BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15610 of 2022 and
W.M.P.(MD)No.11242 of 2022

Eswari ... Petitioner

Vs.

1. The District Revenue Officer,
   Madurai Collectorate Building,
   Madurai – 625 020.

2. The Deputy Commissioner / Executive Officer,
   Arulmighu Meenakshi Sundareswarar Thirukovil,
   Madurai District. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order vide office proceedings in Na.Ka.No.J/204/2020 dated 04.02.2022 on the file of the first respondent office and quash the same.

For Petitioner : Mr.R.Karunanidhi

For R-1 : Mr.K.Balasubramani,
Special Government Pleader.

For R-2 : Mr.V.R.Shanmuganathan,
Standing Counsel.

* * *

O R D E R

Heard the learned counsel on either side.

2. The petitioner questions the impugned order dated 04.02.2022 passed by the District Revenue Officer, Madurai, restoring the name of the second respondent temple in the revenue records. According to the writ petitioner, she purchased the property in question from one Pandi under a registered sale deed. The said Pandi in turn had purchased the property from one Kalyanasundaram. The said Kalyanasundaram was none other the son of Meenakshi Sundaram Iyer in whose favour service inam had been conferred. The learned counsel appearing for the writ petitioner relied on the decision of the Hon'ble Division Bench reported in **2020 (1) CWC 80 (A.Radhakrishnan Vs. The Commissioner of Survey)**.

3. Per contra, the learned Special Government Pleader appearing for the first respondent as well as the learned Standing counsel appearing for the second respondent temple submitted that the impugned order does not call for any interference.

4. I carefully considered the rival contentions and went through the materials on record.

5. It is beyond dispute that the service inam was granted in favour of one Meenakshi Sundaram Iyer in respect of the petition mentioned property. Before the settlement proceedings, the revenue records clearly indicated that the property in question was endowed in favour of the second respondent temple. After the settlement proceedings, the service inam holder was given an option to purchase the property. During the settlement proceedings, an order was passed in favour of the service inam holder granting him the option of either paying the institution the amount specified therein or continue to hold the lands by rendering service. The specific stand of the second respondent in the counter affidavit is that the service inam holder did not opt for either of the courses. He stopped rendering service to the temple. He did not make any payment in order to get discharged further burden of service. Following his demise, his son had alienated the property in question.

6. Now the question that arises for consideration is whether the alienation made by the son of the service inam holder in favour of Pandi was valid or not?

7. My attention has been drawn to Section 38(3) of the Tamil Nadu Act 30 of 1963. The said provision reads as follows:-

> " **38. Stay of execution proceedings and prohibition of certain transfers**.-
>
> (1) ..
>
> (2) ..
>
> (3) Notwithstanding anything contained in any other law for the time being in force, no inamdar shall, on or after the appointed day and before the date on which the earliest deposit as aforesaid is made, sell, mortgage, lease or otherwise assign, or alienate any of his immovable property, and any transaction of the nature hereby prohibited shall be void and inoperative

and shall not confer or take away any right whatever on or from any party to the transaction. ”

The aforesaid provision is to the effect that any alienation of immovable property is clearly void and will not affect the rights of the temple.

8. Section 21 of the Tamil Nadu Act 30 of 1963 is as follows:-

“ **21. Service inams**.- (1) The provisions of this section shall apply in respect of any minor inam which was held immediately before the appointed day by an individual (hereinafter referred to in this section as the service-holder) on condition of rendering service to a religious, educational or charitable institution.

(2) The service-holder shall, subject to the provisions sub-section (3), be bound to continue to render the service after the appointed day.

(3)(i) Where a service-holder is entitled to a ryotwari patta under section 8 in respect of any land, he shall have the option-

(*a*) either to pay to the religious institution the amount specified in sub-section (4) and on such payment the land shall, notwithstanding anything contained in sub-section (7), be discharged from the condition of the service or

(*b*) to hold the land and continue to render service subject to the provisions contained in sub-sections (1), (2) (6) and (7).

(ii) The option referred to in clause (i) shall be exercised within such time from the appointed day, and in such manner as may be prescribed.

(4) The amount referred to in sub-section (3) shall be twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land.

(5) Where the service-holder has exercised his option to pay the amount specified in sub-section (4), the tasdik allowance referred to in sub-section (6) in respect of the period subsequent to the date of the exercise of such option shall be the absolute property

of the institution and the institution shall be at liberty to make such arrangements as it thinks fit for the performance of the service.

(6)(*a*) For so long as the service-holder renders the service, the institution shall pay to the service holder the tasdik allowance paid by the Government under Section 20.

(*b*) If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the tasdik allowance payable to the institution in respect of the period subsequent to the failure shall be the absolute property of the institution and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service.

(7)(*a*) For so long as the service-holder renders the service, he shall be entitled to occupy permanently the lands in respect of which he is entitled to a part under section 8, subject, however, to the payment of the assessment fixed under section 16 or under section 16-A, as the case may be in respect of such lands.

(*b*) If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy permanently the land under clause (*a*) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment fixed therefor under section 16 or under section 16-A, as the case may be. "

In view of the aforesaid provisions, the impugned order passed by the first respondent does not call for any interference. At the same time, the second respondent temple will have to necessarily act in consonance with the decision of the Hon'ble Division Bench reported in **2020 (1) CWC 80 (**

A.Radhakrishnan Vs. The Commissioner of Survey).

9. With this direction to the second respondent to abide by the direction as laid down by the Hon'ble Division Bench, the impugned order is sustained. This writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

26.07.2022

Index : Yes / No
Internet : Yes/ No

PMU

To:

1. The District Revenue Officer,
   Madurai Collectorate Building,
   Madurai – 625 020.

2. The Deputy Commissioner / Executive Officer,
   Arulmighu Meenakshi Sundareswarar Thirukovil,
   Madurai District.

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.15610 of 2022

26.07.2022