as such, the second order is per se without jurisdiction and as such, even without challenging the same, it can be canvassed in this proceedings that the order is illegal and as such the HR & CE is not bound by the earlier order. It is further contention that as per the Gudalur Janman Estates (Abolition and Conversion into Ryotwari) Rules, 1974, framed under the Act, to claim the benefit under Section 14 of the Act, the procedure is prescribed in Rule 10, which is the same as claiming Ryotwari Patta, an application has to be made before the Settlement Tahsildar within 6 months and in the absence of the same, no benefit whatsoever can be claimed by the Nilambur Kovilakam. Therefore, the department has rightly



appointed Fit Person and there is no challenge to the same till date.

22. In support of his submissions, Learned counsel relied upon the judgment in (i) Kiran Singh and others -Vs- Chaman Paswan and others, for the proposition that order which is passed without jurisdiction is a nullity in law; (ii) K. Vellappa Gounder and others -Vs- K.S. Thirugnanasamabandan Chettiar & ors, for the proposition that since the land is divested from Nilambur Kovilakam, it cannot claim the benefit under Section 14 for the purposes of the building alone.

23. Mr. C.K. Chandrasekar, Learned Counsel appearing for the devotees would submit that his clients are the devotees not only of the temple but also of the Girivalam route of the entire Sivan Malai. Relying upon the documents filed by the Mandadan Association, he would submit that the same amply would reveal the importance of the temple and the public character of the temple. When such important religious rights such as the Right to Worship of the Mandadan Association which is a Scheduled Tribe Community is at stake, this Court apart from deciding the lis between the parties has to look at the issue as a Constitutional Court as being done in the case of Sabarimala temple.

24. He would submit that the Constitutional Court should relieve itself from the shackles of the statutory order passed by the Endowment Board and declare that the temple as a public temple. The Learned Counsel would rely upon the judgment in Subramania Aiyar and others -Vs- Lakshmana Goundan and others, to impress upon the Court as to the factors present in this case such as worship by the Mandadans and other devotees, land vesting with the government etc., should be considered for declaring the temple as public one.

25. After giving due consideration of the submissions of all the Learned Counsel and after going through the pleadings of parties and the materials on record, the following questions arise for consideration to be decided in the present writ appeals:-

1. Whether or not the order passed by the Learned Single Judge without impleading the fit person and the HR & CE department is correct in law?
2. Whether or not the finding of the Learned Single Judge that the temple is a private temple be upturned?
3. Whether the provisions of the Act have



the effect of divesting the temple from Nilambur Kovilakam?

Question No. 1:

26.The Learned Judge has allowed the Writ Petition by issuing a writ of Certiorarified Mandamus, quashing the Order of the RDO and ordering entrustment of possession of the Temple to Nilambur Kovilagam. As contended by the Learned Counsel for the Fit Person, as per the law laid down by the Hon'ble Supreme Court in Udit Narain Singh Malpaharia, (a) the authority whose order is quashed is to be made a party, which is complied with as the RDO is a party; (b) the parties in whose favour the orders are passed have to be impleaded. In this respect there are two parties, first in respect of the private or public nature of the temple, the devotees are the proper parties and who are impleaded as second respondent in the writ petition; second handing over of possession to Nilambur Kovilagam will result in dislodging the Fit Person and as such Fit Person is also a necessary/proper party. It is a fact that the HR & CE department had stepped in during the course of the RDO proceedings and upon the direction of the Collector it had appointed the fit person. As a matter of fact, materials have been produced before us , such as Archana Receipt, etc to show that the fit person had actually taken charge of the temple.

27.The answer by the Learned Counsel for Nilambur Kovilakam is two-fold : First, the appointment is without complying with the principles of natural justice and Second such appointment was not to the knowledge of Nilambur Kovilakam. Just because the appointment of a fit person was without compliance of principles of natural justice, the same cannot be repeated in the writ petition. This argument is like a set-off for violation of principles of natural justice and hence rejected. Second, the Learned Counsel for HR & CE relied upon the communication of one of the family members Nilambur Kovilakam dated 12/03/2009 to impute knowledge about the appointment of Fit Person. A careful perusal of the communication would only show that the family member has asserted that the temple belongs to them and requesting the HR & CE to notify them if there are proceedings with the matter in any manner and therefore, no knowledge can be imputed based on the said communication. Besides, considering that the present writ petition itself is the third round of litigation for the same prayer, the third round writ petition itself is of the year 2013 and already eight years have passed by; apart from the preliminary objection, all the Learned Counsel on either side have taken great pains to place all the available records and advanced arguments elaborately on the merits of the matter and the Court heard them at length for several hours on four days and therefore instead of remanding the matter back to the Learned Single Judge, it would be in the



