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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22102 of 2023
and
W.M.P.Nos.21501 & 21503 of 2022

S.Prabhu Shankar ... Petitioner

Vs.

1.The Sub Registrar,
Sub-Registrar's Office,
Kinathukadavu.

2.Executive Officer,
A/M Mariamman Vinayagar Temple,
Sulakkal – 642 110,
Kinathukadavu Taluk,
Coimbatore District and appointed as
Thakkar / Executive Officer,
Arulmighu Vinayagar and Natrayasamy Temple,
S.Mettupalayam,
Kinathukadavu Taluk,
Coimbatore District.

3.The Commissioner,
Office of the Commissioner,
Hindu Religious and Charity Endowments Department,
No.119, Uthamar Gandhi Salai,
Chennai – 600 034.

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4.The Joint Commissioner,
Office of the Joint Commissioner,
Hindu Religious and Charity Endowments Department,
Coimbatore – 641 018.

5.The District Collector,
Coimbatore Collectorate Office,
State Bank Road,
Coimbatore Central,
Coimbatore – 641 018. ... Respondents

[R3 to R5 are suo-motu impleaded as
respondents by order dated 27.07.2023]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Letter, dated 10.09.2018 issued by the Executive Officer, A/M Mariamman Vinayagar Temple, Sulakkal – 642 110, Kinathukadavu Taluk, Coimbatore District and appointed as Thakkar/Executive Officer, Arulmighu Vinayagar and Natrayasamy Temple, S.Mettupalayam, Kinathukadavu Taluk, Coimbatore District, the 2nd respondent herein and the Refusal Check Slip No.RFL/Kinathukkadavu/36/2023 dated 19.05.2023 issued by the Sub-Registrar, Kinathukadavu, 1st respondent herein and quash the same and consequently direct the 1st respondent herein to register the settlement deed, dated 19.05.2023 executed by the petitioner to and in favour of his wife as per the provisions of the Registration Act and the Rules made therein.

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For Petitioner : Mr.D.Krishna Pradeep

For R1 & R5 : Mr.T.Venkatesh Kumar
Special Government Pleader

For R2 to R4 : Mr.N.R.R.Arun Natarajan
Special Government Pleader
[H.R.&.C.E]

O R D E R

The writ on hand has been instituted questioning the letter dated 10.09.2018 issued by the Executive Officer, A/M Mariamman Vinayagar Temple, Sulakkal 642 110, Coimbatore District.

2. The petitioner states that the properties comprised in S.No.137/A in an extent of 1.40 acres and comprised in S.No.137/B2 to an extent of 9.90 acres Mettupalayam Village, Kinathukadavu Taluk, Coimbatore District are the subject matter of proceedings before the Settlement Tahsildar. Under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 proceedings were initiated by the Settlement Tahsildar, Gobichettipalayam, who in turn passed an order on 10.09.1968. Since the settlement Tahsildar passed an order in favour of Vinayagar and Natrayan Temple considering the description of Inam as T.D.No.250, Devadayam

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Inam, the petitioner has taken the said order dated 10.09.1968 by way of an appeal before the Minor Inam Tribunal at Coimbatore. Curiously the vendor to the petitioner Patti Gounder and his allies Krishnasamy Gounder and Subbai Gounder have not impleaded the Hindu Religious Charity and Endowments Department as party. But impleaded Sri Vinayagar and Natarayan Temple represented by Karappandi and Veerabadhran, who were the Pujaris of the said Temple. The Pujaris of the Temple, were the persons, who sold the land to the third parties i.e., Patti Gounder, Krishnasamy Gounder and Subbai Gounder and the said Patti Gounder sold a portion of the property in favour of the petitioner in sale deed dated 30.08.1990.

3. The Minor Inam Tribunal, Coimbatore passed an order stating that the appellants would be entitled to an unconditional patta and accordingly, the order of the settlement Tahsildar is set aside and Ryotwari patta in respect of the land is directed to be issued under Section 8(2)(i)(a) of the Act. Based on the said order dated 19.12.1970 the petitioner herein now claims title over the subject property.

