



W.A.No.3296 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A.No.3296 of 2023
and
C.M.P.No.26807 of 2023

K. Rajan Babu

... Appellant/Petitioner

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,



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Dharmapuri District 636 808.

6. The Commissioner,
Hindu Religion and Charitable Endowments,
Uthamar Gandhi Road,
Nungmabakkam, Chennai-34.

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

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

9. The Executive Officer,
Hindu Religious and Charitable Endowments,
Palacode, Charamapur District-636 808.

10. The District Registrar,
Dharmapuri District,
Dharmapuri-636 801.

... Respondents/Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the appeal and set aside the order dated 06.06.2022 in WP No.4693 of 2022.

For Appellant : Mr.C.Umashankar

For Respondents : Mr.A.Selvendran,
Special Government Pleader
(for R1 to R5 & R10);

Mr.K.Karthikeyan,
Government Advocate (H.R.&C.E.)
(for R6 to R9)



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JUDGEMENT

(Judgement of the Court was delivered by S.M.Subramaniam J.)

These writ appeal has been filed to set aside the Order dated dated 06.06.2022 in WP No.4693 of 2022.

2. The Writ petitioner is the appellant before us. The Writ Petition was 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 Petition, the present writ appeal came to be filed.



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4. Learned Counsel for the appellant, 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 appellant would reveal that the appellant, his father and grand father were in continuous possession of the subject property and they have rendered Puja services to the temple namely, 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



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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 further and considered the long possession of the property by the family members of the petitioner and performing pujas continuously, failed to appreciate the same and dismissed the writ petitions.

8. Learned Counsel for the appellant would rely on Section 21 of T.N.Act 30 of 1963 and stated that the appellant is continuously performing the puja services to Athinarayanasamy Temple. 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. Thus, the impugned order which was under challenge in the writ proceeding is to be set aside.

9. Learned Government Advocate Mr.K.Karthikeyan appearing on behalf of the H.R. & C.E. Department would oppose by stating that right



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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 petitioner is null and void in view of Section 41 of the H.R. & C.E. Act. When the entire transaction between the petitioner 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 appellant 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 H.R. & C.E. 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 H.R. & C.E. Act deals with alienation of immovable property. Sub-Section (1)



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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 H.R. & C.E. 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,



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the alienation of the property by the petitioner and his family members for their possession and personal use is *null* and *void* under Section 41 of the H.R. & C.E. Act.

13. As stated above, the H.R. & C.E. 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 petitioner 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 H.R. & C.E. Act would be relevant, which prevails over Act 30 of 1963. Under Section 41, the temple is empowered



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to resume the property by filing an 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 petitioner and his 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 petition. However, we are inclined to add Section 41 of the H.R. & C.E. Act, since the property stands in the name of the Temple and admittedly a service inam land. For all these reasons, the Writ Appeal is **dismissed**. It is made clear that the Temple administration is bound to resume the land and utilize the property for the benefit of the temple by scrupulously following the provisions of the H.R. & C.E. Act. No costs. Consequently, the connected miscellaneous petition is closed.

(S.M.S.J.,)

(K.R.S.J.,)

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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