



W.P.(MD)Nos.11154 & 11278 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.08.2022

PRONOUNCED ON : 25.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**W.P.(MD)Nos.11154 & 11278 of 2022
and
W.M.P.(MD)Nos.7985 and 8035 of 2022**

W.P.(MD)No.11154 of 2022

1.T.Baskaran
2.T.Nagaraj

... Petitioners

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
No.119, Nungambakkam High Road,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dindigul.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dindigul.

4.The Fit Person,
Arulmigu Mariappan Samathi,
Arulmigu Vigneswarar and Others Thirukoil,
Old Aayakudi, Palani Taluk,
Dindigul District.

... Respondents



W.P.(MD)Nos.11154 & 11278 of 2022

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for the record pertaining to the impugned order passed by the 2nd respondent in M.P.No.45/2022/Aa3, dated 26.05.2022 and quash the same.

For Petitioners : Ms.J.Anandhavalli
For R1 to R3 : Mr.M.Lingadurai
Spl.Government Pleader
For R4 : Mr.M.Muthugeethayan

W.P.(MD)No.11278 of 2022

M/s.Morupatti 24 Manai Telungu
Chettiars Charitable Trust,
Rep.by its Chairman-cum-Managing Trustees,
K.Palanichamy, ... Petitioners

Vs.

- 1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dindigul.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dindigul.
- 3.The Fit Person,
Arulmigu K.Mariappan Samathi,
Office at
Executive Officer
Arulmigu Vigneswarar and Others Thirukoil,
Old Aayakudi, Palani Taluk,
Dindigul District. ... Respondents



W.P.(MD)Nos.11154 & 11278 of 2022

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned notice issued by the 1st respondent in his proceedings Miscellaneous Petition No.47 of 2022/Aa3, dated 26.05.2022 and quash the same as illegal and arbitrary.

For Petitioner : Mr.B.Saravanan
For R1 & R2 : Mr.M.Lingadurai
Spl.Government Pleader
For R3 : Mr.M.Muthugeethayan

COMMON ORDER

In W.P(MD)No.11278 of 2022, the petitioner is challenging Notice issued in M.P.No.47/2022/Aa3, and in W.P(MD)No.11154 of 2022, the petitioners are challenging Notice issued in M.P.No. 45/2022/Aa3, respectively dated 26.05.2022, both issued under Section 78(2) of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959, seeking explanation as to why the petitioners to be declared as encroachers of the Temple property.

2. The contention of the petitioner in W.P(MD)No.11278 of 2022 is that the community elders of '24 Manai Telungu Chettiars'



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constituted a Trust in the name of "M/s.Morupatti 24 Manai Telungu Chettiars Charitable Trust", by executing a Deed of Trust, dated 03.07.1992. The Trust has purchased 50 cents of land in TS.No.860/2, Ward No.3, Block No.18, East Giri Street, Palani Town, Dindigul District, to an extent of 34,899 Sq.ft. The petitioner Trust purchased the property by a Sale Deed, dated 13.07.1992. Ever since the purchase, the petitioner is in possession and enjoyment of the property.

1. The petitioners purchased the property for valid consideration, for the Trust, for their public cause and community service, during the year 1992. The object of the Trust is for construction of Kalyana Mandabam, to enable poor people to celebrate their marriage at free of cost, to establish and run an orphanage Old Age Home, to fund, construct Hospitals, Educational, Vocational Medical Institutions and Home for disabled crippled and handicapped children and other social act. The petitioners shown as respondents 19 and 20 in W.P(MD)No.77 of 2019, thereafter only, the petitioners came to know about the Settlement Deed.

2.



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4. The property originally belonged to one K.Mariappan. By a Settlement Deed, dated 21.07.1941, the said Mariappan executed the deed in favour of one Sadaibaba Chettiar on certain conditions. One of the conditions is that, after life time of the said Mariappan, Sadaibaba Chettiar and his wife V.Parvathi Ammal were at liberty to enjoy the property, without subjecting the property to any encumbrance. Further, after the lifetime of Mariappan, they could enjoy the landed property and can be transferred to third parties, if they wished.

5. One of the primary conditions is that at the North East Corner of the property, the Mortal remains of aforesaid Mariappan buried and every year, on the date of Death Anniversary, Poojas shall be conducted by Sadaibaba Chettiar and Parvathi Ammal and after them, their legal heirs and the purchasers of the property, if any. Thus, the registered Settlement Deed made it very clear that the property can be transferred to third parties.

