



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2020
Pronounced on : 30.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE **N.KIRUBAKARAN**

and

THE HONOURABLE MR. JUSTICE **B.PUGALENDHI**

W.P. (MD) No.13962 of 2020

A.Radhakrishnan

... Petitioner

Vs.

- 1.The Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.
- 2.The Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.
- 3.The Secretary to Government,
Tourism, Culture & Endowments Department,
Secretariat,
Chennai - 600 009.
- 4.The Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 005.
- 5.The Commissioner of Land Administration,
Chepauk,
Chennai - 600 005.
- 6.The Director of Survey and Settlements,
Chepauk,
Chennai - 600 005.
- 7.The Inspector General of Registrations,
100, Santhome High Road,
Chennai.
- 8.The Director,
Town and Country Planning Department,
807, Annasalai,
Chennai - 600 002.



- 9.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Nungambakkam,
Chennai - 600 034.
- 10.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai - 600 004.
- 11.The Inspector General of Police,
Southern Zone,
Madurai.
- 12.The Deputy Inspector General of Registration,
Tirunelveli.
- 13.The Regional Deputy Director,
Survey and Land Records Department,
Madurai.
- 14.The District Collector,
Tuticorin.
- 15.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Tirunelveli.
- 16.The Joint Commissioner cum Executive Officer,
Arulmigu Subramaniaswamy Temple,
Tiruchendur.
- 17.The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Tuticorin.
- 18.The Executive Officer,
Arulmigu Sankararameswarar & Vaikundapathi
Groups Temple,
Tuticorin Town.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondents to implement the direction issued by the Apex Court and this Court in Appeal (Civil) No.3135 of 2007, W.P.No.14428 of 2017 and 16833 of 2017 respectively and thereby secure and safeguard the properties of 18th respondent temple and restore the same in favour of the 18th respondent temple, by considering the petitioner's representation dated 25.04.2019 and 07.09.2020.



WEB COPY

For Petitioner : Mr.A.Radhakrishnan
[Party-in-person]

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader
for RR.1, 6 & 8

Mr.M.Muthugeethaiyan,
Special Government Pleader
for RR.7, 16 & 18

Mr.K.P.Narayanakumar,
Special Government Pleader
for RR.2 to 5, 9 to 15 & 17

O R D E R

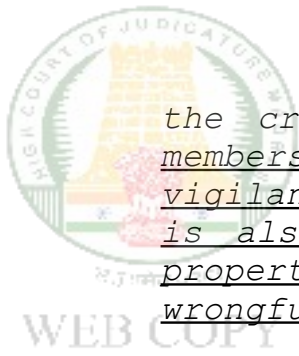
B.PUGALENDHI, J.,

The petitioner / party-in-person has made a representation to the authorities on 25.04.2019 and on 07.09.2020 stating that the properties belonging to the 18th respondent temple are not maintained properly and are being encroached. Alleging that the said representations did not evoke any response, he has moved this petition.

2. Taking cue from the decision of the Hon'ble Supreme Court in **A.A.Gopalakrishnan v. Cochin Devaswom Board and Others** [Appeal (Civil) No.3135 of 2007], the petitioner submitted that not only the Government and / or the Board of Trustees, but also the Devotees should be vigilant to prevent any encroachment on temple lands. By relying upon the decisions of this Court in **P.Lakshmanan v. Superintendent of Police, Sivagangai District and Others** [W.P.(MD) No.14428 of 2017] and in **V.Muthusamy v. Joint Commissioner, Hindu Religious and Charitable Endowments Department, Palayamkottai, Tirunelveli District and Others** [W.P.(MD) No.16833 of 2017], the petitioner submitted that despite very many orders passed, nothing has moved and therefore, prayed for appropriate orders.

3. The Hon'ble Supreme Court in **A.A.Gopalakrishnan's** case (supra) has observed as follows:-

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/Sebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating



the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation. (emphasis supplied)"

4. In **P.Lakshmanan's** case (supra), this Court has issued the following directions:-

"20.

b. The 5th respondent shall prepare and file a report specifying the details of the temple lands in Tamil Nadu for which patta has been granted to third parties/encroachers within four weeks from the date of receipt of a copy of this order;

c. The 6th respondent shall instruct all the Tahsildars or District Revenue Officers as the case may be, to take steps to alter the patta granted to the beneficiaries of illegal transfer of land or possession and restore the name of the temple with further direction to refrain from issuing patta without getting written communication from the HR & CE department related to the temple lands and such process shall be commenced within four weeks from the date of receipt of a copy of this order;

d. The details/particulars regarding the properties/lands owned by the said Public Religious Institutions/temples have to be collected as contemplated under Section 29 of the HR & CE Act and must be published in the Official Website of the HR & CE Department, forthwith and a report to that effect shall be filed before this Court not later than four weeks from today;

