BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 21.11.2022

ORDER PRONOUNCED ON : 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.18593 of 2014
and
M.P(MD)No.1 of 2014

Palanivel @ Palanivelu (Died)

1.Vasantha

2.Devi Sudha

3.Siva Packiam

4.Karuppanasamy ... Petitioners

(P1 to P4 are substituted vide Court order, dated 28.09.2022 in W.M.P(MD)No.16967 of 2022)

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Trichy.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Pudukottai.

4.The Executive Officer,
Arulmigu Subramania Swamy Temple,
Viralimalai,
Pudukottai.

5.The Sub Registrar,
Registration Department,
Viralimalai,
Pudukottai District. ..... Respondents

PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Na.Ka.No.33914/2014/R3 dated 28.08.2014 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to issue No Objection Certificate to enable registration of documents in respect of the land comprised in S.F.No.168 measuring an extent of 5.14.0 Hac in Viralimalai Villge, Pudukkottai District by the 5th respondent.

For Petitioners	: Mr.S.Krishnan
For R1 – R3	: Mr.P.Subbaraj Special Government Pleader
For R4	: Mr.G.Mathavan
For R5	: Mr.S.R.A.Ramachandran Additional Government Pleader

ORDER

The present writ petition has been filed challenging an order passed by the 1st respondent herein under which the request of the writ petitioner for grant of No Objection Certificate for registering a power of attorney has been rejected.

2. According to the petitioner, an extent of 5.14.0 hectares of land in S.F.No.168 in Viralimalai village was originally a service Inam land for the purpose of rendering Kothu service in favour of Arulmigu Subramania Swamy Temple, Viralimalai. The said lands were taken over by the Government under Tamil Nadu Act 30 of 1963 and the minor Inams were abolished.

3. The petitioner has further contended that the petitioner had approached the settlement Tahsildar for grant of patta under Act 30 of 1963. The settlement Tahsildar, Viralimalai by his proceedings, dated 09.05.1968 has granted Kothu service patta in favour of the writ petitioner. Thereafter, the writ petitioner had exercised his option to discharge himself from the service as contemplated under Section 21 (3) of Tamil Nadu act 30 of 1963.

The special Tahsildar, Lalkudi had passed an order on 04.10.1971 directing the writ petitioner to deposit a sum of Rs.9,939/- (Rupees Nine Thousand Nine Hundred and Thirty Nine only) to get himself discharged from the service. This order was challenged by the writ petitioner before the Assistant Collector, Pudukkottai. The appellate authority passed an order on 12.07.1976 reducing the amount to Rs.7,629/- (Rupees Seven Thousand Six Hundred and Twenty Nine only).

4. According to the petitioner, he has deposited a sum of Rs.1,142.85/- (Rupees One Thousand One Hundred Forty Two and Eighty Five Paisa) before the treasury on 15.11.1978. The balance amount was deposited on different dates before Tahsildar, Lalkudi. On 29.09.1995, the Zonal Deputy Tahsildar, Viralimalai has passed an order confirming the fact that the entire compensation amount has been paid and hence, the entries in the “A” register relating to the record of Kothu service of Viralimalai Arulmigu Subramania Swamy Temple may be deleted. Thereafter, revenue patta was also issued in the name of the writ petitioner in Patta No.271.

5. According to the deceased petitioner, he intended to execute a general power of attorney in favour of his wife on 28.12.2012 and he

presented such a document before the Sub Registrar, Viralimalai. The said document was returned by the Sub Registrar by an order, dated 09.01.2013 on the ground that as per guidelines register, Survey No.168 is shown as the property of Hindu Religious and Charitable Endowment Department (herein after referred as HR&CE) department. The petitioner addressed a communication to the commissioner, HR&CE on 09.02.2013 explaining the above said facts and sought for No objection Certificate for registering the document. Since there was no response, the petitioner had filed W.P(MD)No. 9604 of 2013 before this Court. The said writ petition was disposed of on 17.04.2014, directing the petitioner to issue a fresh representation to the Commissioner, HR&CE.

