



W.P(MD)No.24101 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.11.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

W.P(MD)No.24101 of 2023
and
**W.M.P(MD)Nos.20286, 20287, 20288,
20291, 20292, 20295 and 20296 of 2023**

1.P.Senthil Murugan
2.S.Anandh

.. Petitioners

VS

- 1.The District Collector,
Thanjavur District,
Thanjavur - 613 010.
- 2.The Nilavari Titta Asst. Director,
Land Survey Department, (Nila Alavai Thurai),
Office of the Thanjavur Collectorate,
Thanjavur - 613 010.
- 3.The District Revenue Officer,
Thanjavur District,
Thanjavur - 613 010.
- 4.The Revenue Divisional Officer,
Kumbakonam Taluk,
Kumbakonam,
Thanjavur District - 612 001.



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5.The Tahsildar,
Kumbakonam Taluk,
Kumbakonam,
Thanjavur District - 612 001.

6.The Settlement Tahsildar,
Nilavari Titta Tanivattachiyar,
Kumbakonam Town,
Dr. Moorthy Road,
Old Municipal Office,
Kumbakonam - 612 001.

7.The Inspector General of Registration,
Registration Department,
Government of Tamil Nadu,
Santhome Road,
Chennai – 600 028.

8.The Deputy Inspector General – Registration,
Registration Department,
Thanjavur - 613 001.

9.The District Registrar,
Registration Department,
Office of the District Registrar,
Cutchery Road,
Kumbakonam 612 001,
Thanjavur District.

10.The Sub Registrar Joint - 1,
Office of the District Registrar,
Cutchery Road,
Kumbakonam 612 001,
Thanjavur District.



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11.The Inspector General of Police,
Central Zone,
Trichy-20.

12.The Superintendent of Police,
Thanjavur District,
Thanjavur - 613 010.

13.The Deputy Superintendent of Police,
Kumbakonam Taluk,
Nall Road,
Kumbakonam - 612 001,
Thanjavur District

14.The Inspector of Police,
West Police Station,
Kumbakonam - 612 001,
Thanjavur District.

15.The Inspector of Police,
East Police Station,
Kumbakonam - 612 001,
Thanjavur District.

16.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Government of Tamil Nadu, Chennai.

17.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Government of Tamil Nadu,
Mayiladuthurai.

18.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Government of Tamil Nadu,
Kumbakonam – 612 001.



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19.The Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam – 612001.

20.The Town Planning Officer,
(Nagara Nila Alavai Pirivu),
Office of the Kumbakonam Municipal Corporation,
Kumbakonam – 612001. .. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the first respondent herein the District Collector, Thanjavur District to direct the other respondents 2nd to 19th herein in this Writ Petition not to allow any kind of mutation of records of the schedule properties as found in the Revenue Records as on date and restore the position anti-date to the year 1973 i.e., prior to take over of the Aadhi Kambatta Vishwanathar Temple situated at Kumbakonam by the 16th to 18th respondents - the Hindu Religious and Charitable Endowment Department and arrange to immediately create the DCP Record by this HR & CE Department and to maintain 1 to 15 register by them and consequently to arrange to evict all the illegal persons presently occupied by the encroachers on the lands of the above said Temple and fix fair rent as per the established law to the Temple land and its properties on the Survey Nos. found in the A register and TSLR register consisting Survey nos. of Ward 4, Block 5, 6, 7 consisting of around 55 Survey Nos.326, 320, 324, 325, 327, 330, 331, 362, 329, 332, 333, 345, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 363, 394-A, 394-B, 395, 399,



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346, 400, 365, 366, 368, 369, 370, 371, 372, 373, 374-A, 374-B, 376-A, 376-B, 375, 378, 379, 381, 384, 385, 388, 390/1, 390/2, 437 as found in Rule 29 survey register (DCP and SLR Registers) of HR & CE and also as found in the SLR (Settlement Land Register) A Register Survey No. 328 which is missing in the HR & CE Rule 29 property register but found in the revenue record of above said A Register.

