IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7775 of 2003

The Executive Officer,
Arulmighu Kallalagar Devasthanam
Alagarkoil, Madurai ... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.S.R.Lakshmana Bhattar (Died)

4.P.Paramasivam

5.S.Diraviyam Pillai

6.S.Sundaraswamy

7.N.Subramaniyan

8.K.Chithan

9.N.Arumugam

10.D.Sakunthala Devi

11.N.A.Asraof Ali

12.P.Adaikappan Chettiar

13.Nagammai Achi

14.S.Manimegalai Achi

15.T.Gajalakshmi

16.N.Mohammed Feroz Khan

17.S.S.Rajan

18.R.Florence

19.Farook

20.A.Valliyappan

21.R.M.Sulochana

22.A.Premaleelavathi

23.C.Pavankumar Bhangal

24.N.Feroz Noor Mohammed

25.M.Saroja

26.V.M.Sathish Kumar

27.V.M.Thiruvengadasamy

28.V.M.Sanjay Kumar

29.R.Jayashri Golani

30.S.Pownraj

31.P.Adaikkan Chettiar

32.P.Ramkumar

33.P.Sushil Kumar

34.N.N.Kannappan

35.I.Fakruddin

36.M.Salim

37.S.Jaffar Salim

38.A.Ramalakshmi

39.Ahmed Ibrahim

40.P.Saravanan

41.C.Srinivasan

42.R.Salim

43.T.Amalraj

44.S.R.Padma

45.S.R.L.Sri Rangarajan ... Respondents

[R44 & R45 are substituted as LRs of deceased R3 as per order dated 20.09.2019 in WMP.No.20490/2018 in WP.No.7775/2003]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in Roc.J2/91317/2001 dated 16.10.2002 on the file of the I respondent herein viz., The District Collector, Madurai and quash the same in so far as it is against the petitioner-Temple concerned with a consequential direction to the I respondent to resume and re-grant the lands in question in favour of the petitioner-Temple.

For Petitioner	: Mr.P.Gopalan
For R1 & R2	: Mr.T.Arun Kumar Additional Government Pleader
For R3	: Died – (Steps Taken)
For R6, R16, R21, R22, R32, R33 & R35	: Ms.M.Dhanisha For Mr.J.Ashok
For R44 & R45	: Mr.V.Srikanth
For R4, R5, R8 to R10, R12, R13, R15, R18 to R20, R23, R34 & R36	: No Appearance
For R7, R11, R14, R17, R24 to R31, R37 to R43	: Not Ready in Notice

O R D E R

The writ on hand has been instituted challenging the order passed by the District Collector in proceedings dated 16.10.2002 under Section 41 of the Hindu Religious and Charitable Endowments Act, 1959.

2. The petitioner is Arulmighu Kallalagar Devasthanam, Alagarkoil Madurai. The petitioner / temple is an ancient temple in the State of Tamil Nadu. It is listed as public temple and notified under Section 46 of the Tamil Nadu Hindu Religious and Charitable Endowments Act 22 of 1959 and is being administered by the Executive Officer in the cadre of Deputy Commissioner appointed by the Government of Tamil Nadu subject to over all control of the Commissioner of Hindu Religious and Charitable Endowments, Chennai.

3. The petitioner states that the agricultural land of an extent of 1 acre 83 cents comprised in S.No.26 situated in Melamadai Village, Madurai North Taluk, Madurai District, being an Inam land granted to the petitioner / temple under Title Deed No.47 for Kallalagar Archana Manibam. After the Tamil Nadu Minor Inams (Abolition and Conversion Into Ryotwari) Act, 1963

(Tamil Nadu Act 30 of 1963) came into force, the lands in question being a Minor Inam, for grant of rytowari patta under the Tamil Nadu Act 30 of 1963, *suo-moto* enquiry was conducted by the Settlement Tahsildar, Madurai. In furtherance of the settlement enquiry, the Settlement Tahsildar No.I, (M.I), Madurai passed an order in SR.No.1146/M.I. Act/MDU/66 dated 18.09.1971 granting Ryotwari Patta in favour of one Pappammal on the ground that she is entitled to Kudiwaram Interest in the lands in question.

