



A.S.(MD) No.278 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD) No.278 of 2008

1.The District Collector,
Collectorate,
Madurai District,
Madurai.

2.The Tahsildar,
Madurai South Taluk Office,
Madurai-2.

....Appellants/Defendants 1 and 2

-Vs-

1.The Roman Catholic Arch Diocese of Madurai
by its Procurator,
Mr.Ganaprakasam,
S/o. A.Dhevasagayam,
Arch Bishop House,
Madurai -8.

... 1st Respondent/Plaintiff

2.The Commissioner,
Madurai Corporation Office,
Madurai-2.

... 2nd Respondent /3rd Defendant



A.S.(MD) No.278 of 2008

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PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, challenging the judgment and decree of the Additional District Sessions Court cum Fast Track Court No.1, Madurai dated 27.04.2007 made in O.S.No.78 of 2005.

For Appellants	: Mr.K.Baskaran Additional Advocate General assisted by A.Nataraj Govt. Advocate (CS)
For R1	: Mr.C.Dhanasekar
For R2	: Mr.R.Murali

J U D G M E N T

The first respondent herein is the plaintiff. He filed a suit in O.S.No.78 of 2005 before the Additional District Sessions Court cum Fast Track Court No.1, Madurai against the appellants and the second respondent for declaration and permanent injunction.



A.S.(MD) No.278 of 2008

WEB COPY

2. The trial Court after trial, allowed the suit in favour of the plaintiff. Challenging the said judgment and decree, the defendants 1 and 2 filed the present appeal.

3. The brief facts of the case are as follows:

The Roam Catholic Arch Diocese of Madurai consists of several Parishes and is administering the Parishes and its properties for the benefit of the Roam Catholic Arch. The Diocese serves for the spiritual and secular upliftment of its people and carries out several charitable activities through its Parish Churches, Convents, Orphanages, Home for the destitute and aged, home for the poor and destitute women, homes for the houseless poor, homes for the mentally retarded, leprosy homes, hospitals, dispensaries, educational and technical institutions and several other charitable works. These charities are also extended to the people belonging to other faith. As the strength of Catholic Christians increased in and around Madurai, the Arch Diocese built the Holy Rosary Church in 1595 at Madurai. The Nayakar Kings of Madurai patronized the church. As part of the religious



A.S.(MD) No.278 of 2008

activities of the Church, the Church was using an extent of 1 acre 29630 sq.ft. in West and East Madurai Villages as cemetery for the faithful, who reposed therein live in the arms of Our Lord Jesus Christ.

3 (i). In such circumstances, the Procurator of the Diocese made a representation, dated 03.11.1932, to the then Collector of Madurai, for granting the lands used by the Church as cemetery to the Church itself. Pursuant to the representation, the Collector of Madurai, in his proceedings dated 12.03.1935, alienated T.S.No.1876/1A to the extent of 41888 sq.ft. and T.S.No.811/1 to the extent of 20015 sq.ft. In West Maduai and T.S.No. 556 to the extent of 11287 sq.ft. in East Madurai Village in favour of the Diocese. Further, on the representation made by the Diocese in the year 1942, the Government of Madras, through order dated 11.11.1943, directed the Collector of Madurai to grant an additional extent of 6970 sq.ft. in T.S.No.1876/3 Ward – IV, Madurai Town (Madurai West) adjoining to T.S.No.1876/1 (earlier sanctioned in 1935) to the Diocese. Pursuant to the same, the Collector of Madurai, by his proceedings dated 24.11.1943



A.S.(MD) No.278 of 2008

alienated the above said land in favour of the Diocese. The suit properties were also registered as “Roam Catholic Cemetery” in the Revenue Records.