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4. The petitioner states that his mother Smt.Padma Shanmughasundaram purchased the property comprised in S.No.137B/2C, Mettupalayam Village then Pollachi Taluk to an extent of 0.17.0 ares or 0.42 acre from her vendor Mr.Patti Gounder and others by way of the sale deed 30.08.1990 and registered as Document No.603 of 1990. The mother of the petitioner settled the property in favour of the petitioner's father and from his father the petitioner derived the title.

5. The learned counsel for the petitioner reiterated that the petitioner holds valid title and based on the orders passed by the Minor Inam Tribunal, the Temple has no right to claim property. Thus, the order now passed by the Executive Officer is liable to be set aside.

6. The learned Special Government Pleader appearing on behalf of the respondents / Hindu Religious and Charity Endowments Department seriously objected the contentions raised on behalf of the petitioner and drew the attention regarding the nature of the proceedings and the order passed by the Minor Inams Tribunal, Coimbatore.

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7. Pertinently, the Settlement Tahsildar, Gobichettipalayam clearly mentioned about the description of Inam i.e., "TD.No.250, Devadanyam Inam". Survey number and name of the claimants are described as S.No.137/A and 137/B2 Vinayagar and Natarayan Temple and (i) Patti Gounder, (ii) Krishnasamy Gounder (ii) Subbai Gounder (iv) Karappandi.

8. The Settlement Tahsildar conducted an enquiry by examining the witnesses including the said Patti Gounder, from whom the family of the petitioner derived the title. The said Patti Gounder (PW1) deposed before the Settlement Tahsildar that the lands in question were granted Inam in Vinayagar and Natarayan Temple that he is in possession and enjoyment of the lands as ancestral property from his great grandfather's period and they have no documentary evidence to prove their title for their lands and a Ryotwari patta may be granted to them on the basis of their enjoyment right. Similar depositions were given by other claimants also.

9. The Settlement Tahsildar considered the deposition of the said Patti Gounder and others and made a finding that the lands in question were granted as Inam to Vinayagar and Natarayan Temple and the grant was

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confirmed to the said religious institutions as seen in the entries from the extract of Huzur Inam Register (EX.C1). The Kudiwaram right vests in the said temples. PW1 i.e., Patti Gounder and PW2 have no documentary evidence to prove their tile in the lands though they are in possession of the lands. So the possession should to be tracked by the sale documents of the claimants are to be granted Ryotwari Patta as laid down Section 8(2)(i) of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. In the present case, there is no proof to show that the lands were transferred by way of sale. Therefore, the claims preferred by the PW1 and PW2 are inadmissible under the provisions of the Madras Minor Inams Act.

10. Accordingly, the claim of the said Mr.Patti Gounder and others were rejected by the Settlement Tahsildar. The settlement Tahsildar allowed Ryotwari Patta in the name of the religious institutions i.e., Vinayagar and Natarayan Temple at Mettupalayam Village represented by its hereditary Pujaris Karuppandi and Veerabadhran under Section 8 (2)(ii) read with Section 11 of the Madras Minar Inams (Abolition and Conversion into Ryotwari) Act, 1963.

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11. Careful perusal of the order passed by the Settlement Tahsildar reveals the fact that the Inam was granted to Vinayagar and Natarayan Temples and the grant was confirmed to the religious institutions as per the entry made in the extract of Huzur Inam Register, which is marked as EX.C1 document. Considering the document, the settlement Tahsildar formed an opinion that the Ryotwari patta is to be granted in the name of the religious institution represented by the hereditary pujaris Mr.Karuppandi and Mr.Veerabadhran.

12. The said hereditary pujaris Mr.Karuppandi and Mr.Veerabadhran colluded with the said Patti Gounder, Krishnasamy Gounder, Subbai Gounder and karappandi and instituted an appeal before the Minor Inam Tribunal, Coimbatore without impleading the Hindu Religious and Charity Endowments Department as a party. The hereditary pujaris Mr.Karuppandi was the original claimant before the Settlement Tahsildar, who deposed that he is entitled for Ryotwari patta under the Inams Act.

13. That being the case, the collusion between the parties as raised by the learned Special Government Pleader is visibly portrayed in respect of the orders passed by the Settlement Tahsildar and Minor Inam Tribunal. In other

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words Karappandi, the original claimant before the Settlement Tahsildar whose claim was rejected by the Settlement Tahsildar was made as a party representing the Temple before the Minor Inam Tribunal, Coimbatore, who in turn said no objection. Accordingly, Minor Inam Tribunal granted patta in the name of Patti Gounder, Krishnasamy Gounder and Subbai Gounder, since the 4th person Karappandi was added as a respondent representing the Temple before the Minor Inam Tirbunal.

