



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S(MD)NO.118 of 2020

The Idol of A/m.Sri Kalyana Venkataramanaswamy,
Thanthonimalai,
represented by its Executive Officer/The Assistant
Commissioner,
Thanthonimalai,
Karur Taluk and District. :Appellant/Plaintiff

.vs.

- 1.M.Palanivel
- 2.P.Kannadasan
- 3.M.Manju
- 4.S.Kayalvizhi
- 5.S.Vijayalakshmi
- 6.S.Muruganandham
- 7.J.Saravanan(died)
- 8.V.Subramani
- 9.P.Ravi
- 10.G.Prabavathi
- 11.P.Subramani
- 12.V.Sakthivel
- 13.Minor Sarabeshwaran



(minor 13th appellant represented by his mother and natural guardian, the fourth respondent herein Kayalvizhi)

14.Manoranjitham

(4th respondent who is already on record, is recorded as LR of the deceased 7th respondent and respondents 13 and 14 are brought on record as Lrs of the deceased 7th respondent as per order of this Court made in C.M.P.(MD)No.2369 and 2371 of 2022 in A.S(MD)No.118 of 2020, dated 22.3.2022)

:Respondents 1 to 14/Respondents 1 to 14

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code against the judgment and decree made in O.S.No.14 of 2019(PDJ Court O.S.No.27 of 2012),, dated 29.3.2019, on the file of Additional Sessions Judge/ Fast Track Mahila Court, Karur.

For Appellant	:Mr.M.Saravanan
For Respondent-6	:Mr.M.Vallinayagam Senior Counsel for M/s.D.Nallathambi
For Respondent-10	:Mr.K.Suresh
For Respondents 1 to 5 and 8 to 12	:No apperance

JUDGMENT

Aggrieved over the dismissal of the suit filed for declaration and for recovery of possession by the Plaintiff Temple, the present appeal suit came to be filed.

2.The parties are referred to as per their ranking before the



trial Court.

WEB COPY

3.The case of the plaintiff, in brief, is as follows:

The suit properties absolutely belong to the Plaintiff temple. The devadayam Inam was granted by Madurai Thirumalai Naicker for the service of Thirumalaimatti permanently. The said Devadayam Inam was confirmed on 29.4.1836 under title Deed (TD) No.1234. Originally, patta has been granted to the plaintiff under Section 8(2)(ii) of the Tamil Nadu Minor Inams(Abolition and Conversion into Ryotwari)Act, 1963 in favour of the temple, which has been challenged by some of the parties and the matter is remanded back regarding the portion of the patta granted to an extent of 4.88 ½ acres out of 6.77 acres to Matcha Naicker. The said Matcha Naicker appears to have purchased A schedule suit properties on 6.7.1992 and on 13.2.1968 from Vellaiyappan Gounder and Katha Naicker respectively. The defendants 3 and 4 seems to have purchased the the above said 3.38 ½ acres on 9.7.2010 from the defendants 1 and 2, who are the son and grand sons of the deceased Matcha Naicker respectively. The fifth defendant seems to have purchased an extent of 1 acre and 50 cents on 9.7.2010 from the defendants 1 and 2 which has been described as 'B' schedule of property. The first defendant claims



that his father Matcha Naicker purchased the same on 22.11.1965.

On 1.3.2011, the defendants 3 and 4 sold 'A' schedule property measuring an extent of 3.38 ½ acres to one Muruganandham the sixth defendant herein. On 10.3.2011, the fifth defendant sold 'B' schedule property measuring an extent of 1.50 acres to one Saravanan, the 7th defendant herein. During the pendency of the suit, properties also sold by defendants 8 and 9. It is the contention of the temple that the temple is the absolute owner of the suit properties. The order passed by the Settlement Officer will not nullify the rights of the temple. Hence the Suit.

4.The written statement filed by first defendant reads as follows:

The first defendant filed a Written Statenment stating that after enforcement of the Tamil Nadu Minor Inams(Abolition and Conversion into Ryotwari) Act, 1963, Inam with respect of the land stood abolished and the land became vested with the Government free of all encumbrances. In the proceedings before the Settlement Tahsildar, Tiruchirappalli, a joint patta was issued in favour of Matcha Naicker, wherein, the temple is also a party, which has been challenged before the Court. The very Settlement proceedings was not appealed and hence, it became final and conclusive in



nature. From that date onwards, Matcha Naicker was in possession of the property and after his death, his legal heirs are in possession of the said extent and as far as the 'C' schedule property is concerned, Matcha Naicker and his legal heirs continued in possession, as a tenant. In respect of the remaining 4.88 ½ acres, patta was granted in favour of Matcha Naicker and prayed for dismissal of the suit.