6. In the meanwhile, the petitioner came to understand that by proceedings of the Inspector, HR & CE, Palani in Na.Ka.No.110 of 2018, dated 05.07.2018, a report was submitted to the Assistant



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Commissioner, HR & CE, stating that on 11.06.2018, a spot inspection was conducted by the Tahsildar, Palani and other officials, based on the complaint that the property of 'Arulmigu K.Mariappan Samathi' was illegally sold. Further, the report reveals that there are several buildings constructed around Samathi and there are several buildings and shops constructed in the property. Hence, the Inspector, HR & CE, recommended to recover the portion of the aforesaid property and to take action against the persons, who sold the property under Land Grabbing Law. The Assistant Commissioner, HR & CE., passed an order in his proceedings, dated 27.08.2019 and thereafter, the Fit person was appointed in respect of the Samathi, to recover the property and to protect the same, until appointment of non hereditary Trustees.

7. The appointment of Fit person was done in exercise of power under Section 49(1) of the HR & CE Act. The petitioner questioning the same filed a Writ Petition in W.P(MD)No.7083 of 2019, challenging the order passed by the Assistant Commissioner, appointing the Fit person, which is pending adjudication.



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8. One Radhakrishnan filed a Writ Petition in W.P(MD)No.77 of 2019, seeking direction to the temple authorities to secure and safeguard the above mentioned property. Since the said Radhakrishnan's representation pending consideration, another writ petition filed, which is also pending. In the meanwhile, on the report of the Assistant Commissioner, the Joint Commissioner initiated proceedings under Section 78(1) of HR & CE Act and thus, the impugned Notice came to be issued, directing the petitioner to appear for enquiry, make their objections, if any, with documents on 07.06.2022, classifying the petitioner as encroachers. The petitioner further submitted that the impugned notice has been issued when the subject matter in dispute is already pending for adjudication before this Court. Hence, it is illegal, arbitrary.

9. The contention of the petitioner in W.P.(MD)No.11154 of 2022 is that the above mentioned property purchased by the said Mariappan in the year 1937, by a registered Sale Deed, dated 30.06.1937, under document No.1144 of 1937. He executed a registered Settlement Deed on 21.07.1941, in favour of Sadayappa Chettiar. The Settlement Deed conveyed absolute right, title and interest in the property to Sadayappa Chettiar and his wife



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Parvathi Ammal. They executed a Sale Deed in the year 1987, transferring an extent of 70 cents to as many as 20 persons. The mortal remains of Mariappan is situated on the north eastern corner of the property.

10. One Radhakrishanan, a public spirited person, complained to respondents 1 to 3 stating that the above said property is an absolute endowment and there is a Samathi and hence, there is restriction on alienation of the property to third parties. Based on his complaint, the Inspector, HR & CE., conducted an enquiry and submitted a report to the Assistant Commissioner, thereafter, the Assistant Commissioner appointed a Fit person. Following the report of the Assistant Commissioner, the Joint Commissioner, HR & CE., issued the impugned Notice, classifying the petitioners as encroachers. The said Radhakrishanan also filed a Public Interest Litigation in W.P(MD)No.77 of 2019, which is pending before this Court. Earlier, a Writ Petition filed in W.P(MD)No.14511 of 2019 questioning the appointment of Fit person.

11. The said Parvathi Ammal and Saravanan in Document No. 404 of 1987, sold the property to an extent of 70 cents to as many



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as 20 persons, for a sum of Rs.3.5 Lakhs, thereafter, 11 sale deeds have been registered. The impugned notice issued by the first respondent is illegal as much as Samathi dispute is not a religious institution, which comes under HR & CE Act. The nature and title of the property in dispute to be determined in the Writ Petitions, which are pending. Already, a Fit person appointed to take care of Samathi.

12. The character of the Samathi and the settlement whether it is attached to any religious act is to be decided. Even before deciding the religious character of the Samathi, projecting the petitioners as encroachers and issuing the Notice is improper, without jurisdiction. Only after the adjudication of the two writ petitions, which are pending before this Court, the character of the Samathi and the status of the petitioners can be decided. Even before that, the issuance of the impugned notice, amounts to pre-deciding the issue.

13. The right to sell the property, as emanated from the Settlement Deed executed by the original owner of the property to Mariappan in Na.Ka.No.1576 of 1941, whereby, except for doing Poojas and Death Anniversary of Mariappan, nothing more stated.



