BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.11517 of 2019

A.Radhakrishnan .. Petitioner

Versus

1.The Chief Secretary to Government,
Secretariat,
Chennai - 600 009.

2.The Vigilance Commissioner,
Secretariat,
Chennai - 600 009.

3.The Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009.

4.The Secretary to Government (Trainee),
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009.

5.The Secretary to Government,
Revenue Department,
Secretariat, Chennai - 600 009.

6.The Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.

7.The Secretary to Government,
Tourism Culture & Endowment Department,
Secretariat, Chennai - 600 009.

8.The Secretary to Government,
Commercial Tax and Registration Department,
Secretariat, Chennai -600 009.

9.The Director,
Vigilance and Anti Corruption Department,
Chennai.

10.The Commissioner of Land Administration,
Chepauk,
Chennai - 600 005.

11.The Director of Survey and Settlements,
Chepauk, Chennai - 600 005.

12.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Nungambakkam High Road,
Chennai -600 034.

13.The Inspector General of Registrations,
100, Santhome High Road,
Chennai - 600 028.

14.The Director General of Police,
Dr.Radhakrishnan Road,
Chennai - 600 004.

15.The Inspector General of Police,
Southern Zone,
Madurai.

16.The Regional Deputy Director of Survey and Settlements,
Old Collectorate Campus,
Madurai.

17.The Deputy Inspector General of Registrations,
Tirunelveli.

18.The District Collector,
Tuticorin.

19.The District Revenue Officer,
Tuticorin.

20.K.S.Marimuthu

21.The Chief Administrative Officer,
Titanium Zirconium Ltd.,
Pazhayakayal Village,
Tuticorin.

22.The Joint Commissioner / Executive Officer,
Arulmigu Subramania Swamy Thirukoil,
Tiruchendur. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to take steps to survey the Kattalai properties to an extent of 219.54 acres offered to the 22nd respondent temple and also in respect of Kattalai Properties offered to other temples all over the State and consequentially issue direction to the respondents to secure and safeguard those properties by considering the petitioner's representation dated 29.04.2019 as well as following the proceedings of the 16th respondent dated 29.04.2019 in Na.Ka.No.A1/2972/2019.

For Petitioner	:	Mr.A.Radhakrishnan Party-in-person
For Respondents	:	Mr.P.Thilak Kumar Government Pleader for R1 to R11, R13, R16 to R19 Mr.P.Subbaraj Special Government Pleader for R12 Mr.J.Senthil Kumar Additional Public Prosecutor for R14 & R15 Mr.V.R.Shanmuganathan for R20 No appearance for R21 Mr.M.Muthu Geethaiyan for R22

ORDER

R. MAHADEVAN, J

The prayer made in this writ petition as a Public Interest Litigation is to issue a writ of mandamus, directing the respondents to take steps to survey Kattalai properties measuring an extent of 219.54 acres offered to the 22nd respondent temple and also survey Kattalai properties offered to other temples in all over the State and consequently secure and safeguard the same by considering the petitioner's representation dated 29.04.2019 and also based on the proceedings of the 16th respondent in Na.Ka.No.A1/2972/2019 dated 29.04.2019.

2. The petitioner claims to be an ardent devotee of the 22nd respondent temple viz., Arulmigu Subramania Swamy Thirukoil, Tiruchendur, which is the second abode of the Lord Murugan. During the course of his visit to the said temple, he came to know that the temple has several properties, which were offered by the devotees as charities to perform temple activities. According to the petitioner, those properties are situated at Old Koil Village, Srivaikuntam Taluk now Yeral Taluk, Tuticorin District in S.F. Nos.226, 229/6, 286/2, 287, 288, 290/3, 337, 344, 345, 346, 347, 348, 353, 354 and 528, measuring to an extent of 219.54 acres, which were given to the temple to perform Kattalai, but several extent of the same has not been under the control of the temple and the income derived therein has not been appropriated to the temple.

