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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition No.12816 of 2020
and W.M.P.No.15835 of 2020

The Idol of Arulmighu Vilvanatheeswarar
@ Viswanathaswamy
Vilvanatheeswarar Thirukoil
Represented by its Executive Officer
Manjakuppam
Cuddalore Town and District.

.. Petitioner

Vs.

1.The District Collector
Cuddalore District, Cuddalore.

2.The Tahsildar
Cuddalore Taluk, Cuddalore.

3.The Commissioner
Hindu Religious and Charitable Endowments Department
Uttamar Gandhi salai
Nungambakkam
Chennai - 600 034.

4.The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Villupuram Division, Villupuram - 605 602.

5.The Assistant Commissioner
Hindu Religious and Charitable Endowments Department
Cuddalore Division
Cuddalore - 607 001.

6.R.Yuvarajan

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records comprised in Na.Ka.V1/20106/2019 dated 22.05.2020 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.R.Bharanidharan
for Mr.R.Karthikeyan

For R1 and R2 : Mr.C.Sathish
Government Advocate



For R3 to R5 : Mr.S.Yashwanth
Additional Government Pleader
For R6 : Mr.T.R.Rajagopalan, Senior Counsel
for Ms.Aswini Devi

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O R D E R

The petitioner is challenging the order of the 1st respondent dated 22.05.2020 holding that 6th respondent is entitled for patta under RS031(7) in respect of land in old S.No.5, old T.S.No.1871/2, present T.S.No.1509, Block-21, Ward 7, situate at Utharamanikkam, Cuddalore Taluk and District.

2.According to the petitioner, the land in question is Devadayam land granted in favour of the deity Arulmighu Vilvanathaswamy @ Viswanathaswamy, Utharamanikkam Village, Cuddalore. The Inam Fair Register of the year 1861 reveals that the grant is permanent in nature and even after Re-survey was done in 1919, the name of the deity is mentioned in the Town Survey Register as Viswanathaswamy, which is the Sanskrit phonetic name of Vilvanathaswamy. In the Inam Fair Register in column 17, it shows the persons in enjoyment and management as Chinnaasamy Gurukkal and Arunachala Gurukkal, who were in possession of the property in lieu of their services for performance of daily poojas in the temple.

2(i) The 6th respondent (in the year 2002) sought for lease of the land and a file was sent to the Revenue Officials for assessing the value of the properties and to fix the fair rent. The said process was not completed and in the meanwhile, the 6th respondent again made an application for grant of lease. The District Revenue Officer, Cuddalore, fixed the lease value as Rs.450/- per sq.ft. The 6th respondent coming to know about the value of the property, filed O.S.No.345 of 2014 on the file of the Principal District Munsif Court, Cuddalore, for permanent injunction restraining the petitioner temple from interfering with his possession and also denied the title of the petitioner for the first time. The defendants in the suit did not file written statement and hence, the suit filed by the 6th respondent was decreed ex parte by the judgment and decree dated 01.04.2016. Thereafter, the 6th respondent made an application to the 1st respondent for issue of patta in the name of 6th respondent as well as in his brother's name in terms of RSO 31(7). In pursuant to the said application, the 1st respondent issued notice to the 5th respondent alone and did not issue any notice to the petitioner temple. In the mean while, the petitioner temple filed I.A.No.362 of 2019 in O.S.No.345 of 2014 to condone the delay of 1271 days in filing petition to set aside the ex parte decree dated 01.04.2016 made in O.S.No.345 of 2014.



