



W.P.(MD)No.17665 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.17665 of 2014

and

M.P.(MD)No.1 of 2014

EMGS. Arul Pothyraj
S/o. EMG. Soundararajan,
Trustee,
E.M.Gopalakrishna Kon Trust,
25F, Gogulam Bungalow,
Chinna Chokkikulam,
Madurai – 625 002.

... Petitioner

versus

1. The Tahsildar,
Madurai North Taluk,
Madurai.
2. The Town Surveyor,
Madurai North Taluk,
District Collector Office,
Madurai.
3. Iyyanar
4. T.V.Vaishnavi



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5. Karthiya Lakshmi

6. R.Kathija Begam

7. M.Amsath Rani

8. K.Ganesan

9. Saroja

10. M.Rahmathullah

11. A.Meena

12. C.Prasath

... Respondents

(R4 to R12 are impleaded vide order
dated 09.03.2023 in WMP(MD)No.2113 of 2023)

Writ Petition filed under Article 226 of Constitution of India,
seeking for the issuance of Writ of Mandamus, to forbear the
respondents from conducting a survey of any portion of the land in
Survey Nos.169/1 and 169/2, Siruthur Village, Madurai District
without issuing any notice and hearing the objection of the petitioner
trust.

For Petitioner : Mr.G.Prabhu Rajadurai



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For R1 and R2 : Mr.G.V.Vairam Santhosh
Additional Govt. Pleader
For R3 : No appearance
For R4 to R12 : Mr.K.Sathishkumar

ORDER

This writ petition has been filed for a Mandamus, forbearing the respondents 1 and 2 from conducting a survey of any portion of the land in Survey Nos.169/1 and 169/2, Siruthur Village, Madurai District without issuing any notice and hearing the objection of the petitioner trust.

2. The petitioner is the Trustee of E.M.Gopalakrishna Kon Trust. The said Trust has established a School, viz., Gopalakrishnan Higher Secondary School in Siruthur Village, Madurai District with a noble cause to provide education to poor and downtrodden students, for which, certain lands have also been donated and some of the portions have now been converted as a play ground for the School. It is the grievance of the petitioner that the third respondent has created



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fraudulent documents at Padasala, State of Kerala, with regard to the lands, now used by the School as play ground, as if the erstwhile Trustee has transferred these properties by way of a resolution to the third respondent and he sold the same to various other persons as housing plots. In the strength of those registered documents, the purchasers have now approached the surveyor for measuring the lands and to demarcate their respective properties. Aggrieved on the survey conducted, the present trustee has filed this writ petition.

3. The learned counsel appearing for the petitioner submits that the subject properties have been allotted for the purpose of school and there is no condition in the Trust Deed enabling the Trustees to sell the trust properties. He further submits that the trust properties cannot be sold without obtaining necessary permission under Section 34 of the Indian Trusts Act, 1882 from the competent Civil Court and also without the permission from the competent authority under Section 31 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973.



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But, in this case, the trust properties are said to have been sold, without obtaining any permission from the competent Civil Court and without getting permission from the competent authority as required by the statute. Moreover, these documents were created at Padasala, State of Kerala. Therefore, according to him, the documents, which are created at Padasala as claimed by the private respondents, would be void documents, based on which, there cannot be any further alienation and survey of this land. He further submits that if the respondents are allowed to conduct the survey, they may destroy the present structure of the playground.

4. The learned counsel appearing for the respondents 4 to 12 submits that based on a resolution of the Trust dated 09.03.1996, the Managing Trustee has sold the properties and the respondents 4 to 12 have purchased the properties for a valid sale consideration. According to him, the documents are valid one and they have already filed civil suits before the District Munsif Court, Melur, for the Survey Nos.169/1



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and 169/2 as against the petitioner, for the relief of injunction and the same are pending in O.S.Nos.186 of 2010, 187 of 2019, 189 of 2019, 190 of 2019, 192 of 2019, 193 of 2019, 199 of 2019, 200 of 2019, 202 of 2019, 156 of 2019, 180 of 2019, 182 of 2019, 183 of 2019, 184 of 2019 and 185 of 2019.

5. This Court considered the rival submissions made and also perused the materials placed on record.

6. The petitioner claims that he is a trustee of one E.M. Gopalakrishna Kon Trust. According to him, the lands in Survey Nos. 169/1 and 169/2, Siruthur Village were the properties of the said trust and the same was settled in the name of Gopalakrishnan Higher Secondary School which is administered by the petitioner trust. Whereas, the respondents 4 to 12 claim right over the subject property through the documents said to have been registered at Padasala, Kerala. According to them, the then Managing Trustee, based on a resolution



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of the Trust dated 09.03.1996, have sold the trust property to them.

