



W.P.(MD) No.28438 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2023

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.28438 of 2022

and

W.M.P.(MD) Nos.22453 and 22454 of 2022

T.Ramalingam

... Petitioner

/vs./

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungampakkam,
Chennai 600 034.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Nagercoil 629 002,
Kanyakumari District.

3.The Executive Officer,
Hindu Religious and Charitable Endowment Department,
(Affiliated and Non Affiliated Temple),
Suchindram and Post 629 704, Kanyakumari District.

4.The District Collector,
Collector's Office,
Nagercoil 629 001,
Kanyakumari District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 2nd respondent in Na.Ka.No.139/2021/A3 dated 17.10.2022 and the consequential Auction Notice No.Nil date Nil published by the 3rd respondent and quash the same as illegal and consequently direct the 2nd respondent to remove the name board and stone marks installed in the petitioner's property in Survey No.42/22 situated at Vellimalai Village, Kalkulam Taluk, Kanyakumari District.

For Petitioner : Mr.F.X.Eugene for
Mr.T.Murugan
For R1, R2 & R4 : Mr.P.Subbaraj
Special Government Pleader
For R3 : Mr.VR.Shanmuganathan

ORDER

The petitioner has approached this Court for the issue of a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the second respondent in Na.Ka.No.139/2021/A3 dated 17.10.2022 and the consequential auction notice published by the third respondent and quash the same as illegal and consequently directing the second respondent to remove the name board and stone marks installed in the petitioner's property in S.No.42/22 situated at Vellimalai Village, Kalkulam Taluk, Kanyakumari District.



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2.The facts that have constrained the petitioner to approach this Court have been narrated as follows in the affidavit filed in support of this writ petition.

3.It is the case of the petitioner that the property comprised in R.S.No. 42/22, old S.No.3070/93, measuring an extent of 0.09.5 ares (28½ cents) was purchased by him from one Janardhananpillai, S/o.Kumarapillai, Mathaviamma, W/o.Janandhananpillai and Bahulayan, S/o.Janardhananpillai on 02.01.1998 for valid consideration. After the purchase, the petitioner has been in possession and enjoyment of the same.

4.It is his case that the property is the ancestral property of his vendors and it belonged to one Raman Bhoothalingam Iyer. After the partition in his family in the year 1075 (AD 1900), the property fell to the share of one Valliamma and Rugmaniamma. She had sold the property to one Velan, Packianeelan and Madamuthu Bhagavathi Perumal in 1101 (AD 1926). The vendors had mortgaged the property and had taken the property on lease back from the mortgagee. Thereafter, the mortgagee had obtained a decree in O.S.No.1132 of 1107 (AD 1932).



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5. Pending the suit, the mortgagee had died and his son had impleaded himself in the proceedings and had taken delivery of the property through Court auction on 07.02.1114 (AD 1939). Thereafter, he had sold the property to the defendants therein. The petitioner's vendor had got title of property by virtue of the registered partition deed in Doc.No.1171/1981. They had also obtained patta in respect of the property in patta No.7606. After the sale, the property was subdivided and separate patta was also obtained by the petitioner. It is the case of the petitioner that he has, after purchasing the property, planted coconut trees, which is yielding fruits for the last 24 years.

6. The petitioner would submit that in the year 1956, one Ramasamy Iyer had filed a suit O.S.No.497 of 1956 on the file of the Principal District Munsif Court, Padmanabhapuram stating that the property belonged to Kalpadi Grammam Sri Ramar Devaswom and that he was the managing trustee of the Devaswom. The petitioner's vendor, Janardhanan Pillai, was arrayed as the defendant. The learned Principal District Munsif, Padmanabhapuram, has misconstrued the survey number of the property and had passed a decree stating that the property belonged to Devaswom. This misconception was rectified by



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the appellate Court in A.S.No.313 of 1958 on the file of the Subordinate Court, Nagercoil.

7.The learned Judge had observed that the suit property belonged to the petitioner's vendors, Kumarapillai and Janardhanan Pillai. Aggrieved by the said judgment and decree, the plaintiff in the suit, namely, Ramasamy Iyer had filed S.A.No.1453 of 1959 before this Court and by judgment dated 13.03.1962, this Court had dismissed the appeal. This being the factual position, the respondents without any notice or intimation had all of a sudden installed their name board in the property. A detailed representation dated 06.01.2022 was sent by the petitioner to the respondents, which did not yield any response constraining the petitioner to file W.P.(MD) No.3764 of 2022 on the file of this Court and by an order dated 01.03.2022, the writ petition was disposed of directing the second respondent therein to dispose of the representation of the petitioner dated 06.01.2022 within a period of six weeks from the date of receipt of a copy of the order.