4. As against the order of Settlement Tahsildar, No.1 Madurai, the deceased 3rd respondent, who was an archagar along with one Alangara Bhattar @ Paramasami Bhattar filed an Appeal before the Inam Abolition Tribunal / Principal Sub-Judge, Madurai in C.M.A.No.373 of 1972. The learned Principal Sub-Judge, Madurai found that the Inam grant in favour of the deity was of both the warams and the appellants therein / 3rd respondent and Alangara bhattar had been maintaining Archaka Services in the petitioner temple. Thus, they would be entitled to Ryotwari Patta in respect of the lands in question under Section 8(1) of the Tamil Nadu Act 30 of 1963 subject to the provisions of Section 21 of the Act. Accordingly, the Appeal was allowed by setting aside the order of Settlement Tahsildar, Madurai and thereby,

Ryotwari Patta has been granted to the appellants therein viz., Service-holders under Section 8(1) of the Act subject to the provision of Section 21 of the Act namely that they should continue to render Archaka Service in the petitioner / temple. The order of Inam Abolition Tribunal was challenged in S.T.A.No.277 of 1976 and by an order dated 08.11.1978, the order of Inam Abolition Tribunal was confirmed by dismissing the S.T.Appeal.

5. In furtherance of the order granting Ryotwari Patta, the 3rd respondent, who was in possession as a permissive occupant of the agricultural lands of an extent of 1.83 Acres comprised in S.No.26 and situated in Melamdai Village, Madurai North Taluk, Madurai District, only in the capacity of holder of the property as a Service Inam Grant for rendering Archaka Services in the petitioner / temple and under Section 21 of the Tamil Nadu Minor Inams (Abolition and conversion Into Ryotwari) Act, 1963 (Tamil Nadu Act 30 of 1963), the 3rd respondent continuous to hold the property as permissive occupant so long as he perform the services. The 3rd respondent has no right to alienate the property. Thus, so long as the grant was permitted subject to condition of Archaka Services rendered with

reference to the petitioner / temple and the grantee would be entitled to enjoy the Inam land only as a permissive occupant, but not as an owner.

6. Under section 21(7)(b) of the Tamil Nadu Minor Inams (Abolition and conversion Into Ryotwari) Act, 1963 (Tamil Nadu Act 30 of 1963), if the service-holder fails to render the service, the prescribed officials shall after such enquiry and after notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed and thereafter, shall declare that the service-holder's right to occupy the land under Clause (a) shall cease and determine that the institutions 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. However, to the payment of the assessment shall be fixed there for under Section 16 or under Section 16-A as the case may be.

7. The learned counsel for the petitioner brought to the notice of this Court that the 3rd respondent died and his legal heirs are impleaded in the writ petition as respondents 44 and 45. The 3rd respondent alienated the property belonging to the temple in favour of the respondents 4 to 43 in

violation of Section 41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The 3rd respondent is the permissive occupant with a condition attached that he should perform the Archaka Services in the petitioner / temple. When the 3rd respondents ceased to perform the services in the temple, his rights also ceases automatically and the temple is empowered to hand over the land to any other person on condition to perform services in the temple. There is no right of alienation conferred merely based on the patta granted. The Title stands in the name of deity and the temple Title Deed was established in Title Deed No.47 for Kallalagar Archana Manibam. Thus, the said Title was not taken into consideration by the District Collector for the purpose of considering the petition for resumption of the land, which was illegally alienated in favour of the respondents 4 to 43 by the 3rd respondent.

8. The learned counsel for the petitioner reiterated that the District Collector considered and recorded the fact that the land belonging to the temple was alienated. However, not ordered for resumption merely on the basis that the patta was granted in favour of the 3rd respondent under the

Inam abolition Act and the 3rd respondent continued his services in the temple.

