BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A(MD)No.1068 of 2024
and
C.M.P.(MD)No.7983 of 2024

1.Muthulakshmi
2.M.Shanmuganathan
3.M.Selvanayagam
4.M.Maharajan ... Appellants

vs

1.R.V.Shylavijayaraja
through his father and power agent,
C.Ramasamy

2.The District Collector,
Collectoate, Tirunelveli.

3.The Sub Collector,
Cheranmahadevi, Tirunelveli District.

4.The Special Officer,
Sivanthipuram Village Panchayat /
Block Development Officer (Village Panchayat),
Panchayat Union Office,
Ambasamudram, Tirunelveli District.

5.Thiruvavaduthurai Aadheenam Mutt,
Sivanthipuram Village,
Ambasamudram Taluk,
Tirunelveli District. ...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 10.04.2023 passed in W.P(MD)No.9372 of 2021

For Appellants	: Mr.C.Iyyapparaj
For R1	: Mr.S.Meenakshi Sundaram Senior Counsel for Mr.R.T.Arivukumar
For R2 to R4	:Mr.N.Satheesh Kumar Additional Government Pleader
For R5	:Mr.B.Brijesh Kishore

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JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This intra-Court appeal is directed against the order, dated 10.04.2023 made in W.P.(MD)No.9372 of 2021.

2.The short facts to be noted in this appeal is that Thiruvavaduthurai Aadheenam Mutt is the owner of the property measuring an extent of 1 acre 2 cents in S.No.162/4 in Nochikulam Hamlet of Sivanthipuram Village in

Ambasamudram Taluk. The Mutt had leased out the property in favour of one Ramani on 31.08.1989 and a lease deed has been executed. From out of the property assigned in favour of Ramani, she had, in turn, assigned a portion of the land measuring 50 cents along with superstructure in favour of the first appellant, Muthulakshmi on 15.03.2002 for a valuable sale consideration. Based on the assignment, the superstructure in the property in Door No.4/1 was assessed to property tax demand by the fourth respondent in the name of the first appellant after deleting the name of Ramani.

3.It is the claim of the Writ Petitioner that he had, thereafter, entered into an agreement on 06.04.2008 with the first appellant for assigning the 50 cents of land along with superstructure in Door No.4/1 for a sale consideration of Rs.3,95,000/- and also a lease deed was executed and the possession has also been delivered. It is his further claim that based on the consent deed executed by the first appellant on 14.05.2008, the fourth respondent had mutated the Writ Petitioner's name in the tax register and that the Writ Petitioner had also paid the entire sale consideration. It is the further claim of the Writ Petitioner that the lease deed has been executed in the presence of the Notary Public, in which, the first appellant's husband also stood as witness and also further, the first appellant had executed a requisition letter to the Mutt for change of name of the lessee and also had handed over the original documents to the Writ Petitioner.

4.However, the first appellant had denied the transaction and had disputed the lease deed and the other documents relied on by the first respondent, as they are forged and fabricated and it is the claim of the first appellant that the first respondent was only a sub-lessee in the property and as such, had made a complaint to the third respondent on 16.06.2020, pursuant to which, the third respondent commenced an enquiry and had issued a notice on 23.06.2020 for which, the first respondent had submitted a detailed explanation on 06.07.2020. After a period of two months, the third respondent had issued a notice for enquiry on 15.09.2020 by fixing the enquiry on 18.09.2020, which was served on the first respondent on 17.09.2020. Therefore, the first respondent again submitted a letter seeking time as he was abroad and in view of the COVID-19 protocol at that time. However, the third respondent had proceeded with the enquiry and by the impugned proceedings in the Writ Petition, dated 22.09.2020, passed by the second respondent and the proceeding of the fourth respondent, dated 23.09.2020, the name of the Writ Petitioner was removed from the tax register and the name of the first appellant was restored.

5.Challenging the orders passed by the second and fourth respondents, the first respondent had preferred the Writ Petition and the Writ Court, by the impugned order, allowed the Writ Petition by quashing the impugned orders on the ground that the impugned orders have been passed without affording an opportunity to the first respondent and further, observing that since there is a serious dispute with regard to the very title, and therefore, had relegated the parties to approach the competent civil Court for redressal of their grievances. Assailing the order of the Writ Court, the appellants had preferred the above Writ Appeal.