5.The defendants 6 and 7, who are the contesting defendants, filed a Written statement admitting that S.No.793 as a whole is a minor inam land granted to the plaintiff temple for providing the service of making garlands to the deities Thirumalaikatti. The service holders belong to the Konar community were in possession and enjoyment of the said land rendering the designated service to the temple. During 6.4.1892, one of the service holder Vadamalai Konar, son of Seeranga Konar sold the entire extent comprised in S.No.793 in favour of Nallamma Naicker @ Poosari Naicker and Bomma Naicker @ Poosari Naicker. After a spate of transactions relating to the said land, during the years 1962, 1965 and 1968, Matcha Naicker, son of Muthu Naicker purchased an extent of 4.887 1/2 acres and he was in possession and enjoyment of the same. Though the said sale transactions cannot be deemed to vest absolute right with respect to the said properties, the said



Matcha Naicker by virtue of the above stated sale, was in possession and enjoyment of 4.88 ½ acres within specific four boundaries in S.No.793. In the settlement proceedings, by order dated 18.3.1971, the Settlement Officer held that Matcha Naicker, son of Mutu Naicker was entitled to patta for 4.88 ½ acres of land in S.No.793 and in respect of the remaining land patta was granted to the temple. As against the order of the Settlement Officer, no appeal was filed and hence, it reached its finality. In respect of the other extent of land, Matcha Naicker become a tenant under the plaintiff temple and thereafter, his legal heirs continue as a tenant. According to the defendants, as far as the 'A' and 'B' schedule of property, the plaintiff ought to have initiated proceedings within the period of limitation. The suit filed by the plaintiff after a lapse of 40 years from the date of passing of the order by the Settlement Officer is barred by Limitation. The defendants 6 and 7 challenged the land acquisition proceedings in W.P.Nos.4364 and 4365 of 2011, on the file of this Court and the notification issued under the land acquisition also stands quashed. Hence, it is his contention that as the Government through Settlement Officer has decided the issue relating to the vesting of the suit property and the same has attained its finality, the suit filed by the plaintiff without impleading the Government is not maintainable. Hence prayed for dismissal of the suit.



6.The defendants 3 to 5 adopted the written statement filed by the defendants 6 and 7.

7.The averments in the additional written statement filed by the defendnats 6 and 7 is as follows:

It is the stand of the defendants 6 and 7 that only service holder was having the right of melvaram and kudivaram. In case of non-drop of of service holder, the temple has no independent right and the Government is the only competent authority.

8.The defendants 8 and 9 taken a similar defense.

9.Based on the above pleadings, the trial Court has framed the following issues:

1.Whether the plaintiff is entitled to the relief of declaration, recovery of possession and mesne profits, as claimed in the plaint?

2.Whether the suit is barred by the principle of constructive resjudicata as alleged?

3.Whether the suit not maintainabhle in view of the provision



of Tamil Nadu Public Trusts(Regulation of Administration of Agricultural land)Act,1961, as alleged?

4.Whether the suit is barred by limitation, as alleged?

5.Whether the valuation and Court fees paid are correct?

6.To what relief, if any, the plaintiff is entitled to?

10.The following additional issues were framed on 29.3.2019,which reads as follows:

1.Whether the suit filed by the Executive Officer of the temple is maintainable?

2.Whether the suit A and B schedule properties are the joint family property of Macha Naicker and his brother Vaiyappan as contended by the 12th defendant?

11.Before the Trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A1 to Ex.A6 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B1 to Ex.B30 were marked.



12. On the basis of the evidence and the materials available before it, the trial Court had dismissed the suit in respect of 'A' and 'B' schedule of properties and decreed the suit in respect of 'C' schedule of property. The dismissal of the suit was mainly on the ground that the suit filed by the Executive Officer is not maintainable. It is only a personal grant and not a service grant and that patta has also been issued in favour of Matcha Naicker by the Settlement Tahsildar as early as in the year 1971. That apart, the suit is barred by limitation. On the above findings, the suit has been partly allowed in respect of some properties and dismissed in respect of some properties by the trial Court. Challenging the same, the present appeal suit came to be filed by the appellant.