interest of all concerned to decide the issue ourselves on merits. The Hon'ble Supreme Court itself in the above judgment recognizes the discretion of the court to add and implead all parties for completely settling all the questions that may be involved in the controversy and since now the Fit Person has been granted leave and other affected parties have also come on record, answering the issues on merits is the right course and accordingly the Question No.1 is answered.

Question No. 2 :

28. There is a declaration in favour of Nilambur Kovilakam that the temple is a private temple. The declaration is by the then Hindu Religious Endowments Board, which is the competent authority under Section 84 of the then Madras Hindu Religious Endowments Act, 1926. The successive acts, namely, the Hindu Religious and Charitable Endowments Act, 1951 and thereafter the Hindu Religious and Charitable Endowments Act, 1959 have saved the orders passed under the earlier enactments as valid and binding and as such the Order is binding on everyone, morefully on the HR& CE Department, which is the succeeding authority. The legal ground of attack on the said Order dated 02/07/1937 is that after the Original order was passed on 21/12/1936, the Board had become functus officio. Hence, there was no jurisdiction at all for the same to pass the second order, which is in the form of a review of its earlier order. There is no express provision in the 1926 Act for the Board to review its own order and under the circumstances, it is a null and void order and without being challenged, it can be declared so even in these collateral proceedings. It is useful to extract Section 84 of The Madras Hindu Religious Endowment Act, 1926 (Madras Act No.II of 1927), which is as under :-

"Section 84 : (1) If any dispute arises as to -

(a) Whether an institution is a math or temple as defined in this Act;

(b) Whether a trustee is a hereditary trustee as defined in this Act or not, or

(c) Whether any property or money endowed is a specific endowment as defined in this Act or not,

such dispute shall be decided by the Board and no court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

(2) Any person affected by a decision under sub-section (1) may, within six months, apply to the court to modify or set aside such decision.

(3) From every order of a District Judge, on an application under sub-section (2), an appeal shall lie to the High Court within three months



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from the date of the order.

(4) Subject to the result of an application under sub-section (2) or of an appeal under sub-section (3), the decision of the Board shall be final."

The counsel placed reliance on paragraph 6 of the decision in Kiran Singh & others which reads as follows:-

"6. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings...."

The Judgment has been subsequently clarified by the Hon'ble Supreme Court in Mantoo Sarkar Vs. Oriental Insurance Co.Ltd., & Ors, that lack of subject matter jurisdiction alone and not other procedural matters would be 'coram non judice'. There is no quarrel over the proposition that as opposed to an illegal order, a null and void order need not be specifically challenged and set aside and that its nullity can be straightaway canvassed even in a collateral proceeding. But in the instant case, the original order dated 21/12/1936 is not traceable by all the parties including the HR & CE department. Neither the copy of the M.P. No.24 of 1937, is placed before us. It is therefore difficult to ascertain what exactly was the text of the first order and what was the nature of the petition. But as pointed out by Mr.Arun Anbumani, the connected two orders in respect of the other two temples declared public on the same day are placed on record. A perusal of the said orders dated 21/12/1936 (on the same day), in Ref. Nos. 3223 & 3224 reveal that the orders are passed setting the Nilambur Kovilakam exparte. Therefore, according to him, the Miscellaneous Petition was in the nature of the setting aside the exparte order and when the matter came up for hearing the other party remained exparte and accordingly in respect of the one out of 8 temples alone there was a declaration that it is a private temple. Therefore, it appears that the nature of exercise of power by the Madras Religious Endowments Board was re-opening of the proceedings upon sufficient reasons. It becomes a mixed question of fact and law as whether the Board was right in re-opening, whether the reasons were sufficient, whether under bye-laws framed under the erstwhile 1926 Act and whether there were provisions regarding the same. If one has to undertake a rowing inquiry so as to determine the correctness of the order, it would be difficult to hold that the order is void in a collateral proceeding and to ignore the same. As late as in the year 1996, the HR & CE, relies on the said orders in its communications dated 14/05/1996 and 12/08/1996. The Hon'ble Supreme Court of India in Pune Municipal Corporation Vs. State of Maharashtra and Ors, has further held



thus:-

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"36.It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void, or not in consonance with law. As Prof.Wade states:

'The principle must be equally true even where the "brand of invalidity" is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court' [H.W.R.Wade, Administrative Law (6th Edn., Clarendon Press, Oxford 1988) 352]. He further states:

'The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the palintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case, the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another'."