3. It is further averred by the petitioner that before the UDR scheme, patta in respect of above said properties stood in the name of one P.K.Thiruparkadal Natha Pillai. While implementing the UDR scheme, without any information to the temple authorities, patta had been illegally issued to several individuals and thereby, the properties belonging to the temple had been grabbed by them. That apart, the Government had also acquired 30.16.5 hectare of lands for the purpose of forming Atomic and Titanium Zirconium Factory and deposited a sum of Rs.6,42,669/- to the Sub Court, Tuticorin as compensation, but the position of the said amount has not been known to anyone.

4. The petitioner also stated that the respondent temple had sent communications dated 03.01.2003 and 04.08.2003 to the Revenue Divisional Officer, Tuticorin and to the District Collector, Tuticorin, respectively, requesting to cancel the patta standing in the name of the individuals in respect of the Kattalai properties. Furthermore, the respondent temple, through its Memo dated 08.08.2012, indicated that the compensation amount for the acquired lands has to be utilized for performing Kattalai and sent further Memo dated 21.05.2013 and reminder dated 05.07.2014 to the higher officials for securing and safeguarding the said properties. However, no action was taken by the 12th respondent officials /HR&CE Department to retrieve the properties. All the efforts taken by the petitioner in this regard, also ended in vain. Therefore, the petitioner submitted a detailed representation dated 29.04.2019 to all the respondent authorities requesting to take necessary steps, for securing and

safeguarding the Kattalai properties offered to the temple. Upon receipt of the same, the 16th respondent sent a communication dated 29.04.2019 to the 12th respondent, requesting to furnish details relating to Kattalai properties belonging to the subject temple as well as the temples in other Districts, through appropriate authorities, for taking necessary action. Thereafter, nothing progressed, which compelled the petitioner to prefer this writ petition with the aforesaid prayer.

5. Upon notice, the 20th respondent filed a detailed counter affidavit denying the averments made in the writ petition. It is stated therein that the lands in S.Nos. 226, 227(B), 229(b), 528, 337, 344, 345, 346, 347, 348, 353, 354, 287, 288 and 290 of Palayakayal Village, Sree Vaigundam Taluk, Tuticorin District, measuring an extent of 219.54 acres belonged to the 20th respondent's grandfather by name K.S.Shanmuga Pillai. In respect of the said lands, there was a registered partition deed dated 07.04.1909 bearing document No.939/1909 between (1)Karupayee Ammal W/o.K.Subramaniam Pillai and D/o.Sudalaimuthu, (2)Shanmugam Pillai S/o.Karupayee Ammal (3)Sivarama Pillai S/o.Karupayee Ammal and (4)Sudalai Vadivammal W/o.Veerapandia Pillai and sister of 2 and 3. Further, there was an undertaking and understanding that the lands shall be kept as common and shall not be alienated and encumbered; that, they shall conduct the religious activities viz., Tiruchendur Sree Subramaniasamy Thirukoil Chithirai Matha Vasantha Urchavam 9th Thirunal Mandahapadi; and that, the rest be apportioned to sharers as per their share. Thereafter, the sharers have executed several documents on 18.02.1924,

12.11.1931, 12.11.1931, 12.11.1931, 13.05.1939 and 10.06.1937, however, it was reiterated therein that the above lands should not be alienated or encumbered; that, the Mandahapadi be performed with the help of these lands, and that, the rest, if any, be enjoyed by them. Thus, according to this respondent, there was no alienation or encumbrance in respect of the aforesaid lands.

6. The counter affidavit filed by the 20th respondent further proceeds to state that in the year 2002, he came to know that during UDR enquiry, umpteen number of changes have been effected and the names of third parties have been entered; that, a portion of the aforesaid lands has been alienated by some of the sharers; and that, several encumbrances have been created thereon. Therefore, the 20th respondent and few sharers had approached the Revenue Divisional Officer, Tuticorin, for rectification of mistakes and restoration of pattas. But the Revenue Divisional Officer, by proceedings dated 07.07.2003, directed this respondent to approach the civil court. Challenging the same, this respondent preferred appeal before the District Revenue Officer, Tuticorin, who by order dated 05.06.2009, had gone into the issue in detail and held that all alienations are void and mutations in the revenue records are also bad, but refused to take a final decision, in view of the fact that the compensation of Rs.6,42,669/- awarded by the Government for acquisition of lands measuring about 30.16.5 Hectares, was deposited in the Sub Court, Tuticorin, under section 30(1) of the Land Acquisition Act, on the premise that there is a dispute as to ownership. Even thereafter, the 20th respondent is continuing with mandahapadi without any

interruption. It is also stated that the 20th respondent has approached the Joint Commissioner /Executive Officer of the temple to retrieve the lands, who inturn, sent a letter to the District Collector way back in the year 2003 and thereafter, no follow up action was made. Therefore, this respondent prayed for appropriate direction to the respondent officials to evict the occupants of the lands and retrieve / regularise the same.