3 (ii). While so, the Commissioner of the Madurai Corporation initiated proceedings for the expansion of Periyar Bus Stand to an extent of 37378 sq.ft. out of 48858 sq.ft. in the cemetery in S.Nos.1876/1 and 1876/3 (Madurai West) belonging to the Diocese. However, pursuant to the talks between the Diocese and the Commissioner of Madurai Corporation, The Commissioner agreed to alienate an equal extent of land in T.S.No.38/13, Sathamangalam Village and T.S.No.2745, Bibikulam Village in favour of the Diocese, in exchange for the land in T.S.No.1876/1 and 1376/3, Madurai West. Pursuant to the same, the Commissioner of Madurai Corporation recommended to the exchange of lands. But, the Government in G.O.Per.No.326, Revenue L 20 Department, dated 16.03.1992, ordered to alienate 37373 sq.ft. and 48858 sq.ft. of land in T.S.Nos.1876/1 and 1876/3 to the third respondent. Therefore, the Diocese filed W.P.No.18679 of 1992 before this Court and this Court, by order dated 28.01.1999, set aside the



A.S.(MD) No.278 of 2008

WEB COPY

said G.O.Ms.No.326, dated 16.03.1992 and issued certain directions to the first respondent therein. Since the Diocese has acquired title by adverse possession, the defendants have no right to cancel the alienation. The defendants have not filed any writ appeal as against the findings of the single Judge. Subsequently, a combined bus stand called 'Mattuthavani Bus Stand' has been constructed in Madurai – Melur Road and the said Bus Stand has been operated. Therefore, the Commissioner of Madurai Corporation, by letter dated 15.09.2000, informed the Diocese that as the above said combined bus stand has been formed, the land in T.S.No. 1874/1A are not required by the Corporation for the expansion of Periyar Bus Stand, Madurai. Since the suit properties belong to the Diocese, now the Diocese is constructing a 'Mediation Hall' in some of the suit properties, for which, plan was approved by the Corporation. On 31.05.2005, the subordinates of the defendants 1 and 2 had come to the suit properties and attempted to interfere with the Diocese possession and enjoyment of the suit properties and obstruct the construction of the Mediation Hall and threatened to encroach and demolish the building in the suit properties.



A.S.(MD) No.278 of 2008

Therefore, the Diocese has filed the suit for declaration and permanent injunction.

4. The first defendant resisted the suit by filing a written statement stating that the alienation was given to the Diocese by the then District Collector, Madurai, subject to certain specific conditions and the entries as per the Revenue Records is Government poramboke and in the adangal column, it is remarked as Government Catholic Mayanam. The suit properties have been alienated with specific conditions to maintain the cemetery. The Church authorities have demolished the whole cemeteries and thereby violated the specific conditions of alienation. Hence, the Collector, Madurai has ordered to resume the land to the Government. While so, the Corporation, Madurai and the Diocese could not enter any agreement themselves. It is true that the Corporation, Madurai came with a proposal to expand the Periyar Bus Stand and prepared to offer some piece of land in exchange. But the same was rightly negatived by the Government in G.O. (Ms).No.326, Revenue Department, dated 16.03.1992. On the other hand,



A.S.(MD) No.278 of 2008

the said proposal was dropped. The alienation granted on free of cost to the occupancy right only to maintain the cemetery and a small chapel was permitted to be constructed without disturbing the existed tombs. But, the Diocese drastically violated the main objective of the alienation, by demolishing the whole cemeteries and tried to construct a Mediation Hall without trying to seek permission from the District Collector. The Government being the owner of the property alone is having every right over the suit property. Therefore, the Government have taken steps to resume the suit property by issuing show cause notice, dated 06.06.2005 and thereafter by resuming the said land to the Government in Collector's proceedings in Roc.Y2/58282/98, dated 20.12.2005.

5. The third defendant resisted the suit by filing a written statement stating that the first defendant has alienated the lands subject to some conditions to the plaintiff to an extent of 1 acre 29,630 sq.ft. in T.S.No.556 etc., for cemeteries. Subsequently, another land in T.S.No. 1876/3 in ward No.4, to an extent of 6920 sq.ft. was alienated in favour of



A.S.(MD) No.278 of 2008

the Diocese. As per the condition, the Diocese has constructed a chapel in that place. The first defendant alienated T.S.No.1876/1 to an extent of 41888 sq.ft. and extended to T.S.No.1876/3 to an extent of 6970 sq.ft. in the year 1942 and the place is used for cemetery. In the year 1984, the Madurai Corporation has proposed for Periyar Bus Stand in T.S.No.1876/1, 1876/3 to an extent of 37378 sq.ft. and the plaintiff agreed for that and requested for alternative place for the said purpose. To that effect, the Corporation passed a resolution No.479, dated 23.03.1987. Subsequently, the Government passed G.O.Ms.No.326 that the Diocese is using the land as cemetery, but the lands are vested with the Government as poramboke. Hence, there is no need to exchange the lands to the Diocese. Challenging the same, the Diocese filed the writ petition in W.P.No.18672 of 1992 before this Court and this Court, by order dated 28.01.1999 allowed the writ petition and given liberty to the first respondent to pursue the matter, after giving an opportunity to the petitioner, by issuing a show cause notice and consider the request of the petitioner for alternative accommodation. Hence, the suit is not maintainable and the same is liable to be dismissed.