29. In the above background, on merits, there are three different arguments advanced by the Learned Counsel to upturn the finding that the temple is private in nature. First, the Nilgiris gazetteer and other early documents are pointed out to contend that the Mundadan Community's right to Worship was in existence even prior to the passing of the order by the Endowment Board and therefore the temple cannot be a private temple.

30.The second argument is the converse of the above argument that this court should consider the subsequent developments after the declaration and revisit the declaration and declare the nature of the temple as public. In our considered view, there is no quarrel over the propositions about the judgments relied on by the Learned Counsel about the test which is to be applied while determining the private or public nature of the temple. But, however, we are afraid that such an exercise can straight away be undertaken in collateral proceedings under Article 226 while there was and yet there is scope now for approaching the appropriate statutory tribunals. We say so especially considering the findings of the Full Bench



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of this Court in Subramania Aiyar & others in paragraph 32 and 33 of the said Judgment to the effect that Malabar has numerous private temples and Malabar region stands by itself in this respect and that there are even public kattalais in these private temples. The Full Bench says,

"32.It was rightly conceded by Mr.Srinivasa Aiyangar that the question whether an institution is dedicated to public worship is ordinarily a question of fact. Nonetheless he quoted a number of decisions for the purpose of showing on what principles a conclusion of this kind should be based. Mr.Krishnassvamy Aiyar, on the other hand, cited other decisions to draw our attention to circumstances which should guide Courts in deciding whether there is dedication or not. Before dealing with these cases I should like to make one remark of a general character. In Southern India, excepting Malabar, on which I shall say a few words later on, there is no private temple in which the outside public has established kattalais and in respect of which they have build chatrams for the accommodation of travellers. Mr.Srinivasa Aiyangar with his large experience of litigation told us that he is unable to mention another instance of a similar kind. He referred to temples in Malabar and to private institutions in Bengal. It is necessary to deal with these two instances. In Malabar people are divided into tarwads, which are practically separate domains; each clan or tarwad has its own place of worship, its own burial ground, its own bathing tank, etc. Each of these tarwads has been regarding itself as a separate entity different from the rest.

33.There are therefore numerous private temples in Malabar and the questions which have come before the Courts have mostly related to the right of trusteeship in such temples inhering in the members of the tarwad. Malabar in this respect stands by itself. This clannish feeling is not what we find outside the west coast. In the south, common worship in the temple, and communal rights in burial grounds and in bathing places are everywhere to be found. Therefore in dealing with a case coming from the east coast no decision in respect of temples situated in Malabar can be of any practical assistance."

31.Thus it requires a proper fact finding in appropriate proceedings and the said exercise cannot be carried on in an writ petition under Article 226 in the teeth of the declaration



by the appropriate statutory body. The declaration that the temple is private was made in the year 1937 and both the Mandadan Association as well as the HR & CE have not raised any issue whatsoever till the year 2000. As a matter of fact the HR & CE goes further and by its two communication of the year 1996 requires the particulars regarding the eight public temples alone pursuant to the determination by the Endowment Board thereby tacitly affirming the declaration by the Board that Nembalakota temple is a private temple. The Mandadan Association, having attempted to contest the matter in the year 1936 and 1937, has not raised a finger upto 2007 and come into picture only after the RDO proceedings. Once the said order holds the field, this Court cannot undertake an inquiry as suggested by the Learned Counsel for the fit person, in these proceedings challenging the RDO order refusing to entrust the temple on the strength of the Act.

32.Lastly, coming to the argument of Mr. C.K. Chandrasekar, the Learned Counsel for the devotees, we are in agreement with him that when the rights of the Scheduled Tribe are involved, this Court as a Constitutional Court should come out of the shackles of such statutory orders and examine the issue from the fundamental rights perspective. Even though we understand that from the perspective of the Mandadan Community, it is important for them to perform the marriages in the temple and offer worship, we do not see any discrimination or violation of Right to Life or any practice of untouchability or Right to Practice their religion as submitted by the Learned Counsel so as to ignore the Lawful order of the appropriate authority and hold otherwise. Thus, viewed from any angle the finding of the Learned Judge that the temple is private in nature cannot be upturned.

