



W.P(MD)No.13562 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13562 of 2014

and

M.P(MD)Nos.2 & 3 of 2014

Tamil Evangelical Lutheran Church,
Having office at
Tranquebar House,
Tiruchirappalli – 620 001,
Represented by the Property Officer,
Rev.C.Sam Jebaraj Stephenson

... Petitioner

Vs

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The District Revenue Officer,
Madurai District,
Madurai.
- 3.The Revenue Divisional Officer,
Madurai.
- 4.The Tahsildar,
Madurai West,
Madurai.



W.P(MD)No.13562 of 2014

5.The Zonal Deputy Tahsildar,
Madurai West,
Madurai.

6.G.K.Gopinath

7.The Village Administrative Officer,
Melmadurai,
Madurai District.

8.D.Abraham Das
***(R.8 is suo motu substituted vide order
of this Court dated 17.07.2023)***

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to order passed by the Zonal deputy Tahsildhar, Madurai West dated 10.08.2012 in R.T.R.No.6395 of 2012 and quash the same and consequently direct the respondents to transfer and register the revenue records in the name of petitioner society in respect of the petition schedule properties.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.D.Gandhiraj
Special Government Pleader
for R.1 to R.5 & R.7

Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.A.Srinivasan for R.8

No Appearance for R.6



W.P(MD)No.13562 of 2014

ORDER

WEB COPY

Heard the learned counsel appearing for the writ petitioner, the learned Special Government Pleader appearing for the respondents 1 to 5 & 7 and the learned Senior Counsel appearing for the eighth respondent.

2. The writ petitioner is a religious institution that was registered under the provisions of the Societies Registration Act, 1860. It challenges the impugned patta transfer orders dated 10.08.2012 which are 12 in number. It is not in dispute that all the items covered by the impugned transfer orders stood in the name of Church of Swedish Mission.

3. The stand of the writ petitioner is that all the items covered under the impugned orders had been alienated in their favour by the Church of Swedish Mission in the year 1962 under two deeds of sale. It is conceded that only in respect of two items, the name of TELC has been entered as a joint pattadhar. The remaining properties are only in the name of Church of Swedish Mission. The petitioner contends that they are in possession of all the properties covered under the impugned orders and that therefore non-issuance of notice to them by the Zonal Deputy Tahsildar, Madurai West vitiates the proceedings. It is further contended that the basis of claim made by the eighth respondent, namely,



W.P(MD)No.13562 of 2014

Kremmer Sandegren Foundation is unsustainable in law. The learned counsel appearing for the writ petitioner pressed for setting aside the impugned orders and for registering the name of TELC in respect of the petition scheduled properties.

4. The learned Special Government Pleader submitted that the impugned orders deserve to be sustained. The eighth respondent Thiru.A.Dharmaraj passed away during the pendency of the writ proceedings. Thiru.D.Abraham Das is now said to be the President of the foundation and he had filed counter affidavit. Additional typed set of papers has also been filed and the learned Senior Counsel took me through its contents. He strongly emphasized that the petitioner had not purchased the petition mentioned properties and that they were owned only by Church of Swedish Mission. He would also point out that the title documents based on which the petitioner claims that the properties were transferred in their favour have not been produced before this Court. He submitted that the encumbrance certificate does not reflect the transactions relied on by the petitioner. He also strongly submitted that the question of issuing notice did not arise at all because the name of TELC was not there. In the alternative, he submitted that the petitioner deserves to be relegated to the civil Court for establishing their rights. He pressed for dismissal of the writ petition.



W.P(MD)No.13562 of 2014

5. I carefully considered the rival contentions and went through the materials on record.

6. It is not in dispute that Church of Swedish Mission owned the properties originally. In respect of the properties (T.S.No.4 and 5, Survey No. 128) covered by two of the orders, the petitioner is shown as joint pattadhar. I am of the view that atleast in respect of those properties the petitioner should have been put on notice.

7. The learned counsel appearing for the petitioner would point out that the Kremmer Sandegren Foundation is a Society registered under the Tamil Nadu Societies Registration Act, 1975. The procedure set out in Section 30 of the Act will become applicable. Section 30 of the said Act is as follows:

“30. Amalgamation and division of registered Societies.- (1) Any two or more registered societies may with the prior approval of the Registrar, by special resolution of both or all such registered societies, become amalgamated together as one society, with or without any dissolution or division of the funds of those registered societies or any of them.

(2) Any registered society may with the prior approval of the Registrar, by special resolution, divide itself into two or



WEB COPY



W.P(MD)No.13562 of 2014

more societies. The resolution shall contain proposals for the division of the assets and liabilities of the registered society among the new societies into which it is proposed to divide it and may specify the area of operation of, and the members whom will constitute, each of the new societies.

(3) No amalgamation or division of a registered society under sub-section (1) or sub-section (2), as the case may be, shall have any effect until and unless the new society or societies is or are duly registered in accordance with the provisions of this Act.

(4) Upon the registration of the new society or societies, as the case may be, the assets and liabilities of the original registered society or societies shall, subject to the provisions of section 18, be transferred to, and be the assets and liabilities of the new society or societies, in the manner specified in the special resolution mentioned in sub-section (1) or sub-section (2), as the case may be.”

Since there is nothing on record to show that prior approval of the District Registrar of the Society was obtained, the theory of amalgamation could not have been accepted by the Zonal Deputy Tahsildar, Madurai West. No application can be allowed for the asking. A proper enquiry must be held. When an applicant applies for patta transfer, the competent authority was duty bound to verify if all the statutory procedures and formalities have been duly complied with. In this case such an exercise was not undertaken. Since



W.P(MD)No.13562 of 2014

contentious title issues have been projected, it is only just and proper that the jurisdictional civil Court goes into all the outstanding issues. In this view of the matter, I set aside the impugned orders. The revenue record will reflect the position that obtained immediately prior to passing of the impugned orders. I make it clear that I have not gone into the merits of the matter. No finding against or in favour of any of the parties has been rendered in the writ petition. The parties will have to work out their remedies before the jurisdictional civil Court.

8. The writ prayer is in two parts. The second part of the prayer is negatived. The first part of the prayer is granted and the writ petition is disposed of by directing the fifth respondent to restore the position that obtained immediately prior to the passing of the impugned orders.

9. This writ petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA



W.P(MD)No.13562 of 2014

To

1. The District Collector,
Madurai District,
Madurai.
2. The District Revenue Officer,
Madurai District,
Madurai.
3. The Revenue Divisional Officer,
Madurai.
4. The Tahsildar,
Madurai West,
Madurai.
5. The Zonal Deputy Tahsildar,
Madurai West,
Madurai.
6. The Village Administrative Officer,
Melmadurai,
Madurai District.



WEB COPY



W.P(MD)No.13562 of 2014

G.R.SWAMINATHAN, J.

MGA

W.P(MD)No.13562 of 2014
and
M.P(MD)Nos.2 & 3 of 2014

24.08.2023