A.S.(MD) No.278 of 2008

WEB COPY

6. The first defendant has filed an additional written statement stating that the suit property is Government poramboke in Survey No. 1876/1A measuring an extent of 41.888 in West Madurai Village, Madurai South Taluk, Madurai District. At the time of grant by the then District Collector, dated 12.03.1995, in respect of the suit properties, certain conditions were imposed on the Diocese. Again, the land measuring an extent of 6970 sq.ft. In T.S.No.1876/3 of West Madurai Village, Madurai South Taluk, Madurai District was also alienated in favour of R.C.Diocese of Madurai for maintenance as a cemetery. The then District Collector passed an order dated 17.06.1977, wherein it has been specifically mentioned that the land shall be used for the maintenance of the cemeteries and for no other purpose and the grant shall not allow any fresh burials on the land. Since the Diocese had grossly violated the conditions of grant, the said grant in respect of the suit property was duly resumed to the Government by the District Collector, Madurai in his proceedings dated 20.12.2005. Thereafter, a portion of the suit property alone was handed over to the Highways Department for the construction of the railway over bridge



A.S.(MD) No.278 of 2008

vide proceedings dated 09.01.2006, by the District Collector, Madurai. In fact, the cemeteries in the suit property were not demolished by the Highways Department as alleged by the Diocese. The Diocese already demolished the cemeteries and started to construct the alleged Mediation Hall in the suit property.

7. The plaintiff Diocese has filed a reply stating that the alienation is only reorganisation of the previous right, title and possession of the plaintiff and will not create a new right. In the suit property, there were graveyards even prior to alienation and the graveyard is a sacred place, which cannot be resumed by the Government. The plaintiff Diocese is still in possession of the suit property. The plaintiff Diocese had not violated any of the conditions mentioned in the alleged alienation and the plaintiff has got every right to remain in possession of the property. The Highways Department only took the land for construction of the railway over bridge demolishing the cemetery. The proposed construction is with the permission of Corporation authorities viz., the third defendant and it will not amount to



A.S.(MD) No.278 of 2008

violation of any condition. The Government cannot resume the suit property. Hence, there is no merit in the written statement of the defendants.

8. On the basis of the above pleadings, the learned trial Judge framed the following issues for consideration:

(i) Whether the plaintiff is entitled to get the suit schedule properties?

(ii) Whether the plaintiff is entitled to get the relief of permanent injunction?

(iii) Whether the plaintiff Diocese is entitled to get the suit schedule property as per the averments contained in the written statement filed by the defendants 1 and 2?

(iv) Whether the plaintiff has the cause of action to file a suit?

(v) To what relief the plaintiff is entitled?



A.S.(MD) No.278 of 2008

On 13.11.2006, the learned trial Judge has framed the following additional issues for consideration:

(i) Whether there is any cemetery before the assignment of suit schedule property to the plaintiff Diocese?

(ii) Whether the assignment was cancelled as per the order made in the Writ Petition filed by one Somasundaram?

(iii) Whether the plaintiff has adverse possession before the assignment of the suit schedule property?

9. In order to substantiate the case, on the side of the plaintiff, one witness was examined as P.W.1 and 18 documents were marked as Exs.A1 and Ex.A18. On the side of the defendants, two witnesses were examined as D.Ws.1 to 2 and 6 documents were marked as Ex.B1 to Ex.B6.



A.S.(MD) No.278 of 2008

WEB COPY

10. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record, allowed the suit in favour of the plaintiff. Against which, the defendants 1 and 2 filed the appeal suit.