Question No. 3

33.Before advertng to the contentions made in this regard, it is useful to extract the relevant provisions of the act and the rules framed thereunder. Section 3, 8, 9, 11 & 14 of the Tamil Nadu Gudalur Janman Estates (Abolition and Conversion into Ryotwari) Act, 1969, read as follows:-

"3.With effect on and from the appointed day and save as otherwise expressly provided in this Act-

(a) the Malabar Tenancy Act, the Malabar Land Registration Act, 1895, the Gudalur Compensation for Tenants Improvements Act, 1931 and all other enactments applicable to janmam estates as such, shall be deemed to have been repealed in their application to janmam estates;

(b) every janmam estate including all communal lands and porambokes, waste lands,



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pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries, and ferries situated within the boundaries thereof shall stand transferred to the Government and vest in them free of all encumbrances, and the Tamil Nadu Revenue Recovery Act, 1864, the Tamil Nadu Irrigation Cess Act, 1865, the Tamil Nadu Cultivating Tenants Protection Act, 1955, the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 and all other enactments applicable to ryotwari lands shall apply to the janmam estate;

(c) all rights and interests created by the janmi in or over his janmam estate before the appointed day shall as against the Government cease and determine;

(d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the janmam estate and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to the janmam estate which the Government may require for the administration thereof:

Provided that the Government shall not dispossess any person of any land in the janmam estate in respect of which they consider that he is prima facie entitled to a ryotwari patta pending the decision of the appropriate authority under this Act as to whether such person is entitled to such patta;

(e) the janmi and any other person whose rights stand transferred under clause (b) or cease and determine under clause (c) shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act;

(f) the relationship of janmi and tenant, shall as between them, be extinguished; and

(g) any rights and privileges which may have accrued in the janmam estate to any person before the appointed day against the janmi shall cease and determine and shall not be enforceable against the Government or against the janmi and every such person shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act.

8. The janmi shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of all lands proved to have been



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cultivated by the janmi himself, or by the members of his tarwad, tavazhi, illom or family or by his own servants or by hired labour with his own or hired stock in the ordinary course of husbandry for a continuous period of three agricultural years immediately before the 1st day of June 1969.

Explanation I.-"Cultivate" in this section includes the planting and rearing of topes, gardens, orchards and plantation crops, but does not include the rearing of topes of spontaneous growth.

Explanation II.- Where any land is cultivated with plantation crops any land occupied by any building for the purpose of or ancillary to the cultivation of such crops or the preparation of the same for the market and any waste land lying interspersed among or contiguous to the planted area upto a maximum of twenty-five per centum of the planted area shall be construed to be land cultivated by the janmi.

9.(1) Every tenant shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of the lands in his occupation:

Provided that such land is proved to have been cultivated by the tenant himself or by the members of his tarwad, tavazhi, illom or family or by his own servants or by hired labour with his own or lured stock in the ordinary course of husbandry for a continuous period of three agricultural years immediately before the 1st day of June 1969:

Provided further that no person who has been admitted into possession of any land by a janmi on or after the 1st day of June 1961 shall, except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land.

(2) Notwithstanding anything contained in sub-section (1), no tenant shall be entitled to a ryotwari patta in respect of any land under sub-section if such tenant has voluntarily abandoned or relinquished his rights in respect of such land on or before the date of the decision of the Settlement Officer under subsection (1) of section 12.

11. Notwithstanding anything contained in sections 8 and 10, no ryotwari patta shall be granted in respect of any land falling under any



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of the categories specified below and situated within the limits of a janmam estate:-

- (a) forests;
- (b) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels;
- (c) threshing floor, cattle stands, village sites, cart-tracks, roads, temple sites and such other lands situated in any janmam estate as are set apart for the common use of the villagers;
- (d) rivers, streams and other porambokes.

14. Every building situated within the limits of janmam estate shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day but the Government shall be entitled for each fasli year commencing with the fasli year in which the appointed day falls, to levy the appropriate assessment thereon.

In this section, "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto."

