BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

A.S.271 of 2004

Sree Meenakshisundareswarar etc.,
Devasthanam Madurai,
Rep by its Executive Officer,
South Adi Street, Madurai. ... Appellant

Vs.

1.Ramu Ammal

2.Meenakshi

3.Sethulakshmi

4.Sooryagandhi Ammal

5.E.M.Subramanian

6.Panneerselvan

7.Nithyanandam

8.C.Balakrishnan

9.E.Subramaniyan

10.S.Sundaram

11.Venkatachalapathy

12.Thangaraj

13.Rangaraj

14.Ilangovan

15.Kuppusami

16.Kanakaraj

17.Mani

18.Sankarraj

19.Paulraj

20.Venkatasami

21.Sundarapandiyan

22.Ramamoorthy

23.Premraj

24.Balasubramanian

25.Alagarsami

26.N.Palaniappan

27.C.Ganesan

28.Sudalai (Died)

29.Kanakavel

30.Muthukrishnan

31.Murugan

32.Ramasami

33.Radhakrishnan

34.K.Pothi

35.Balasubramanian

36.Navaneethakrishnan

37.Radhakrishnan

38.Solaimalai

39.Rajaram (Died)

40.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai.

41.The Secretary to Government,
Tourism, Culture and Religious
Endowments Department,
Secretariat, Fort St.George,
Chennai – 9.
(R40 & R41 are suo motu impleaded vide order dated 23.04.2025 in A.S.No.271 of 2004 by GRSJ & MJRJ)

42.Subbulakshmi

43.Poovalaga Kumari

44.Durai Murugan

45.Thangamani

(R42 to R45 are brought on record as the legal heirs of the deceased 28th respondent vide common order dated 28.04.2025 in C.M.P.(MD)Nos.9428, 9430, 9433, 9434, 9436 and 9437 of 2023 in A.S.No.271 of 2004 by GRSJ & MJRJ)

46.Poongothai

47.Babu

48.Senthilkumar

49.Srinivasan ... Respondents

(R46 to R49 are brought on record as the legal heirs of the deceased 39th respondent vide common order dated 28.04.2025 in C.M.P.(MD)Nos.9428, 9430, 9433, 9434, 9436 and 9437 of 2023 in A.S.No.271 of 2004 by GRSJ & MJRJ)

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 30.04.1985 made in O.S.No.12 of 1984 on the file of the Principal Sub Court, Madurai.

For Appellant : Mr.S.Manohar

For Respondent : Mr.K.Mukilan for R7 & R8.
Mr.S.Madhavan for R15, R20, R23 & R30.
Mr.R.Venkatesan for R18
Mr.S.Srinivasa Raghavan for R42 to R45.
Mr.G.V.Vairam Santhosh,
Addl. Govt. Pleader for R40 & R41.
No appearance for R4, 9, 10, 12, 22, 26, 28, 36 & 39.

JUDGMENT

(Judgment of the court was delivered by **G.R.Swaminathan, J.)**

This first appeal is directed against the judgment and decree dated 30.04.1985 on the file of the Principal District Court, Madurai. The appellant / temple filed the said suit for recovery of possession. The suit was dismissed vide judgment and decree dated 30.04.1985. The appeal was not filed immediately. Though the suit was dismissed as early as on 30.04.1985, the appeal was numbered only in 2004. This appeal has been hanging fire for the last 21 years. During this period, a number of respondents have passed away. Steps were not taken to bring the legal heirs on record. On account of non-payment of batta and for failure to take steps, even this appeal came to be dismissed as against many of the respondents. This decree is not a severable decree. In normal circumstances, we would have straightaway dismissed the appeal itself. But then, we are not in a position to adopt such a harsh course of action. We cannot forget the fact that the appellant is a temple. It has been repeatedly held that when it comes protecting temple properties, the Court has to assume the *Parens Patriae* jurisdiction (***vide Executive Officer, Arthanareswarar Temple v. R. Sathyamoorthy, (1999) 3 SCC 115)***