11. The learned Additional Advocate General appearing for the appellants would submit that the suit property is a Government poramboke in Survey No.1876/1A measuring an extent of 41.888 in West Madurai Village, Madurai South Taluk, Madurai District and at the time of grant by the then District Collector, dated 12.03.1995, in respect of the suit properties, certain conditions were imposed on the Diocese. Again, the land measuring an extent of 6970 sq.ft. In T.S.No.1876/3 of West Madurai Village, Madurai South Taluk, Madurai District was also alienated in favour of R.C.Diocese of Madurai for maintenance as a cemetery. The then District Collector by an order dated 17.06.1977, specifically mentioned that the land shall be used for the maintenance of the cemeteries and for no other purpose and the grant shall not allow any fresh burials on the land. However, the



A.S.(MD) No.278 of 2008

Church authorities have demolished the whole cemeteries and thereby violated the specific conditions of alienation. Hence, the said grant in respect of the suit property was duly resumed to the Government by the District Collector, Madurai in his proceedings dated 20.12.2005. A portion of the suit property alone was handed over to the Highways Department for the construction of the railway over bridge vide proceedings dated 09.01.2006, by the District Collector, Madurai and the cemeteries in the suit property were not demolished by the Highways Department as alleged by the Diocese. The Diocese already demolished the cemeteries and started to construct the alleged Meditation Hall in the suit property. But, the trial Court has failed to consider the same. Hence, he prayed for dismissal of the suit and allow the appeal.

12. The learned counsel appearing for the first respondent Diocese would submit that there is a cemetery (Kallarai) for more than 100 years even prior to independence and it was in existence during the Kings period and some maintenance charge was given for maintaining the cremation



A.S.(MD) No.278 of 2008

ground. In the year 1935, the District Collector, Madurai has alienated the portion of the land and in the year 1943 also the Government of Madras assigned the land. On 17.05.1977, they obtained permission from the Government and constructed the building. Therefore, Survey Nos.1876/1 and 1876/3 are in the possession of the first respondent more than 100 years. The settlement register clearly shows that it is only a crematory ground of the first respondent and they are in possession for more than a statutory period. Therefore, the trial Court has rightly decreed the suit that the first respondent Diocese is entitled to get the suit property by way of adverse possession. Therefore, the first respondent Diocese is in possession and the appellants have no right to interfere with the possession. Hence, there is no merit in the appeal.

13. Heard the learned Additional Advocate General for the appellants and the learned counsel for the respondents and perused the materials available on record.



A.S.(MD) No.278 of 2008

WEB COPY

14. A reading of the entire plaint, especially the cross-examination of P.W.1 has clearly admitted regarding 1935 assignment order and 1943 assignment order. Ex.B1 clearly stated the conditions of the assignment, which reads as follows:

“3. The R.D.O. should satisfy himself that the alienation has been noted in the village and taluk registers of alienation.

Conditions:-

(i) The land shall be used for the proper maintenance of the cemeteries and for no other purpose.

(ii) The Collector shall not allow any fresh building on the land.

(iii) Compound walls shall be constructed around T.S.No.556 of East Madurai Village and T.S.No.B1/1 of West Madurai Village and small chapel shall be built in the centre of each of an cemetery within two years from the date of grant.

(iv) No other buildings shall be constructed on the land without the previous permission of the Collector of the District.

(v) The Government may resume the land, wholly



or in part with the buildings thereon, in the event of the infringement of any of the conditions of the grant, or if, in the opinion of the Government, the land is required for public purpose, or for conducting mining operations.

(vi) In the event of such resumption, if there are buildings on the land, the Government may, at their option either

(a) Purchase the buildings or;

(b) allow the grantee to purchase the land at its value on the date of sale, or

© direct the grantee to remove the buildings.

(vii) In the event of the resumption of the land followed by purchase of the buildings under condition (vi) (a) or in the event of the acquisition of land for any reason, the compensation payable therefor shall in no case exceed the initial cost, or the value at the time of resumption or acquisition whichever may be less, of any buildings erected or other improvements effected on the land by the grantee in accordance with the terms of the grant, but in no circumstances shall any compensation be paid by the Government in respect of buildings constructed in contravention of condition (iv).