6. The petitioner had submitted a fresh representation to the Commissioner, HR&CE department on 27.05.2014 explaining the above said facts and sought for No Objection Certificate. After enquiry, the present impugned order has been passed by the 1st respondent herein rejecting the request of the petitioner mainly on the ground that the compensation amount has not been paid to the institution concerned, namely, Arulmigu Subramania Swamy Temple, Viralimalai. This order is under challenge in the present writ petition.

7. The learned counsel for the petitioners had contended that admittedly, the property in dispute is a service Inam classified as a Kothu service in favour of Arulmigu Subramania Swamy Temple, Viralimalai. The petitioner was the service holder. As contemplated under Section 21 (3) of Tamil Nadu Act 30 of 1963, the petitioner has exercised his option to pay the institution and get himself discharged from the condition of the service. As per Rule 16 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules 1965 (herein after called rules), the option has to be exercised by the service holder as per statutory form no.11. He further contended that as per Rule 43, the authority to consider the said option/request is the concerned Tahsildar. In the present case, the petitioner has approached the Tahsildar and an order has also been passed fixing the quantum of compensation. As per explanation to Rule 43, an appeal shall lie to the District Collector. Since the petitioner was aggrieved over the quantum of compensation, he had filed an appeal before the Collector, who had reduced the quantum of compensation. Thereafter, the entire compensation fixed by the District Collector has been paid by the service holder/writ petitioner. The said payments have been acknowledged and the concerned Tahsildar has passed an order deleting the service Inam from the "A" register.

Hence, the petitioner is no longer under an obligation to obtain No Objection Certificate from the HR&CE authorities. Though in the revenue records, the service Inam has been deleted, the guideline register continued to reflect that the lands belonged to HR&CE department. Hence, entries in the guideline register are erroneous and they do not reflect the revenue records. Only based upon the guideline register, the petitioner was directed to approach the HR&CE department.

8. The learned counsel for the petitioners has further contended that as per Rule 17, the compensation amount has to be paid by the District Collector to the Trustee or Manager or other person in charge of the institution. The service holder need not directly pay the amount to the institution. In the present case, the entire compensation amount has been paid by the petitioner before the concerned Tahsildar. Hence, it is for the institution to collect the same from the District Collector concerned. Therefore, the reason assigned in the impugned order that the petitioner has not paid the amount to the concerned institution directly is not legally sustainable. Hence, he prayed for allowing the writ petition.

9. Per contra, the learned counsel appearing for the respondent Temple relied upon a Division Bench judgment of our High Court in ***W.A(MD)No. 609 of 2014***, dated 08.02.2018 ***(M.Subramanian Vs. The Sub Registrar, Viralimalai Registration Office & another)*** and contended that the entire amount has to be paid within a period of 3 years from the date of fixation of the amount directly to the concerned institution. If no such payment is made, the option exercised by the service holder will no longer be available and the lands will continue to be service Inam lands. It is settled position of law that a service Inam land cannot be alienated. The service Inam holder is in possession and enjoyment of the property only as a consideration for performing certain services to the religious institution. Hence, the service Inam lands cannot be alienated and such alienation is void in the eye of law. Hence, he prayed for sustaining the order impugned in the writ petition and to dismiss the writ petition.

10. I have carefully considered the submissions made on either side.

11. There is no dispute that Survey No.168 having an extent of 5.14.0 hectares in Illuppur Village, Viralimalai Taluk is a service Inam land for rendering Kothu service to Arulmigu Subramania Swamy Temple,

Viralimalai. According to the petitioner, he is the service holder and he has paid the compensation and the land has been discharged from the said service. On the other hand, the Temple has contended that the compensation amount has not been paid within a period of 3 years. That apart, the compensation amount has been paid only to the Tahsildar concerned and not to the Temple. The issue that arises for consideration in this writ petition is that whether the lands in dispute have been discharged from the conditions of service and if so, whether the compensation amount has been paid as contemplated under Tamil Nadu Act 30 of 1963.