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The Samathi is neither a Temple nor specific endowment defined under HR & CE Act. Further, from the Settlement Deed, there is no restriction or prohibition for the said settle to deal with the property as their own. The only condition is that yearly anniversary poojas to be done to the Samathi, which is a private authority. Thus, issuance of Notice is improper, without jurisdiction. Hence, the learned counsel prayed for quashing of the impugned notices. Further, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in ***Radhakanta Deb and Anothert Vs. Commissioner of HR & CE, Orissa***, reported in ***(1981 2 SCC 226)*** wherein in paragraph 14, it is stated as follows:-

"14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:

(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;



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(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature.

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of



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the endowment."

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14. The learned counsel appearing for the respondents submitted that there were totally 80 cents of land purchased by the said Mariyappan Chettiar, who executed a conditional Settlement Deed on 21.07.1941, in favour of the said Sadayappa Chettiar. Sadayappa Chettiar and his wife Parvathi Ammal entrusted with conditions to perform Samathi Poojas on the anniversary and also to maintain Samathi. The Samathi is worshipped by one and all. Settlee Mariappan taken to Sanniyasam and was proposing the Hindu Religion and for that purpose, the property was purchased. One of the condition is that on the day of his Star, Poojas to be conducted without fail. Further, the specific condition is that the settlor to enjoy the property and not to create encumbrance to the property in any manner. The petitioners by purchasing the property created encumbrance, claiming right over the property. The said Sadayappa Chettiar and his wife were given interest to maintain the property and not to alienate the same. They produced the photographs showing the samathi, idol of god, pooja articles and Yagam.



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15. The learned counsel further submitted that the petitioners are challenging the Notice issued calling for their objections, if any. If the petitioners have any legal right over the property, as projected, the same to be submitted to the first respondent in response to the notice. Failing to do, approaching this Court is not proper. It is not in dispute that the Samathi of Mariappan Chettiar is still available and Poojas are regularly held, public visiting the Samathi. Samathi itself is situated in the East Giri Street on the Foot Hills of Palani Hills. The Samathi has got religious character. If the petitioners have contra view, they have to place the materials and make their objections pursuant to the notice to the first respondent. As per HR & CE Act, the first respondent is the authority to conduct enquiry to remove encroachments, restore the lands of Temple and Religious character. The issuance of notice cannot be objected, which is as per the law. Further, Fit person already appointed in the year 2018, who had taken all steps to recover the religious property. Earlier, Notice issued by the Fit person on 27.02.2019. The Fit person enquired about the encroachments. The Fit person sent letter to the District Registrar, Palani, not to register the property in T.S.No.860/2, to an extent of 34899 Sq.Ft. Further, letters addressed to the Municipal Authorities seeking details with regard



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to sanctioned plan, if any, given for the construction of the building in the said Survey Number. Produced photographs showing existence of Samathi and a deity. Further, regular Pooja articles, Karagam found in the property. The learned counsel, in support of his contention, relied on the decision of this Court in ***K.V.Lakshmi Ammal Vs. The Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai*** reported in ***(2010 (1) CWC 490)*** and an yet another Judgment of this Court in ***A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai rep. by its Executive Officer*** reported in ***(2011 3 MLJ 230)***.

16. Considering the submission and perusal of the materials it is seen that one Mariappan Chettiar purchased the property in TS.No.860/2, to an extent of 34,899 Sq.ft., which is not in dispute. The settlement made in favour of Sadayappa Chettiyar and his wife Parvathi Ammal is also not denied. As per the Settlement Deed, there is a specific clause not to encumber the property and to conduct Poojas without fail. From the photographs produced it is seen that there is a deity before the Samathi and Pooja articles are available, including Karagam and place for Yagam. The impugned notices under challenge is only Notice issued by the first



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respondent, calling for objections. It is for the petitioners to make their objections along with documents pursuant to the Notice. Approaching this Court at threshold a premature one. In view of the claim and counter claim by the petitioners and the respondents, the fact finding to be done in an enquiry, which is contemplated as per the Notice. In view of the same, this Court is not dwelling into the claim and counter claim made by the petitioners and the respondents. It is for the petitioners to appear before the first respondent, make their objections and claim with appropriate documents and materials.

17. In the result, the Writ Petitions are dismissed with a direction to the first respondent to proceed further to the Notice issued. As per the notice, the petitioners were called to give their objections on or before 07.06.2022. Since the present writ petitions filed before this Court on 06.06.2022, the enquiry could not be conducted. Hence, the petitioners are directed to respond to the Notice, appear before the first respondent on or before 07.09.2022, thereafter, the first respondent to proceed with the enquiry from thereon. No costs. Consequently, connected Miscellaneous Petitions are closed

Index: Yes/No

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To

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Endowments Department,
No.119, Nungambakkam High Road,
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M.NIRMAL KUMAR, J.

MPK

Pre-Delivery Orders made in

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