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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM

THE HON'BLE MR. JUSTICE PARESH UPADHYAY
AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2737 of 2021

M/s.Rajam Hotels P. Ltd.,
Rep. By is Authorized Signatory -
Mr.C.Gabriel,
No.14, Aziz Nagar 2nd Street,
Kodambakkam,
Chennai - 600 024.

.. Appellant

Vs

1. The State of Tamil Nadu
Rep. By its Secretary,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Tahsildar,
Sriperumbudur Taluk,
Sriperumbudur,
Kancheepuram District.
4. The Executive Officer,
Arulmigu Kasi Viswanathaswami Thirukoil &
Arulmigu Venugopalswami Thirukoil,
Office at Arulmigu Varadarajaperumal Koil,
Poonamallee.
5. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai - 34.

.. Respondents

Appeal preferred under Clause XV of Letters Patent against
the order dated 07.10.2021 in W.P.No.31132 of 2013.



Prayer in WP No.31132 of 2013 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other Writ or order in the nature of Writ Calling for the records pertaining to the 3rd respondent's unilateral Demand Notice bearing Na.Ka.No.4808/2007-A4 dated 1.8.2013 pertaining to the lands measuring 4.16 acres comprised in Survey Nos.352/4 16.78 Acres in Survey No.354/2 & 0.12 acres in Survey No.365 totally measuring 21.06 Acres situated in Mevalur Kuppam-B Village, Sriperumbudur Taluk, Kancheepuram District, quash the same and forbearing the respondents interference with the petitioners peaceful possession and enjoyment of the said property without due process of law and render justice.

For Appellant : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.K.Ramakrishna Reddy

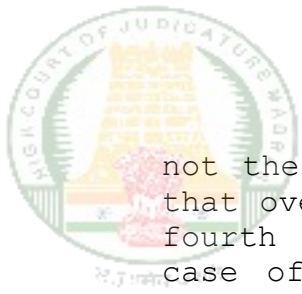
For Respondents : Mr.R.Shunmugasundaram,
Advocate-General
assisted by
Mr.D.Ravichander,
Government Advocate
for R1 to R3 and R5
Mr.A.K.Sriram for R4
M/s.A.S.Kailasam Associates -R4

JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made by the writ petitioner to the order passed by learned Single Judge dated 07 October, 2021, in W.P.No.31132 of 2013.

2. We have heard learned Senior Advocate for the appellant, learned Advocate-General for the State Authorities and learned advocate for the original fourth respondent, at length.

3. Learned advocate for the appellant/ petitioner has submitted that, challenge in the writ petition was to the demand notice dated 01 August, 2013 issued by State Authorities and the appellant/ petitioner could not have been worse of than loosing in the petition in toto. Without prejudice to this, learned advocate for the appellant has further submitted that the rejection of the petition qua impugned notice dated 01, August, 2013 is also erroneous. It is further submitted that the impugned order travels much beyond the scope of the petition since the petitioner is directed to make payment not only to the State Authorities but also to the fourth respondent, which was



not the point at issue in the petition. It is further submitted that over and above the payment to the State Authorities and the fourth respondent, the impugned order further prejudices the case of the appellant, which was not within the scope of the petition. It is noted that learned advocate for the appellant has taken this Court through the pleadings and has also referred to various provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 to make his case good, to contend that the impugned order calls for interference. It is submitted that this appeal be entertained.

4.1. Learned Advocate-General has submitted, by referring to paras 14 and 15 of the impugned order that, though the cause of action for the petitioner was the demand notice issued by State Authorities dated 01 August, 2013, since the appellant had invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, the learned Single Judge is justified in going into other connected questions, including lack of bonafide on the part of the appellant. It is submitted that no interference be made by this Court.

4.2. Learned Advocate-General has further submitted that the appellant has attempted to take advantage of the dispute between the State Authorities and the fourth respondent inter-se with regard to the title over the land in question, but that has nothing to do with the demand notice impugned in the petition or the demand notice dated 26 June, 2013 issued by the Temple. It is submitted that no interference be made by this Court. It is also submitted that the appellant/ petitioner has not approached with clean hands and this appeal be dismissed.