6.Mr.C.Iyyapparaj, learned Counsel for the appellants argued that when the Mutt had only assigned the properties in favour of one Ramani and out of which, a portion of the property along with superstructure was subsequently assigned to the first appellant, which was based on the no objection issued by the Mutt and the same was transferred in the name of the first appellant and her name was also entered in the tax register. The learned Counsel further submitted that, however, in so far as the claim made by the first respondent is concerned, it is all based on fabricated documents and the transfer in the property tax has also been made by forged letter, which is without the approval of the Mutt. The learned Counsel further submitted that based on the complaint submitted by the appellants, the enquiry was conducted by the third respondent, wherein, the authorised person from the Aadheenam had appeared for enquiry and had clearly deposed that it is only the first appellant, who is the lessee in occupation of the property, which fortifies the fact that the first respondent is only a sub-lessee and the transfer in the property tax register has been made based on the fabricated documents without the approval of the Mutt.

7.The learned Counsel further submitted that the third respondent, based on the complaint of the first appellant, had issued the notice as early as on 23.06.2020 and in fact, the first respondent had also submitted a reply on 06.07.2020 and when the enquiry notice was issued on 15.09.2020 fixing the enquiry on 18.09.2020, it is only for the first respondent to appear for the enquiry and since he had not admittedly appeared for the enquiry, the enquiry was concluded based on the available materials by examining all the concerned parties. Only thereafter orders were passed by the second and fourth respondents cancelling the transfer made and for restoration of the first appellant's name. The learned Counsel further submitted that when there is no title dispute and it is clear from the records that the Mutt is the owner, which had been subsequently transferred by the assignee, Ramani in favour of the first appellant, which has been approved by the Mutt, the learned Judge by erroneously observing that there is a dispute in respect to the title of the property, had allowed the Writ Petition and relegated the parties to civil Court.

8.The learned Counsel further contended that the first respondent, if at all, is claiming any right based on an agreement, it is for the first respondent to approach the civil Court. As far as the property in question is concerned, the Mutt, being the owner, which has been leased out with the superstructure to the first appellant and the property tax being mutated in the first appellant's name based on the consent of the Mutt, the direction of the learned Judge by driving the first appellant to the civil Court is erroneous, he contended and sought for interference of this Court and allow the appeal.

9.Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the first respondent argued that the first appellant had entered into an agreement on 06.04.2008 with the first appellant for assignment of 50 cents of the land along with superstructure for a sale consideration of Rs.3,95,000/- and the first appellant, after receiving the entire sale consideration, had executed the assignment deed by transferring the leasehold rights, in which, her husband stood as witness and has also executed further consent deed for mutation of her name in the record of the lessee maintained by the Mutt and also in the property tax register. The learned Senior Counsel further submitted that when the first appellant had handed over all the original documents and had put the first respondent in possession of the property as early as on 06.04.2008 itself, only after a period of 12 years, all of a sudden, the first appellant had preferred a complaint on 16.06.2020 alleging that all the documents executed in favour of the first respondent are fabricated.

10.The learned Senior Counsel further contended that if the claim made by the first appellant is correct, then, there is no explanation on their behalf as to why they had remained silent and they have not taken any steps for the past 12 years, when, admittedly, the first respondent is in possession of the property and also the tax receipt has been mutated in his favour. The learned Senior Counsel further submitted that based on the complaint of the appellants, the third respondent had issued a notice for enquiry on 15.09.2020, which was served on the first respondent on 17.09.2020 by fixing the enquiry on the very next day on 18.09.2020, thereby, without giving breathing time for the first respondent to participate in the enquiry. The learned Senior Counsel further submitted that the enquiry has been hurriedly made and without affording reasonable and proper opportunity, the impugned orders in the Writ Petition came to be passed by cancelling the entry made in the tax register in the name of the first respondent and ordering the restoration of the name of the first appellant.

