IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-08-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.21421 of 2023

Mr.K.M.Samy @ K.Munusamy ... Petitioner

Vs.

1.The District Collector,
Chengalpattu District,
Chengalpattu-603 002.

2.The District Revenue Officer,
Chengalpattu District,
Chengalpattu-603 002.

3.The Regional Divisional Officer,
Chengalpattu District,
Chengalpattu-603 002.

4.Nemili Arulmigu Alavandhar Arakattalai,
Mahabalipuram,
Chengalpattu District.

5.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Road,
Thousand Lights West,
Nungambakkam,

Chennai-600 034.
[R-5 suo motu impleaded vide order of
Court dated 14.08.2023 made in
WP No.21421 of 2023] ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 09.02.2023.

For Petitioner : Mr.Dharani Kasinathan

For Respondents-1 to 3 : Mr.G.Krishna Raja,
Additional Government Pleader.

For Respondents-4 and 5 : Mr.R.Shanmugasundaram,
Advocate General assisted by
Mr.N.R.R.Arun Natarajan,
Special Government Pleader
(HR&CE) and Ms.A.G.Shakeenaa.

<u>O R D E R</u>

The present writ petition has been filed to direct the respondents to consider the representation submitted by the petitioner on 09.02.2023.

2. The representation filed by the petitioner on 09.02.2023 to the Revenue Divisional Officer, Chengalpattu reveals that the petitioner submitted an application for cancellation of patta granted in the name of 'Nemili Arulmigu Alavandhar Trust'. The ground raised in the representation states that the patta was granted in the name of the Trust without any documents and thus it is to be cancelled.

3. When the present writ petition was taken up for admission, it is brought to the notice of this Court that the petitioner has suppressed about the writ petition earlier filed by him and more-so, it involves larger extent of property in Chengalpattu District (ECR Road) and the market value of the property is running to more than rupees thousand crores.

4. Certain vital facts were not brought to the notice of this Court and with reference to the information placed before this Court, the Commissioner, Hindu Religious and Charitable Endowments Department was suo motu impleaded as the fifth respondent in the present writ petition for the purpose of placing all facts before this Court.

5. The learned counsel for the petitioner made a submission that the petitioner inherited the property through Testamentary Succession i.e., Patta No.630 and 7 at Nemili, Patta No.12 at Pattipulam, Patta No.9 at Saluvankuppam and Patta No.29 at Kadambadi Villages, Thiruporur Taluk, Chengalpattu District.

6. The petitioner states that the Testator Mr.V.Muthukrishna Naicker, S/o.Veerasamy Naicker executed a 'Will' in his favour on 13.11.1995, which was duly registered on the file of the Sub Registrar's Office at T.Nagar, Chennai vide Document No.134 of 1995. Mr.V.Muthukrishna Naicker inherited the subject properties by Testamentary Succession via 'Will' executed in Document No.3 of 1914, dated 22.06.1914, executed by the Testator Mr.V.Alavandhar, S/o.Venkatachalapathy Naicker. The subject properties were self acquired properties of Mr.V.Alavandhar, S/o.Venkatachalapathy.

7. Relying on the 'Will' executed by Mr.V.Muthukrishna Naicker on 13.11.1995, the petitioner states that he inherited the subject property. Since patta stands in the name of the Trust as of now, he made

representation for cancellation of patta.

8. In respect of suppression of fact regarding the earlier writ petition, the petitioner has sought for an unconditional apology, since he had no intention to suppress any facts.

9. The learned Advocate General assisted by the learned Special Special Government Pleader (HR&CE), raised serious objection with reference to the entertainability of the present writ petition mainly on the ground that certain documents were fraudulently created in order to grab the properties, which was endowed under the Hindu Religious and Charitable Endowments Act, 1959.

10. 'Religious Endowment' or 'Endowment' as defined under Section 6 (17) of the Hindu Religious and Charitable Endowments Act, 1959 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".

11. In the context of the above definition, the learned Advocate General drew the attention of this Court with reference to the original 'Will' executed by late Mr.V.Alavandhar on 22.06.1914. It is a registered 'Will' executed by late Mr.V.Alavandhar, creating an endowment in favour of temples. The power of alienation is not given to any of the family members of late Mr.V.Alavandhar.

12. Mr.V.Muthukrishna Naicker is the brother's son of late Mr.V.Alavandhar.

13. A Scheme suit was instituted under Section 92 of the Code of Civil Procedure. The matter came before this Court in Civil Appeal No.226 of 1916. The said Appeal Suit was decided by the Hon'ble Division Bench of this Court, consisting Justice Mr.Abdur Rahim and Justice Mr.Seshagiri Aiyar, on 25.04.1918. The Hon'ble Division Bench considered the nature and the scope of the 'Will' executed by late Mr.V.Alavandhar on

22.06.1914 and elaborately discussed the endowment created through and by 'Will' of the year 1914. It is relevant and important to consider the findings of the judgment. Since the said judgment provided the scope for the Trust to carry on the charities as stipulated in the 'Will' and consequently, patta also was granted in the name of the Trust.

