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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.1136 of 2024
and
W.M.P.Nos.1184 and 1186 of 2024
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Govindakudi Appakutty Ayyar's Charity,
represented by its Managing Trustee,
S.K.R.Balasubramanian,
having office at
No.5, Banadurai Sannathi Street,
Kumbakonam-612 001. .. Petitioner

Vs.

1. Secretary to Government,
   Revenue and Disaster Management
   Department,
   Government of Tamil Nadu,
   Fort St.George,
   Chennai-600 009.

2. The District Collector,
   Thiruvarur District,
   Nagapattinam Road,
   Thiruvarur-610 004.

3. The District Revenue Officer,
   Thiruvarur District,
   Nagapattinam Road,
   Thiruvarur-610 004.

4. The Tahsildar,
   Taluk Office,
   Valangaiman-612 804. .. Respondents

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Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for entire records pertaining to impugned order dated 17.07.2023 in Na.Ka.No.8558/2022/VO2 and the order dated 12.10.2023 in Na.Ka.No.2115/2023/A10 of the second respondent as far as the land comprised in R.S.No.27/2 of the Govindhakutti Vilangaiman Taluk, Thiruvarur District and quash the same and direct the respondents herein to issue Patta in favour of the petitioner/Institution so far as land comprised in R.S.No.27/2 of the Govindhakutti, Vilangaiman Taluk, Thiruvarur District.

For petitioner : Mr.V.G.Suresh Kumar
For respondents: Mr.T.Arun Kumar, Add.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for entire records pertaining to impugned order dated 17.07.2023 in Na.Ka.No.8558/2022/VO2 and the order dated 12.10.2023 in Na.Ka.No.2115/2023/A10 of the second respondent as far as the land comprised in R.S.No.27/2 of the Govindhakutti Vilangaiman Taluk, Thiruvarur District and quash the same and direct the respondents herein to issue Patta in favour of the

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petitioner/Institution so far as land comprised in R.S.No.27/2 of the Govindhakutti, Vilangaiman Taluk, Thiruvarur District.

2. Learned counsel for the petitioner submitted that the property in question belongs to the first respondent, though originally, in the year 1844, the original owner executed a Will on 28.08.1844 and based on the Will, subsequently, one Rajammal and K.G.Swaminatha Iyer, have filed a suit before the Civil Court (Subordinate Court, Kumbakonam) in O.S.No.23 of 1920 in which, a preliminary Scheme Decree was passed on 03.01.1921 and it was amended on 07.04.1964 and 27.09.1972 and subsequently, in RSLR (Resurvey Settlement Register), the property in question was wrongly classified as 'Government Land', though the parties were not aware of the same and thereafter, the Government has now tried to put up constructions and therefore, the petitioner/Charity (Trust) had made objections and in consideration of the said objection, the impugned orders came to be passed, against which, the present Writ Petition is filed.

3. It is further contended by the learned counsel for the petitioner that in the counter affidavit, the second respondent had stated that in 1925, the RSLR land has been shown as

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'Government Dry Tharisu', but however, the Patta column therein still shows Trust/Charity's name. Therefore, according to the petitioner, the impugned orders passed by the respective respondents, are liable to be set aside.

4. The learned Additional Government Pleader appearing for the respondents submitted that in the year 1925, in the RSLR, the land(s) had been classified as "Government Tharisu", but however, the petitioner has not produced any title document. Unless the petitioner produces title and if they are not entitled to the relief, since RSLR land has been classified as 'Government Tharisu', the petitioner is not entitled to the relief sought for in this Writ Petition.

5. Heard both sides and perused the materials available on record.

6. Originally, the land in question belongs to the Govindakudi Appakutty Ayyar and he executed the above said Wil, based on which, the suit in O.S.No.23 of 1920 (on the file of Subordinate Court, Kumbakonam) was filed by the said Rajamammal (died) and K.G.Swaminathiar against the defendant-Gopu Nataraja Chetty,

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and in the said suit, the Court passed preliminary Scheme Decree on 03.01.1921. Now, the petitioner is managing the entire property, but however, in the RSLR of the year 1925, the classification of the land is mentioned as "Government/Inam" in Column No.4 therein and the authorities have mentioned the land as the Government Land and in Column No.5(d), it is shown as 'dry' and also in the last column, it is shown as "Tharisu". Further, in Column No.14, the name of the petitioner herein is mentioned. Therefore, originally, the land was a private land and the land owner executed the said Will, based on which, the Trust (Govindakudi Appakutty Ayyars Charity) was formed and in order to maintain the Charity/Trust, the suit in O.S.No.23 of 1920 was filed, in which the said preliminary Scheme Decree was also passed.

7. Taking advantage of the land in question, which was not being cultivated, or used for any other purpose, at one point of time, in the RSLR, the land was classified as "Government Land", but however, since the property is the Trust property, even the Trustee has no authority to alienate or encumber the property under dispute. Even the provisions of the Limitation Act will not be applicable to the Charity/Trust and the law of 'estoppel' and law of

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'adverse possession' are also not applicable to the Charity/Trust.

8. Further, in the computerised Patta, as pointed out by the learned counsel for the petitioner, for a portion of the land(s), the Patta was granted, however, only they are refusing to give the other portion of the land, in which it is clearly shown that the Government itself has admitted that the petitioner/Charity is the owner of the property in question.

9. Therefore, the contentions of the Government (respondents) are not acceptable and that no title deed was produced before this Court to substantiate their contentions. The Charity/Trust approached the competent Civil Court and the preliminary Scheme Decree (which was amended subsequently) was also passed by the Civil Court, and the same has not been challenged by any of the parties, and there is also no record to show that subsequently, the Scheme Decree was set aside or it was cancelled.

10. Hence, in the above facts and circumstances, the contentions of the official respondents are not acceptable. Both the impugned orders are accordingly quashed. The Writ Petition is

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allowed as prayed for. The respondents are directed to issue Patta in respect of the property in question, in the name of the petitioner-Charity (Trust).

11. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

22.02.2024

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To

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   Chennai-600 009.

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