9. At the outset, the District Collector has considered the Inam Abolition Act, Whereas the contention of the petitioner under Section 41 of the Hindu Religious and Charitable Endowments Act was not considered for the purpose of taking possession.

10. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 made a submission that the Collector has considered the case in a right perspective under the provisions of the Inam abolition Act and therefore, the writ petition is to be rejected. Under the Inam abolition Act, the Ryotwari Patta was granted in favour of the 3rd respondent by the competent authority and by virtue, he was in possession of the subject property and was performing services in the petitioner / temple and thus, the Collector declined to interfere with the possession of the 3rd respondent in the subject temple.

11. Considering the arguments, it is not in dispute between the parties that the lands to the extent of 1 acre and 83 cents comprised in S.No26 situated in Melamadai Village, Madurai North Taluk, Madurai District is an Inam land granted to the petitioner / temple under Title Deed No.47 for Kallalagar Archana Manibam. Thus, the Title Deed stands in the name of deity of the temple and therefore, the deity is the owner of the property. Deity being a minor, the Courts are bound to protect the interest of the deity. In the event of any illegality or irregularity in dealing with the property belonging to the deity, the Court is empowered to go to any extent to protect the property belonging to the deity, if it is abused or dealt with fraudulently.

12. In the present case, the Title Deed No.47 for Kallalagar Archana Manibam stands in the name of deity of the petitioner / temple and the Ryotwari Patta granted in favour of the 3rd respondent, was granted only to possess the property and perform Archaka Services to the temple. Thus, it is a conditional patta granted under the provisions of the Inam Abolition Act. Such a conditional patta granted in favour of the 3rd respondent would not confer any right of alienation in favour of 3rd parties. In the present case, patta would not confer any right to sell the property and therefore, the sale of

property by the 3rd respondent, which belongs to the deity is illegal and in violation of section 41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

13. The District Collector, though admitted the fact that the 3rd respondent is the patta holder and the Title Deed stands in the name of the deity of the petitioner / temple, only considered the provisions of the Inam Abolition Act and failed to consider section 41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, which unambiguously stipulates that such Inam lands are allotted in favour of a person during service to the temple cannot alienate the property. Thus, the patta granted in favour of the 3rd respondent is not in dispute and the patta will continue to be a valid patta so long as the 3rd respondent performs Archaka Services in the temple. If there is any failure in performing services to the temple, then the 3rd respondent is not entitled to continue in possession merely based on the patta granted under the Inam Abolition Act.

14. Let us now consider the spirit of Section 41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which reads as under:

> *"41. Resumption and re-grant of inam granted for performance of any charity or service.*
>
> *(1) Any exchange, gift, sale or mortgage and any lease for a term exceeding five years of the whole or any portion of any inam granted for the support or maintenance of a religious institution or for the performance of charity or service connected therewith or of any other religious charity and made, confirmed or recognised by the Government shall be null and void:*
>
> *(2)(a) The Collector may, on his own motion, or on the application of the trustee of the religious institution or of the Commissioner or of any person having interest in the institution who has obtained the consent of such trustee or the Commissioner, by order, resume the whole or any part of any such inam, on one or more of the following grounds, namely:*
>
> *(i) that except in the case referred to in the proviso to Sub-Section (1), the holder of such inam or part or the trustee of the institution has made an*

exchange, gift, sale or mortgage of such inam or part or any portion thereof or has granted a lease of the same or any portion thereof for a term exceeding five years, or"

15. Therefore, the Collector is the competent authority under Section 41(2)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act and is empowered to initiate action on his own motion or on the application of the trustee of the religious institution or of the Commissioner or of any person having interest in the institution. Thus, the Collector has got wider powers to entertain any application from any person, if such person is having interest over the religious institution or on his own motion, if any informations are received.

16. The Collector in the event of receiving any application or on his own motion, shall pass an order resuming the whole or an part or any of such inam, if the holder of such Inam land or part or the trustee of the institution has made an exchange, gift, sale or mortgage of such Inam land. Therefore, in the event of establishing that the holder of the Inam land had alienated the property in favour of any person, then the District Collector is empowered to

resume the Inam land in favour of the deity so as to protect the interest of the temple.