14. The learned counsel for the petitioner made a submission that a portion of the property covered under the 'Will' executed by late Mr.V.Alavandhar was transferred in the name of Mr.V.Muthukrishna Naicker, who is the brother's son of late Mr.Alavandhar.

15. The Sub Court, Chengalpattu in the matter of Alavandhar Charities/Audit Report dealt with the issues and passed an order on 22.11.1938, which reveals that "Patta in the name of late Mr.V.Muthukrishna Naicker should be transferred soon in favour of the Trustees". Thus the Sub Court, Chengalpattu based on the Division Bench judgment of this Court dated 25.04.1918, further ordered to transfer the pattas that stood in the name of late Mr.V.Muthukrishna Naicker in favour of the Trustees.

16. The learned counsel for the petitioner made a submission that late Mr.V.Muthukrishna Naicker, who executed the 'Will' in favour of the petitioner on 13.11.1995 died on 21.03.1997.

17. The respondents have raised an objection with reference to the 'Will' executed by late Mr.V.Muthukrishna Naicker and his date of death. Though the learned counsel for the petitioner produced the Death Certificate issued by Perungudi Panchayat Union, the said Death Certificate was questioned by the respondents on the ground that it was either erroneously obtained or secured by collusion or by fraud.

18. The learned Advocate General made a submission that wrong entry of the date of death of late Mr.V.Muthukrishna Naicker was made in collusion with some parties and his date of death was wrongly stated as 21.03.1997. In respect of such forged documents and with reference to the claim of the writ petitioner in his representation, the learned Advocate General made a submission that it is an offence committed and all persons, who all are connected with the said allegations are liable to be

prosecuted.

19. This Court is of the considered opinion that in this regard, the respondents are bound to initiate all appropriate actions to prosecute the offenders if any fraudulent transactions or registration of documents were made.

20. With reference to the endowment created by late Mr.V.Alavandhar through the 'Will' dated 22.06.1914, the observations made in paragraphs 1 and 24, in Civil Appeal No.226 of 1916 on 25.04.1918 by the Hon'ble Division Bench of this Court, reads as under:-

> *"1. I agree in the conclusions arrived at by my learned brother in his learned and exhaustive judgment which I had the advantage of reading. On the question of the interpretation of the will of Alavandar, there can be little doubt that he intended to devote all his properties to charity and did not desire to make a gift of them to the appellant. It will be superfluous on my part to add anything to the reasons given in my learned brother's judgment on this point. Nor can I*

usefully add anything to what he has said on the question whether the provisions of the will constitute such a definite and certain gift to religious and charitable objects as the Courts could give effect to. The testator was a religious minded and charitable person and was particularly attached to certain temples at Mahabalipuram and Tirupathi, and reading the will in connexion with the other relevant evidence in the case and in the light of the history of Alavandar's life it seems to me that his intention was clearly to further the interests of the Hindu religion by endowing certain forms of worship in connexion with those temples."

.. ..

24. In my opinion Section 92 of the CPC, gives Indian Courts similar powers. In the present case, the scheme should be of such a nature as to give effect to the expressed intention of the testator and to apply the surplus income for educational purposes. Without unduly fettering the discretion of the lower Court, I may indicate the main lines on which the scheme should be framed: (a) An establishment for collecting the *income should be sanctioned, not exceeding Rs. 500 a year; (b) Defendant 1 should be paid Rs. 40 a month for superintending the charities; (e) with him should be associated two more trustees of whom one at least should be a non Brahmin; (d) Rs. 1,500 out of the net income should be spent in Thaligais and Utsavams; Rs. 500 in Tiruvedanthai and Mahabalipuram to be spent on the Tirunakshatram day; and Rs. 500 to be utilized for purchasing Prasadam in Tirupati during Brahmotsavam to feed non-Brahmin worshippers; (e) the balance should be spent for giving religious education in Tamil Prabandam. With these suggestions, the appeal is dismissed. Costs of both parties in both Courts will come out of the trust fund."*

21. The respondents have produced copy of the Register of Deaths maintained by the Taluk Office. As per the said Register, late Mr.V.Muthukrishna Naicker died on 03.09.1936. With reference to the Death Register, the Death Certificate was issued by the Sub Registrar, Thirupporur stating that the date of death of Mr.V.Muthukrishna Naicker was 03.09.1936 and the place of death has been stated as Nemili. The date

of death of Mr.V.Muthukrishna Naicker was registered on 04.09.1936.