For Petitioners	:	Mr.Prakash
For Respondent Nos.1 to 10, & 16 to 18	:	Mr.P.Thilak Kumar Government Pleader
For Respondent Nos.11 to 15	:	Mr.S.Ravi Additional Public Prosecutor
For Respondent Nos.19 & 20	:	Mr.M.Rajarajan

ORDER

[Order of the Court was made by M.SUNDAR, J.]

When the Captioned main 'Writ Petition' along with captioned 'Writ Miscellaneous Petitions' [hereinafter 'WP' and 'WMPs' respectively for the sake of brevity] were listed before this Court, two sets of orders/proceedings were made on 19.10.2023 and the same are as follows:



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'W.P.(MD)No.24101 of 2023

and

W.M.P.(MD)No.20287 of 2023

M.SUNDAR, J.,

and

R.SAKTHIVEL, J.,

**[Order of this Court was made by
M.SUNDAR,J.,]**

Captioned main 'Writ Petition' and captioned 'Writ Miscellaneous Petition' [hereinafter 'WP' and 'WMP' respectively for the sake of brevity] are in the Admission Board today.

2.Mr.R.Prakash, learned Counsel for PIL petitioners is before us in the physical court hearing.

3.In the earlier listings of the captioned main writ petition in the Admission Board on 05.10.2023 and 12.10.2023, the following proceedings were made:

05.10.2023:

'When the matter was taken up, Mr.R.Prakash, learned counsel for the 'two writ petitioners' ('PIL petitioners' for the sake of convenience){To be noted, 'PIL' stands for 'Public Interest Litigation'} submitted that subject matter pertains to temple property i.e., property belonging to a temple and it pertains to 'The Tamil Nadu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' ['TN HR&CE Act' for the sake of convenience and clarity]. Learned counsel, who had joined the hearing on the video conferencing platform submitted that it would be desirable to have a physical hearing.



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2. List this matter in the admission list under the same cause list caption i.e., 'FOR ADMISSION' on 12.10.2023'.

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12.10.2023:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 05.10.2023.

2. Today, Mr.R.Prakash, learned counsel for PIL petitioners was before us in person. Learned counsel submitted that the two writ petitioners have a right under the TN HR&CE Act. However, learned counsel sought for a short accommodation to examine the exact provision under TN HR&CE Act and come before us. Learned counsel requested for listing on 19.10.2023. Request acceded to.

3. List one week hence. List on 19.10.2023.'

4.The aforementioned proceedings shall now be read as an integral part and parcel of this proceedings / order. This means, the short forms, abbreviations and other short references used in the earlier proceedings will be used in the instant order / proceedings and in further proceedings also.

5.Factual matrix in a nutshell or in other words the crux and gravamen of the captioned matter is lands belonging to 'Aadhi Kambatta Vishwanathar Temple situate in Kumbakonam, Thanjavur District' [hereinafter 'said temple' for the sake of convenience and clarity] which is a non-listed temple under TN HR & CE Act and is a group temple *qua* 'Arulmigu Sarangapani Thirukovil' ['main temple' for the sake of convenience and clarity]; that the central issue that is being raised is, lands comprised in as many as 55 survey numbers in No.96,



Kumbakonam Town, Thanjavur District belong to said temple but patta for the said lands [to be noted, lands comprised in these 55 survey numbers shall be extracted and reproduced infra and the same is being collectively referred to as 'said lands'] have been transferred / given to various individuals; that steps have to be initiated to retrieve / claim said lands which are temple lands is the burden of the song of the PIL petitioner. According to PIL petitioners, lands comprised in 55 survey numbers (said lands) is as follows:

'Survey Nos.326, 320, 324, 325, 327, 330, 331, 362, 329, 332, 333, 345, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 363, 394-A, 394-B, 395, 399, 346, 400, 365, 366, 368, 369, 370, 371, 372, 373, 374-A, 374-B, 376-A, 376-B, 375, 378, 379, 381, 384, 385, 388, 390/1, 390/2, 437 in No.96, Kumbakonam Town, Thanjavur District [Ward 4, Block 5,6,7]'