12. A perusal of records will indicate that during settlement proceedings under Act 30 of 1963, ryotwari patta was granted in favour of the writ petitioner indicating that it is a Kothu service. As contemplated under Rule 43, the petitioner has approached the concerned Tahsildar by exercising his option under Section 21 (3) of Tamil Nadu Act 30 of 1963. The Tahsildar has passed an order on 04.10.1971 fixing the quantum of compensation as Rs.9,939/-(Rupees Nine Thousand Nine Hundred and Thirty Nine only). The petitioner aggrieved over the quantum of compensation, has approached the Collector by way of an appeal as contemplated in the explanation to Rule 43. The Collector, by his order, dated 12.07.1976 has reduced the compensation

to a tune of Rs.7,629/- (Rupees Seven Thousand Six Hundred and Twenty Nine only). This order has also been communicated to the temple and the Assistant Commissioner, HR&CE department.

13. The petitioner has deposited this amount on various dates between 15.11.1978 to 14.12.1987 before Tahsildar, Viralimalai. The Tahsildar has accepted this compensation amount and he has passed an order on 29.09.1995 discharging the lands in dispute from the conditions of service. Therefore, it is clear that the land in dispute has already been discharged from the conditions of service by invoking Section 21 (3) of Tamil Nadu Act 30 of 1963.

14. As per Rule 17, the District Collector has to disburse the said amount to the Trustee or the Manager or other person in charge of the institution. Therefore, it is clear that the service holder is not expected to directly pay the amount to the religious institution concerned. As contemplated under Rule 43, the authority empowered to consider the option of the service holder is the concerned Tahsildar. The petitioner has directly paid the entire amount to the Tahsildar and he has also passed an order discharging the lands from the conditions of service. Therefore, it is for the

religious institution concerned to approach the concerned Collector for the payment of the said compensation amount. In fact, the order passed by the District Collector in an appeal filed under Rule 43, a copy has also been addressed to the temple concerned. Therefore, it is clear that the Act and the Rules do not contemplate direct payment of compensation by the service holder in favour of the religious institution. It is for the revenue authorities concerned to determine the compensation and collect the compensation. Thereafter, the District Collector disburses the said compensation to the religious institution concerned. In the present case, the petitioner has paid the compensation amount though belatedly, the concerned Tahsildar has accepted the said amount and passed an order discharging the lands from the conditions of service. This order has been carried out in the revenue records but not in the guideline register maintained by the authorities under Registration Act. This has lead to the present litigation.

15. Once the land is discharged from the condition of service, the petitioner is not performing Kothu service in the temple. At no point of time, the temple has objected to the non-performance of the service and sought for resumption of the lands as contemplated under Section 21 (6) of the Tamil Nadu Act 30 of 1963. Hence, it is clear that the temple concerned was very

much aware of the discharge of the lands from the conditions of service and the mutations made in the revenue records. But the temple has not chosen to challenge the same. By taking advantage of the continuous entries in the guideline register, the temple concerned has raised an objection that the compensation amount has not been paid to the institution and hence, No Objection Certificate cannot be issued.

16. In view of the above said discussion, the stand taken by the HR&CE department or the concerned temple is not legally sustainable. In view of the discharge of land from the conditions of service by an order of the concerned Tahsildar and the payment of entire consideration, the lands do not continue to be service Inam. Therefore, the concerned temple or the HR&CE department do not have any right whatsoever over the land in dispute.

17. In view of the above said facts, the order impugned in the writ petition is set aside and the 5th respondent is directed to accept any document for registration relating to S.F.No.168 admeasuring 5.14.0 hectares in Viralimalai Village, Pudukkottai District.

18. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2023

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Internet : Yes/No
Index : Yes/No

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.18593 of 2014

03.01.2023