7. Heard the submissions made by the learned counsel appearing for all the parties and also perused the materials available on record.

8. The issue involved in this writ petition is relating to secure and safeguard the properties endowed specifically for Kattalai, to the subject temple as well as to other temples in all over the State.

9. Before we proceed further, it may be relevant to understand the term 'Kattalai' as defined in the provisions of law as well as in the judicial pronouncements. A 'Kattalai' in particular, is an endowment for the performance of specified / assigned services or religious charity. Kattalais are made with specific reference to special services in the temples, its festivities and several charities in glorification of the principal deity. They are in the nature of particular endowments and under the terms of the grant, the trustee has the power to utilize the income for specified services in the temple. However, the trustee, in respect of the management of the *kattalai*

properties, is under the obligation to maintain the Kattalais and properties and any alienation by him of those properties would be void. In the cases of certain important temples, the sources of the income are classified into distinct endowments according to their importance. Each endowment is placed under a separate trustee and specific items of expenditure are assigned to it as legitimate charges to be paid therefrom. The import of the expression *Kattalai* was discussed in detail by *Sesagiri Aiyyar, J. in the case of Ambala Vana v Sree Minakshy*. In the said case, the expression is used with reference to three different kinds of endowments. Properties may be endowed- (a) for the performance of pujas in the temple, or (b) for the performance of certain festivals in the temple, or (c) for the performance of Archanas to the deity in the name of the donor. In this context, it is worthwhile to refer to the following judgments:

(i) ***Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao [1957 AIR 797 : 1957 SCR 1122]***

> *"......Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word "trust" or "trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter. Is the private title over the property intended to be completely extinguished ? Is the title in regard to the property intended to be completely transferred to the charity ? The answer to these questions can be found not by concentrating on the significance of the use of the word "trustee" or "trust" alone but by gathering the true intent of the document considered as a whole. In some cases where documents purport to dedicate property in favour of public charity, provision is made for the maintenance of the worshipper who may be a member of the family of the original owner of the property himself and in such cases the question*

often arises whether the provision for the maintenance of the manager or the worshipper from the income of the property indicates an intention that the property should retain its original character and should merely be burdened with an obligation in favour of the charity. If the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication. It is naturally difficult to lay down a general rule for the solution of the problem. Each case must be considered on its facts and the intention of the parties must be determined on reading the document as a whole..."

(ii) NIRMALA BALA GHOSE V. BALAI CHAND GHOSE [AIR 1965 SC 1874]

"19. It is inexpedient to construe the terms of one deed by reference to the terms of another, or to lay down general rules applicable to the construction of settlements varying in terms. In construing a deed, the Court has to as- certain the intention of the settlor, and for that purpose to take into consideration all the terms thereof. If, on a review of all the terms, it appears that after endowing property in favour of a religious institution or a deity, the surplus is either expressly or by implication retained with the settlor or given to his heirs, a partial dedication may readily be inferred, apparently comprehensive words of the disposition in favour of the religious endowment notwithstanding."

(iii) N. Satyanarayana v. T. Nagiah [AIR 1957 AP 498]

"If any of the reliefs specified in Section 73(1) is asked for against the trustee or a de facto trustee of a religious endowment, then the sanction of the Board is essential, if, however, a trustee of a temple or of a Kattalai sues to recover a property belonging to the temple or money payable to the temple by strangers, then consent of the Board is not required under S. 73(1). Such a suit should be maintained in the ordinary civil courts and the jurisdiction of the courts to entertain such suits would be governed by the provisions of the Civil Procedure Code."