14. Thus, the submission made by the learned Special Government Pleader that the appeal filed before the Minor Inam Tribunal, Coimbatore is a collusive suit and it is apparently made clear and established.

15. Since the petitioner is deriving title from and out of the order passed by the Minor Inam Tribunal through Patti Gounder and the said order is now found to be a collusive suit between the hereditary pujaris and the others persons claiming Ryotwari patta under the Inams Act, let us consider the provisions of the Hindu Religious and Charity Endowments Act.

16. Section 6(17) defines "Religious Endowment or Endowment"

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means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution.

17. Section 41 of the Hindu Religious and Charity Endowment Act enumerates “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 a charity or service connected therewith or of any other religious charity and made, confirmed or recognized by the Government shall be null and void: Provided that any transaction of the nature of aforesaid (not being a gift) may be sanctioned by the Government as being necessary or beneficial to the institution”.

18. Section 41 (2)(a) The Collector may, on his own motion, or on the

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application of the trustee of the religious institution or 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 of any portion thereof or has granted a lease of the same or any portion thereof for a term exceeding five years ; or (ii) that the religious institution has ceased to exist or the charity or service in question has in any way become impossible of performance ; or (iii) that the holder of such inam or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of the institution, the charity or service for performing which the inam had been made, confirmed or recognized as aforesaid, or any part of the said charity or service as the case may be".

19. Section 41(1) unambiguously and expressly stipulates that the such Inam granted for support or maintenance of religious institution or for the performance of charity service connected therewith or of any other religious

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charity and made, confirmed or recognised by the Government shall be null and void. Thus, all the subsequent documents entered between third parties based on the collusive suit that ended with an order by the Minor Inam Tribunal cannot be held valid, in view of the order passed by the settlement Tahsildar, Gobichettipalayam in proceedings dated 10.09.1968. There was no occasion to prefer an appeal against the order passed by the Minor Inam Tribunal, since the hereditary pujaris, who claimed Ryotwari patta before the Settlement Tahsildar represented the Temple and was impleaded as respondents before the Minor Inams Tribunal where three other claimants happened to be the petitioners.

20. Thus, this Court has no hesitation in arriving at a conclusion that the suit instituted before the Minor Inam Tribunal is a collusive suit and the same cannot stand in the scrutiny of law and is to be held as non executable and in violation of the provisions of the Hindu Religious and Charity Endowments Act.

21. In view of the facts and circumstances, the petitioner cannot seek

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relief based on the order passed by the Minor Inam Tribunal, Coimbatore on 19.12.1970 in C.M.A.No.511 of 1966. Thus, the objection raised by the Temple Authorities under section 22-A of the Registration Act is tenable and within the ambit of Section 22-A and there is no infirmity. Accordingly, the Temple authorities shall institute all appropriate proceedings under the provisions of the Hindu Religious and Charity Endowments Act. More specifically, under Section 41 and resume the Temple land to utilise the same for the welfare and the interest of the Temple. Such an order of resumption is necessary to be passed by the High Court in exercise of powers of judicial review under Article 226 of the Constitution of India, since the High Court is the *parens patriae* as far as the deity of the Temple is concerned and the deity being a minor.

22. For initiating action under the Hindu Religious and Charity Endowments Act, The Commissioner, Hindu Religious and Charity Endowments Department, No.119, Uthamar Gandhi Salai, Chennai – 600 034, The Joint Commissioner, Hindu Religious and Charity Endowments Department, Coimbatore – 641 018 and The District Collector, Coimbatore Collectorate Office, State Bank Road, Coimbatore Central, Coimbatore – 641

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018, are *suo-motu* impleaded as respondents 3, 4 and 5 respectively. The respective learned Special Government Pleaders takes notice for the *suo-motu* impleaded respondents.

23. Accordingly, the respondents are directed to initiate all appropriate actions in the manner known to law. The Authorities are directed to complete the said exercise within a period of six (6) months from the date of receipt of a copy of this order.

24. With the above directions, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.07.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

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S.M.SUBRAMANIAM, J.

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