

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-09-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.22035 of 2021 and 25472 of 2023

And

WMP Nos.23255, 23257 of 2021, 24867 to 24869 and 24871 of 2023

Sri Kamatchi Amman Devasthanam,
Represented by its Secretary
Thiru Subramaniam,
No.60, Bharathi Street,
Puducherry.

... Petitioner in WP 22035/2021

V.Velmurugan

... Petitioner in WP 25472/2023

Vs.

1.Department of Hindu Religious Institutions and Wakf,
Represented by its Commissioner,
3rd Floor, Collectorate Complex,
Pettaiyanchathiram,
Vazhudavoor Road,
Puducherry – 605 009.

2.Director of Survey and Settlement Records,
Represented by its Director,
II Floor, Revenue Complex,
Kamaraj Salai, Saram,
Puducherry – 605 013.

3.Settlement Officer,
Directorate of Survey and Land Records,
1st Floor, Revenue Complex,
Kamaraj Salai,
Puducherry.

4.M/s.Sabari Educational Society,
Represented by Shri V.Manoharan,
No.34, 9th Cross Street,
Brindavan,
Puducherry.

5.Thiru Periyamayagasamy @ Arulraj

6.K.Umapathy

7.K.Varalakshmi

8.R.Chandran

9.V.Adinarayana

10.A.Rajamahendiran

11.R.Kumaresan

12.M.Smitha

13.K.Sajeevan

14.R.P.D.Baboo

15.S.Hansraj

16.S.Muneer Basha

17.S.Mohammed Aijaz

18.P.Krishnaveni

19.P.Balaji

[R-6 to R-19 impleaded vide order of Court
dated 12.09.2023 made in WMP No.3030 of
2023 in WP 22035 of 2021] ... Respondents in WP 22035/2021

1.Union Territory of Puducherry,
Represented by its Chief Secretary,
Government of Puducherry,
Secretariat,
Goubert Avenue,
Puducherry-605 001.

2.Inspector General of Registration-cum-
Revenue Secretary,
Department of Revenue and Disaster
Management,
Chief Secretariat,
Puducherry-605 001.

3.The District Registrar,
Office of District Registrar,
Department of Registration,
Kamaraj Salai,
Sakthi Nagar,
Saram,
Puducherry.

4.The Sub Registrar,
Office of Sub Registrar,
Oulgaret,

Town and Country Planning Building,
Ground Floor,
Jawahar Nagar,
Boomianpet,
Puducherry.

5.Adecalamarie

6.Sugantha Nancy

7.J.Victoria Rina

8.Mrs.Justine

9.Rathinavelu

10.Mohansundari

11.M/s.Sabari Educational Society,
Represented by V.Manoharan,
No.34, 9th Cross Street,
Brindavan,
Puducherry.

12.Mr.A.John Kumar

13.Mr.Vivilian Richards John Kumar

14.P.Aroquia Das

15.Sri Kamatchi Amman Devasthanam,
Represented by its Secretary,
No.60, Bharathi Street, Puducherry.

16.The Superintendent of Police,
Pondicherry.

[R-16 suo motu impleaded vide order of Court dated 28.08.2023 made in WP 25472 of 2023]...Respondents in WP 25472/2023

WP No.22035 of 2021 is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in Appeal No.21 of 2019 dated 23.06.2021 on the file of the second respondent and quash the same as illegal, arbitrary and perverse and for consequential orders.

WP No.25472 of 2023 is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned registration of the documents of the respondents 5 o 8, 10, 11 and 14 herein in Document Nos.17564/2021 dated 13.08.2021, 23074/2021 dated 24.09.2021, 23075/2021 dated 24.09.2021, 23076/2021 dated 24.09.2021, 27078/2021 dated 24.09.2021, 3127/2010 dated 07.09.2010 and 3145/2011 dated 29.07.2011, on the file of the fourth respondent herein and quash the same followed removal of said entries in the Encumbrance Certificate and consequently direct the second respondent herein to restore Patta of the properties in R.S.No.292/4 Cadaster No.156 Paimash No.285 to an extent of 00.31.60 Ha and R.S.No.291/5 Cadaster No.186 Paimash No.308 to an extent of 00.29.20 Ha of Saram Revenue Village, Oulgaret Taluk, Puducherry, in the name of Kamatchi Amman Temple i.e., 15th respondent herein.

