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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. NO.5049 OF 2014

AND

M.P. NO.2 OF 2014

Yarasee M.Nataraja Chettiar Trust,
Represented by its Trustee,
K.Skandamurugan

...Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments
Department, Nungambakkam High Road,
Chennai - 600 034.

2.The Joint Commissionr,
Hindu Religious and Charitable Endowments
Department, Villupuram.

3. K.Murugan

4. The Inspector of Police,
Chidambaram Town,
Cuddalore.
(Impleaded as suo motu as R4 by
order dated 14.07.2021)

...Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to Writ of Certiorari to call for
the records of the 2nd respondent pertaining to the proceedings
in Se.Mu.Na.Ka.No.268/2014/E2 dated 10.01.2014 and quash the
same.



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For Petitioner : Mr.P.Valliappan

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate for R1 & R2
Mr.R.Swaminathan for R3

O R D E R

Heard Mr.P.Valliappan, learned counsel for the petitioner, Mr.NRR.Arun Natarajan, learned Government Advocate for the official respondents/ R1 & R2 and Mr.R.Swaminathan, learned counsel for R3/Executive officer of the Arulmighu Thillai Kaliyamman Thirukovil, Chidambaram, who has been appointed as the fit person to administer the properties endowed to the temple for various religious purposes by AV.Ramalinga Chettiyar under Deed of Trust dated 08.05.1933.

2. The petitioner claims that the A.V.Ramalinga Chettiyar was his grandfather's grandfather and he constituted a Trust on 08.05.1933 for the purposes of carrying out various charitable and philanthropic activities. The Trust owned a property situated at No.3, West Car Street, Chidambaram. The income from the aforesaid property was to be utilized for Annadhanam during the Arudra and Ani Thirumanjanam festivals of the Sabanayakar Temple at Chidambaram.

3. The petitioner was of the view that the building was dilapidated and the trust was not in receipt of sufficient income to allow for repairs to its properties. Hence, O.S.No.38 of 2009 was filed before Principal District Court at Cuddalore seeking permission to sell the Trust property to one Karthikeyan for an amount of Rs.50,00,000/-. The said suit was decreed on 16.04.2009 and the sale deed registered on 30.04.2009 in favour of Karthikeyan. The sale consideration of a sum of Rs.50,00,000/- were directed to be deposited in a Nationalized Bank and the same has been deposited in Indian Bank, Nellikuppam Branch, Cuddalore District. According to the petitioner, the interest from the deposits of the proceeds from sale of the said property are being utilized towards the objects of the Trust.



4. The petitioner did not choose to array the Hindu Religious and Charitable Endowments Department as a party in the above suit. Thus a Civil Revision Petition came to be filed by the Sabanayakar Temple represented by its Executive Officer, albeit belatedly. When the matter came up for condonation of delay under CRP SR.No.64869 of 2011, Mr.Justice R.S.Ramanathan, by his order dated 31.01.2012, accepted the revision petitioner's submission that it ought to have been heard by the lower Court in the suit as it was a necessary party. However, in conclusion, he granted liberty to the revision petitioner to file an appeal against the judgment and decree in O.S. No.38 of 2009 and raise all pleas therein after obtaining leave of the First Appellate Court.

5. Admittedly, the HR & CE Department has not exercised the above option and has allowed the judgment to attain finality. However, what they did was to pass the impugned order on 10.01.2014. The impugned order captures the narration in regard to the sale of the property that had been specifically endowed for a particular purpose as being contrary to the interests of the endowment and the wishes of the original trustee. The Joint Commissioner was of the view that the sale of the property to the private individual should be enquired into and the impugned order states as such in conclusion.

6. I am given to understand that consequent thereupon, CSR. No.236/2014 has been filed before the Inspector of Police, Chidambaram Town, Cuddalore District by the Executive Officer appointed under the impugned order on 16.10.2020, though nothing has transpired in the interim thereafter.

7. Learned counsel for the petitioner fairly does not contest the position that the property in question constitutes a specific endowment in terms of Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (in short 'Act') insofar as it is a property that has been endowed for the purpose of a specific service or charity in a temple. The only challenge raised is as regards the lack of opportunity to the petitioner prior to passing the impugned order. This aspect of the matter is admitted insofar as no notice has been issued to the petitioner prior to passing of the impugned order. For this purpose, the impugned order is liable to be set aside and I do so.



8. Since the property originally endowed has been alienated, the nature of the asset endowed would now stand altered to the Fixed Deposit comprising the sale consideration from the property and all terms, conditions and stipulations attached to the original endowment will attach to, and apply to the fixed deposit. Learned counsel for the petitioner would confirm that accounts are being maintained in regard to the income from the fixed deposit and deployment of the same. This is however a question of fact that needs verification and confirmation.

9. R4 is thus directed to issue notice to the petitioner, call for all records as may be necessary and pass a speaking order in respect to (i) whether the sale consideration has been deposited in full in favour and to the benefit of the endowment created by AV.Ramalinga Chettiyar (ii) Whether accounts are being maintained in regard to the income granted from the sale consideration deposited (iii) whether the proceeds from the sale consideration are being deployed solely towards the endowment created, and render a finding in regard to each of the aspects as enumerated aforesaid.

10. Mr.Swaminathan, learned counsel for R3 would also state that the petitioner was in error in filing a suit as regards the alienation of immovable Trust property, as the provisions of Section 34D barred the jurisdiction of the Civil Court in such a situation. I am not inclined to consider any argument in regard to the civil litigation instituted by the petitioner at this juncture, seeing as this Court, as early as in 2012 had granted leave to the temple to agitate the matter by way of a First Appeal and this opportunity has been lost by the temple.

11. Having said so, his submission would have to be rejected on a plain reading of Section 34D of the Act, that states as follows:

'34-D. Bar of jurisdiction of Civil Court.—Save as otherwise provided in section 34-A or 34-C, no suit or other legal proceeding in respect of an order passed under section 34-A or 34-B or 34-C, as the case may be, shall be instituted in any court of law.'



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12. The bar set out in Section 34D only relates to those proceedings covered by Sections 34 A, B or C and cannot extend to alienation of immovable Trust properties, which is dealt with in terms of Section 34 of the Act, not covered by the exclusions under Section 34D.

13. The petitioner has been enjoying interim protection till date. Henceforth, the Executive Officer appointed shall be in joint management of the asset, being the fixed deposit till such time the enquiry on CSR 236/2014 is complete, which shall, in any event be so completed within a period of twelve (12) weeks from today. The directions as contained in paragraph 9 of this order shall be complied with, within a period of 16 weeks taking note of the result of the enquiry of CSR No.236/2014 as well.

14. Since investigation is to be conducted by the Inspector of Police, Chidambaram Town, Cuddalore, I suo motu implead him as R4 for compliance with the direction as aforesaid.

15. This writ petition is disposed in the aforesaid terms. Connected Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

rkp

To

1. The Commissioner,
Hindu Religious and Charitable Endowments
Department, Nungambakkam High Road,
Chennai - 600 034.
2. The Joint Commissionr,
Hindu Religious and Charitable Endowments
Department, Villupuram.



3. The Inspector of Police,
Chidambaram Town,
Cuddalore.

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+1cc to Mr.R.Swaminathan, Advocate, S.R.No.33337

+1cc to Mr.P.Valliappan, Advocate, S.R.No.33886

W.P. No.5049 of 2014
and
M.P. No.2 of 2014

PCH(CO)
RLP(22/11/2021)