2(ii) In the application filed by the 6th respondent, the 1st respondent conducted enquiry on various dates. Both the 6th respondent and 5th respondent filed written submissions and documents. The 6th respondent objected the petitioner from participating in the enquiry before the 1st respondent as in the Inam Register, it has been wrongly stated that the land in question belongs to Arulmighu Viswanathaswamy temple and H.R. and C.E. Department under R.T.I. Act informed 6th respondent that there is no such temple by name Viswanathaswamy. The Sanskrit phonetic name of Arulmighu Vilvanathaswamy temple has been entered as Arulmighu Viswanathaswamy temple. Even assuming Natesa Gurukkal was owner of the property and leased out the property for 10 years on 01.09.1917, he could not have orally sold the property in the year 1918 pending the lease. The decree in O.S.No.345 of 2014 does not confer any title upon the 6th respondent. The 1st respondent held that 6th respondent is in possession of the property for a very long time. The petitioner has not taken any steps against the 6th respondent to take possession and till final decision is arrived in O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) filed by the petitioner, the 6th respondent is entitled to patta and that order would be subject to the decree to be passed in O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) filed by the petitioner and till then the authorities cannot interfere with the possession of the 6th respondent. Challenging the same, the petitioner has filed the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that impugned order passed by the 1st respondent, without hearing the petitioner, is arbitrary. The 1st respondent failed to consider the circular, wherein it has been stated that when it is brought to the notice of the authority of pending suit, the authority should not pass any order, but would have directed the parties to seek remedy pending suit. When the name of the temple is mentioned in the revenue records, it is for the 6th respondent to approach the Civil Court to prove the title. The learned counsel for the petitioner further submitted that though the 1st respondent has observed that Civil Court would be the competent authority to decide the ownership of the property, the finding that the 6th respondent is in uninterrupted possession and is entitled to patta would be a bearing issue in the civil proceedings, which would amount to evading into the jurisdiction of the Civil Court by the 6th respondent and prayed for setting aside the order of the 1st respondent.

4.The 6th respondent filed counter affidavit and denied all the averments made in the affidavit. The learned Senior Counsel appearing for the 6th respondent submitted that Writ Petition filed by the Executive Officer is not maintainable as he has no authority to file Writ Petition on behalf of the temple. On this



ground alone, Writ Petition is liable to be dismissed. The property in question does not belong to the petitioner temple. Originally, the property belonged to one Natesa Gurukkal and in the year 1917, he orally sold the property in question to the 6th respondent's grand father Bashyam Reddiyar. From that date onwards, the property is in possession and enjoyment of the 6th respondent's family. The 6th respondent's grand father, on the death of his wife Rajambal Ammal, buried his wife in the portion of the land in question, built a Samadhi in the year 1956 and also constructed Pillaiyar temple and Abhishekgam is done for more than 70 years. In the revenue records, the property is shown as 'Samadhi' and there is no document to show that property belongs to the petitioner temple. The officials of the H.R. and C.E. Department in the information furnished to the petitioner under R.T.I. Act informed that there is no temple called Arulmighu Viswanathaswamy temple. While father of the 6th respondent was in possession of the suit property, the petitioner issued a notice dated 26.02.1993 to the 6th respondent's father stating that H.R. and C.E. Department took over the petitioner temple about 1 ½ years prior to the notice stating that on verification of the property register of the temple and revenue records, Radhakrishnan Reddiyar, father of the 6th respondent was in illegal possession of the temple and asked him to vacate and surrender the possession. Father of the 6th respondent sent a reply dated 12.03.1993 denying the title of the temple to the suit property and stated that they are in possession and enjoyment of the property for more than 96 years, while tracing the title in his favour. After receiving the said reply, the petitioner did not take any further action realising that the suit property is private property of 6th respondent's family.

4(i).Learned Senior Counsel appearing for the 6th respondent further submitted that after death of the 6th respondent's father, 6th respondent is in possession and enjoyment of the property. The petitioner is trying to forcibly take possession of the suit property from the 6th respondent. Hence, the 6th respondent filed O.S.No.345 of 2014 for permanent injunction, against the petitioner and respondents 3 to 5. Even though several opportunities were given to the petitioner and respondents 3 to 5, they did not contest the suit and on 01.04.2016, an exparte decree was passed in favour of the 6th respondent. The application filed by the petitioner in I.A.No.362 of 2019 to condone the delay of 1271 days in filing petition to set aside the exparte decree dated 01.04.2016 was dismissed on 26.02.2021.

4(ii).Subsequently, 6th respondent filed an application before the 1st respondent for issue of pata. The 1st respondent considering all the materials placed before him, has held that 6th respondent and his family members are in possession and



enjoyment of the property for long time, the petitioner has not taken any steps and 6th respondent is entitled for patta. But however issuance of patta will be decided subject to result of the suit filed by the petitioner in O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020).