For Petitioner in WP 22035/21: Mr.Sunny Sheen Akkara
for Ms.V.Srimathi

For Petitioner in WP 25472/23: Mr.D.Ravichander

For Respondents-1 to 3 in
WP 22035/2021 : Mr.S.Raveekumar,
Government Pleader (Puducherry).

For Respondent-4 in
WP 22035/2021 : Not Ready in Notice

For Respondent-5 in
WP 22035/2021 : Mr.K.Sasindran

For Respondents-6 to
19 in WP 22035/2021 : Mr.B.Arvind Srevatsa

For Respondents-1 to 4
and R-16 in WP 25472/2023: Mr.Raveekumar,
Government Advocate
(Puducherry)

For Respondents-5to8, 12
and 13 in WP 25472/2023 : Mr.S.Xavier Felix

For Respondent-14 in WP
25472/2023 : Mr.B.Balavijayan

For Respondent-15 in WP
25472/2023 : Mr.G.Karthikeyan,
Senior Counsel for
Ms.K.R.Vinodhinee

For R-9 and R-10 in
WP 25472/2023 : Mr.B.Saravanakumar

For Respondent-11 in
WP 25472/2023 : Not Ready in Notice

COMMON INTERIM ORDER

WP No.22035 of 2021 is filed to call for the records in Appeal No.21 of 2019 dated 23.06.2021 on the file of the second respondent and quash the same.

2. The petitioner-temple contends that the temple is the absolute owner of the property situated at R.S.No.292/4, Cadaster No.156, Paimash No.285 to an extent of 00.31.60 Hectares and R.S.No.291/5, Cadaster No.186, Paimash No.308 extent of 00.29.20 Hectares situated at Oulgaret Sub Road, Village No.38, Saram Revenue. The temple continue to be the owner of the above properties ever-since from the year 1935 and was in continuous possession for more than 80 years.

3. The subject properties originally belonged to one Mr.Vedassala Moudaliar, who inherited the property vide Partition Deed No.10.09.1989 entered in R.V.43 No.15. Vedassala Moudaliar had three sons. After the demise of Mr.Vedassala Moudaliar, his three sons inherited the subject properties. The Mortgage Deed was executed under the condition that the mortgagee shall be allowed to bring the property for sale if the mortgagor fails to discharge the debt along with interest within a period of four years. The family members of Mr.Vedassala Moudalilar were committed default and the mortgage was not redeemed in the month January 1930. Subsequently one Mr.Muthuswamy Achary purchased the properties on 20.09.1930 and became the absolute owner of the properties. The said Muthuswamy Achary on 06.03.1935 had executed a registered Will, which was recognised as document No.48 of 1935 R.V.54. In the Will, the very same Mr.Muthswamy Achary had bequeathed two properties in favour of the petitioner-temple. The copy of the Will dated 06.03.1935 is submitted before this Court. The relevant portion of the said Will reads as under:-

“Therefore, I give and bequeathe to the temple dedicated to the deity of Sri Camatchyamman wet lands 1) No.156 of Cadastre

No.285 of Paimash situated in the land of Sarampacom, Commune of Oulgaret, to the South of land of hair dresser's maniom, to the North of the land of Virudassala Gurukkal, measuring thirty one ares, sixty centiares, equal to fifty kuzhis, one veesams and 2) No.186 of Cadastre, No.308 of Paimash, situated at the said place, to the East of Canal and to the South of land of Radjagopalanaiker and of Thiroumoudy Ranga Arounaguiry Chetty, measuring twenty nine ares, twenty centiares, equal to fifty four kuzhis, nine veesams.

From the income of the above said lands, excepting Government taxes, the rest of the income will be served for food in the form of 2 bowls of rice every day for one person. If my family members failed to execute the above said act, then the Administrators of the Camatchyamman Koil will execute the the same. If the above said Administrators also failed to execute the same, then 5 of my legal heirs will insist them to do so. My brother Manicaassary will provide food daily for 6 devotees out of my income.”

4. The petitioner-temple states that in due course, the properties belonging to the temple were grabbed by creating certain fraudulent documents, since it remained as a vacant land till today. Several documents were executed including Sale Deed, Settlement Deed, Power of Attorney, Will, Possession Certificate issued by the Village Administrative Officers and certain proceedings of the Government Officials etc. It is contended by the petitioner-temple that large scale collusion and fraudulent execution of documents occurred in surreptitious manner with an intention to grab the temple-property.