17. In the present case, the petitioner / temple filed an application under Section 41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The District Collector adjudicated the issues and made a categorical finding that Ryotwari Patta granted under Section 21(2)(a) of the Inam Abolition Act does not convey absolute alienable right to the grantee. Therefore, the Collector found that the Inam land and the patta granted in favour of the 3rd respondent, would not convey any absolute alienable right.

18. In the absence of any alienable right, the sale executed by the 3rd respondent is *void ab inito*. Though the District Collector found that the 3rd respondent has no alienable right in respect of the Inam land and the holder has been given possession on a condition to perform services in the temple, then the Collector ought to have ordered for resumption of the land in favour of the temple. The Collector erroneously held that the petition under Section 41 is not entertainable and is without jurisdiction. Thus, the order passed by the Revenue Divisional Officer, Madurai dated 15.06.2001 is also cancelled. The Collector formed an opinion that the issues are to be adjudicated before

the Competent Civil Court of Law. Such an opinion formed by the District Collector is not in consonance with Section 41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. When the petitioner / temple is controlled by the Statutory Authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act and Section 41 provides protection to the temple Inam properties and the title holder is the deity of the temple, then the Collector ought to have exercised the powered under Section 41(2)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act and would have resumed the property in favour of the temple.

19. In the case of ***Joint Commissioner, Hindu Religious and Charitable Endowments Administration Department Vs. Jayaraman and Other*** reported in ***[(2006) 1 SCC 257]***, the Three Judges Bench of the Hon'ble Supreme Court of India made the following observations:

> *"7. .... The claimants had, in fact, acted totally without bona fides in an attempt to corner the properties for themselves or at least to make undue gains for themselves by selling the properties. Such action would certainly not bind the deities or the HR & CE Department. The High Court, representing the sovereign as parens patriae*

ought to have come down on the respondents herein and ought to have issued directions for the protection of the properties."

20. It is brought to the notice of this Court that the respondents 44 and 45 filed a counter stating that the 3rd respondent has given an alternate land in favour of the temple. However, the said exchange was not made with due permission from the competent authority / the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Act. Fit person is not competent to accept any exchange of property on behalf of the temple. Thus, the exchange was not accepted by the competent authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act. More so, whether the exchange of land is in the possession of the temple itself has not been stated. Therefore, the exchange made by the 3rd respondent is invalid and not accepted by the Commissioner H.R and C.E Department and thus, the said ground is of no avail to the respondents 44 and 45.

21. In view of the fact that the District Collector has failed to consider the spirit of section 41(2)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, though the collector admitted that the Inam land

alienated by the 3rd respondent is in violation of the conditions and further, the 3rd respondent died during the pendency of the writ petition. The temple has got every right to resume the land and therefore, relegating the parties to the Civil Court is unwarranted and not in consonance with spirit of Section 41 of Tamil Nadu Hindu Religious and Charitable Endowments Act. Once the adjudicatory powers are conferred under the Act, the competent authorities shall not relegate the parties to the Civil Court for the purpose of adjudication. This being the principles to be followed the order impugned is infirm.

22. Accordingly, the impugned order passed by the 1st respondent in Roc.J2/91317/2001 dated 16.10.2002 partly confirming the order passed by the Revenue Divisional Officer, Madurai in proceedings dated 15.06.2001 is quashed and consequently, the subject lands are resumed in favour of the petitioner / temple. The 1st respondent is directed to resume the temple land in favour of the temple, by evicting the occupants within a period of eight (8) weeks from the date of receipt of a copy of this order.

23. With the above direction, this Writ Petition stands allowed. No costs.

21.04.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The District Collector,
Madurai District,
Madurai.

2.The Revenue Divisional Officer,
Madurai.

S.M.SUBRAMANIAM, J.

Jeni

W.P.No.7775 of 2003

21.04.2023