IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.NO. 34181 OF 2017
AND
W.M.P. NO. 37973 OF 2017

Shri Ramakrishna Math,
Mylapore, Chennai,
represented by its Manager
Swami Vimurtananda,
No.31, Ramakrsihna Math Road,
Mylapore, Chennai 600 004. .. Petitioner

- Vs -

1. The Secretary
   Government of Tamil Nadu
   Tourism, Culture & Religious Endowments
   Department, Secretariat, Fort St. George
   Chennai 600 009.

2. The Commissioner
   Hindu Religious & Charitable Endowments
   Department, No.119, Uthamar Gandhi Salai
   Nungambakkam, Chennai 600 034.

3. A/m.Kabalishwarar Temple
   represented by its Joint Commissioner/
   Executive Officer, Mylapore

Chennai 600 004. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Certiorarified Mandamus calling for the entire records pertaining to the impugned Communication dated 30.11.2017 of the 1st respondent made in Letter No.7812/A.Nee.3-1/2014 and quash the same and direct the 1st respondent to dispose the appeal dated 29.01.2002 on merits.

For Petitioner : Mr. Yashod Vardhan, Sr. Counsel

For Respondents : Mr. N.R.R.Arun Natarajan,
Spl.G.P. for R1 & R2
Mr.A.K.Sriram SC, for
M/s.A.S.Kailasam & Associates for R-3

ORDER

The impugned communication, in and by which the 1st respondent has rejected the appeal petition of the petitioner with regard to the claim made by the 3rd respondent and further directed the petitioner to take recourse before the appropriate forum with regard to the claim of the 3rd respondent is assailed before this Court by filing the present writ petition.

2. It is the case of the petitioner that it is a religious institution engaged in

service to humanity and providing spiritual solace to the devotees and with a view to provide for a much larger space for the congregational prayer hall, which was found inadequate to accommodate large number of devotees, land measuring 6 grounds and 2150 sq.ft., belonging to the 3rd respondent was sought, which lands were leased out to one Rathina Naicker and upon his demise, it was enjoyed by his son.

3. To acquire the said land, the petitioner approached the Tamil Nadu Temple Administrative Board in the year 1993 for allotment of the said land in favour of the petitioner for the construction of a new temple and considering the same, the Tamil Temple Administrative Board, vide its order dated 9.12.1993 granted No Objection Certificate for acquisition of the land from the temple and grant the same to the petitioner.

4. It is the further averment of the petitioner that pursuant to the said permission, the petitioner paid a consolidated compensation of Rs.5 Lakhs to the erstwhile tenant on 10.4.1984 and on the basis of the resolution of the Board, the petitioner was permitted to enter upon the subject land and the petitioner

entered into the said land on 14.9.1994 and started construction of the new temple.

5. It is the further averment of the petitioner that without quoting the value, an amount of Rs.50 Lakhs was fixed as interim payment pending fixation of the land value on 24.8.1995 and the same was paid on 5.12.1995. The said value paid was equivalent to 80% of the total value of the land as per the prevailing land value on the date of allotment.

6. It is the further averment of the petitioner that thereafter, vide proceedings dated 4.3.1997, the temple authorities fixed the land value at Rs.611.80 per sq.ft. and calculated the total value for the land at Rs.1,01,25,290 and demanded payment of Rs.1,15,92,750, which included 30% solatium and 12% interest. It is the averment of the petitioner that solatium and interest is not applicable in the present case.

7. It is the further averment of the petitioner that as solatium and interest is not applicable to the present case, the petitioner objected to the same, but the

institution paid the remaining balance of Rs.51,25,290/- as full payment of the entire land value on 21.3.1997. It is the further averment of the petitioner that the petitioner paid a further sum on 10.07.1997 towards part payment of interest and the balance of Rs.2,43,142/- was promised to be paid at the time of registration. However, inspite of the said payment, the temple authorities have not come forward to execute the sale deed in favour of the petitioner.

8. It is the further averment of the petitioner that when the matter stood thus, the 2nd respondent sent a communication dated 23.11.2001 dated 23.11.2001 fixing the land rent at the rate of Rs.4,019/- per sq.ft. in contravention of the earlier fixation at Rs.611.80 per sq.ft. Based on the erroneous fixation, the 1st respondent called upon the petitioner to pay a sum of Rs.6,65,14,450/-. The communication between the parties as also the date of allotment and the earlier determination have not been taken into consideration while fixing the above amount.