11.The learned Senior Counsel further submitted that as the impugned orders came to be passed in violation of principles of natural justice, the learned Judge has rightly interfered and set aside those orders and only since the very title was in dispute between the parties, as the appellants denied the execution of the documents, after nearly a decade, the learned Judge has rightly relegated the parties to the civil Court, only where, evidence can be let in and the rights of the parties can be ultimately decided and therefore, sought for dismissal of the Writ Appeal.

12.Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing on behalf of the respondents 2 to 4 submitted that based on the complaint lodged by the appellants, the third respondent had issued notice and only after conducting proper enquiry, the orders came to be passed and as the Writ Petitioner had submitted a detailed reply, even two months ago and only thereafter, the date of enquiry was fixed and orders came to be passed and therefore, the orders are justified, he contended.

13.Heard the rival contentions and perused the materials available on record.

14.It is an admitted case that the property measuring an extent of 1 acre 2 cents in S.No.162/4 in Nochikulam Hamlet of Sivanthipuram Village in Ambasamudram Taluk belonged to Thiruvavaduthurai Aadheenam Mutt. The Mutt had originally allotted the property in favour of one Pitchai by granting a lease, who, in turn, had assigned the land in favour of Ramani on 31.08.1989. Out of which, a portion of the land measuring 50 cents with superstructure came to be assigned in favour of the first appellant, Muthulakshmi on 15.03.2002 for a valuable consideration and also the superstructure was assessed to property tax in Door No.4/1 by the fourth respondent in the name of Muthulakshmi. The transfer in the name of the first appellant Muthulakshmi had also been entered into in the lease register of Mutt and also the property tax register of the local body. The ownership of the first appellant, Muthulakshmi is not in dispute between the parties.

15.However, the first respondent claims that the first appellant had entered into an agreement on 06.04.2008 for assigning the land along with the superstructure for a sale consideration of Rs.3,95,000/- and based on which, a lease deed was executed in favour of the first respondent and possession of the property was also delivered. It is his further claim that the first appellant had also executed a consent deed for mutation of her name in the property tax register and also the lease register of the Mutt and further she had handed over all the previous original documents. But the appellants are disputing this claim made by the first respondent and according to the appellants, the first respondent is only a sub-lessee, who is making a false claim based on the fabricated and forged documents.

16.The first appellant had made a complaint to the third respondent that by submitting forged documents, the mutation of property tax has been made in favour of the first respondent. The enquiry was commenced and the third respondent had issued a notice on 23.06.2020. On receipt of the said notice, the first respondent had submitted a detailed explanation on 06.07.2020. Thereafter, the third respondent had issued an enquiry notice, dated 15.09.2020, by fixing the enquiry on 18.09.2020. The first respondent had contended that the notice was served only on 17.09.2020 and since the enquiry was fixed on the very next day and due to COVID-19 protocol at that time, he had submitted a letter seeking for 15 days time to appear for the enquiry. However, the third respondent concluded with the enquiry and based on which, the second and fourth respondents have passed orders by cancelling the mutation of the first respondent's name in the property tax register and ordered for restoration of name of the first appellant.

17.The ownership of the first appellant is not in dispute and only the subsequent documents executed in favour of the first respondent, based on which, the mutation of the name in the property tax register was made, are in dispute. From the enquiry report submitted by the third respondent to the second respondent, certain things come to light. Admittedly, since it is a property belonging to the Mutt, any transfer of assignment has to be made with the consent of the Mutt and the assignee's name will be entered in the assignment register maintained by the Mutt. In fact, in the enquiry, the Inspector of Thiruvavaduthurai Aadheenam had appeared and had given a statement that the name of the first appellant, Muthulakshmi, is entered in the assignment register in Sl.No.57 for the property measuring 50 cents in

S.No.162/4, as a lessee from the year 2002 and she has been in enjoyment and necessary charges have been paid regularly till Fasli 1413 and in fact, even the latest theervai for the Fasli 1413 has been paid by the first appellant, Muthulakshmi to the Aadheenam through receipt No.555/27749, dated 11.09.2020, and had also submitted a copy of the receipt. From this statement, it is clear that as far as the records of the Mutt are concerned, the name of the first appellant alone has been entered, as a lessee and she had also paid kist till Fasli 1413 and the receipt dated 17.09.2020 has also been submitted by the Aadheenam before the third respondent.

