IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **12.02.2024**

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Writ Appeal Nos.2508 & 2550 of 2022
and
C.M.P.Nos.19528 & 20073 of 2022

P.Senthil Kuamr ... Appellant in W.A.No.2508 of 2022

Dhanaseelan ... Appellant in W.A.No.2550 of 2022

Vs.

1.The District Collector,
Dharmapuri District,
Dharmapuri – 636 705.

2.The District Revenue Officer,
Dharmapuri District,
Dharmapuri – 636 705.

3.The Revenue Divisional Officer,
Dharmapuri Division,
Dharmapuri District,
Dharmapuri – 636 701.

4.The Tahsildar,
Palacode Taluk,
Dharmapuri District,
Dharmapuri – 636 808.

5.The Village Administrative Officer,
Jakkasamudram Village,
Palacode Taluk,
Dharmapuri District – 636 808.

6.The Commissioner,
Hindu Religion and Charitable Endowments,
Uthamar Gandhi Road,
Nungambakkam, Chennai – 600 034.

7.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Kottai Mariamman Temple,
Salem – 636 001.

8.The Assistant Commissioner,
Hindu Religion and Charitable Endowments,
Dharmapuri – 636 701.

9.The Executive Officer,
Hindu Religion and Charitable Endowments,
Palacode, Dharmapuri District – 636 808.

10.The District Registrar,
Dharmapuri District,
Dharmapuri – 636 701. ... Respondents in both Writ Appeals

Prayer in W.A.No.2508 of 2022: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 06.06.2022 in W.P.No.4908 of 2022.

Prayer in W.A.No.2550 of 2022: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 06.06.2022 in W.P.No.7454 of 2022.

For Appellants : Mr.C.Umashankar (in both W.A's)
For R1 to R5 : Mr.T.Arunkumar
Additional Government Pleader
(in both W.A's)
For R6 to R9 : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR & CE)
(in both W.A's)

COMMON JUDGMENT

(Judgment of the Court delivered by S.M.SUBRAMANIAM)

These writ appeals have been filed to set aside the Order dated 06.06.2022 passed in W.P.Nos.4908 & 7454 of 2022.

2. The Writ petitioners are the appellants before us. The Writ Petitions were filed challenging the order of the District Revenue Officer, Dharmapuri dated 11.01.2022, to conduct re-survey and issue Patta in the name of Arulmigu Athinarayanaswamy Temple, at Jakkasamudram Village, Dharmapuri District.

3. The application submitted by the Competent Authority under the Tamil Nadu HR & CE Act, 1959 for UDR Patta had been entertained by the

District Revenue Officer, Dharmapuri. The District Revenue Officer has conducted an enquiry and granted Patta in the name of the subject temple. The said order came to be challenged in the writ proceedings. Since the learned Single Judge has dismissed the Writ Petitions, the present writ appeals came to be filed.

4. Learned Counsel for the appellants, Mr.C.Umashankar would submit that as per the order of the Settlement Officer dated 01.06.1968, the great grand father of the petitioner Thiru.Ramanuja Iyer was performing Puja and Patta was granted under Section 8(3)(ii) r/w Section 20 (1) (2) and (3) of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963.

5. The order passed by the Settlement Officer relied upon by the appellants would reveal that the appellants, their fathers and grand fathers were in continuous possession of the subject property and they have rendered Puja services to the temple of Athinarayanaswamy Temple and were willing to continue the performance of Puja services, to hold the suit land permanently. Relying on the said statement, the Settlement Officer has passed

the order, in exercise of the powers delegated in G.O.No.401/Revenue Dated 18.08.1965. Accordingly, the subject land was granted in the name of Thiru.Ramanuja Iyer and Thiru.Duraisamy Iyer and consequently, Ryotwari Patta was granted under Act 30 of 1963.

6. Mr.C.Umashankar, would further submit that they are performing puja and in occupation of the subject property and subsequently sold the property in favour of third parties, in order to meet out their personal and family expenditures and to lead their livelihood.

7. Sale of temple property has not been disputed between the parties. Learned Single Judge though considered Section 21 of the Act 30 of 1963 and considered the fact regarding the long possession of the family members of the petitioners performing pujas continuously, failed to appreciate the same and dismissed the writ petitions.