9. It is the further averment of the petitioner that since the refixation is against the procedures contemplated by law, appeal was filed before the 1st

respondent challenging the refixation in the year 2002. However, no action was taken on the said appeal, which was kept for 15 years and, thereafter, vide communication dated 30.11.2017, the same was rejected as not maintainable in terms of Section 34 (4) of the HR & CE Act in terms of the amendment vide Act 38 of 1998 and the petitioner was directed to approach the competent civil court. Aggrieved by the said order, the present petition has been filed by the petitioner.

10. The facts, as have been stated above, were reiterated by the learned senior counsel appearing for the petitioner and the learned senior counsel further submitted that the 1st respondent, without adverting to Section 34 (4)(A) of the HR & CE Act has mechanically returned the appeal filed by the petitioner and the delay caused by the 1st respondent is deliberate. It is the further submission of the learned senior counsel that the negligent and lethargic functioning of the 1st respondent has kept the issue alive for over 25 years and that the impugned action is a clear non-application of mind on the part of the 1st respondent.

11. It is the further submission of the learned senior counsel that in view

of the return of the appeal by the 1st respondent, the 3rd respondent has issued a demand notice dated 18.12.2017 demanding a sum of Rs.36,91,98,526/- towards the land value and arrears and that such demand has been made without considering the earlier orders, communications and deposits made by the institution. Further the fixation of land value at Rs.4,019/- per sq.ft. is liable to be set aside. Accordingly, learned senior counsel prays for allowing the present appeal.

12. Per contra, learned standing counsel appearing for the 1st and 2nd respondents, while fairly admitted the payment of various sums by the petitioner, however submitted that the fixation of land value is not within the purview of the temple and, therefore, the fixation of a sum of Rs.611.80 per sq.ft., as the value of the land at the material point of time is wholly erroneous. When the temple has no authority to fix the land value, the same is not legally binding as the amount fixed under the provisions of the Act.

13. It is the further submission of the learned counsel that the 2nd respondent had, vide order dated 23.11.2001, fixed the land value at Rs.4,019/-

per sq.ft., as against which appeal was filed by the petitioner u/w 34 (4) of the Act, without realizing the fact that the said provision had undergone a change by way of Amendment Act 38 of 1998 and, therefore, even as on the date of filing of the appeal, there being no provision for appeal, the 1st respondent did not have jurisdiction to entertain the appeal and, therefore, the 1st respondent had rightly rejected the appeal with a direction to the petitioner to approach the appropriate civil court for remedy.

14. It is the further submission of the learned standing counsel that for the first time, vide order dated 23.11.2001, the 2nd respondent had fixed the land value at Rs.4,019/- per sq.ft., and the fixation of the land value by the 3rd respondent is impermissible and that the fixation of the land value is as per the procedure contemplated under Alienation of Immovable Trust Properties Rules.

15. It is the further submission of the learned standing counsel that the order passed by the 2nd respondent has not been put to challenge in this writ petition; rather the order passed by the 1st respondent is assailed herein. When the 1st respondent did not have jurisdiction to pass the order, the petitioner

cannot assail the said order, moreso, without challenging the order passed by the 2nd respondent. Further, the stand of the petitioner that the 2nd respondent failed to consider the deposit of the entire amount demanded by the temple is wholly erroneous as the authority to fix the land value is the 2nd respondent and the 3rd respondent has no authority to fix the value of the land.

16. It is the further submission of the learned counsel that the land value has been fixed subsequent to G.O. Ms. No.3 dated 5.1.2001, wherein the earlier proceedings in respect of invoking land acquisition proceedings stood cancelled and permission was granted to fix the land value u/s 34. The order of the 2nd respondent being in pursuance of the said Government Order, the said order cannot be modified by the 2nd respondent and refixation is impermissible.

17. It is further submitted that the advisory role envisaged under Section 34 (4)(A) would not bind the Government and it cannot be in respect of modification/setting aside the order, which is an appellate remedy, which is not envisaged u/s 34 (4)(A). It is the further submission of the learned standing counsel that the impugned communication dated 18.12.2017 would clearly show

the basis for fixing the value of the land at Rs.4,019/- per sq.ft. and after giving credit to the amounts paid by the petitioner, interest has been calculated as per order dated 23.11.2001 and, therefore, no modification or setting aside the order is permissible at the hands of the 1st respondent and, therefore, the 1st respondent has rightly passed the said order, which does not require any interference at the hands of this Court.