6.Reverting to the earlier proceedings made in the previous listings, learned Counsel for PIL petitioners drew our attention to sub-section (15) of Section 6 of TN HR & CE Act. To be noted, sub-section (15) of Section 6 of TN HR & CE Act is an explanation of the expression 'Person having interest' slotted under Section 2 captioned 'Definitions'. Learned Counsel also fairly submitted that all the ingredients and determinants *qua* sub-section 15 of Section 6 have not been made by way of averments in the writ affidavit but nonetheless going by **A.A.Gopalakrishnan** principle **[A.A.Gopalakrishnan**



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Vs. Cochin Devaswom Board and Ors., reported in (2007) 7 SCC 482], this Court is *parens patriae qua* temple lands, Idol being in the status of minor, this Court is the guardian. To put it differently, this Court is *custodia legis* qua temple properties and therefore leaving the question of locus turning on sub-section (15) of Section 6 for the present, we are entertaining the captioned writ petition ie., PIL petition on the *parens patriae* principle.

7. Issue notice.

8. Mr. P. Thilak Kumar, learned Government Pleader accepts notice for respondents 1 to 10, 16 to 18, Mr. S. Ravi, learned Additional State Public Prosecutor, accepts notice for respondents 11 to 15 and Mr. M. Rajarajan, learned Standing Counsel accepts notice for respondents 19 and 20.

9. As there were two earlier listings, learned Government Pleader representing 18th respondent namely, the jurisdictional Assistant Commissioner of TN HR & CE Dept., was ready with a status report dated 11.10.2023 which is before us.

10. Paragraph No.4 of the status report is of relevance and the same reads as follows:

'4. It is respectfully submitted that the properties belonging to the said temple is there in the Kumbakonam Ward – 3, Block – 21 and Ward – 4, Block – 5, 6, 7 of the Town Survey Area and as per the Temple Records 1-15, A



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Register the same is entered in the name of the Temple. It is hereby brought to the kind knowledge of this Hon'ble High Court that since mistakenly on the basis of the Tamil Nadu Land Development Scheme / Natham Land Settlement Scheme, the individual patta in the name of the private parties have been made and against the same as per the G.O.385 Public 3 Revenue Department dated 17.08.2004, the Land Survey & Land Taxation Commission – North, Chepak, Chennai was approached by the then Executive Officer of the Temple on 23.11.2019 by way of an appeal. The same is pending and only then it was understood that the Revenue Divisional Officer (4th Respondent) is the competent authority. Therefore, when it was understood that there was a wrong appeal, now steps are being taken by the present functionaries of the temple to file the appeal before the Revenue Divisional Officer (4th Respondent).'

11. Learned Counsel for petitioner submits that aforementioned said lands comprised in 55 survey numbers which constitute writ prayers fall within Kumbakonam Ward – 3, Block – 21 and Ward – 4, Block – 5, 6, 7 as adverted to in paragraph No.4 of the status report.

12. We are acutely conscious of the fact that persons in whose names pattas stand are not before us nonetheless balancing the rights of the parties and considering that *prima facie* case has been made out and the matter pertains to temple lands, putting in a safety valve (infra) and protecting rights and contentions of



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parties in whose names pattas stand, we make the following order:

i) The TN HR & CE Dept., shall now pursue the appeal before the fourth respondent as expeditiously as possible;

ii) This Court is informed that the appeals are being preferred under Section 12 of the 'Tamil Nadu Patta Passbook Act, 1983' ['Patta Passbook Act' for the sake of convenience]. We do not express any opinion on the merits of the appeal or the provision under which the appeal is being preferred as all this is within the domain of the appellate authority concerned;

iii) The TN HR & CE Dept., which will be the appellant shall move the appellate authority for interim order pending appeal and the appellate authority ie., fourth respondent before us is requested to consider the same on its own merits and in accordance with law as expeditiously as his business would permit after putting the patta holders on notice;

iv) In the interregnum, having balanced the rights of the parties to prevent irreversible legal injury, there will be an order of *status quo* ie., an order of *status quo* regarding further encumbrance or further alienation of said lands between now and next listing which will be four [4] weeks hence. In other words, this interim order will operate for a period of four [4] weeks from today, which will be the next listing date.

13.List on 16.11.2023.'