22. In order to establish the fact regarding the death of late Mr.V.Muthukrishna Naicker, it is relevant to look into the order passed by the Subordinate Judge of Chengalpattu in the matter of Alavandhar Charities/Audit Report dated 22.11.1938, wherein the Subordinate Judge has stated that “Pattas in the name of late Mr.V.Muthukrishna Naicker should be got transferred soon in favour of the present Trustees”. Thus it is clear that even on the date of passing of the order in the matter of Alavandhar Charities/Audit Report by the Subordinate Court of Chengalpattu on 22.11.1938, Mr.V.Muthukrishna Naicker was not alive and he died. Even before passing of the order during 1936, one Mr.S.Ramachandra Naicker, Pattipulam Village, Chengalpattu Taluk in his letter dated 09.07.1936 addressed a letter to Tahsildar, Chengalpattu, requesting him to transfer the patta in the name of Mr.N.A..Muthukrishna Naicker, the life Trustee of Alavandhar Charities.

23. Before His Excellency the Governor of Tamil Nadu, a Memorandum was submitted by Mr.N.M.Jeyarama Naicker, Hereditary

Trustee, Sri Alavandhar Charities, Nemili Village, Chengalpattu Taluk and District. In the said Memorandum, the Hereditary Trustee has clearly stated that “the said Charity was found by his Great Grandfather Sri Alavandhar, in his 'Will' dated 22.06.1914, bequeathed his entire self earned property for Charities to be named after him. The properties consisted of all the Nanja, Punja, Jari (assigned by the Revenue Authorities) site and movable properties such as lands confirmed in Patta No.12 in Nemili Village No.113 in Krishnankaranai No.114 Pattipulam, 115 Salavan Kuppam No.116 Kadampatti, No.174 Mahabalipuram. His Great Grandfather has Willed that “his father Muthukrishnan Naicker would be his legal heir to the Charities and conduct all the Charities according to the provisions of the Will”.

24. Beyond the above documents, which would establish that the said late Mr.V.Muthukrishna Naicker died on 03.09.1936. The sworn affidavit filed by Mr.N.M.Loganatha Naicker, S/o.late Mr.N.M. Muthukrishna Naicker dated 23.07.1996 has stated that “his father Mr.N.M.Muthukrishna Naicker expired on 03.09.1936 at No.113, Nemili Village, Chengalpattu District and that his mother Tmt.Amirthammal died in the year 1976”.

25. Interestingly, the said Mr.N.M.Jeyarama Naicker, who was also the son of late Mr.N.A.Muthukrishna Naicker died on 07.03.1977. Even at the time of filing the sworn affidavit by Mr.N.M.Loganatha Naicker, he was aged about 75 years.

26. Taking note of the probabilities based on the documents submitted by the respondents, the Death Certificate produced by the petitioner that late Mr.Muthukrishna Naicker died on 21.03.1997 cannot be trusted upon and in this regard, the respondents have stated that they are proposed to prosecute the persons for creation of fraudulent documents or otherwise.

27. In the present case, the vast extent of immovable properties are bequeathed under the 'Will' in favour of Alavandhar Charities. After the death of Mr.V.Muthukrishna Naicker on 03.09.1936, the sons of the deceased Mr.V.Muthukrishna Naicker, Mr.N.M.Loganatha Naicker and Mr.N.M.Jeyarama Naicker at the age of 23 and 21 respectively instituted

civil suit in O.S.No.1 of 1943 on the file of the District Court, Chengalpattu, which was filed on 05.04.1943. However, in the said suit, an interlocutory application was filed by the plaintiffs, who in turn, have stated as under:-

> *"Cause of action arose at Mahabalipuram and other places wherein the endowed properties are situated on 22.06.1914, 05.03.1919, 21.08.1936 and 03.09.1936. One Alavandhar grandfather of plaintiffs created a turn by means of a Will for performance of Charities in respect of which a Scheme was framed in OS No.13 of 1916 on the file of Sub Court. On Appeal AS No.226 of 1916 before the High Court, Muthukrishna Naicker was recognised as Testator's Successor and Hereditary Trustee. He died."*

Thus the sons of late Mr.V.Muthukrishna Naicker have stated before the Court that their father late Mr.V.Muthukrishna Naicker died even before the institution of the Original Suit No.1 of 1943 on 05.04.1943.

28. Considering the probabilities based on the documents referred above, the statement of the writ petitioner stating that Mr.V.Muthukrishna Naicker died on 21.03.1997 cannot be trusted upon

and as stated by the learned Advocate General, if any such Death Certificate or other documents are fraudulently created, then all such persons involved in such acts are liable to be prosecuted.