5. Learned advocate for the fourth respondent has submitted that, though the fourth respondent has its own say whose land it is, and for that aspect the fourth respondent and the State Authorities may not be on the same page, however, so far the claim of the appellant is concerned, the rejection of his petition may not be interfered with by this Court. Learned advocate for the fourth respondent has also drawn the attention of this Court to the grounds mentioned in the memo of appeal and para 5 of the counter to contend that the appeal not only lacks merit it also lacks bonafide. It is submitted that this appeal be dismissed.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

6.1. The challenge in the writ petition was to the notice dated 01 August, 2013 demanding Rs.1,08,69,423/- by the State



Authorities from the present appellant/writ petitioner was principally on the ground that, before the said demand notice, the appellant should have been heard and additionally on the ground that the calculation was erroneous. The demand notice of the year 2013 has been pending for all these years. The aspect of prejudice to the appellant is taken note of by learned Single Judge and the same is appropriately answered in the impugned order itself, after taking into account the explanation of the petitioner qua that notice. We are in agreement with the conclusion arrived at by learned Single Judge that in the present case, not only there was no necessity to issue any show-cause notice before raising demand, no prejudice is caused to the appellant in that regard. We find that, in the facts which are noted in the impugned order, the learned Single Judge cannot be said to have fallen in any error which may call for any interference in an intra-court appeal. The challenge to the order of learned Single Judge to that extent is rejected and the impugned order dated 07 October, 2021 is confirmed to the extent of rejecting the petition, challenging the notice dated 01 August, 2013 issued by the State Authorities demanding an amount of Rs.1,08,69,423/- from the petitioner.

7. We accept the argument of learned advocate for the appellant that, over and above rejecting the petition qua the impugned demand notice dated 01 August, 2013, the impugned order further contains observations, findings and directions against the appellant. This grievance can be grouped under two heads. Firstly, in para 22 of the impugned order, there is direction that, over and above paying the amount as asked for by the State Authorities vide notice dated 01 August, 2013, the appellant shall make further payment to the fourth respondent pursuant to its notice dated 26 June, 2013. Secondly, there are other observations/ findings against the appellant.

8. So far the first of the above two parts is concerned, we find that, while rejecting the petition qua the demand notice issued by the Government dated 01 August, 2013, the appellant could not have been further directed to make payment to the fourth respondent pursuant to its notice dated 26 June, 2013. According to us, the impugned order calls for correction to that extent.

9. So far other observations, findings and directions issued by learned Single Judge are concerned, though prima facie it may appear that, that was beyond the scope of petition, since the appellant had invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, when there was material on record, it ought to have been taken note of, which learned Single Judge did and the consequences thereof cannot be



said to be an error which may call for interference in an intra-court appeal. It would not be proper for us to interfere in any of that part of the impugned order. While not interfering in the impugned order (except to the extent as indicated in para 6.2.1 above) it is noted that, we have taken into consideration the findings as noted in paras 14 and 15 of the impugned order, which learned Advocate-General has specifically referred to, so also para 5 of the counter of the fourth respondent.

9.1. Paras 14 and 15 of impugned order read as under:-

"14. From the narrative thus far, learned TN HR & CE State counsel and learned Revenue State counsel as well as learned counsel for said temple submit in one voice that the writ petitioner is taking advantage of the tussle between Revenue Department and -Tamil Nadu Hindu Religious & Charitable Endowments Department- (hereinafter -TN HR & CE Dept.- for the sake of brevity) and is not paying rent to either of them, but is in possession and occupation of vast and valuable property i.e., demised land admeasuring 21.06 Acres (19.29 acres) and is commercially exploiting the same by running a hotel and an amusement theme park that too on the teeth of aforementioned Civil Court decree that the demised land should not be used for any purpose other than agricultural activity. This court is informed that this civil court decree made in aforementioned appeal suit under section 96 of CPC has been given legal quietus by parties / attained finality and is operating. In other words, this court is informed without any disputation or disagreement that this decree in the appeal suit has not been further assailed either by way of second appeal under section 100 of CPC in this court or in any other manner.