18.However, it could be seen that when the third respondent even though had issued a notice earlier and an explanation has also been submitted, still when the third respondent had decided to proceed with the enquiry and issued a notice for enquiry, dated 15.09.2020, the third respondent ought to have given sufficient time for the parties to appear for the enquiry. From the records, it could be seen that the notice, dated 15.09.2020, has been issued and served on the first respondent on 17.09.2020 by fixing the enquiry on 18.09.2020. The first respondent had not been given sufficient time to prepare himself and appear for the enquiry and in fact, the first respondent had also submitted a request seeking a time of 15 days expressing his difficulty, as he was in abroad and due to the COVID-19 protocol, he was not able to appear immediately. However, the third respondent had proceeded with the enquiry and without affording sufficient time for the first respondent to participate in the enquiry, had completed the enquiry based on which, the impugned orders in the Writ Petition came to be passed by the second respondent and consequentially, by the fourth respondent, removing the name of the first respondent from the tax register.

19.As sufficient time was not provided for the first respondent to participate in the enquiry, the learned Judge, after hearing the Writ Petition, having found that the impugned orders in the Writ Petition came to be passed without affording an opportunity to the first respondent to put forth his case, had interfered with the orders and thereby, had allowed the Writ Petition by quashing the orders passed by the second and fourth respondents. However, when once the learned Judge has come to the conclusion that the impugned orders have been passed without affording sufficient opportunities and the orders have been passed in violation of principles of natural justice, then the natural corollary would be only to set aside the orders and remand the matter back to the concerned authorities to conduct enquiry afresh after affording reasonable opportunities to the parties and to arrive at a decision thereafter.

20. However, in the instant case, even though the learned Judge had interfered in the orders on the ground of violation of principles of natural justice and have set aside the orders impugned, by observing that there is a serious title dispute in respect of the subject property, had relegated the parties to the competent civil Court for redressal of their grievance. In our considered opinion, this portion of the order cannot be sustained and it is liable to be interfered with.

21.Admittedly, the property belonged to the Thiruvavaduthurai Aadheenam Mutt and even the first respondent admits the ownership of the 1st appellant and it is only the claim of the first respondent that by an agreement, the first appellant had transferred the assignment in his favour and executed lease deed and given consent letters. As such, when adverse orders have been passed by removing the name of the 1st respondent, sufficient opportunity ought to have been provided. Since the orders have been passed without giving sufficient time to the 1st respondent to participate in the enquiry, it is only appropriate to remand the matter for the same authority to conduct enquiry afresh by affording sufficient opportunity. Therefore, while sustaining the order passed by the learned Judge, in respect to allowing the Writ Petition by quashing the order of the second and fourth respondents, we set aside the portion of the order in respect of relegating the parties to the competent civil Court.

22.In view of the above findings, we are inclined to pass the following orders:

> *(1)The impugned order passed by the Writ Court in so far as relegating the parties to the civil Court is set aside.*
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> *(2)The impugned order passed in the Writ Petition in so far as quashing the orders of the second and fourth respondent, is confirmed. However, the matter is remitted back to the third respondent to conduct enquiry afresh, after affording reasonable opportunity of hearing*

to both the appellants and the first respondent and all other necessary parties and thereafter, pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

(3)It is made clear that the enquiry, as directed above, shall be conducted, without being influenced by any of the findings or observations made in this appeal.

23.With these directions, the Writ Appeal stands partly allowed to the extent indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
28.06.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
cmr

To

1.The District Collector,
Collectoate, Tirunelveli.

2.The Sub Collector,
Cheranmahadevi, Tirunelveli District.

3.The Special Officer,
Sivanthipuram Village Panchayat /
Block Development Officer (Village Panchayat),
Panchayat Union Office,
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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Judgment made in
W.A(MD)No.1068 of 2024

28.06.2024