e. The 5th respondent shall within four weeks, file a report disclosing the lands, the details of the sanction granted by him for alienating the properties of the temples in Tamil Nadu either by way of sale, exchange or mortgage or lease beyond five years with the copy of the approval obtained from the Government and the report of objections from the trustees or interested parties as contemplated under Section 34 of the Hindu Religious and Charitable Endowments Act, 1959;

f. The 5th respondent shall constitute a committee/committees for each territories / regions and direct the members to visit all the temples in Tamil Nadu, identify the lands belonging to and in the custody of the temple and in the hands of the encroachers with the help of the Tahsildars of the respective revenue Districts and submit a report before this Court within six weeks from the date of receipt of a copy of this order;



g. The 5th respondent shall send a communication to the trustees for various temples and collect the details of the properties under their custody and in illegal occupation of third parties, the properties alienated by them with or without sanction and the list of cases pending in various courts and submit a report within six weeks from the date of receipt of the copy of this order;

h. Further, the 5th respondent shall look into it as to whether appropriate departmental action is taken against the erring officials of the HR & CE Department and the trustees of the temples under Sections 53 and 66 of the Act, against whom, the allegations with regard to illegal transfers of the properties/lands owned by the Public Religious Institutions/temples are made, after conducting proper enquiry in this regard;

i. The 5th respondent shall issue appropriate directions to his subordinates to ensure that the temple properties are not sold, parted or leased illegally;

j. The 5th respondent shall instruct the appropriate Assistant Commissioners/Joint Commissioners to initiate inquiry under Section 78 to retrieve the temple lands from the encroachers and shall submit a report to that effect within four weeks;

k. The 5th respondent shall cause to issue public notices informing the public / encroachers / third parties in possession of the temple lands to voluntarily come forth and surrender the lands to avoid penal action, failing which, inform them that prosecution will be initiated against them under Section 79B of the HR & CE Act."

5. Similar such directions were issued in the decision in **V.Muthusamy's** case (supra), as well.

6. Since comprehensive directions have already been issued by this Court as early as on 12.02.2018, the learned Special Government Pleader was directed to get a report from the Commissioner, Hindu Religious and Charitable Endowments Department and accordingly, a report has also been filed by the Commissioner. From the report, this Court can infer the following things:-

6.1. Two committees have been formed, namely, Identifying Committee and Scrutinizing Committee. The Identifying Committee comprises of three members, (i) Executive Officer / Trustee / Fit Person / Hereditary Trustee, (ii) Village Administrative Officer and (iii) Field Surveyor (Retired). Similarly, the Scrutinizing Committee comprises of five members, (i) Assistant Commissioner of the Division, (ii) Tahsildar / Deputy Tahsildar (Retired), (iii) Executive Officer / Trustee / Fit Person / Hereditary Trustee, (iv) Village Administrative Officer and (v) Field Surveyor (Retired).



6.2. As on 30.09.2020, 42674 such committees were formed and they are entrusted with the task to identify the land and the encroachment and third party occupation thereon; to find out the alienation of Inam Lands; to identify the patta transfer during UDR; and to identify the errors committed in preparing computer chitta.

6.3. Out of 38655 temples, which are coming under the purview of Hindu Religious and Charitable Endowments Department, the properties of 10586 temples have been identified by the Identification Committees and based on the report of the Scrutinizing Committees, 41664 demand notices were served on the lessees / tenants / other occupants, who failed to remit the dues. In response to the demand notices, 13660 lessees / tenants have remitted the dues. Insofar as the defaulters are concerned, they have initiated legal action and the same is under progress.

6.4. The Executive Authorities of the Temples are directed to compare the property register of the temple with the Revenue Department Land details available in Tamil Nilam Data Base. In such exercise, 66% of the temple properties matched with the revenue records. Insofar as the remaining 34% of the properties are concerned, they have initiated appropriate proceedings before the Revenue Authorities and the same is under progress. So far, the Temple Authorities have filed 10585 appeal petitions before the Revenue Department and the enquiry is in progress.

6.5. That apart, steps are also underway to upload the details maintained in the property register of each temple in the webportal and the process of uploading has also commenced.

7. From the report of the Commissioner, it appears that approximately 5.17 Lakh acres of immovable properties belong to temples, as per the comparison of property register of temples with revenue department land details available in Tamil Nilam Data Base. But, the extent of available temple properties is disclosed as 4.78 Lakhs acres, which means, the remaining around 39,000 acres of land are in the hands of encroachers.