29. The learned Special Government Pleader appearing on behalf of HR&CE Department, brought to the notice of this Court that the writ petitioner, who is not having any title over the subject properties, bequeathed it under a 'Will' dated 12.04.2023 stating that as if he is the owner of the entire subject property. The 'Will' was executed in favour of his grandsons. The Schedule of the property mentioned in the 'Will' reveals that the entire Trust properties were included. However, the learned counsel for the petitioner brought to the notice of this Court that the writ petitioner had already cancelled the said 'Will' on 12.04.2023 executed by him.

30. Since the petitioner is not holding any title over the subject properties, and he cannot execute any 'Will' in favour of any person, more-so, his claims are not fructified even till today.

31. The facts and circumstances would reveal that the writ

petitioner or the persons behind him, whose faces are hidden before this Court, are attempting to grab the vast extent of properties worth more than rupees thousand crores in Chengalpattu District (ECR Road) and those properties were already bequeathed through the 'Will' dated 22.06.1914 by late Mr.Alavandhar in favour of Alavandhar Charities. Mr.V.Muthukrishna Naicker was appointed as the Manager to manage the Trust properties. As per the documents, a sum of Rs.40/- was directed to be paid towards salary to late Mr.V.Muthukrishna Naicker for the purpose of managing the properties and to fulfil the charitable purposes. Therefore, it is clear that Mr.V.Muthukrishna Naicker was appointed by Mr.Alavandhar as Manager to carry on the objects of the 'Will' after his lifetime. Since Mr.V.Muthukrishna Naicker was appointed as Manager to manage the property, he had no power of alienation nor the 'Will' dated 22.06.1914 gives any power of alienation to Mr.V.Muthukrishna Naicker to deal with the subject properties.

32. The said factum stipulated in the 'Will' had been considered by the Hon'ble Division Bench of this Court in Civil Appeal No.226 of 1916 on 25.04.1918 in unambiguous terms that "**on the question of the**

interpretation of the will of Alavandar, there can be little doubt that he intended to devote all his properties to charity and did not desire to make a gift of them to the appellant (Mr.V.Muthukrishna Naicker)”. Therefore, the Hon'ble Division Bench of this Court, as early as on 25.04.1918, held that the properties given for performing Charity by Alavandhar, are not alienable at the instance of Mr.V.Muthukrishna Naicker and hence, now the petitioner, who claims to be the grandson of Mr.V.Muthukrishna Naicker, is not entitled to deal with the properties or claim patta or otherwise. Even the two sons of Mr.Muthukrishna Naicker instituted the suit and failed. The entire subject properties are maintained by the Trust, under the control of Hindu Religious and Charitable Endowments Department of the Government of Tamil Nadu.

33. That being the factum, the HR&CE Department is bound to protect the properties of the Trust in the interest of Charity and as contemplated under the 'Will' and initiate all appropriate actions to evict the encroachers in the property and utililse the same for the purpose for which it was donated by late Mr.V.Alavandhar, through his 'Will'.

34. Thus the Competent Authorities are directed to initiate all appropriate actions to prosecute the offenders by registering criminal cases against them for creation of fraudulent documents and against the encroachers and the unauthorised occupants, who have created any documents in an illegal manner to gab the property belonging to the Charitable Trust and initiate necessary further actions to protect the Trust properties in the manner contemplated under the provisions of the Hindu Religious and Charitable Endowments Act, 1959. The abovesaid exercise is directed to be done by the Competent Authorities of the HR&CE Department, within a period of four weeks from the date of receipt of a copy of this order.

35. The writ petitioner, who seeks the relief to direct the respondents to consider the representation, has made an attempt to achieve his goal in an indirect manner. Merely directing the Authorities to consider the representation would do no service to the cause of justice. Such general directions on some occasions are paving way for illegalities and corrupt

practices.

36. Thus in the present case, the petitioner is not entitled for any relief as such sought for. Though this Court has proposed to impose exemplary costs on the present writ petition, considering the age of the petitioner as he is about 82 years old, no cost is imposed. However, the present writ petition stands dismissed. However, there shall be no order as to costs.

37. **The Registry is directed to list the matter before this Court under the caption 'For Reporting Compliance' on 13.09.2023**.

16-08-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

1.The District Collector,
Chengalpattu District,
Chengalpattu-603 002.

2.The District Revenue Officer,
Chengalpattu District,
Chengalpattu-603 002.

3.The Regional Divisional Officer,
Chengalpattu District,
Chengalpattu-603 002.

4.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Road,
Thousand Lights West,
Nungambakkam,
Chennai-600 034.

S.M.SUBRAMANIAM, J.

Svn

WP 21421 of 2023

16-08-2023