34. The relevant Rules, which are Rule 8 & 10 of the Gudalur Janman Estates (Abolition and Conversion into Ryotwari) Rules, 1974, are extracted hereunder :-

"8. Enquiry into claims under section 8, 9 or 10:-

(1) Every application for grant of ryotwari patta in respect of any land under section 8, 9 or 10 shall be in Form No.4 and shall be either presented in person or sent by registered post, to the Settlement Officer, within six months from the appointed day.

(2) Every such application shall be signed and verified by the applicant and restricted to lands in the holdings in a single village.

(3) If, in respect of any land, no person has applied for patta under sub-rule (1), the Settlement Officer shall proceed to enquire into the nature and history of the land suo motu and determine if any person is prima facie entitled to a ryotwari patta in respect of that land.

(4) The Settlement Officer shall, then, fix a date for the enquiry and shall cause a notice in Form No.5 to be served on each janmi or tenant or cultivator who has applied for ryotwari patta or who, in the opinion of the Settlement



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Officer, is prima facie entitled to a ryotwari patta, to produce any record or make any representation which he may wish to make at the enquiry. A copy of the notice shall also be sent to the Tahsildar of the Taluk.

(5) The Settlement Officer shall also publish a notice in Form No. 6 requiring any person who has any objection to any of the proposal to grant ryotwari patta, to file before him a statement of his objections, within a week from the date of the notice and also requesting all interested persons to be present at the enquiry either in person or through an authorised representative and make their representations. Copies of the notice shall also be affixed on the notice board of the offices of the Settlement Officer and of the Assistant Settlement Officer.

(6) The date of the enquiry shall not be earlier than fifteen days from the date of the publication of the notice referred to in sub-rule (5).

(7) The enquiry shall be summary. The Settlement Officer shall hear the parties and afford them a reasonable opportunity for adducing any oral or documentary evidence.

(8) The decision of the Settlement Officer shall be published in Form No.7. A copy of the decision shall be made available to the party concerned in person or sent to him by registered post. A copy of the decision shall also be sent to the Tahsildar of the Gudalur Taluk and to the Director of Settlements.

10. Vesting of buildings. -

(1) The Settlement Officer shall enquire into the claims of any person for a decision as to in whom the building shall vest under section 14 of the Act.

(2) The provisions of rule 8 as in enquiry shall apply mutatis mutandis in regard to such claims.

(3) The power of the Settlement Officer specified in sub-rule (1) shall "be exercisable also by the Assistant Settlement Officer subject, to revision by the Settlement Officer, the Director of Survey and Settlement and the Commissioner of Land Administration. Such revision petitions, other than, the revision to the Commissioner of Land Administration, shall be preferred within thirty days from the date of communication of the order sought to be revised



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and the revision petition to the Commissioner of Land Administration shall be preferred within sixty days from the date of communication of the order sought to be revised. The Commissioner of Land Administration may, at any time in his discretion, suo motu call for, examine and revise, if necessary, any order passed or proceeding recorded by the Assistant Settlement Officer, the Settlement Officer or the Director of Survey and Settlement:

Provided that the Assistant Settlement Officer, the Settlement Officer, the Director of Survey and Settlement or the Commissioner of Land Administration shall not pass any order prejudicial to any person unless he has had a reasonable opportunity of making his representations. "

35.The primary contention of the Learned Counsel for the appellants as well as of the Counsel appearing for the HR&CE department is that once the Act comes into picture, the entire Janmam estate including the temple which stood on the Janmam land got vested in the Government as per Section 3(b) of the Act and all the rights of the Janmi also stood extinguished by virtue of Section 3(c) of the Act. But, however, a plain reading of the Act shows that Section 3 starts with the phrase " With effect on and from the appointed day and save as otherwise expressly provided in this Act" and therefore as rightly contended by the Learned Counsel for Nilambur Kovilakam and as held by the Hon'ble Supreme Court of India in Paragraph 13, Raja Somasekar Chikka and Another -Vs- M. Paduravatamma and others, the words "Save as otherwise expressly provided in this act" in the opening part of the section shows that the Act could specifically provide for some property of the estate not being transferred to and vesting in the government in paragraph, we have no hesitation in holding that Section 3 is subject to Section 14 and the effect thereof is that only the cultivable and other vacant sites are vested in the Government and wherever there is a building, the building and the site thereof on which the building stands were vested with the respective owners of the building. This apart, Section 3(c), in our considered view only extinguishes the right created by the Janmi in favour of the third parties vis -a- vis the Government and not the rights of the Janmi, viz., Nilambur Kovalakam.