8. Lands / properties are donated by individuals to religious institutions, out of reverence, love, faith and in satisfaction towards their contribution to the religion they profess; and for the institution to be self-sufficient to perform the every day rituals, etc. The custodians of such temple properties, be it the trustees or the Hindu Religious and Charitable Endowments Department, must keep in mind the object and the reason behind such donations to the temple. The Commissioner of Hindu Religious and Charitable Endowments Department is duty bound to ensure that such temples and endowments are properly administrated and that their income is duly appropriated for the purposes for which they were founded or exist. In fact, the Commissioner is granted with powers to ensure that lands belonging to the temple and endowments are not alienated or



institution. As per Sections 78, 79 and 80 of the Hindu Religious and Charitable Endowments Act, the Joint Commissioners are empowered to retrieve the temple lands from the encroachers.

9. The Courts have time and again observed that temples in Tamil Nadu are not only a source of identification of the ancient culture, but also a testimony of pride and knowledge of the talent in the field of arts, science and sculpture and a conduit for spiritual activities as well. The properties of the religious institutions, more particularly the temples, have to be maintained properly in order to derive more income to spend for their betterment.

10. In the case on hand, the directions were issued by this Court as early as in the year 2018 and from the report of the Commissioner, Hindu Religious and Charitable Endowments Department, it appears that the Department has started implementing the same, but at a snail pace. All that this Court can say is that the rock has moved a bit, instead of saying that nothing has moved. No doubt, something is always better than nothing. At the same time, the pace at which the implementation is going on needs to be increased, since three full years have already completed from the date of issuance of such directions. The authorities need to realize that we are talking about 5.17 Lakh acres of land, of which, 4.78 Lakh acres alone is available as of now, meaning thereby, already around 40,000 acres of land is at the hands of encroachers.

11. Very recently, a Division Bench of this Court, ***In Re The Director, Archaeological Survey of India, New Delhi, [in Suo Motu W.P.No.574 of 2015 & W.P.(MD)No.24178 of 2018, decided on 07.06.2021]***, has issued a set of as many as 75 directions, of which, this Court feels it apposite to refer to the following directions:

"55.

LAND REVENUE, RENT, ARREARS, ENCHROACHMENTS ETC

(31) The District Committees must take stock of the lands of all the temples within their respective District, list out the total extent with survey number and door number, vacant or leased, nature of land i.e agricultural or otherwise, current rent, date of fixation of rent, current market rent, name of lessee/tenant, duration of lease, whether authorised by the Commissioner, if the period of lease is beyond 5 years, nature of the lessee whether individual, firm or company and in case, lessee is an individual, then the religion of such individual, arrears if any of each lessee with period of default, list of cases pending before any forum or Court regarding the rent or entitlement to lease, list of encroachers including sub-tenant and sub-lessees and status of action taken to remove the encroachers, list of temple lands conveyed and action taken to retrieve them and status of the criminal complaint



lodged against illegal sale of temple land, if any and document the same properly. A detailed report also be filed before this Court within a period of twelve (12) weeks.

... ..

(33) The state Government or the Commissioner of the HR&CE department, who are the Trustee/administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor. The lands shall always remain with the temples. The public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests.

... ..

(35) The encroachment and illegal constructions in the protected area, archaeological sites, temple lands, etc., must immediately be removed. The extent of lands owned by the temples must be identified with the help of the revenue Department by the District Level Committee. The District Collector of the appropriate District, on the request of the Heritage Commission or State Committee or District Level Committees or by any officer of the HR&CE Department, shall forthwith take steps for the removal of any such illegal construction or encroachment or unauthorised occupants. Appropriate action must be taken against the errant Government officials of the central as well as state department and officers under the HR&CE department for not removing the encroachments in the protected and regulated area, within a period of eight (8) weeks on expiry of the time given.

(36) A list of defaulters with the arrears due from them must be prepared within a period of six (6) weeks and the same must be published in the website. Appropriate steps must be taken to evict them and recover the arrears as per the provisions of the HR&CE Act and the rules there under.

(37) The respondent authorities shall regulate the period of lease pertaining to the properties of the religious institutions and renewal of the same."

12. The aforesaid directions are self explanatory, which is inclusive of the earlier directions issued in **P.Lakshmanan's** case (supra) and in **V.Muthusamy's** case (supra). These directions are for pan-State and therefore, no specific direction is required to be passed in this writ petition. That apart, the respondents have also taken steps to implement the orders of the Court by forming two Committees and by uploading the temple properties in the website. Therefore, it would be appropriate to direct the respondents to comply with the directions issued in the suo-motu case referred supra, in its letter and spirit and such compliance would address the grievance of the petitioner herein.



13. In fine, this writ petition stands disposed of. There shall be no order as to costs.

Post the matter after three months 'for reporting compliance'.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

- 1.The Secretary to Government,
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Groups Temple,
Tuticorin Town.

+2 CC to M/s.M.MUTHUGEETHAYAN, Advocate(SR-25090[F]dated 03/08/2021)

W.P. (MD) No.13962 of 2020
30.07.2021

RK (24.08.2021) 10P 20C