2.Coming to the merits of the matter, it is not in dispute that the suit property (S.No.156, Ponmani Village) is an inam property. During settlement proceedings, the Settlement Tahsildar (Minor Inams Unit – I), Madurai passed order vide S.T. 2 SR No.404/Md 9 Mdu 67 dated 01.08.1967 in respect of the suit schedule property. The Settlement Tahsildar had directed issuance of ryotwari patta in favour of three persons namely, C.Nithiyanandam, C.Balakrishnan (Both sons of Chinniah Asari) and Narayana Pattar, S/o.Chokkalingam Pattar. The said lands were given by way of inam for performing what is known as Kannar Maanipam (copper and brass) for Meenakshi Sundaraeswar Temple in Madurai. It was directed that the service holder are entitled to ryotwari patta under Section 8(2)(ii) r/w. 8(5) subject to the provision of Section 21 of the Tamil Nadu Minor Inams (Abolition and Conversion Into Ryotwari) Act, 1963. Even though it was a pure service grant, for reasons that are not quite clear, the trial Court chose to give a finding that it was a personal grant. The settlement patta was marked as Ex.A3.

3.The relevant provisions are extracted as follows:-

*" **Section 8. Grand of ryotwari pattas.***

(2) Notwithstanding anything contained in sub-section (1) in the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Hindu Religious and Charitable Endowments Act, 1959 [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act 22 of 1959), [and in the [Tamil Nadu] [Inserted by

section 7 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1964 (Tamil Nadu Act 33 of 1964).] (Transferred Territory)] Incorporated and Unincorporated Devaswoms Act, 1959 [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act 30 of 1959), the following provisions shall apply in the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institutions or for the performance of a charity or service connected therewith or of any other religious charity -

(i) ....

(ii) in the case of any other land, the institution or the individual rendering service shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land.

Explanation. - For the purpose of this sub-section, "land revenue" means the ryotwari assessment including the additional assessment, water-cess and additional water-cess.

(3) .....

(4) .....

(5) In the case of a minor inam held immediately before the appointed day by an individual on condition of rendering service to a religious, educational or charitable institution, the grant of ryotwari patta under sub-section (1) or (2) shall be subject to the provisions of section 21.

Section 21: Service inams.

(1)The provisions of this section shall apply in respect of any minor inam which was held immediately before the appointed day by an individual (hereinafter referred to in this section as the service-holder) on condition of rendering service to a religious, educational or charitable institution.

(2)The service-holder shall, subject to the provisions of sub-section (3), be bound to continue to render the service after the appointed day.

(3)(i)*Where a service-holder is entitled to a ryotwari patta under section 8 in respect of any land, he shall have the option -*

(a)either to pay to the religious institution the amount specified in subsection (4) and on such payment the land shall, notwithstanding anything contained in sub-section (7), be discharged from the condition of the service; or

(b)to hold the land and continue to render service subject to the provisions contained in sub-sections (1), (2), (6) and (7).

(ii)The option referred to in clause (i) shall be twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land.

(5)Where the service-holder has exercised his option to pay the amount specified in sub-section (4), the tasdik allowance referred to in sub-section (6) in respect of the period subsequent to the date of the exercise of such option shall be the

absolute property of the institution and the institution shall be at liberty to make such arrangements as it thinks fit for the performance of the service.

(6)(a)*For so long as the service-holder renders the service, the institution shall pay to the service-holder the tasdik allowance paid by the Government under section 20.*

(b)*If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the tasdik allowance payable to the institution in respect of the period subsequent to the failure shall be the absolute property of the institution and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service.*

(7)(a)*For so long as the service-holder renders the service, he shall be entitled to occupy permanently the lands in respect of which he is entitled to a patta under section 8, subject however, to the payment of the assessment fixed [under section 16 or under section 16-A, as the case may be] [Substituted for the expression 'under section 16' by section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1964 (Tamil Nadu Act 33 of 1964).], in respect of such lands.*

(b)*If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify* *such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy permanently the land under clause (a) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment fixed therefor [under section 16 or under section 16-A, as the case may be] [Substituted for the expression 'under section 16' by section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1964 (Tamil Nadu Act 33 of 1964).].*

Explanation I. - For the purposes of this section, -

(i)service-holder includes his heirs;

(ii)non-performance of the service due to illness or other temporary disability shall not be deemed to be failure to render service, provided that the service-holder makes alternative arrangements for rendering the service during the period of such illness or of other temporary disability.