13. The learned counsel for the appellant would submit that mere pleadings of the defendants itself clearly indicate that the originally the property was dedicated to the temple for doing service. Therefore, even assuming that it is only a service inam, service holder has no right to alienate the said property. According to him, the Executive Officer has every power to institute a suit for recovery of the temple property. Idol being minor, anyone interested to protect the temple property can maintain a suit, otherwise, it is his contention that Section 34(B) of the Tamil Nadu Hindu Religious and Charitable Endowments Act



gives authority to the Executive Officer to take possession of the property from the encroachers. Hence it is his contention that the Division Bench Judgment relied on by the trial Court cannot be applied in this regard. As far as the ownership and title of the property is concerned, the defendants themselves have admitted in the written statement as to the ownership of the temple. Therefore, the patta issued under Act 30 of 1963, will not take away the right of the Civil Court. Still the Civil Court can decide the validity of the title and the suit filed for recovery of possession is very well maintainable. As far as the limitation is concerned, it is the stand that the property is a temple property and Section 109 of the Act makes it clear that no Limitation Act is applicable. Therefore the contention that earlier Limitation Act will apply, cannot be countenanced. Further, it is his contention that the absolute right not vested with any persons who is in occupation as service holder and will continue only as a service holder and the same cannot be vested with him. Further, it is the contention that admittedly, the scheme has already been framed under the old Act. After the introduction of the new Act, all the schemes in existence also got ratified. Hence it is his contention that the trial Court has not considered the legal position and simply partly allowed and also dismissed the suit in respect of some of the suit properties.



14. The following decisions were relied on by the appellant as
 vs:

1. Judgment of this Court in 1998(1)CTC 630(FB) in the case of Srinivasan and six others /vs/ Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchy represented by its Executive Officer at Pettavaithalai Devasthanam and five others.

2.Judgment of the Honourable Apex Court reported in 2023 SCC Online Mad 880 = (2023) 1 LW 85 in the case of S.M.Devi and another .vs. Lord of Sri Jambukeswarar Akilandeswari Devasthamam, represented by its Executive Officer.

*3.Judgment of the Honourable Apex Court
reputed in 2011 SCC Online Mad 475 = (2013) 2
MWN (Civil) 801(DB) in the case of Thomas
Educational and Charitable Trust, Chennai .vs.
Arulmighu Ekambaranathar Thirukkoil,
Kancheepuram District.*

4. Judgment of the Learned Single Judge of this Court in A.S.No.397 of 2010, dated 14.12.2022, in the case of Durgalakshmi Kalyanamandapam, specific endowment to Arulmighu Siddhi Ganesar Nataraj Perumal Durgaiamman Group Temples, represented by K.Jeevanandam and other .vs.The idol of Arulmighu siddhi Ganesar Nataraja Perumal Durgaiamman Group Temples, represented by its Executive Officer and other.



5.Judgment of the Division Bench of this Court made in STA.Nos.20 to 24 of 2001 and 1 to 8 and 10 to 19 of 2002 dated 3.3.2023. in the case of Kandasamy @ Muthu Mudaliar /vs/ Sri Ranganathaswamy (idol), represented through his Executive Officer, Srirangam, Trichy.

15.It is the contention of the learned counsel for the respondents that only service inam was granted in favour of the temple and in fact, the Inam Fair Register also support the same. When the Act 30 of 1963 came into force, all the lands vested with the Government and settlement proceedings were initiated. Originally, the Settlement Officer granted patta in favour of the temple under Ex.B6 and thereafter, in appeal in C.M.A.No.76 of 1969 on 21.7.1970, the entire matter was remanded back to the Settlement Officer, for fresh disposal. In the settlement proceedings, the temple is also a party. The Settlement Officer considering the entire evidence on record, by order, dated 18.3.1971, granted patta in respect of schedule 'A' and 'B' in favour of Matcha Naicker and only in respect of 'C' schedule property, patta was given in the name of the temple. Hence it is his contention that the very temple was a party to the proceedings, already the order had attained its finality and the present suit filed after passage of more than 30 years, is not maintainable.

According to the learned Senior Counsel, the property has been



sold in the year 1892 under Ex.B1 Sale. Thereafter, the same has been dealt with under Ex.B2 one Matcha Naicker had purchased the property under Ex.B3, Ex.B4 and Ex.B5. It is his contention that the predecessor in title has purchased the property under Ex. B1 in the year 1892, wherein, he was in possession of the lands for a continuous period of 60 years immediately before the first day of April 1960. Therefore the respondents who has also purchased the property from the patta holder is entitled to the benefit of the right conferred on the patta holder. It is his contention that once patta is issued in favour of Matcha Naicker, the proceedings have reached its finality, now the temple is estopped from claiming any right over the suit properties. The properties are dealt with by some other persons right from the year 1971 and the defendants 6 and 7 were contesting the suit and purchased the property under ExB1 and Ex.B22 on 1.3.2011, even after the purchase they also exercised their right and challenged the land acquisition proceedings. The property is subject to mortgage executed by Matcha Naicker in the year 1983 itself. Therefore it is the contention that patta stands in the name of Matcha Naicker and that the proceedings has also reached its finality, it is the specific proof as to the title. Therefore it does not mean that civil suit can be filed at any time. Further even assuming that it is a service inam tasdik allowance has been received by the temple.