15. As already alluded to supra, while the writ petitioner company has chosen to respond to the impugned notice in and by a detailed reply dated 10.09.2013, it has chosen to neither respond nor comply qua 26.06.2013 notice from said temple. The respondents-counsel i.e., the two State Counsel and counsel for said temple, make submissions in this regard in unison in one voice and the burden of the song is whenever there is a demand of rent



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from the Revenue Department, writ petitioner says it is a tenant/lessee under said temple and when said temple makes a demand, there is neither response nor compliance. The writ petitioner is thus squatting on demised property and commercially exploiting it without paying rent though (on a demurrer) the lease under said temple expired / elapsed in June of 1997."

9.2. Para 5 of the counter of the fourth respondent reads as under:-

"5. I state, that the lease was granted for agricultural purposes and since the said D.Selvaraj and 3 Others attempted to utilize it for different purposes, i.e., they made an attempt to build a swimming pool and other recreational facilities in the said place and so this Respondent filed a suit in O.S.No.427/1997 on the file of the Principal District Munsiff Court, Poonamallee with a prayer of permanent injunction and the Principal District Munsiff, by judgement and decree dated 10.12.2008 decreed the suit 5 thereby granting a permanent injunction restraining the said D.Selvaraj and other from putting up the land for different use and converting the same as a recreational place. I state, that as against this judgment and decree, the said Selvaraj preferred an appeal in A.S.No.73/2009 on the file of the Subordinate Judge at Poonamallee. I state, that while the appeal was pending, the said Selvaraj died and his legal representatives S.Amirtharaj, S.Anandaraj and S.Rajapriya were brought on record by an order in I.A.No.1646/2009 in A.S.No.73 of 2009 on the file of Sub Court, Poonamallee. I state, that the said appeal was dismissed on 30.11.2011 by the Subordinate Judge, Poonamallee confirming the judgment and decree made by the Principal District Munsiff, Poonamallee. I state, that the permanent injunction still stands and the land in question cannot be put to any use other than agriculture, for which it was leased out to D.Selvaraj & 3 Others."

10. On conjoint consideration of the above, we find that the appellants have chosen to blow hot and cold together to suit his



convenience. We consider it neither necessary nor proper to protect the appellant qua that part of the order or the consequences thereof. While doing so, we also make it clear that we may not be understood to have expressed any opinion with regard to the competing claims about the title over the land in question, between the State Authorities and the fourth respondent/Temple inter se.

11. For the reasons recorded above, the following order is passed.

11.1. The impugned order dated 07 October, 2021 is confirmed to the extent of rejecting the petition, challenging the notice dated 01 August, 2013 issued by the State Authorities demanding an amount of Rs.1,08,69,423/- from the petitioner.

11.2. The impugned order dated 07 October, 2021 is set aside to the extent (directions in para 22) it directs the petitioner to make further payment to the fourth respondent, pursuant to its demand notice dated 26 June, 2013.

11.3. Other part of the impugned order, including the observations and findings against the appellant, is not interfered with, for the reasons which are noted in detail by learned Single Judge, with the clarification that, we may not be understood to have expressed any opinion with regard to the competing claims about the title over the land in question, between the State Authorities and the fourth respondent/Temple inter se.

12. The writ appeal stands disposed of in above terms. No costs. C.M.P.No.17928 of 2021 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm/8

To

1. The Secretary,
State of Tamil Nadu
Revenue Department,
Fort St.George, Chennai - 600 009.



2. The District Collector,
Kancheepuram District,
Kancheepuram.

3. The Tahsildar,
Sriperumbudur Taluk,
Sriperumbudur,
Kancheepuram District.

4. The Executive Officer,
Arulmigu Kasi Viswanathaswami Thirukoil &
Arulmigu Venugopalswami Thirukoil,
Office at Arulmigu Varadarajaperumal Koil,
Poonamallee.

5. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai - 34.

+1CC to M/s.A.S.Kailasam & Associates, Sr.No.56388

+1CC to Mr.Government Pleader, Sr.No.56802

W.A.No.2737 of 2021

PA (CO)

K.RK. (12.11.2021)