5. The learned counsel for the petitioner mainly contended that there is an unambiguous nexus between the bureaucrats from the Government of Pondicherry and Politicos. Therefore, the Temple Authorities are not in a position to initiate any action, since their claim ended in vain and the Government also failed to initiate appropriate action, since there is bureaucrats and political negotiations existing in the matter of dealing with the temple properties to a larger extent.

6. Subsequently WP No.25472 of 2023 is filed by one Mr.V.Velmurugan, a Devotee of the temple. He appeared before this Court as an ardent devotee and worshiper of Sri Kamatchi Amman Temple. He states that some individuals in compilation with politically influenced persons have grabbed the temple properties fraudulently and got the documents registered through impersonation.

7. The learned counsel for the petitioner drew the attention of this Court with reference to several documents executed, which would be sufficient enough to form an opinion that there are visible discrepancies, which cannot be countenanced by the parties. The discrepancies in the name of place, manner in which the documents were executed, particulars provided in the document, sale consideration are brought to the notice of this Court. Mere perusal of those documents relied on by the petitioner would be sufficient enough to arrive an inevitable conclusion that the investigation into the criminality is imminent. Regarding the documents

furnished, the same requires an elaborate consideration from the hands of this Court and investigation is in progress.

8. Pertinently, respondent Nos.12 and 13 in WP No.25472 of 2023 are sitting Members of Legislative Assembly and respondents 5 to 8 are the family members of the sitting MLAs.

9. The learned counsel for the petitioner drew the attention of this Court with reference to the modus adopted for the purpose of execution of documents in order to transfer the property, which stands in the name of the temple. At the stage of admission, this Court impleaded Superintendent of Police, CBCID (SIT), Pondicherry suo motu and directed him to conduct investigation into the allegations of criminality raised against several persons, including the two sitting MLAs in the territory of Pondicherry.

10. Pursuant to the directions, the learned Government Pleader, Pondicherry appeared and submitted preliminary investigation report in

sealed cover. Further investigation report by way of additional status report was filed in sealed cover.

11. This Court has carefully gone through two investigation reports filed by the Superintendent of Police, CBCID (SIT), Pondicherry. The facts of investigations are also narrated and the criminality involved are also stated in the said investigation report. Certain shocking revelations are found in respect of the documents executed and the manner in which the Government Officials acted unbecoming of Public Servants are visibly established.

12. In this context, this Court directed the learned Government Pleader, Pondicherry to register the cases both under the Criminal Law and under the Prevention of Corruption Act, since the public servants are involved in the matter of transfer of temple properties in favour of individual persons. The Possession Certificate issued by the Village Administrative Officer reveals that fraudulent transactions emanated from the Possession Certificate issued by the Village Administrative Officer and

the subsequent proceedings were issued by Higher Officials without even verifying the title documents and other relevant records.

13. Under the provisions of the Registration Act and the Rules in force, the Registering Authority is bound to verify the correctness of the title by verifying the linkage between the documents provided for registration and the title documents relied on by the presentant of the documents for registration.

14. The learned counsel for the petitioner relied on Rule 55 of the Pondicherry Registration Rules in this context.

15. The learned counsel appearing on behalf of the respondents 5 to 8, 12 and 13 opposed by stating that the sitting MLAs are the bona fide purchasers of the property. They are the innocent purchasers and they are unconnected with the allegations of criminality in the matter of transfer of temple property. The said respondents filed affidavit stating that they are

ready and willing to hand over the property to the temple, in the event of establishing the title by the Temple Authorities.

16. It is contended that the sitting MLAs have no intention to grab the temple property, but as they, being innocent purchasers, got a right to establish their case in the manner known to law.

17. The learned counsel for the petitioner made a submission that respondents may approach the Competent Civil Court of Law and claim compensation from their vendors as per the covenants in the document.

18. The said submission is seriously objected by the learned counsel for the petitioner by stating that there is a large scale collusion between the bureaucrats and the politicians in the matter of grabbing of the temple properties in these writ petitions and there are doubtful circumstances and the Investigating Authorities may not initiate actions against the sitting MLAs.

19. In this context, the learned Government Pleader appearing on behalf of the Government of Pondicherry reiterated that no one will be spared if the allegations are established against any of the person in the matter of land grabbing or other criminality in execution of documents and transfer of properties. The learned Government Pleader with commitment made a submission before this Court that they will not leave any person, including the MLAs if it is found that the allegations raised are established against those MLAs or their relatives or any other persons.