Such view of the matter, due to long possession, the predecessor in title also become entitled to the property by long and continuous possession of the property. It is his contention that the property purchased by the predecessor in title is vested with them before 30.09.1951. Such being the position, when the suit has been filed at a later point of time, now the appellant cannot come and contend that no limitation whatsoever is applicable to the temple property. According to the learned Senior Counsel, as per the unamended Section 109 of the Act, limitation will apply only after 30.09.1951. Therefore when the persons have already perfected title and no action is taken within the period of limitation, the temple cannot maintain the suit for declaration and for recovery of possession. Even as per the amended Section 109 of the Act, it apply only for recovery of possession of the immovable properties, same cannot be pressed into service for declaratory reliefs. Hence it is his contention that the relief of declaration ought to have been claimed within the period of limitation. The other submissions of the learned counsel that the suit filed by the Executive Officer is not maintainable, he has not been conferred with the power by the Commissioner as required under Section 45 of the Act. Therefore the suit filed by the Executive Officer is not maintainable. It is his further submission that even there was a scheme available authorizing the Executive Officer, the said scheme has not been



notified or renewed which has been clearly held by the trial Court.

Therefore the scheme relied on by the plaintiffs cannot be pressed into service. The trial Court has considered the entire matter and in fact, it disbelieved the title deed of the temple.

16 In the light of the above submission, now the point that arose for consideration is as follows:

1. Whether the Executive Officer has no right to file the suit for declaration and recovery of possession of the temple properties?

2. Whether the Civil Court is debarred from going to the title of the properties despite the fact that patta has been granted under Act 30 of 1963?

3. Whether the suit is barred by limitation?

4. Whether the defendants have perfected title by adverse possession ?

5. To what relief the plaintiff is entitled to?

**17.Point No.1:**

WEB COPY

As far as the contention that the Executive Officer cannot maintain the suit, it is relevant to note that the Division Bench judgment relied on by the trial Court as well as the learned counsel for the respondent's concerned, in the case of ***Sri Arthanareeswarar of Thiruchengode by its Executive Officer Sri Sabapathy .vs. T.M.Muthuswamy Padayachi reported in 2003 1 LW 386***, the Division Bench has held that the Executive Officer was not competent to file the suit, as he is not empowered to file the suit. It is relevant to note that Condition for appointment of Executive Officer Rules 2015 framed by the Government of Tamil Nadu. The said rules, authorises the Executive Officer to represent and also to file the suit for and on behalf of the temple. The constitutional validity of the said rules also upheld in ***M/s. Temple Worshippers Society, represented by its President T.R.Ramesh .vs. Government of Tamil Nadu***. Further, the Division Bench of this Court in ***A.N.Kumar .vs. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, represented by its Executive Officer(Assistant Commissioner),Thiruvannamalai and others***. While the Division Bench in the year 2011, while resolving the issue, held that it is the duty of the Executive Officer to file the



suit and it is useful to extract para No.32 of the said judgment which reads as follows:

"32,.....The Executive Officer, being an officer appointed by a competent authority, is duty bound to protect the property of the temple. Therefore, it is incumbent on him to file a suit and protect the right of the temple."

18.The Full Bench of this Court in the decision reported in **1949 2 MLJ 171 in the case of Sankarana Narayana Iyer .vs. Poovanaatha Swami Temple, Kallipatti** held that so long as action for recovery of possession, a stranger has for the benefit of the owner namely, idol or owner and person doing action who is in the management of the idol or may be for the time being doing their trustee, such action could be allowed to maintain the act on behalf of the idol. Similarly, the Apex Court in the case reported in **1967 SC 1044 (Biswanth .vs. Shri Thakkur Radha Babuji)** held that the legal status of the idol is that of a minor when the person represent left in lurch, the worshipper of the idol in his official capacity can maintain the suit for possession.