18. Learned senior counsel appearing for the 3rd respondent also sailed along with the contentions submitted by the learned standing counsel appearing for respondents 1 and 2 and further submitted that erroneously, the 3rd respondent had fixed the value of the land, which cannot be done, as the lands stood vested with the deity and the error committed by the 3rd respondent cannot be imposed upon the deity and the 3rd respondent, being the custodian of the properties belonging to the deity, has to act only in the interests of the deity and cannot shy away the properties of the deity, even be it for spiritual activities conducted by the petitioner. The interests of the deity has to be safeguarded by this Court and the petitioner has to pay the amount, which is due and payable for the lands, as determined by the 2nd respondent, which would enure to the benefit

of the deity and, accordingly, prayed that direction be issued to the petitioner to deposit the said amount, as has been arrived at by the 2nd respondent.

19. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

20. It could be spelt without an iota of doubt, that the 3rd respondent is the custodian of the properties belonging to the deity and the interests of the deity are of paramount importance while the properties of the deity are being dealt with. The 3rd respondent has to act in the best interests of the deity and the properties of the deity cannot be wished away to the wishes of the 3rd respondent. Therefore, the 3rd respondent, merely being the custodian of the property cannot fix the land value and it is only the 2nd respondent, who is the appropriate authority which can fix the value of the land, as the 3rd respondent temple comes under the control of the 2nd respondent.

21. The 2nd respondent, based on G.O. Ms. No.3, which has been passed in

the year 2001, cancelling aside the land acquisition proceedings and directing fixation of the land value in terms of Section 34 (4), had embarked upon fixing the land value at Rs.4,019/- which act cannot be said to be erroneous. Equally, it cannot be said that the impugned order is erroneous, as by the Amendment Act 38 of 1998, the appeal remedy, which was available with the 1st respondent was deleted and, therefore, on the date when the appeal was filed before the 1st respondent, the 1st respondent did not have jurisdiction to entertain the appeal and pass any orders.

22. Though the petitioner lays emphasis on Section 34 (4)(A) to prevail upon this Court that the 1st respondent can act in an advisory capacity with regard to the lands, however, it is to be pointed out that the advisory capacity would not trample the order passed by the Government In G.O. Ms. No.3 in and by which the earlier order relating to land acquisition proceedings was cancelled and land value was directed to be fixed u/s 34 (4). When there is a Government Order, which has not been disturbed in any manner known to law, the 1st respondent, even in an advisory capacity, cannot give any report to the Government, as in the wake of G.O. Ms. No.3, the said report, even if it to be

given would be an act in futility, as the Government had already considered the issue and passed the Government Order.

23. Further, it is to be pointed out that when properties are entrusted in trust to the benefit of the deity, the benefit of the deity takes precedence over any other issue and if the petitioner, for the purpose of advancing the spiritual cause, wanted to establish the Mutt in the lands belonging to the deity, necessarily the interests of the deity would assume significance and the issue has to be looked at in the perspective of the deity.

24. As aforesaid, the prime concern of this Court as also the Government is to protect the interest of the deity with regard to the properties held in trust on behalf of the deity and in such circumstances, the land value fixed by the 2nd respondent, having not been put in issue before any competent civil court, this Court would have to find out the crucial date for fixing the rate of the land so as to compute the compensation payable to the 3rd respondent by the petitioner, which would include interest and solatium.

25. When this Court expressed the above view, learned counsel appearing on either side fairly submitted that this Court may pass orders keeping in mind the interests of either side as both the sides are spiritually connected. Though the land value has been fixed at Rs.4,019/= by the 2nd respondent taking the value in the year 2001, after the issuance of G.O. Ms. No.3, however, this Court is of the view that since certain amount, as initial payment having been made by the petitioner way back in the year 1995 and a further sum in the year 1997, the date to be reckoned for fixation of the amount per square feet for calculating the value of the land would have to be reckoned as in the year 1996, which would alone be equitable to either side. Further, in view of the aforesaid fair stand taken by the learned counsel on either side, this Court called upon the learned counsel for the parties to spell out the value of the land during the year 1996-1997 to which it was submitted by the learned standing counsel for respondents 1 and 2 that it was fairly above Rs.1500/-, which has not been contradicted by the petitioner.