8. Learned Counsel for the appellants would rely on Section 21 of T.N.Act 30 of 1963 and stated that the appellants are continuously performing the puja services to Athinarayanasamy Temple and therefore, the

order of the Settlement Officer assisted by their possession would be sufficient to grant the relief. The District Revenue Officer has no jurisdiction to entertain the application for grant of UDR Patta and thus, the impugned order which was under challenge in the writ proceedings is to be set aside.

9. Learned Special Government Pleader Mr.N.R.R.Arun Natarajan appearing on behalf of the HR & CE Department would oppose by stating that right to alienate the temple property has not been conferred on the petitioner's or their ancestors in order dated 01.06.1968 by the Settlement Officer. Therefore, the alienation of property made by the petitioners are null and void in view of Section 41 of the HR & CE Act. When the entire transaction between the petitioners and third parties found to be null and void and the UDR Patta granted in the name of the temple is in consonance with the provisions of the Act, the learned Single Judge has rightly dismissed the writ petitions.

10. Considering the arguments as advanced between the appellants and the respondents to the *lis* on hand, Act 30 of 1963, as far as the facts in the present case are concerned is a general Act. Act 30 of 1963 defines

"Inam" means (i) a grant of melvaram in any inam land; or (ii) a grant of both the melvaram and the kudivaram in any inam land; which grant has been made, confirmed or recognised by the Government. Section 21 deals with "Service Inams". As far as the temple properties are concerned, the provisions of the HR & CE Act would be applicable, since it is a special Act. When the Special Act provides dealing of Inam lands and its resumption, the general Act cannot be applied. Section 34 of the HR & CE Act deals with alienation of immovable property. Sub-Section (1) states that *"Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the commissioner as being necessary or beneficial to the institution"*

11. Section 41 provides resumption and re-grant of inam granted for performance of any charity or service. Sub-Section (1) denotes that "Any exchange, gift, sale or mortgage and any lease for a term exceeding five years of the whole or any portion of any inam granted for the support of maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity and made,

confirmed or recognized by the Government shall be null and void." Proviso clause states that "Provided that any transaction of the nature of aforesaid (not being a gift) may be sanctioned by the Government as being necessary or beneficial to the institution."

12. Therefore, the main ingredient under Section 41 of the HR & CE Act would be any lease cannot be granted beyond 5 years and any such transaction must be for the benefit of the religious institution. Thus, the alienation of the property by the petitioners and their family members for their possession and personal use is *null* and *void* under Section 41 of the HR & CE Act.

13. As stated above, the HR & CE Act will prevail over Act 30 of 1963, since the subject property is admittedly a temple property stands in the name of the deity. More so, it is admittedly a service inam. Therefore, the family members of the petitioners are entitled for usufructuary and not to alienate the property. In the present case, continuance of service by the family members are disputed by the respondents. Further, the property had already been alienated. Thus, this Court do not find any infirmity in respect

of the order passed by the District Revenue Officer, Dharmapuri in granting Patta in the name of the Temple by conducting an enquiry under the provisions of the Tamil Nadu Patta Passbook Act, 1983.

14. The learned Single Judge has elaborately considered the scope of service inam under Section 21 of Act 30 of 1963. However, the admitted fact is that the subject property belongs to the temple and therefore, Section 41 of the HR & CE Act would be relevant, which prevails over Act 30 of 1963. Under Section 41, the temple is empowered to resume the property by filing an appropriate application before the District Collector concerned. More so, the lease cannot be granted beyond the period of 5 years and in the present case, the alienation done by the petitioners and their family members are null and void under Section 41 of the Act.

15. Thus, we do not find any infirmity in respect of the decision taken by the learned Singly Judge by dismissing the writ petitions. However, we are inclined to add Section 41 of the HR & CE Act, since the property stands in the name of the Temple and admittedly a service inam land. For all

these reasons, both the Writ Appeals are **dismissed.** It is made clear that the Temple administration has to utilize the property for the benefit of the temple by scrupulously following the provisions of the HR & CE Act.

[S.M.S.J.] [K.R.S.J.]
12.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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