36.The second submission relating to the Act that Section 11 of the Act says no patta can be given for a temple site and therefore that will counter the argument that the temple is a building within the meaning of Section 14 is also without any merit. On a complete reading of the scheme of the Act, one can



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easily understand that the Legislation vests the entire Janmam estate with the Government and only the buildings alone, i.e., the houses and other buildings owned by not only the Janmi but by every person within the Janmam estate is vested in the Janmi or the individual respectively. Only in respect of the cultivable and other vacant lands and sites vested with the Government the procedure of issuing Ryotwari patta to the Janmi or the concerned individual cultivating arises. Therefore, the mentioning of temple sites in Section 11 of the Act carving out an exception that no Ryotwari patta can be granted has nothing to do with the vesting under Section 14 of the Act.

37. The Learned Counsel also placed before us, the Judgment in Zamindar of Ettayapuram -Vs- Panchayat Board, Kalugumalai, to press home the point that the word 'Building' mentioned in Section 14 of the Act, can mean a temple whereunder in respect of a pari materia provision the temple is held to be a building as per the Act. Therefore, there is no difficulty in holding that Nilambur Kovilakam is the owner of the building (temple) immediately preceding the day of notification of the Act and therefore the same is vested in it pursuant to Section 14. In this regard the further argument of Mr. Harsha, the Learned Counsel appearing for the HR&CE that since Nilambur Kovilakam did not apply before the settlement Tahsildar within a period of six months under the rules, it cannot claim the benefit under Section 14 cannot be countenanced as the vesting under Section 14 take place immediately and is not dependent on any contingency. Rule 10 of the Rules merely mentions that for any claim the same procedure before the Settlement Tahsildar for a claim of Ryotwari Patta to be followed and the same cannot be construed to have a diametrically opposite effect of Vesting which is expressly provided in Section 14 of the Act. Further in the instant case, the settlement Tahsildar had taken up the exercise under the Act and by an order bearing Ref: S.R. 385/1977 dated 10/07/1977, classified the land on which the Namabalakota Temple stands as 'Temple Poramboke'. The Nilambur Kovilakam approached the Janmam Abolition Tribunal -cum- The District Judge, Udagamandalam, by way of C.M.A. No.25/1988 and the same was dismissed by order dated 27/09/1994. Thereafter, the order has become final. It is in this context the Learned Single Judge has held that Nilambur Kovilakam will be entitled to the superstructure alone and they cannot deal with the land on which the temple is situated in any manner whatsoever. Dual ownership is a recognized concept in India and therefore such an approach cannot be faulted with. In this context, the learned Counsel appearing for the fit person would raise a further submission that once the land becomes public, there cannot be a private temple over the same. It is to be noted that the private temple was originally located on Janmi land only and it is only by the subsequent intervention of the statute and by way of



statutory proceedings under the Act, the rights of parties over the land being altered. Therefore, for all the foregoing reasons, we are unable to hold that by virtue of the Act, the Right of Nilambur Kovilakam over the temple is affected or divested, hence, we answer the question accordingly.

38. Subject to the above observations, the appeals fail and are accordingly dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

klr

To

1. The Executive Officer,
Nilambur Kovilakam Common Properties,
T.N. Ashokavarnan, Thirumalpad, Residing at Madasseri Kalam,
Pathriyal - 676 123,
Malappuram District, Kerala.
2. The Revenue Divisional Officer,
Gudalur - 643 212, The Nilgiris.
3. The Assistant Commissioner,
H.R. & C.E Department, Coimbatore.

+1cc to M/s.C.K.Chandrasekhar, Advocate, S.R.No.58937
+1cc to Mr.K.Ashok Kumar, Advocate, S.R.No.59081
+3cc to Mr.P.V.Ravichandran, Advocate, S.R.No.58838
+3cc to Mr.A.V.Elango, Advocate, S.R.No.59145
+1cc to the Government Pleader, S.R.No.59802
+1cc to the Special Government Pleader, S.R.No.59554

W.A. Nos.1243 of 2014 & M.P.Nos.1 & 2 of 2014
and
W.A. No.635 of 2014 & M.P.No.1 of 2014
and
W.A. No.812 of 2014 & M.P. No.1 of 2014

AJS (CO)
SB(09/12/2021)