20. At this juncture, this Court need not disbelieve the statement made by the learned Government Pleader of Pondicherry, since the preliminary investigations conducted by the Superintendent of Police, CBCID (SIT), Pondicherry reveals that they have commenced the investigation by verifying the documents and found that there is a prima facie case made out for criminal prosecution. Therefore, this Court has to provide an opportunity for the purpose of completing the investigation in all respects and prosecute the offenders in the manner contemplated under law.

21. Prima facie documents establish that the subject properties were bequeathed through the “Will” in favour of the temple and the lands being vacant, it is to be handed over to the temple immediately and the sitting MLAs have stated that they have no objections to hand over the lands if the case is established against them. However, the sitting MLAs are representing the people of the territory of Pondicherry. The people's representatives involving in such nature of criminal allegations, cannot be tolerated and the MLAs have taken oath under the Constitution. Therefore, they are expected to be the truthful and trustworthy Public Servants and thrive hard for the up-liftment of the people residing within their Constituency and to upheld the constitutional principles of law. They are the *parens patriae* of the people of their Constituency and in respect of the grievance of the people and they are constitutionally obligated to represent them in the manner contemplated.

22. Article 51-A of the Constitution of India enumerates that it shall be the duty of every citizen of India to abide by the Constitution and to safeguard the public property and to abjure violence. Therefore, every

citizen is duty bound to safeguard the public property. The temple property being the public property, is to be protected by the Members of the Legislative Assembly and thus this Court is of the considered opinion that in all fairness and with commitments, the two sitting MLAs should hand over the vacant possession of the subject land to the temple immediately to establish their fairness and bona fide as the elected Members of the Legislative Assembly under the Constitution of India and subjected themselves for criminal investigation already undertaken by the Government of Pondicherry i.e., the Superintendent of Police, CBCID (SIT), Pondicherry. In respect of remaining properties, the Government of Pondicherry is directed to take possession of the property in entirety and hand over the same to the administration of Sree Kamatchiamman Devasthanam, within a period of four weeks from the date of receipt of a copy of this order. The temple is at liberty to maintain the property. The validity of the documents and the allegations of fraud, impersonation, misrepresentation, corrupt activities, collusion, fabrication of document, payment of consideration, income tax returns etc., are to be investigated thoroughly by the Superintendent of Police, CBCID (SIT), Pondicherry.

23. The learned counsel for the petitioner raised a ground that the sale consideration requires examination by the Income Tax Authorities. It is for the petitioner and the temple to file an appropriate complaint before the Income Tax Authorities, who in turn shall conduct an investigation and initiate all appropriate actions.

24. The Superintendent of Police, CBCID (SIT), Pondicherry is directed to conduct an impartial and uninfluenced investigation with reference to the allegations of criminality etc., as stated above and proceed with the criminal prosecution by following the procedures as contemplated. The impugned order dated 23.06.2021 in Appeal No.21 of 2019 is stayed till the disposal of the present writ petitions.

25. The Superintendent of Police, CBCID (SIT), Pondicherry has been directed to initiate action under the provisions of the Prevention of Corruption Act. At the outset, the Government of Pondicherry is directed to take possession of the entire temple lands and hand over the same to the

temple Administration.

26. The two preliminary investigation reports submitted before this Court by the Superintendent of Police, CBCID (SIT), Pondicherry is directed to be handed over to the Registrar (Judicial) to keep the same in safe custody and produce the same whenever required by the Court.

27. The criminal investigation shall be expedited and list the writ petitions for final hearing after six weeks.

28. Post the matter after six weeks under the caption 'For Reporting Compliance' i.e., on 06.11.2023.

22-09-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

- 1.The Commissioner,
Department of Hindu Religious Institutions and Wakf,
3rd Floor, Collectorate Complex,
Pettaiyanchathiram,
Vazhudavoor Road,
Puducherry – 605 009.
- 2.The Director,
Director of Survey and Settlement Records,
II Floor, Revenue Complex,
Kamaraj Salai, Saram,
Puducherry – 605 013.
- 3.The Settlement Officer,
Directorate of Survey and Land Records,
1st Floor, Revenue Complex,
Kamaraj Salai,
Puducherry.
- 4.Chief Secretary,
Union Territory of Puducherry,
Government of Puducherry,
Secretariat,
Goubert Avenue,
Puducherry-605 001.

5.The Inspector General of Registration-cum-
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