



W.P.(MD) No.18247 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.18247 of 2024
and
W.M.P(MD).Nos.15538 & 15539 of 2024**

Valarmathi

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Nungambakkam High Road,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Tiruppur – 4.

3.The Executive Officer,
Arulmigu Kalayana Pasupatheeswarar Temple,
Karur Town.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to impugned order passed by the 2nd respondent dated 31.05.2024 in Se.Mu.Na.Ka.No.10538/2022-31,34,40,41,43 to 47, 49,50,51,53,55,58,61,62, 63, 65/29.03.2024/A3 and quash the same and also direct the 2nd respondent to



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provide reasonable opportunity of hearing by considering the petitioner's representation dated 13.06.2024 and documents filed along with the said representation.

For petitioner : Mr.V.Sukumar

For respondents : Mr.P.Subbaraj
Special Government Pleader for R1 & R2
Mr.Athimoolapandian for R3

ORDER

The petitioner is before this Court against the impugned order passed by the second respondent/Joint Commissioner under Section 78 of the TNHR&CE Department, 1959 dated 31.05.2024. The petitioner claims to be a beneficiary of deceased Rasammal, whose name appears at serial No.55 in the impugned order.

2. The case of the petitioner is that the said Rasammal is the petitioner's Aunt viz., the petitioner's mother's sister, who had executed a Will in Doc.No.103 of 1999 in favour of the petitioner on 31.12.1999 and that by virtue of the aforesaid Will, after the death of the petitioner's Aunt Rasammal on 29.03.2022, the petitioner became the lawful owner of the property.

3. It is submitted that earlier, an order came to be passed on 15.11.2022 in a



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batch of Writ Petitions in W.P.(MD)Nos.22682, 25280, 25308 to 25311 of 2018 filed by one RadhaKrishnan for a Mandamus directing the respondents 6 to 8 therein as also the Temple to take appropriate actions to remove the encroachments over 10 acres 48 cents of the land of the third respondent/Temple.

4. It is submitted that the petitioner's Aunt had also impleaded herself in the said proceedings and was impleaded as respondent No.48 pursuant to the order dated 15.11.2022 in W.M.P.(MD)Nos.21481 to 21483, 21485 to 21487 of 2018, 2289, 2462 to 2468, 2543, 2548 to 2550, 2588 to 2597 of 2019 and 10113 of 2021.

5. It is submitted that pursuant to the above order dated 15.11.2022, proceedings were initiated by the second respondent/Joint Commissioner under Section 78 of the TNHR&CE Act, 1959 and that the serial No.55 came to be filed in the name of the petitioner's deceased Aunt Rasammal.

6. It is submitted that a notice was issued on 16.03.2024, in response to which, the petitioner, as a beneficiary under the Will executed by the her deceased



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Aunt, who died on 29.03.2022, sent a representation on 20.03.2024 and 25.04.2024 enclosing about 17 documents to establish that the subject property was purchased by the petitioner's Aunt's predecessors as early as 28.11.1895.

7. It is submitted that the property in question changed hands over a period of time and that the petitioner has perfected her title over the property after the death of her Aunt on 29.03.2022, pursuant to the Will executed by her on 31.12.1999 bequeathing the rights over the property to the petitioner.

8. It is submitted that the impugned order has been passed without considering the documents filed by the petitioner instead its observation that no documents have been filed by the petitioner or the persons, against whom the proceedings were issued under Section 78 of the TNHR&CE Act, 1959.

9. It is submitted that there is a gross violation of the principles of natural justice and therefore, the impugned order is liable to be quashed.

10. The learned Special Government Pleader for the respondents 1 and 2



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WEB COPY would submit that the petitioner has an alternative remedy before the Commissioner/first respondent under Section 21 of the TNHR&CE Act, 1959 by way of a Revision Petition and therefore, this Writ Petition is liable to be dismissed.

11. It is submitted that under the similar circumstance, W.P.(MD)Nos.17245 to 17248/2024, challenging the very same order, were dismissed with a liberty to file statutory Revision under Section 21 of the TNHR&CE Act, 1959 within a period specified thereon.

12. That apart, it is submitted that the proceedings have been initiated pursuant to the order passed by the Hon'ble Division Bench of this Court on 15.11.2022 in W.P.(MD)No.22682 of 2018.

13. That apart, it is submitted that the title to the land of the third respondent/Temple stands confirmed by the Hon'ble Division Bench of this Court *vide* order dated 01.11.2017 in A.S.Nos.19 to 21 and 39 of 2005, Tr.A.S.Nos.50 to 55 of 2007 and S.A.No.746 of 2002 and Tr.A.S.(MD)No.1 of 2014.



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14. The learned counsel for the third respondent/Temple would submit that the petitioner has played a fraud in this Court. In as much as, on the date of the order dated 15.11.2022 in W.P.(MD)No.22682 of 2018, the petitioner's Aunt had admittedly died and even as per the petitioner's statement today before this Court, the petitioner's Aunt died on 29.03.2022. The petitioner ought to have impleaded herself in the said proceedings.

15. That apart, in response to the notice issued on 16.03.2024, the petitioner herself has replied.

16. Defending further, the learned counsel for the third respondent/Temple would draw attention to para 10 and 11 of the impugned order.

17. It is submitted that as far as the persons in para 10 of the impugned order is concerned, 13 persons have appeared and have filed their objections and their documents were considered and separate orders have been passed. In para 11, it has been clearly stated by the Joint Commissioner that non of the persons mentioned in para 11 have responded and therefore, order was passed and



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therefore, no fault can be attributed to the Joint Commissioner.

18. I have considered the arguments advanced by the learned counsel for the petitioner, learned Special Government Pleader for the respondents 1 and 2 and learned counsel for the third respondent.

19. In my view, the impugned order, as far as the petitioner is concerned, is clearly passed in gross violation of principles of natural justice considering the fact that the petitioner has sent a representation on 20.03.2024 and 25.04.2024. *Prima facie*, it stands established, in view of the postal receipts attached to the reply dated 25.04.2024 of the petitioner.

20. It is quite possible that the said response of the petitioner may have been ignored by the Joint Commissioner/second respondent since notice dated 16.03.2024 is not addressed to the petitioner, but, to the petitioner's deceased Aunt namely, Rasammal, who had died on 29.03.2022.

21. Although there was an irregularity in the conduct of the petitioner



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before this Court, when the order was passed on 15.11.2022 in the batch of Writ Petitions in W.P.(MD)Nos.22682, 25280, 25308 to 25311 of 2018 filed by the said Radha Krishnan, wherein, the petitioner's Aunt was included as respondent No.48 as the counsel ought not to have assisted with the Court with correct information by stating that the petitioner's Aunt had already pre-deceased on the date when the case was taken up for hearing, the orders were passed on 15.11.2022 in the batch of Writ Petitions.

22. Although the petitioner as also the counsel ought not to have been careful, the Court is of the view that the second respondent ought to have considered the representation of the petitioner dated 20.03.2024 and 25.04.2024 and passed final order as it is the specific case of the petitioner that the land in question was purchased as early as 28.11.1895 vide document No.2503 of 1895. This aspect ought to have been examined by the Joint Commissioner/second respondent.

23. Under these circumstances, the impugned order is set aside and the case is remitted back to the second respondent as far as the petitioner is concerned to



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pass fresh orders on merits and in accordance with law within a period of four weeks from today.

This Writ Petition is allowed with above directions. No costs.
Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

01.08.2024

To

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2.The Joint Commissioner,
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C.SARAVANAN, J.

apd

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