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Writ Petition No.6892 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2023

PRONOUNCED ON : 12.04.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.6892 of 2023

and

WMP No.6987 of 2023

1. L.Kothandaraman

2. N.Kasturi

3. G.Kousalya

4. R.Krishnaveni

(all the petitioners are descendants of the family
of Alavandar Naicker of Nemmeli)

.... Petitioners

Vs.

1. The District Collector,
Chingleput District.

2. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Rep. By Special Officer (Temple Lands),
Nungambakkam, Chennai – 34.

3. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
11/20, A.K.Thangavel Street,
Kanchipuram.

4. The Tahsildar,
Tiruporur, Chingleput District.



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5. The Sea Water Desalination Plant,
Nemmeli under the control of
Chennai Metro Water and Sewerage Board,
1, Pumping Station Road,
Chintadripet, Chennai – 2.

6. The Executive Officer,
Nemmili Arulmigu Alavanthar Naicker Arakkattalai,
Mamallapuram,
Chengalpattu District – 603 104.

.... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 2, 3 and 5 to dispose the petitioners' representations dated 18.02.2022 and 18.06.2022 enabling the petitioners to reap the benefit ensured under the registered Will of Testator Alavandar Naicker dated 22.06.1914 vide Document No.3 of 1914 on the file of the Sub Registrar, Tiruporur, Chengalpattu District in the time bound manner.

For Petitioner : Mr.M.Kalyanasundaram, Sr. Counsel
for Mr.R.Vasudevan

For Respondents : Mr.S.Arumugam (For R1 & R4)
Government Advocate
Mr.K.Karthikeyan (For R2 & R3)
Government Advocate (HR&CE)

ORDER

This writ petition is filed by the petitioners, seeking a direction to the respondents 2 and 3 to pass orders on their representations dated 18.02.2022

and 18.06.2022, and to handover the possession of 1175 acres of nanja / punja

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lands mentioned in the petition, in view of the Will having Document No.3 of 1914 dated 22.06.1914 executed by Alavandar Naicker, on the file of Sub Registrar, Thiruporur and also for mesne profits.

2. Heard the learned Senior Advocate Mr.Kalyanasundaram, appearing on behalf of the petitioners and also the respective learned Government Advocates appearing for the official respondents.

3.(a) Though at the outset it appears to be a writ for simple mandamus, the case has got a chequered history to deal with. As per the affidavit filed in support of the writ petition, it is specifically averred that Alavandar being a bachelor had executed a Will bequeathing the self acquired properties to and in favour of Muthukrishnan, grandfather of the petitioners on 22.06.1914 with regard to the properties mentioned in Document No.3 of 1914 on the file of the Sub Registrar, Thiruporur and the said Alavandar died on 09.08.1914.

(b). The petitioners relied upon the WILL registered as Document No.3 of 1914, on the file of the Sub Registrar, Tiruporur, wherein the testator has categorically covenanted as below:



- (i) that for doing charity deeds to the above three places after his life time appointing Muthukrishnan, who is none other than his brother Veerasami's son declaring him as his varisu (successor) giving him all right authorising him to do all the works done by him even after his life time.
- (ii) The Government pattas to remain in his name only. The properties of Chingleput District, V.No.113, Nemmeli, V.No.114, Krishnan Karanai, V.No.115 Pattipulam, V.No.116, Salavankuppam and in V.No.174, Kadumbadi Mahabapalipuram is earned by him, when he was a bachelor and by declaring one Muthukrishnan as his successor and declared that other than Muthukrishnan, no others have any right over his estate.
- (iii) To do Taligai every month on his star birthday.
- (iv) To do dharma for Tiruvidandai, Tirukadarmadu Mahabalipuram Tirupathi in Chingleput District.

(c). The said Muthukrishnan died intestate on 03.09.1936, leaving behind his two sons viz., NM Loganatha Naicker and Jayarama Naicker, who as a hereditary persons entitled to continue their hereditary rights. On coming to know of the scheme decree passed in O.S.No.13/1916 on the file of the Sub Court, Chingleput, filed by strangers and the consequent decree passed in AS No.226/1916 on the file of this Court to have the hereditary rights restored on them filed a suit in O.S.No.1/1943 on the file of District Court, Chingleput against the trustees appointed as per the directives of the High Court and against the Endowment Board to modify the scheme decree.