(iv) The Idol Of Sri Ranganathaswamy v. Gopaldas Dwarakadoss [MANU/TN/4205/2019]

"26. With regard to the submission made by the learned Additional Advocate General appearing for the appellant that the property(ies) was/were specifically endowed to the appellant-Idol, it is replied by the learned counsel appearing for the third respondent-auction purchaser, by relying on a decision of a Division Bench of this Court reported in the case of S.Kandasami Iyer and another Vs. Sivachidambaram Chettiar and another, reported in 1922 (xvi) L.W 341, contended that the "Kattalai" in a Hindu temple itself is an independent religious Trust and such a "Kattalai" is not subject to control by the Temple Committee. According to the learned counsel appearing for the third respondent, mere existence of a "Kattalai" without "specific endowment" or "dedication" of a property(ies), will not entitle the Hindu Religious and Charitable Endowments Department to claim a right over such property(ies), as they are not Temple property(ies). In this case, there was no "Kattalai" or "specific endowment" in respect of the property(ies) sold to the third respondent, to the appellant-Idol and therefore, Hindu Religious and Charitable Endowments Department

has no jurisdiction to assert a right over the property(ies) in question. In this context, the learned counsel appearing for the third respondent relied on a decision of the Honourable Supreme Court in the case of Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao reported in AIR 1957 SC 797, wherein it was held in para No.5 that "If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character." Thus, "religious charity" is commonly called as "Kattalai" in Hindu Temples and such "Kattalai" must be clear and certain and must show that a particular property(ies) is exclusively set apart or dedicated for the purpose of charitable activities to the Deity or the Temple in tune with the definition of "specific endowment" given in Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act. In the absence of any proof to show the nature of "Kattalai", for performance of which, the subject matter of the property(ies) had been specifically endowed, the claim of the appellant cannot be sustained."

Thus, it is vivid that Kattalai properties, which are dedicated to the temple, hold immense religious and cultural significance in the promotion of temple festivities and charitable activities. These properties are offered by devout individuals to support and glorify the principal deity of the temple. The purpose of such donations is to support and facilitate the performance of assigned services, rituals and charitable initiatives associated with the temple. However, in recent times, encroachments on Kattalai properties have raised a serious concern about the preservation of these sacred assets, which undermines the intention and object of the original donors who generously offered the Kattalai properties to the temple.

10. This court has considered the evil of encroachments in temple lands on multiple occasions. We may refer to a few cases. In ***V.Thiagaragan (Died) v. State of Tamil Nadu [2015 (1) CWC 189]***, this court emphasized that the State, which is entrusted with the administration of temples, must not only stay vigilant, but also act with responsibility to remove encroachments. In ***V. Muthusamy v. The Joint Commissioner of HR&CE Department, Chennai, [2018-1-Writ.LR.530]***, this

court directed the State to secure the lands belonging to the temples, by constituting a committee to identify the same and evict third parties in illegal possession. In ***P. Lakshamanan and Ors. v. the Superintendent of Police, Sivagangai [(2018) 3 MLJ 202],*** this court highlighted the peril of encroachment on temple lands, which essentially deprives the temples of their revenue and directed the Commissioner, HR and CE department to enquire, take action under section 78 of the HR and CE Act, and recover the encroached properties.

11. Recently, in a comprehensive decision in a ***suo moto WP.No.574 of 2015 and WP(MD)No.24178 of 2018 dated 07.06.2021 [(2021) 5 MLJ 413]***, covering wide ranging issues related to preservation, protection and safeguarding the temples and its properties, a Division Bench of this court, in which, one of us (RMDJ) was a part, considered the above-mentioned judgments and reiterated the State's duty to remove illegal encroachments and ultimately, directed the authorities to identify the extent of temple lands and remove the encroachments. Reference may be had to the following passage for better appreciation of State's responsibility:

> "*30. At this juncture, it is needless to state that the properties of the temples/religious institutions belonging to them have to be maintained properly in order to derive more income so as to spend it for the betterment of the temples. The custodians of the temple properties are the trustees, HR&CE department and mutts, who must keep in mind the object and the reason behind such donations made to the temples. The endowments are created and the lands are donated in love, in faith and in satisfaction towards the one's contribution to the religion they profess, for the temples to be selfsufficient to perform all every day rituals, to ensure that people who profess and practice the same ideology and belief, are uplifted economically and spiritually and for the subsistence of their religion. A duty is cast on the Commissioner under Section 23, to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist and*

therefore, whenever any order is passed, the object of the endowment is not to be forgotten. Section 29 of the Act lays down the preparation of register for all institutions by the Commissioner. That apart, the Joint Commissioners are clothed with the power to retrieve the temple lands from the encroachers by exercising the powers under Sections 78, 79 and 80. But, the officials have not properly exercised the power conferred on them and they are in dereliction of duties and responsibilities assigned to them. At least from now, the HR&CE Department should act diligently to retrieve all the properties under the encroachments."

Therefore, under section 78 of the HR&CE Act, the Assistant Commissioner is conferred with the powers to report any factum of encroachment on temple lands, either on complaint or *suo moto* to the Joint Commissioner. The Joint Commissioner, upon perusal of such a report, shall conduct an enquiry and order removal of encroachment, if found to be true, after hearing the parties.

12. In the case at hand, there is a dispute regarding the ownership and status of the Kattalai properties offered to the 22nd respondent temple. The petitioner alleges that the properties have been alienated to third parties, whereas the 20th respondent states that the properties belonged to his grandfather, K.S. Shanmuga Pillai, and there exists a registered partition deed, with an undertaking to keep the lands in common without any alienation or encumbrance and they should conduct the religious charity viz., Thiruchendur Sree Subramaniasamy Thirukoil Chithirai Matha Vasantha Urchavam 9th Thirunal Mandahapadi. However, it is evident from the documents produced that some of the sharers have unlawfully alienated portions of the lands and during the UDR enquiry in 2002, changes have been effected illegally and the names of the persons who did not belong to the family of the original owner, have been entered into the revenue records, details of which are furnished by the 20th

respondent in his counter affidavit. It is further revealed from the report of the 16th respondent viz., Regional Deputy Director of Survey and Settlements, Madurai dated 29.04.2019 that a detailed survey of the lands/properties belonging to the subject temple as well as other temples in the State of Tamil Nadu, would be necessary for identifying and retrieving the same from alienation / encroachments and safeguarding / protecting the lands / proeprties for the purpose of temple activities, and hence, the 16th respondent prayed for appropriate direction to the authority concerned to furnish the relevant details, such as, survey numbers, total extent, classification of the lands, etc. so as to proceed further in this regard.

13. Considering the nature of the issue involved herein as well as the report of the 16th respondent dated 29.04.2019 and also in the light of the settled position that the lands / properties belonging to the temples should be used only for the religious purposes and connected activities, this court deems it appropriate to direct the authorities concerned to conduct a comprehensive survey, identify the classification of the lands, remove the encroachments and retrieve the same in accordance with law, in respect of not only the subject temple, but also all other temples in Tamil Nadu.

14. Accordingly, this writ petition stands disposed of with the following directions:

(i)The Commissioner, HR&CE Department, Chennai in consultation with the Executive Officers of the temples, shall furnish the necessary inputs, relating to the lands / properties owned by the temples / religious institutions / mutts to the survey and settlement Department of the concerned Districts through the respective District Collectors, within a period of eight weeks from the date of receipt of a copy of this order.

(ii)On receipt of the said information, the District Collector(s) shall direct the respect survey and settlement Department to conduct a detailed survey of the lands, ascertain the present position and file report through proper channel, to the Commissioner of the HR&CE Department, Chennai, within a period of eight weeks thereafter. Such report contains the details relating to the name of the encroachers, survey numbers, property extent, village address and nature of the property (whether vacant land or constructed building), etc. The survey and settlement department shall take the assistance of the revenue and police officials, if required, for the purpose of inspection and survey.

(iii)Upon receipt of such reports, the Commissioner, HR&CE Department, Chennai shall take necessary action, with respect to removal of encroachment, retrieval of lands, etc., as per law, within a period of eight weeks thereafter.

No costs.

Post the matter after six months, for reporting compliance.

[R.M.D., J.] **[J.S.N.P., J.]**
28.04.2023

Speaking order / Non-speaking order
Internet : Yes.
Index : Yes/No

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