"19.Section 45 of the HR and CE Act reads as follows:

45.Appointment and duties of Executive Officers:---



(1)Notwithstanding anything contained in this Act, the Commissioner may appoint subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

(Explanation –In this section "math" shall not include a temple under the control of a math)

(2)The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub section(1) shall be assigned to the executive officer.

(3)The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4)The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive officer."

20.It is relevant to note that Rule 4(b)(iii) of the Condition for the Appointment of the Executive Officer Rules, 2015 referred to above, the Executive Officer can sue or be sued in the name of religious institutions in all the legal proceedings with the approval of the competent authority. Therefore, once the Executive Officer



has the power to administer the affairs of the temple, Rules also specify that he can sue or be sued in the name of religious institutions, power to institute a suit is inherent at any point of time, as per the rules. When the Executive Officer is the responsible Officer and it is his duty to maintain and protect the interest of the temple, it cannot be said that for every action for recovering the temple properties, a separate approval is required. Such approval is inherent in view of the Rules 4(b)(iii) of the Conditions for Appointment of Executive Officer Rules, 2015. It is also relevant to note that subsequent to the judgment of this Court as referred to above, there was an amendment in the form of 34-A and 34-B which came into existence w.e.f 10.5.2003. Section 34-A(2) gives absolute power to the Executive Officer in fixing the lease of the land in respect of religious institutions. It is an appealable order. 34(B)(3) is also clearly empowers the Executive Officer to take possession of the property including buildings, if any. When the amendment itself has brought in the statute empowering the Executive Officer to recover possession of the temple properties, merely on technicalities, it cannot be said that there is no power conferred by the Commissioner to institute a suit, therefore the suit cannot be non-suited. Executive Officer in the realm of affairs of the temple, duty is cast upon him to protect the temple property and for recovery of the same. Therefore, this



Court exercising the Parens patriae jurisdiction over the temple properties, is of the view that the technicalities has to yield to substantial justice. From the above discussions, this Court is of the view that the suit filed by the Executive Officer is very well maintainable, as also held by the learned Single Judges in the latest judgments. It is also relevant to note that Ex.A5 is the scheme framed under the old Act. Scheme was originally framed on 15.10.1956 for a period of five years. The trial Court has held that there is no document to show that publication was effected in this regard to show that the scheme was extended from time to time. Therefore the Scheme is also not believed by the trial Court. It is relevant to note that under Ex.B5, the Executive Officer is specifically empowered to file a suit. It is relevant to note that Section 118(b)(i) of the H.R& C.E Act deals with **Repeal and savings**. If any provision contained in the Scheme settled or deemed to have been settled under the old Act and only such scheme is repugnant to any provision contained in this Act or rules made thereunder, the later provisions shall prevail and the former provision shall to the extent of the repugnancy be void and not in its entirety. The Executive Officer is the person appointed to exercise the powers of the of the appointing authority of the religious institutions, as is assigned to him or under this Act or Rules made thereafter or by any scheme settled or deemed to have



been settled under this Act. Therefore, the Executive Officer in the affairs of the temple, there is specific rules framed as referred to above in the Rules 2015, wherein, he can sue or be sued in the name of religious institutions. Therefore, it cannot be said that he has no power to maintain the suit. Accordingly, this point is answered.

Points 2 and 3:

21. It is relevant to note that only defendants 6 and 7 and 11 and 12 are the contesting defendants before the trial Court. Though patta was issued under Ex.B8 in favour of one Matcha Naicker, on a perusal of the order passed by the Settlement Officer on 18.3.1971, the Settlement Officer admitted that the service holders sold the properties. Therefore patta has been granted to the subsequent purchasers. Despite the fact that the property was endowed to the temple for doing some charities. Patta has been mainly issued on the ground that since the service holder has sold the properties and hence, the subsequent purchaser is entitled to get patta. On a perusal of the entire order of the Settlement Officer, though in one portion of the order, it is stated that the land in respect of 'C' schedule property, patta has been granted in favour of the temple, the fact remains that as far as 'A' and 'B' schedule of



the suit properties, patta has been granted under Section 8 of the Act in respect of 4.88 ½ acres in S.F.No.793 under Section 8(2)(1) of the Tamil Nadu Minor Inams(Abolition and Conversion into Ryotwari)Act, 1963.