A.S.(MD) No.278 of 2008

(viii) *In the event of the grantee refusing to remove the buildings when so directed under condition (vi) ©, the Government may remove them and realise the cost of removal by the sale of the materials.*

(ix) *In the event of the voluntary relinquishment of the land by the grantee, no compensation shall be payable for any improvements that may have been effected or other works that may have been executed on the land by the grantee at its cost.*

(x) *Full ground rent shall be levied if at any time net income is derived from the land.*

<u>Village</u>	<u>T.S.No.</u>	<u>Extent</u>
West Madurai	1976/1A	41888 sq.ft.
”	811/1	20015 sq.ft.
East Madurai	556	11287 sq.ft.
		
		Total: 1 Acre & 29630 sq.ft.
		 ”



A.S.(MD) No.278 of 2008

WEB COPY

15. Exs.B1 to B3 clearly shows that the first respondent Diocese admitted the title of the Government and also they obtained the conditional assignment and since they violated the conditions, the Collector of Madurai issued the show cause notice / Ex.B4 and the Diocese filed the writ petition before this Court in W.P.No.18679 of 1992 and in Ex.A12, the respondent Diocese clearly admitted that,

“10.The Diocese made representation to the Commissioner that if such expansion is done several graves will have to be upturned, bodies exhumed and souls laid to rest disturbed, which would be sacrilegious against the tenets of the Roam Catholic Religion. The Diocese further agreed that if alternative site is granted the tombs could be shifted with the least disrespect to the bodies and souls resting in peace and awaiting their resurrection unto the Lord on the date of judgment.”

and also on every stage, the Diocese obtained permission and in Ex.A9, it is stated as follows:

“II. The Board has considered the proposal. It



A.S.(MD) No.278 of 2008

seems no objection to delete the condition requiring the priest to put up a Chapel. But there is no provision to permit the construction of buildings of remunerative nature and divert the income derived from it to the charitable purposes. Hence, the portion required for shops and the destitute home will have to be sub-divided and the plot required for putting up shops will have to be granted under B.S.No.24. On competitive rent in and the plot required for the destitute home placed at the disposal of the R.C. Mission under B.S.No.25, subject tot the usual conditions after the resumption of the lands. The Collector is requested to take action on the above lines and to submit proposals in due course in consultation with the R.C.Mission. The Collector is also requested to fix the rent to be collected for the plot required for the putting shops taking into consideration on the fact that the mission has undertaken to run a destitute home.”

16. But, there is no provision to permit the construction of buildings of remunerative nature and divert the income derived from it to the charitable purposes. Ex.A9 clearly shows that it is only the assignment



A.S.(MD) No.278 of 2008

which has given only to maintain the cremation ground viz., (Kallarai) and there should not be a construction, especially for the commercial nature and they have the permission only to construct the small chapel in the centre of each of the cemetery within two years from the date of the grant and it is also stated that no other buildings shall be constructed on the land without the previous permission of the Collector of the District. Though the properties in the possession of the first respondent Diocese, the documents filed by the appellants and the respondents clearly show that it is subject to conditions imposed by the appellants in Exs.B1 to B3. The further communications also clearly shows that the first respondent Diocese has not enjoyed the property as their absolute property. In order to get title by adverse possession, the person has to enjoy the property as his own against the real owner without any interference of the real owner and he has to establish the hostile title. Whereas, in this case, they have not enjoyed the property against the original owner and on every moment, while improving the property, they got permission from the Government. Therefore, it cannot be stated that they enjoyed the property as their exclusive property with the



A.S.(MD) No.278 of 2008

knowledge of the Government without any control over the property for more than a statutory period. Since the first respondent Diocese enjoyed with permission or condition, the theory of adverse possession will not arise. The respondents failed to establish the prescribed title by adverse possession. The trial Court failed to appreciate the legal provisions and therefore, the finding of the trial Court is erroneous and even possession of the respondents is only a permissible possession, subject to certain conditions. Therefore, the first respondent is not entitled to get the relief as prayed for.

17. In the result, the Appeal Suit is allowed and the judgment and decree passed by the Additional District Sessions Court cum Fast Track Court No.1, Madurai in O.S.No.78 of 2005, dated 27.04.2007 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2022

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A.S.(MD) No.278 of 2008

To

1. The Additional District Sessions Court cum
Fast Track Court No.1, Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD) No.278 of 2008

P.VELMURUGAN,J.

akv

A.S.(MD) No.278 of 2008

08.07.2022