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'W.M.P.(MD)Nos.20286, 20288, 20291, 20292,
20295 and 20296 of 2023

in

W.P.(MD)No.24101 of 2023

M.SUNDAR, J.,

and

R.SAKTHIVEL, J.,

[Order of this Court was made by
M.SUNDAR,J.,]

*Read this in conjunction with and in continuation
of the proceedings / orders made in the main writ
petition and W.M.P.(MD)No.20287 of 2023.*

*2.In the light of the aforementioned proceedings,
list captioned Writ Miscellaneous Petitions with the
main Writ Petition.*

3.List on 16.11.2023.'

2.The aforementioned proceedings shall now be read as an
integral part and parcel of this final order. To be noted, considering the
trajectory the matter has taken after the last listing, we are taking up the
captioned main WP itself along with captioned WMPs with the consent
of both sides and this final order is being made.



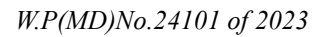
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3.Paragraph 12 of our earlier order dated 19.10.2023 in the captioned main WP and one of the captioned WMP namely W.M.P(MD)No.20287 of 2023 are relevant. To be noted, in paragraph 12 as many as four sub-paragraphs contain directives and an interim order of status quo.

4.Today, Mr.R.Prakash, learned counsel on record for PIL petitioner; Mr.P.Thilak Kumar, learned Government Pleader for respondents 1 to 10 and 16 to 18; Mr.S.Ravi, learned Additional Public Prosecutor for respondents 11 to 15 and Mr.M.Rajarajan, learned counsel for respondents 19 and 20 are before us.

5.Adverting to aforementioned paragraph 12 more particularly sub-paragraphs (i) to (iii) therein, learned State Counsel submits that appeals have since been filed before fourth respondent and the same has been taken on file as Appeal No.'009942 of 2023'. It is noticed that there are as many as 80 alleged encroachers, who have been arrayed as respondents in the appeals. Learned State Counsel also



before fourth respondent.

carried to its logical end.

decide the main appeal also, after hearing both sides.



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8.In the light of the narrative thus far, we make the

following order:

'(i) Stay petitions in the aforementioned appeal now preferred before fourth respondent ie., appeal preferred by the State namely Appeal No.009942 of 2023, shall be decided on its own merits and in accordance with law by fourth respondent as expeditiously as his official business would permit after giving ample and adequate opportunity to both sides, more particularly, the alleged encroachers as they are not before this Court but in any event within twelve (12) weeks from today ie., by 08.02.2024;

(ii) Within the aforementioned twelve (12) weeks time frame, if it is possible for fourth respondent to dispose of the main appeal, it is well open to fourth respondent to decide the same after hearing both sides and after providing adequate and ample opportunity to both



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sides.

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(iii) As regards stay petitions, post disposal of the same by fourth respondent within aforementioned twelve weeks, the parties concerned may require a window to carry the matter further to the next tier provided under the statute concerned. Therefore, the interim order of status quo already granted by this Court vide sub-paragraph (iv) of paragraph 12 of our order dated 19.10.2023 in the captioned main WP and W.M.P(MD)No.20287 of 2023 thereat will now be extended and will now continue to operate for sixteen (16) weeks from today ie., till 07.03.2024.

9.As regards other captioned WMPs are concerned, the same are disposed of as closed without expressing any view or opinion on the merits, leaving it open to PIL petitioner and/or anyone concerned to canvass the same depending on the circumstances and the trajectory the matters take. To be noted, we have exercised *parens patriae* jurisdiction *inter alia* by respectfully following the approach of Hon'ble



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Supreme Court in **A.A.Gopalakrishnan's** case and therefore, whatever questions have been left open vide captioned WMPs they will remain left open for future course of action, if any. As this Court exercises *parens patriae* jurisdiction, it is not necessary to examine locus or Rule 15 of the Madras High Court Writ Rules, 2021 petition to permit the petitioners to file a single Writ Petition and other prayers qua captioned other WMPs and therefore they are being closed without expressing any opinion.

10.Captioned WP is disposed of as closed with aforementioned observations and directives. There shall be no order as to costs.

[M.S.,J.] [R.S.V.,J.]
16.11.2023

Index : Yes
Neutral Citation : Yes
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To
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- 1.The District Collector,
Thanjavur District,
Thanjavur - 613 010.
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M.SUNDAR, J.,
and
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