22.On a careful persual of sub-clause (2)(i) of Section 8 of the of the Act, it can be seen that for issuance of patta under Section 2(i) one may show continuous period of possession for sixty years before the first day of April 1960 or continuous period of 12 years immediately before the first day of April 1960.The only person who was able to show that they were in possession for more than 60 years before the first day of April 1960, ryotwari patta can be granted to such person.The order under Ex.A8 when carefully seen that only on the basis of the sale made under Ex.B5, dated 13.2.1968 and Ex.B4, dated 22.11.1965, Ex.B3, dated 6.7.1962 and Ex.B2 dated 8.5.1962, Macha Naicker said to have purchased the property. Further no document was filed before the Settlement Officer to show that he or his predecessor in title were in continuous possession for a continuous period of 60 years before the first day of April 1960 or continuous period of 12 years immediately before the first day of April 1960. Merely on the basis of the said documents, the Settlement Officer has granted patta in favour of Matcha Naicker. The very mandatory procedure for



granting ryotwari patta is to find out the possession for 60 years before the first day of April 1960 or for a continuous period of 12 years immediately before the first day of April 1960. No enquiry whatsoever was held by the Settlement Officer in that regard.

23. Such being the position, now the question remains to be answered is whether the Civil Court can go into the question of title of the property in view of the order passed under Ex.B8 which has reached its finality. In this regard, it is well settled now that the orders passed by the authority in respect of issuance of patta will not exclude the jurisdiction of the Civil Court. It is also held by the Honourable Apex Court in the judgment reported in **AIR 1985 SCC 10 in the case of State of Tamil Nadu .vs. Ramalinga Samigal Madam**. The Full Bench of this Court in the judgment reported in **1998 1 CTC 630 in the case of Srinivasan and six others /vs/ Sri Madhyarjuneswaraswami, Pattaivaithalai Tiruchirappalli represented by its Executive Officer at Pettaivaithalai Devasthanam**, has held that Civil Court has got jurisdiction to entertain the suit. Such suit is not barred by reason of grant of patta under the provisions of Tamil Nadu Act 30 of 1963. Civil Court is entitled to nullify the decisions of the authorities which had been accorded finality on proof of settled exceptional factors. In view of the above judgments, this Court is



of the view that though the orders of the Settlement Officer has reached its finality, still the Civil Court can go into the title of the properties. As referred to earlier, ExB8 patta has been granted on the basis of four sale deeds and no enquiry whatsoever was held in respect of the continuous possession as envisaged under Section 8(2)(a) and (b) of the Act 30 of 1963. In the absence of any enquiry with regard to the continuous possession for more than 60 years or 12 years immediately before the first day of April 1960, granting patta on the basis of the sale deeds alone, in the opinion of this Court will not bar the Civil Court's Jurisdiction to go into the question of title.

24.It is also relevant to note that it is the specific case of the defendants 6 and 7, they have purchased the property under the sale deeds, dated 1.3.2011, 10.3.2021 under Ex.B21 and Ex.B22. In the written statement they have specifically pleaded that the suit property measuring an extent of 6.7 acres in S.No.793 was originally a minor inam land granted to the plaintiff temple for preparing garlands to the deities (Thirumalaikatti).Paragraph 2 of the written statement of defendants 6 and 7 reads as under:

"2.The suit properties depicted in three schedules are comprised in S.No.793 of Thanthoni Village, measuring a total extent of 6.77 acres. It is



admitted that S.No.793 as a whole was originally a minor inam land granted to plaintiff temple for providing the service of making garlands to the deities, Thirumalaikatti. The service holders belonging to Konar community were in possession of the said land and were rendering the designated service to the temple. During 6.4.1892, one of the service holder by name Vadalamalai Konar, son of Seeranga Naicker @ Possari Naicker and Bomma Naicker @ Poosari Naicker. After a spate of transactions relating to the said land , during 1962, 1965 and 1968 Machcha Naicker, son of Muthu Naicker totallhased an extent of 4.88 ½ acres and consequently was in possession and enjoyment of the same. Though the said sale transactions cannot be deemed to be vest absolute title with respect to the said properties, the said Machcha Naicker by virtue of the above stated sale was in possession and enjoyment of 4.88 ½ acres within specific four boundaries in S.No.793, which are now shown as A and B schedules in the plaint;"