26. Considering that fact that enter upon permission was granted in the year 1993 and that on 14.9.1994, the petitioner had entered upon the said land,

however, the land value for the said land has not been paid in full, as it was not determined by then, the petitioner had paid a sum of Rs.50 Lakhs, which has been credited towards payment by the respondents and, thereafter, a sum of Rs.5,12,290/- and a further sum of Rs.20,00,000/- has been paid, which amounts have also been given due credit, this Court deems it fit and proper that the land value as in the year 1996 could safely be fixed at Rs.1,500/- per sq.ft., as it should not be lost sight of that the value of the said lands in the present day scenario has sky-rocketed and, therefore, the interests of either side should be balanced so that the interests of the deity is not prejudiced.

Further, adding solatium at 30% and calculating interest at 8%, the total amount payable by the petitioner could be arrived at as under :-

S. No.	Details	Amount (Rs.)
1	Land Value of 16550 sq.ft. @ Rs.1500/- per sft	2,48,25,000/=
2	30% Solatium	74,47,500/=
3	Interest @ 8% from 14.9.1994 to 28.11.1995 (Rs.7073/- per day)	31,12,120/=
	Total	3,53,84,620/=
4	Amount paid by petitioner on 28.11.1995	50,00,000/=

	Balance	3,03,84,620/=
5	Amount paid by petitioner on 21.03.1997	51,25,290/=
	Balance	2,83,29,590/=
6	Interest @ 8% from 22.03.1997 to 06.07.1997 (Rs.6209/- per day)	6,64,363/=
	Balance	2,89,93,953/=
7	Amount paid by the petitioner on 07.07.1997	20,00,000/=
	Balance	2,69,93,953/=
8	Interest @ 8% from 8.7.1997 to 30.09.2024	5,01,67,680/=
	Total	**7,71,61,633/=**

27. The above amount of Rs.7,71,61,633/= has been arrived at on a conservative application of the value of the land as was existing during theyear 1996, as the amount of Rs.611.80 fixed by the 3rd respondent was in the year 1994. Further, it should not be lost sight of that even the order passed by the Tamil Nadu Temple Administration Board granting permission to the petitioner had made it clear in the said order that solatium at 30% and interest at 12% per annum would be payable. However, while this Court had adopted the solatium at 30%, however, keeping in mind the efflux of time between the date of entering

upon the land till this day, this Court had fixed the interest at 8% per annum, which would be just and reasonable.

28. This Court has arrived at the aforesaid amount to be payable by the petitioner to the 3rd respondent by clearly having in mind that the petitioner is also carrying on a spiritual centre and that the properties, which have been passed over to the petitioner by the respondents belong to the deity of the 3rd respondent temple and that the interests of the said deity, being the owner of the property requires to be safeguarded. Therefore, not only the interest of the petitioner, who has been carrying on spiritual activities for a long time but also the interest of deity needs to be protected. Therefore, this Court is of the considered view that the petitioner could be directed to pay the sum of Rs.7,71,61,633/= (Rupees Seven Crores Seventy One Lakhs Sixty One Thousand Six Hundred and Thirty Three only) within a prescribed time, it would subserve the interests of both the parties.

29. At the same time, the land, which belongs to the deity, having been parted by way of acquisition, the petitioner should show a benevolent gesture

towards the deity by installing the deities within the precincts of the Mutt, which would also add more spirituality to the Mutt.

30. Accordingly, for the reasons aforesaid, this Court directs the petitioner to deposit the sum of Rs. 71,71,61,653/- (Rupees Seven Crores Seventy One Lakhs Sixty One Thousand Six Hundred and Thirty Three only) within a period of four weeks from the date of receipt of a copy of this order. Since the land, which has been allotted to the petitioner belongs to Arulmighu Karpagambal Udanurai Kabaleeshwarar Temple and the amount demanded by the 2nd respondent is in the interest of Deity, viz., Arulmighu Karpagambal Udanurai Kabaleeshwarar and the petitioner has used the lands by constructing a Dhyana Mandapam and also for car parking facilities and it is not using the lands for commercial purposes to earn any monetary gains and since the alienation is in the interest of spirituality, this Court directs that the petitioner shall install the deities of Arulmighu Kapaleeswarar and Karpagambal within the precincts of the temple, either inside the Dhayana Mandapam or in any other conspicuous place in clear public view so that the devotees coming to the temple can not only attain spiritual salvation through meditation, but would also stand benefitted by offering prayers to the

deity, which has bestowed its benevolence by giving the place for upliftment of spirituality.