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(d). In the said suit, the fathers of the petitioners' herein have contended that the order in A.S.No.226 of 1916 discloses that as if the testator created a Trust to do charity connected with the temple and also recognised Muthukrishnan as testator's successor (varisu) with full rights to manage the properties as trustee. The Court directed association of two other trustee to be appointed by the trust. Thus petitioners hereditary right under the Will is confirmed by the order of this Court.

(e) However, in view of the decree of this Court in A.S.No.226 of 1916, the change in the constitution has been made as per the order of the Court which was suppose to be followed.

(f) The 1st Petitioner's father Loganatha Naicker died in 2003 and Jayaram Naicker, father of petitioners 2 to 4, died in 1977. As the petitioners are the next in the line of hereditary entitled, they approached one Savarimuthu and by entering into a memorandum of undertaking on 29.12.1997, they collected the relevant papers regarding their title to the estate of Alavandar devolved on their grandfather Muthukrishnan by virtue of registered Will document No.3 of 1914 left by Alavandar and thereafter vested on their fathers



viz., Loganathan and Jayaraman, respectively. Further, by that undertaking, they authorised the 1st petitioner to have correspondences with all the authorities concerned in this regard on their behalf and some of them have been filed in the typed set of papers.

(g) The petitioners are the entitled persons by the registered Will or the testator whose predecessors' right was assured by this Court in AS No.37 of 1945 and their rights cannot be deprived of by any one of any guise.

4. The petitioners have made a representation to the Commissioner of HR&CE, Chennai, the 2nd respondent herein and that has been forwarded to the Joint Commissioner, HR&CE, Kancheepuram, the 3rd respondent herein. In the representation dated 18.02.2022, the 1st petitioner Kothandraman and one S.Savarimuthu claimed that they are the legal heirs of Muthukrishnan Naicker and hence, the property covered under the registered Will dated 22.06.1914, has to be handed over to them.

5. The learned Government Advocate, based upon instructions could contend that on the registered Will of the Alavandar Naicker, bequeathing the



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properties to Muthukrishnan Naicker, the alleged grandfather of the 1st petitioner dated 22.06.1914, a scheme decree is formulated in OS.No.13 of 1916 by the Temporary Subordinate Judge, Chingleput and on appeal before Division bench of this Court in A.S.No.37 of 1945, the scheme decree has been modified to a little extent. However, the scheme decree is under operation and hence, the petitioners cannot claim based upon the Will.

6. By an order dated 07.05.2022, the Executive Officer of the Nemmili Arulmigu Alavanthar Naicker Arakkattalai, the 6th respondent herein has informed the 1st petitioner that pursuant to the scheme decree in Appeal No.226 of 1916, and as per the Will of the Testator, an Arakkattalai has been formed in the name of Arulmighu Alavandar Naicker Arakkattalai, under the control and administration of the HR&CE Board and any other person including the petitioner has no right whatsoever.

7. The above said order has been served upon the 1st petitioner and hence, it is open to the 1st petitioner to file appropriate application under the HR&CE Act. Instead of doing so, he has filed a representation making a claim over the properties covered under the scheme decree of this Court and hence, I find that in view of the communication already sent to the 1st petitioner on



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07.05.2022 by the 6th respondent viz., the Executive Officer of Arulmighu Alavandar Naicker Arakkattalai, the representation appears to have been made only to circumvent the order and to manufacture another case. Therefore, I am of the view that for the petitioner, the remedy lies elsewhere.

8. In view of the above, I am not inclined to grant the order as sought for, since the grievance of the petitioners are duly answered in the above said communication of the 6th respondent dated 07.05.2022, who is functioning under the control of the 2nd respondent i.e. HR&CE Board. Hence, the representation of the petitioners, is nothing but to divert the findings given by the 6th respondent in the proceedings dated 07.05.2022 and it is open to the petitioners to challenge the said communication in the manner known to law.

9. With these observations, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

12.04.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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RMT.TEEKAA RAMAN,J

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Pre-delivery order in
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