



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2022

Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, Chief Justice
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.742 of 2022
and
C.M.P.No.5211 of 2022

Mr.Kanniya Kumar

.. Appellant/Petitioner

Vs.

1. Tamil Development, Charitable Endowments and
Information Department,
(Now Hindu Religious and Charitable Endowments
Department),
Secretariat, Chennai.
2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
19 Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
3. ESI Corporation, Rep. by its Commissioner,
Sub Regional Officer at Panchamp Complex, 1897,
Trichy Road,
Ramanathapuram,
Coimbatore-641 045.
4. The Sellandiyamman Mariyamman Kovil,
Old No.11, New No.4, Chettipalayam Village,
Tiruppur.
5. The Executive Officer,
The Sellandiamman Mariamman Temple,
Chettipalayam Village,
Tiruppur.

.. Respondents



Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.10.2021 passed by the learned Single Judge in W.P.No.20131 of 2021 on the file of this Court.

Prayer in WP.No.20131 of 2021:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the G.O.No.325(Aa.Ni.5.2) issued by the 1st respondent Development of Tamil and Information Department dated 19.12.2011 for the purpose of the sale of temple land belonging to the Sellandiamman Mariamman Temple to ESI Corporation for construction of hospital and quash the same.

For appellant :Mr.Karthikeyan Anbazhagan

For respondents:Mr.N.R.R.Arun Natarajan,
Spl.G.P. for RR-1 & 2

JUDGMENT

(The Judgment of the Court was delivered by The Hon'ble Chief Justice)

By this Writ Appeal, a challenge is made to the order dated 28.10.2021, whereby the Writ Petition preferred by the Writ appellant was dismissed.

2. The Writ Petition was filed to challenge G.O.Ms.No.325, Tamil Development, Charitable Endowments and Information (Aa.Ni.5.2) Department, dated 19.12.2011 to sell the land belonging to Sellandiamman Mariamman Temple to ESI Corporation for construction of a hospital. It was submitted that Patta was granted in favour of the writ appellant by order dated 22.05.1968 and claim herein is in regard to S.No.183/2B. Referring to the order dated 22.05.1968 and the provisions relevant for it, it is submitted that when once Patta was issued in favour of the appellant, the land could not have been sold to ESI Corporation and immediately when the appellant came to know about the sale of the property, he filed the Writ Petition. It has been dismissed without addressing the legal issue, but only on the ground of delay.

3. In view of the above and as the rights were conferred in favour of the writ appellant, the subsequent sale of the land to ESI Corporation, by the said G.O. in question, should have been quashed with grant of lease to the appellant. Referring to Sections 34 and 41 of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, it is further submitted that



the procedures contemplated under the provisions aforesaid, was not adhered to. In the absence of it, the right was conferred in favour of the appellant. It is however true that the appellant preferred a civil suit to claim title over the land and the suit in that regard was filed in O.S.No.90 of 2013 and is pending consideration before the Sub-Court, Tiruppur, but merely for that reason, the right accrued in favour of the appellant could not have been ignored by the learned Single Judge, and therefore, the prayer is to set aside the order passed by the learned Single Judge for grant of prayer as made in the Writ Petition.

4. The learned Special Government Pleader appearing for the respondents 1 and 2 has contested the Writ Appeal. He submitted that the order dated 22.05.1968 has to be taken into account, as out of two survey numbers, one pertains to Gopala Rao and the other belonging to the Temple. The appellant is not making any claim in reference to S.No.183/2A of Gopala Rao and only the land in respect of the Temple in S.No.183/2B. It was taken to be represented by the hereditary Poojaris for the time being. Referring to the order dated 22.05.1968, it was further submitted that as per Sections 8(2)(i)(b) and 11 of the Act, 1963, a direction was given to the pay the amount equal to 20 times of the reference between the fair rent in respect of such land, as determined by the Tahsildar for grant of pattas. The appellant has not produced any document to show payment in compliance of the order so as to get Patta. The order itself was not sufficient to claim right and otherwise, there was no reason for the appellant to file the suit in the year 2013 for claim of title, more so, when prior to it, the land was sold in 2012 itself to the ESI Corporation. With the sale of the land and registration of the document, a writ petition could not be maintained and the appellant should have filed, at best, a suit for cancellation of the sale deed. In any case, the appellant is not having right over the property. Thus, the learned Single Judge has rightly dismissed the Writ Petition and the prayer is made to maintain the order.

5. We have considered the rival submissions of the parties and perused the records.

6. It is an admitted case that an order was passed on 22.05.1968 by the Court of Settlement Tahsildar No.II, Gobichettipalayam, with regard to the subject land. The subject land was not only in S.No.183/2A, but also in S.No.183/2B. So far as S.No.183/2A is concerned, it was to be given in favour of Gopala Rao, while S.No.183/2B was to the Temple by its hereditary Poojari for the time being. The appellant has no claim against



the land of Gopala Rao, but on the other land in S.No.183/2B. The order dated 22.05.1968 was requiring payment of the amount in reference to Section 8(2)(i)(b) of the Act of 1963 to get Patta of the land. There is nothing on record to show compliance of the order so as to claim the right on the land in question. It is otherwise the fact that the appellant, by his own saying, preferred a civil suit to claim title of the land. Till date, decree has not been passed in favour of the appellant. Before that, the challenge to G.O. was made by way of a writ petition, by which the land was sold and transferred to ESI Corporation. The sale of the land to ESI Corporation was on valid consideration of more than Rs.11,90,72,566/- on the value which was determined at the relevant time of sale. The consideration and payment thereupon satisfy the requirement of sale and otherwise, for the registration of the sale deed, the absolute right should be conferred in favour of the ESI Corporation. If the appellant was aggrieved by the same, while maintaining the civil suit for claiming title, he should have even sought cancellation of the sale deed registered in favour of the ESI Corporation, because, in the absence of the cancellation of the sale deed, the land would remain in the name of the ESI Corporation for construction of the hospital.

7. Taking the over all facts into consideration, even if we ignore the delay, the position as on today is that the title as per the provisions of law, i.e. Transfer of Property Act and the Registration Act and other provisions, stand in the name of the ESI Corporation, and therefore, unless the sale deed is challenged and sought to be cancelled, the appellant is not entitled to raise the claim and a mere challenge to the G.O. was not sufficient. It is also under the circumstance that the appellant is still waiting for a decree to settle the title for the land.

8. Thus, for the reasons given above, we do not find any reason to cause interference in the impugned order of the learned Single Judge, rather, we find additional reasons for sustaining the order and the action of the respondents. This Writ Appeal fails and the same is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar



To

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1. Tamil Development, Charitable Endowments and Information Department,
(Now Hindu Religious and Charitable Endowments Department),
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+1cc to the Government Pleader, SR.No.21101, 21157

W.A.No.742 of 2022

RSI (CO)
CB (05/04/2022)