Explanation II. - For the purposes of sub-section (4), "land revenue" means the ryotwari assessment including the additional assessment, water-cess and additional water-cess."

4.The aforesaid provisions have been considered in many a decisions and it has been consistently held that such lands are not alienable. The Hon'ble Supreme Court vide order dated 23.02.2022 in ***Sankaranarayana Swamy Devasthanam .vs. P.S.Chandrasekara Raja (Civil Appeal No.2671 of 2012)*** held as follows:

> "17.Once it is clear that ..it was a grant burdened with the service and that there was a right of resumption under Section 21(7) of the Act, the respondent cannot resist the reliefs sought by the temple. In other words, the sale deeds in favour of the respondent or his predecessors-in-title cannot take away the statutory right of the appellant-temple to resume the land. An institution which has the right of resumption, has a right to seek a declaration that the sale is null and void. There is no point in allowing title to remain with some one and possession with another."

The patta holder is entitled to retain the property so long as he renders service. If there is a default in rendering service, the only course of action open to the institution is to move the prescribed authority under Section 21(7) for resumption of lands. In this case, without approaching the prescribed authority, the temple chose to file a suit. It was obviously not maintainable. Therefore, dismissal of the suit has to be necessarily upheld.

5.We grant liberty to the appellant / temple to take recourse to the procedure laid down in Section 21(7) of Tamil Nadu Act No.30/1963. In normal circumstances, we would have dismissed the appeal with the aforesaid liberty. Considering the special facts and circumstances of this case, we intend to travel an extra mile. It is not in dispute that value of the property as on date is Rs.1,100/- per square feet. The learned standing counsel for the temple draws our attention to the letter bearing Na.Ka.No.190/2025 issued in the month of April, 2025 given by the jurisdictional Sub Registrar. The persons in occupation of the land can take a title deed in their name absolutely on payment of the aforesaid sum computed at the rate of Rs.1,100/- per square feet directly to the temple account, and obtain NOC from the temple also. Since in this appeal, the Commissioner, Hindu Religious and Charitable Endowments Department as well as the government have been made as respondents, as and when NOC is issued by the appellant / temple, any land transaction shall be registered. The learned counsel for some of the respondents states that many of the occupants may not in a position to pay the said amount right away. In such cases, they shall pay a sum of Rs.1,00,000/- per cent within a period of two months from the receipt of copy of this order so that they can continue to be in occupation of their lands. As and when they sell the land in question occupied by them, they have to pay at the rate mentioned above after making due deduction. Of course, interest also will start running from today ie., 28.04.2025 onwards at the rate of 6% per annum. If the entire amount is remitted to the temple account by the occupants, the temple will immediately issue NOC based on which, they can enter into transactions later. The registering department will not decline to register the document on the ground that the value of lands have been shown as “zero” value. If there is failure on part of the occupants to pay the aforesaid sum of Rs.1,00,000/- within the period mentioned above, the temple management would be liberty to move the prescribed authority for resumption of lands occupied by them. We also grant liberty to the appellant / temple to resume the lands that are vacant and which have not changed hands from the hands of the original service holder.

6.The impugned judgment and decree are modified and the first appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (M.J.R. J.,)
28.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

1.The Principal Sub Court, Madurai.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.

3.The Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Fort St.George,
Chennai – 9.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

G.R.SWAMINATHAN, J.
and
M.JOTHIRAMAN, J.

ias

A.S.271 of 2004

28.04.2025
(2/3)