4(iii) The 6th respondent filed revision before the Commissioner of land Administration against the order of the 1st respondent dated 22.05.2020 and the same is pending. The learned Senior Counsel further contended that property in question is in possession of family of the 6th respondent from the year 1917 onwards without any interference by the petitioner and petitioner has no document in his possession to show that property belongs to the petitioner temple. The order of the 1st respondent that 6th respondent is entitled to get patta is valid and hence, a direction may be issued to the Principal District Court, Cuddalore, to dispose of O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) on merits, based on the oral and documentary evidence placed by both the petitioner as well as 6th respondent, without being influenced by the order of the 1st respondent and prayed for dismissal of the Writ Petition.

5. In reply, the learned counsel appearing for the petitioner submitted that a direction may be issued to the learned Judge to dispose of the suit in O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020), without being influenced by the order passed by the 1st respondent.

6. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 and 2, the learned Additional Government Pleader appearing for the respondents 3 to 5 and the learned Senior Counsel appearing for the 6th respondent and perused the entire materials on record.

7. From the impugned order, it is seen that the 1st respondent has held that 6th respondent is entitled to patta subject to result of the suit in O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) filed by the petitioner, based on the possession by the family members of the 6th respondent from the year 1917, Samadhi and Rajaganapathy temple built by the 6th respondent's grand father, report of the Tahsildar with regard to possession of the 6th respondent, in addition to other documents filed by the 6th respondent including the judgment and decree dated 01.04.2016 made in O.S.No.345 of 2014, wherein permanent injunction is granted in favour of the 6th respondent against the petitioner and respondents 3 to 5 and that the petitioner and respondents 3 to 5 are restrained from interfering with possession of the 6th respondent except due process of law, after establishing their title to the property through the Court. It is not in dispute that the 6th respondent's



family is in possession of the property in question from the year 1917 onwards. The contention of the learned Senior Counsel appearing for 6th respondent that petitioner after issuing notice in the year 1993 to the father of the 6th respondent to surrender the vacant possession of the property treating him as an encroacher, has not taken any further action after receipt of the reply dated 12.03.1993 sent by the father of the 6th respondent, is not disputed by the petitioner and respondents 3 to 5. The petitioner has filed O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) for declaration of title, recovery of possession, mandatory injunction and damages at Rs.50,000/- per month for use and occupation of the suit property. The 1st respondent, taking note of the pendency of the said suit, has held that issue of patta in favour of the 6th respondent will be subject to the result of the said suit. The learned counsel for the petitioner submitted that finding of the 1st respondent in the impugned order will have a bearing against the petitioner in the suit filed by him in O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) and his contention is in view of the pendency of the suit, the impugned order of the 1st respondent is liable to be set aside. On the other hand, the learned Senior Counsel appearing for the 6th respondent apart from making submissions on merits for dismissal of the Writ Petition, has submitted that a direction may be issued to the learned Judge to decide the issue in O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) filed by the petitioner temple, based on the oral and documentary evidence placed by the petitioner as well as 6th respondent, without being influenced by the impugned order of the 1st respondent. A reading of the impugned order of the 1st respondent makes it clear that said order is subject to the result of O.S.No.55 of 2020 (wrongly mentioned as O.S.No.356 of 2020) on the file of the Principal District Court, Cuddalore.

8. In view of the above materials and contention of the learned Senior Counsel appearing for the 6th respondent and the learned counsel for the petitioner, the Writ Petition is dismissed with a direction to the learned Principal District Judge, Cuddalore, to decide O.S.No.55 of 2020 on merits based on the oral and documentary evidence placed before him, without being influenced by the findings of the District Collector, Cuddalore, 1st respondent, in the impugned order dated 22.05.2020. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

1.The District Collector
Cuddalore District
Cuddalore.

2.The Tahsildar
Cuddalore Taluk
Cuddalore.

3.The Commissioner
Hindu Religious and Charitable Endowments Department
Uttamar Gandhi salai
Nungambakkam
Chennai - 600 034.

4.The Joint Commissioner
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Villupuram - 605 602.

5.The Assistant Commissioner
Hindu Religious and Charitable Endowments Department
Cuddalore Division
Cuddalore - 607 001.

6.The Principal District Judge, Cuddalore.

+1 cc to M/s.Asmini Devi, Advocate Sr.NO. 28993
+1 cc to Government Pleader Sr.NO. 29788,28879

W.P.No.12816 of 2020
and W.M.P.No.15835 of 2020

PM(CO)
A.SK(23/05/2022)