8.Pursuant to the orders of this Court, the second respondent had called upon the petitioner for an enquiry on 01.08.2022, wherein the petitioner had



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submitted the facts and produced documents. The second respondent had sent an enquiry report on 17.10.2022 stating that the revenue document SLR show the name of Janardhanan Pillai as Kalapady Sree Ramar Kovil Tharkala Nambukar. The second respondent had relied on these revenue documents and ignored the judgment and decree of the Court. Thereafter, the second respondent has put up a notice stating that they propose to hold an auction of the coconuts on 21.12.2022 at 11.00 am. Therefore, the petitioner has come forward with the above writ petition.

9.A counter has been filed by the respondents 2 and 3, wherein they would submit that the property in question has been classified in the revenue records as Devaswom Vaga or Devaswom Poramboke and these lands and other Pandaravaka lands are in the possession and enjoyment of the incorporated Devaswoms after the 30th meenam 1097, corresponding to 12th April 1922 and could be dealt with only as Devaswom properties. This factum has not been brought to the notice of this Court in the earlier proceedings.



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10.The respondents would further submit that after the territory had come within the State of Madras, the Madras Hindu Religious and Charitable Endowments Act became applicable and in the year 1959, after the Hindu Religious and Charitable Endowments Act came into force, all temples and the properties of the temples came under the protection of the statutory authorities under this Act. The third respondent after verifying the records found that the property belonged to the temple, although the revenue records stood in the name of an individual and therefore, treated the same as Devaswom property under Section 97D of the Tamil Nadu Hindu Religious and Charitable Endowment Act 22 of 1959 (*herein after referred to as Act*).

11.Further, during the pendency of the earlier writ petition, W.P.(MD) No. 3764 of 2022, this Court had directed the fourth respondent, the District Collector to submit a report, which has also been done and the report would indicate that the land in R.S.No.42/22 was in the possession of the second respondent and the lands comprised in R.S.No.42/23 was in the possession of the petitioner. Therefore, the respondents would submit that the petitioner is not entitled to the relief claimed.



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12.Heard the learned counsels appearing on either side.

13.A status report filed by the fourth respondent would indicate that the lands comprised in old S.No.3070/93 in Kadiyapattinam Village, which is also known as Vellimalai Village, has been sub-divided as R.S.Nos.42/22 and 42/23. The report would further indicate that field inspection with relevant officials in the presence of both the petitioner as well as the respondents had been undertaken.

14.R.S.No.42/22 was found to be in the possession of the second respondent and the area is having an extent of 0.095.5 hectares. In the said property, there were 15 number of coconut trees apart from the notice board of the HR & CE Department. In R.S.No.42/23, which measures 0.27.0 hectares, there were 18 coconut trees, 1 mango tree and teak wood trees and the land was in the possession of the petitioner. The field inspection report would therefore imply that the property in respect of which the above writ petition has been filed is in the possession of the second respondent.



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15.A perusal of the judgment in A.S.No.313 of 1958 does not indicate the total extent of property comprised in old S.No.3070/93 and there is a reference in the second appeal filed before this Court, namely S.A.No.1453 of 1959 that the suit property therein under Ex.D8 and Ex.D9 stood in the name of the trust. There is nothing to show that after old S.No.3070/93 had been sub-divided into two new survey numbers, the name of the petitioner or his predecessors in title continued to be reflected in the revenue records.

16.Be that as it may, in the light of the report of the fourth respondent, wherein possession as on date with reference to R.S.No.42/22 is now with the second respondent, the relief claimed in this writ petition cannot be granted without the petitioner having his right to the said survey number being declared.

17.The contention of the third respondent is that the property in respect of which the present writ petition has been filed is not the property that was covered under the earlier decree in the suit O.S.No.479 of 1956 on the file of the Principal District Munsif Court, Padmanabhapuram. Therefore, considering the fact that



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there is serious dispute with reference to title, the petitioner has to establish his right to R.S.No.42/22.

18.The learned counsel for the third respondent would submit that they would deposit the amounts received from auctioning the usufruct in the land comprised in S.No.42/23 till the disposal of the proceedings and they shall be taking care of the land.

19.In the result, the Writ Petition is disposed of. Liberty is given to the petitioner to move the civil Court, since serious issue of title has been raised in respect of R.S.No.42/22. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

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This matter is listed today under the caption 'for being mentioned'.

2. In Paragraph No.14, it has been wrongly typed as 0.095.5 hectares instead of 0.09.5 hectares; in Paragraph No.17, it has been wrongly typed as O.S.No.479 of 1956 instead of O.S.No.497 of 1956; and in Paragraph No.18, it has been wrongly typed as S.No.42/23 instead of R.S.No. 42/22. The said mistakes stand corrected. Registry is directed to issue fresh certified copy.

30.06.2023

abr