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7. Section 34 of the Indian Trusts Act, 1882, reads as follows:

“34. Right to apply to Court for opinion in management of trust-property.—

Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.”

8. The learned counsel for the petitioner has also relied on Section 31 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1932 and the same is extracted as under:



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“31. Restriction on alienation of property of private school. -

(1) Notwithstanding anything contained in any other law for the time being in force or in any deed, document or instrument having effect by virtue of such other law –

(a) no property of a private school shall except with the previous permission in writing of the competent authority, be transferred by way of sale, exchange, mortgage, charge, pledge, lease, gift or any other manner whatsoever; and (b) if any such property is transferred without such permission, the transfer shall be null and void.

(2) The competent authority may –

(a) grant the permission under clause (a) of sub-section (1) if the transfer is made in furtherance of the purposes of the private school or of similar purposes approved by the competent authority, and the assets resulting from the transfer are to be wholly utilised in furtherance of the said purposes; and

(b) when granting such permission, impose such conditions as it deems fit to ensure that such assets are wholly utilised in furtherance of such purposes; but a contravention of any such condition shall not invalidate the transfer:

Provided that the permission shall not be refused under this section unless the applicant has been given an opportunity of making his representations.

Explanation. - For the purposes of this section, "property" means any – (a) movable property of not less than such value as may be prescribed; and (b) such immovable property as may be specified in the rules



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made in this behalf.”

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9. In order to ascertain the condition of the disputed land this Court appointed an Advocate Commissioner by order dated 29.03.2023 and the relevant findings of the Commissioner's report is reproduced as follows:

“i. The subject property in S.No.28, Old S.No.169, in Siruthur Village, Madurai District is fenced from North (169-A) to South East (169-B) and from South East to South (196-C). From North to Southern direction, there was only partial fencing, as the school building in the adjacent land in S.No.27 connects to the playground of the school. Hence, there was no fencing in the region where the school building meets the playground.

ii. That it was the claim of the petitioner that the entire subject property is utilized as playground. For better understanding we can assume the asbestos shed erected by the petitioner for playing kabddi, a year back, as a dividing point. The land to the northern side of the



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shed as northern part and the land to the southern side of the shed as southern part.

iii. That towards the southern part, I could find Kho-Kho Poles and volley ball poles. And I could also find white marking on the ground. There were no marking of plots or any stones laid to denote plots. The land was clear without grass denoting, it has been utilised as playground by the students.

iv. That in the northern part of the property, there were no traces or markings of any sports activity to be held. At the western side of the northern part, I could find heap of boulders and also clothes drying in old iron bars. At 90 meters from the northern point (169-A), in the eastern side, I could find four stones (out of which one was lying in the ground) demarcating a plot. While I enquired about the same, one Mr.Vijayakumar, husband of the Respondent No.4, stated that he had fixed the boundary stone demarcating his plot No.6 of an unapproved layout.

v. The said Mr.Vijayakumar had explained that the stones fixed to the soil, demarcates his property and also a pathway of the unapproved layout. Travelling around



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90 Meters from the north (169-A), we can find a stick and three boundary stones, demarcating the property of Mr.Vijayakumar and two stones demarcating the road of unapproved layout, as stated by Mr.Vijayakumar.

vi. That apart, I could not find any other stones laid in the northern part of the property (on the day of inspection) demarcating plots as claimed by the other respondents.”

10. From the report of the advocate commissioner, it can be seen that the subject property which is now being used as a playground for the school. Hence, the property shall be maintained as a ground till the issue is decided by the competent Civil Court.

11. Though the petitioner has made out a case, it is reported that Civil Suits are pending between the parties in O.S.Nos.186 of 2010, 187 of 2019, 189 of 2019, 190 of 2019, 192 of 2019, 193 of 2019, 199 of 2019, 200 of 2019, 202 of 2019, 156 of 2019, 180 of 2019, 182 of 2019, 183 of 2019, 184 of 2019 and 185 of 2019 before the District



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Munsif Court, Melur.

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12. Therefore, this writ petition is disposed of with liberty to the parties to work out their remedy before the District Munsif Court, Melur in O.S.Nos.186 of 2010, 187 of 2019, 189 of 2019, 190 of 2019, 192 of 2019, 193 of 2019, 199 of 2019, 200 of 2019, 202 of 2019, 156 of 2019, 180 of 2019, 182 of 2019, 183 of 2019, 184 of 2019 and 185 of 2019. The District Munsif Court, Melur, shall decide the suits as expeditiously as possible preferably within a period of six months. The parties shall extend their co-operation for early disposal of the suits. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



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