

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/03/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.15527 of 2000

1. Jagathambigal Nagar Co-operative
House Site Society
rep. by its President
No.81-A, Thiruvalluvar Street
Padi, Chennai-600 050.

2. S.P.Pandian
3. S.Veeraragavalu
4. A.Thirunavukkarasu
5. S.Parthasarathy .. Petitioners

-Vs-

1. The State of Tamil Nadu
rep. by the Secretary to Government
Hindu Religious and Charitable
Endowments Departments
Fort St.George, Chennai-9.

2. The Commissioner
Hindu Religious and Charitable
Endowments Department
Chennai-34.

3. The Executive Officer
Arulmighu Thiruvalluwar Thirukkoil
Padi, Chennai-50.

4. P.S.Shanmugasundaram .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of
a writ of Mandamus as stated therein.

For Petitioners : Mr.N.G.R.Prasad
for Mr.R.Rajaram
For Respondents : Mr.K.Sukumaran
Spl. Government Pleader
for respondents 1 & 2
Mr.Lingeswaran
for respondents 3 & 4

:ORDER

The petitioners seek a writ of Mandamus to direct the second respondent-Commissioner to hold an enquiry under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for brevity " the Act") and to consequently sell the house sites at the same rate fixed in 1984 to the 135 members of the first petitioner-society, who are owning the superstructures, occupying and living in the said temple lands.

2.1. According to the petitioners, Arulmighu Thiruvalleeswarar Thirukkcoil, Padi, Chennai owns lands of an extent of 19.40 Acres in Survey Nos.271, 303/1 to 4, 364/1 to 3 near the temple in Padi, Chennai. The said temple is under the supervision and control of the third respondent- Executive Officer, and under the management of the trustees represented by the fourth respondent-Hereditary and Managing Trustee.

2.2. The fourth respondent-Hereditary and Managing Trustee sent a proposal to sell the lands of the temple to the occupants of the same and the said proposal was also approved by the second respondent in the proceedings Na.Ka.No.11/76 R2, dated 7.12.1984.

2.3. The approval granted by the second respondent in his proceedings dated 7.12.1984 was challenged by some third parties in W.P.No.286 of 1986 on the ground that the procedure contemplated under Section 34 of the Act was not followed while according sanction for the said proposal to sell the lands to the occupants, and this Court, by order dated 11.1.1994, allowed the said writ petition and remitted the matter to the second respondent-Commissioner for passing appropriate orders under Section 34 of the Act. As no orders were passed by the second respondent-Commissioner till date, the petitioners have preferred the present writ petition.

3. Mr.N.G.R.Prasad, learned counsel for the petitioners submits that the petitioners are occupants of the said lands for nearly 30 years and since the fourth respondent-Hereditary and Managing Trustee of the temple proposed to sell the lands, sent a proposal for sanction of the second respondent-Commissioner, and the same was also approved by the second respondent-Commissioner in his proceedings dated 7.12.1984, the respondents 1 to 4 cannot take a different stand at this juncture, except to satisfy with the proposal as well as the quantum of sale consideration and to accord sanction to the same.

4. Per contra, Mr.K.Sukumaran, learned Special Government Pleader appearing for the respondents 1 and 2, submits that the power conferred under Section 34 of the Act is absolute and it is for the Government to grant or refuse approval.

5. Mr.Lingeswaran, learned counsel for the respondents 3 and 4 submits that there is no change in the decision of the temple to sell the lands.

6. I have given careful consideration to the submissions of both

sides.

7. A reference to Section 34 of the Act is apposite:

"Section 34: Alienation of immovable trust property:

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner:

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation - Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, the Commissioner may impose such conditions and give such direction, as he may deem necessary regarding the utilisation of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this Section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of the publication of the order, appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the inams referred to in Section 41."

(emphasis supplied)

8. It is settled law that alienation of the properties of the temple

without the sanction of the Commissioner is null and void, and such power conferred on the Commissioner is plenary and should be exercised with due regard to: (i) the necessity for the sale; and (ii) the benefit to the institution. Any sale without sanction of the Commissioner is sham and nominal, vide *Basha Sahib v. Valikandapuram Village Kasi Viswanathaswami Koil*, (2003) 1 MLJ 563.

9. As it is not in dispute that the fourth respondent-Hereditary and Managing Trustee of the temple still proposes to sell the lands, suffice it to permit the petitioners to negotiate the sale consideration with the fourth respondent-Hereditary and Managing Trustee and make a representation to the second respondent-Commissioner, within thirty days from the date of receipt of copy of this order, for his sanction for sale of the respective lands. On receipt of such representation, the second respondent shall, after obtaining prior approval of the Government as contemplated under Section 34 of the Act, pass appropriate orders within a period of four months from the date of receipt of copy such representation, of course taking note of the earlier decision dated 7.12.1984, even though the same was set aside by this Court, by order dated 11.1.1994, for non-compliance of the procedure contemplated under Section 34 of the Act. As the necessity for sale got concluded long back, viz., 7.12.1984, suffice it to observe that while according sanction to the proposal and granting approval, the quantum of sale consideration which would benefit the temple alone would be the criteria.

This writ petition is ordered accordingly. No costs.

Index : Yes

Internet : Yes

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