31. Further, in addition to the above, insofar as the respondents are concerned, this Court directs that the amount, which is received by the respondents shall be kept in an interest bearing fixed deposit for a period of six months and in the interregnum, the respondents are directed to take steps to formulate a plan for utilizing the said amount either for the construction of a Cultural Centre or Marriage Hall (Thirumana Mandapam) so as to enable the 3rd respondent to earn income which could be utilized for the betterment of the society and also the deity.

32. On the amount being deposited by the petitioner within the period prescribed aforesaid, the respondents are directed to execute the sale deed and also give No Objection Certificate so as to enable the revenue authorities to transfer the patta and mutate the other revenue records in the name of the petitioner.

33. The Writ Petition is partly allowed with the aforesaid directions as given in paragraphs 30 to 33 above. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

18.09.2024

Index : Yes / No

Msr/GLN

<u>Note to Office</u> :

Issue Order Copy
on 25.09.2024

To

1. The Secretary,
   Government of Tamil Nadu,
   Tourism, Culture & Religious Endowments
   Department, Secretariat, Fort St. George,
   Chennai 600 009.

2. The Commissioner,
   Hindu Religious & Charitable Endowments
   Department, No.119, Uthamar Gandhi Salai,
   Nungambakkam, Chennai 600 034.

M. DHANDAPANI, J.

msr/GLN

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M.DHANDAPANI, J.

The matter is listed today at the instance of the learned standing counsel appearing for the respondents.

2. It is brought to the notice of this Court by the learned counsel for the respondents that in para-26 of the order dated 18.09.2024, though credit of an amount of Rs.51,12,290/- has been given, however, there is a typographical error showing that only a sum of Rs.5,12,290/- has been paid. Further, the unnumbered paragraph after para-26, wherein the tabular column is shown, though interest at 8% from 29.11.1995 to 4.3.1997 for a period of 461 days at Rs.6660/- per day had to be levied, thereby a sum of Rs.30,70,260/- is payable towards interest totalling to a balance amount of Rs.3,34,54,880/-, however, the same has not been taken into account. Likewise in para-30 of the said order, though the sum to be deposited is only Rs.7,71,61,653/-, however, there is a typographical error showing the sum as Rs.71,71,61,653/-. Therefore, they submit that necessary corrections may be made in the said order and a fresh order copy be issued.

3. Learned senior counsel appearing for the petitioner has no objection and

fairly submits that the said typographical errors are there in the said order.

4. Accordingly, Rs.5,12,290/-, which appears in para-26 of the order shall stand replaced with Rs.51,12,290/-. Likewise, the amount Rs.71,71,61, 653/- appearing in para-30 shall stand replaced with Rs.7,71,61,653/-.

5. Further, the unnumbered paragraph immediately following para-26, which contains the tabulated statement of the calculation shall stand modified with the following :-

Further, adding solatium at 30% and calculating interest at 8%, the total amount payable by the petitioner could be arrived at as under :-

S. No.	*Details*	*Amount (Rs.)*
1	*Land Value of 16550 sq.ft. @ Rs.1500/- per sft*	*2,48,25,000/=*
	30% Solatium	*74,47,500/=*
2	*Interest @ 8% from 14.9.1994 to 28.11.1995 (Rs.7073/- per day)*	*31,12,120/=*
	Total	*3,53,84,620/=*
3	*Amount paid by petitioner on 28.11.1995*	*50,00,000/=*
	Balance	*3,03,84,620/=*

4	*Interest @ 8% from 29.11.1995 to 04.03.1997 – 461 days – Per day Rs.6660/-*	*30,70,260/=*
	Balance	*3,34,54,880/=*
5	*Amount paid by petitioner on 21.03.1997*	*51,25,290/=*
	Balance	*2,83,29,590/=*
6	*Interest @ 8% from 22.03.1997 to 06.07.1997 – 107 days – Rs.6209/- per day*	*6,64,363/=*
	Balance	*2,89,93,953/=*
7	*Amount paid by the petitioner on 07.07.1997*	*20,00,000/=*
	Balance	*2,69,93,953/=*
8	*Interest @ 8% for Rs.2,69,93,953 /=*	*21,59,516/=*
9	*Interest @ 8% from 8.7.1997 to 30.09.2024 – 8480 days @ Rs.5916/- per day*	*5,01,67,680/=*
	Total	***7,71,61,633/=***

6. Registry is directed to make the necessary corrections as aforesaid in the order dated 18.09.2024 and issue fresh order copy to the parties.

03.10.2024

RAP/GLN

M.DHANDAPANI, J.

RAP/GLN

W.P. NO. 34181 OF 2017

03.10.2024