25.The very written statement itself clearly show that the property was endowed and the minor inam land granted to the temple and the service holders belonging to the Konar community were in possession of the said land rendering the designated service to the temple. The so-called predecessor one Matcha Naicker purchased the property in the year 1961, 1962 and 1965 under three sale deeds. Therefore the patta issued in his name



under Section 8(2)(A)(i) of the Act itself is against the provision of the Act. No document was produced to show that his predecessor in title were in continuous possession for more than sixty years before the first day of April 1960 or 12 years immediately before the appointed day. When the title itself is admitted by the defendants, the trial Court, in fact, has disbelieved the title deeds produced by the temple under Ex.A1-Inam Fair Copy Register on the ground that there are some discrepancies in the entries. It is relevant to note that a stand has been taken before the trial Court that it is only a personal grant. When the pleading in the written statmeent clearly indicates that the property was endowed to the temple and service holders are enjoying the property and they dealt with the property, the question of personal grant as contended by the defendants does not arise at all and it is against their own pleadings. The trial Court has disbelieved Ex.A1 mainly on the ground that the entries were made in different dates. It is to be noted that it is nobody's case that the property originally not belong to the temple. Such being the position, the Trial Court giving undue importance to some discrepancies in the entries to non-suit Ex.A1, is also not proper.

26. Section 21 of the Tamil Nadu Minor Inam Abolition Act, 1963, reads 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)



WEB COPY



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 the service holder renders 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 service, the prescribed office 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 patta 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.

Explanation I- *For the purposes of this Section*

(i) service holder includes his heirs

(ii) non performance of the service due to illness or other temporary disability shall not be deemed to be failure to render service, provided that the service holder makes alternative arrangements for rendering the service during the period of such



WEB COPY



illness or of other temporary, disability.

Explanation II:- *For the purposes of sub section (4)"land revenue" means the ryotwari assessment including the additional assessment, water cess and additional water cess."*

27. Section 44 of the Act raises presumption that whenever any inam is granted to an individual for rendering services to a religious institution, it shall be presumed that the inam consists of both Melaram and Kudivaram. Section 44 reads as follows:

"44. Presumption in the case of service inam:-*In proceedings under this act relating to any inam granted for the benefit of any religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service, it shall be presumed, unless the contrary is proved that the inam consists not merely of a grant of the melvaram in the land but also the kudivaram therein."*

Therefore, if the stand of the respondents that it is only a personal grant, it is only with an obligation to render service to the temple. Further Section 21(7)(b) of the Act makes it clear that if the service holders fails to render the designated service, the temple is



entitled to resume the land. Further, no evidence whatsoever was produced to show that the service holder was rendering service to the temple.

28.Explanation to sub-section 17 of Section 6 of the Hindu Religious and Charitable Endowments Act states that any inam granted to Archaka/service holder, other employees of the religious institution for the performance of any service or charity shall not be deemed to be a personal gift to the service holder. Therefore any sale made by service holder is not valid and did not convey any title to the subsequent purchaser. Ex.B2 earlier document of the year 1892 and on a perusal of the same, makes it clear that only the persons working as Archaka(Poojari) and their legal heirs dealt with the property. This fact clearly show that the property is absolutely belong to the temple. Further no evidence was produced to show that service holder was rendering service to the temple. When the service holder has no right to deal with the property, any sale made by the Archaka or the service holder would not convey any title in favour of the subsequent purchaser. Therefore the subsequent sale deeds based on the said sale is also void. It is also relevant to note that Matcha Naicker in whose name patta was granted under the Act 30 of 1963 based his claim only on the basis of the sale deeds in his favour, dated



6.7.1962, 2.11.1965 and 13.2.1968 Ex.B2 to Ex.B5. The suo-motu settlement proceedings were initiated in the year 1967, as it could be seen from Ex.B6 and in the above suo-motu proceedings, a claim was made by Matcha Naicker based on the sale deeds of the year 1962. To show that his predecessor in title was in exclusive possession as required under Section 8(2) of the Act for a particular period and no document whatsoever was placed. Even when the matter was remanded, no such document was produced. Therefore, when there was no evidence to show continuous possession for more than 60 years before the appointed day or 12 years immediately before the appointed day, the very grant of patta in favour of Matcha Naicker based on three sale deeds of the year 1962, 1965 and 1968 by the Settlement Officer itself is not proper.

29.The Honourable Apex Court, in ***Civil Appeal No.2671 of 2012, dated 23.2.2022***, in the case of ***Sankaranarayana Swamy Devasthanam .vs. P.S.Chandrasekara Raja***, held as follows:

"17.Once it is clear that even as per the admitted case of the respondent, it was a grant burdened with the service and that there was a right of resumption under Section 21(7) of the Act, the respondent cannot resist the reliefs sought by the temple. In other words, the sale deeds in favour of the respondent or his predecessors-in-title cannot take



away the statutory right of the appellant-temple to resume the land. An institution which has the right of resumption, has a right to seek a declaration that the sale is null and void. There is no point in allowing title to remain with some one and possession with another."

30.The learned counsel for the respondents submitted that the property is already vested with the third parties from the date of the sale Ex.B1. According to him, prior to the amendment to Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, old Limitation Act in fact applicable. It is relevant to note that un amended Section 109 reads as follows:

"109.Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any peson the property or funds of any religious institution which was not vested in such person or his predecessor intitle before 30th Sepetember 1951."

31.A perusal of the above makes it clear that when the property is not vested with any person before 30.9.1951, thereafter limitation Act will apply. It is relevant to note that when the service holder has no right to deal with the property and sold the property and there is no evidence to show that service holder doing service, further based on the said sale, the purchasers were



in occupation of the property, the vesting cannot be inferred merely on the basis of the sale deed. Further, no document whatsoever was filed to show that the property has been vested before 30.09.1951 to invoke the unamended Section 109 of the Hindu Religious and Charitable Endowments Act. Even in the present suit, except the subsequent sale deeds and mortgage deed of the year 1983 and 2004 and some kist receipts of the year 1985 and 1986, which came into existence only after Ex.B8 proceedings. No other documents filed to show that property already vested with the purchasers. Therefore, the contention of the learned counsel for the respondents cannot be countenanced. Other contention of the learned counsel for the respondents that the Amended Section 109 of the Hindu Religious and Charitable Endowments Act applicable only to a suit for possession and not for declaratory reliefs, also cannot be countenanced, for the simple reason that very object of the amendment was to literally remove any restriction by way of limitation in recovering the religious institution's immovable properties. Therefore, merely declaratory relief is claimed, where the larger relief is for recovery of possession, the contention that Section 109 of the HR &CE Act not applicable, has no legs to stand.

32.It is also relevant to note that in the entire Written



Statement of defendants 6 and 7, it is not their case that the very predecessor in title have perfected title by prescription and adverse possession even prior to 30.09.1951. In the entire written statement of defendants 6 and 7, no pleadings whatsoever was made with regard to adverse possession by the predecessor in title. In the absence of any evidence and pleadings with regard to the adverse possession, the plea of adverse possession has to fail. Much reliance is placed on the judgment of the Honourable Apex Court reported in **(2008) 7 MLJ 534(SC) in the case of T.Kaliyamurthi and another .vs. Five Gori Thaikal Wakf and others** held that "Before the commencement of the Wakf Act, period of limitation prescribed under 1908 Act already got expired in 1993, Further taking note of the fact that sale were made in the year 1927, 1930 and persons who has obtained patta and enjoyed the property absolutely, suit is barred by limitation". This Court is of the view that the above judgement is not applicable to the facts of the present case. When the Act 30 of 1963 came into force, the inam properties vest with the Government only exception was issuance of ryotwari patta granted under Section 8(2) of the Act. Only on specific paramaters contained in Section 8(2)(1b)), ryotwari patta can be granted. Therefore the plea of limitation cannot be pressed into service. Similarly, reliance was placed on the decision of the Apex Court in **2023 (2) CTC 856 in the case**



of Sabir Ali Khan /vs/. /Syed Mohammed Ahamad Ali Khan

and others. The Honourable Apex Court in relation to the Muslim Wakf Act held that Article 134(b) will not be applicable to the facts of the present case and Article 96 will apply only to the valid transfer and considering the nature of the pleadings proof in the above case, held that the suit was filed beyond the period of limitation. The above judgment is not applicable to the facts of the present case.

33.From the above, this Court is of the view that the trial Court has misdirected itself and held that proper document has not been filed to prove the case and finally decreed the suit in respect of 'C' schedule of property and dismissed the suit in respect of 'A' and 'B' schedule of property. Accordingly, the points are answered and hence, the trial Court findings in dismissing the suit in respect of 'A' and 'B' schedule of property has to be necessarily be set aside and accordingly the same is set aside.

34.In fine, the appeal suit is allowed setting aside the dismissal of the suit in respect of 'A' and 'B' schedule of property and the respondents are directed to hand over the possession of 'A' and 'B' schedule property to the appellant/temple within a period of two months from the date of receipt of a copy of the



judgment. The findings of the trial Court with regard to 'C' schedule property stands confirmed. No costs.

19.06.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1.The Additional Sessions Judge,
Fast Track Mahila Court,
Karur.

3.The Section Officer,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



38

N.SATHISH KUMAR, J.

vsn

JUDGMENT MADE IN
A.S(MD)NO.118 OF 2020

19.06.2023