IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.09.2024	18.10.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 25908, 25942, 25943, 25946, 25947, 25953, 25954, 25910 & 25956 OF 2024
AND
W.M.P. NOS. 28339, 2820, 28316, 28319, 28337, 28338, 28314, 28283, 28312, 28279, 28330, 28284, 28311, 28278, 28320, 28321, 28317, 28318, 28331, 28333, 28324, 28328, 28329, 28332 & 28322 of 2024

W.P. NO. 25908 OF 2024

M.Samudi .. Petitioner

- Vs –

1. The District Collector
Tirupattur District
Tirupattur 635 601.

2. The Commissioner
Hindu Religious & Charitable Endowments Dept.
Nungambakkam, Chennai 600 034.

3. The Joint Commissioner
Hindu Religious & Charitable Endowments Dept.
Vellore, Vellore District.

4. The Assistant Commissioner

Hindu Religious & Charitable Endowments Dept.
Tirupattur, Tirupattur District.

5. The Tahsildar
Natrampalli Taluk
Tirupattur District 635 852.

6. The Fit Person/Executive Officer
(Arulmighu Perumal Swamy Thirukkoil)
Kathari Village, Natrampalli Taluk
Tirupattur District.

7. R.Sekar .. Respondents

W.P. No.25908 of 2024 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the impugned order dated 15.07.2024 passed by the 2nd respondent in R.P. No.220 to 225 of 2023 and consequent impugned notices issued to the petitioner dated 17.08.2024 by the 4th respondent and quash the same.

For Petitioners : Mr. N.G.R.Prasad, for
M/s. S.Sivakumar

For Respondents : Mr. N.R.R.Arun Natarajan, S.G.P.
for RR-2 to 4 & 6 in WP 25908, 25942, 25943, 25946 & 25910/2024
Mr. H.S.M.Hasan Faizal, AGP
For RR-1 & 5 in WP 25908, 25942, 25943, 25946, 25947, 25953, 25954, 25910 &

25956/2024
Mr.Karthikeyan, GA (HR & CE),
for RR-2 to 4 & 6 in WP 25947,
25953, 25954 & 25956/2024

COMMON ORDER

The orders of the 2nd respondent confirming the order passed by the 3rd respondent in and by which the 3rd respondent had ordered the eviction of the respective petitioners from the subject property and also directed payment of damages for use and occupation has been put in issue before this Court by the petitioners by filing the respective writ petitions.

2. As the factual aspects in all the writ petitions are one and the same and the genesis of the case is also identical and all the petitioners are related in one way or the other, all the writ petitions are taken up together for disposal through this common order.

3. It is the case of the petitioners that originally a larger extent of land in Survey No.84/1 to an extent of 7 acres and 38 cents of Inam Punja land in Kathari Village, Natrampalli Taluk, Tirupattur District was owned by one Chennadasiri.

The legal heirs of the said Chennadasiri sold the property to the grandmother of the petitioners, one Pachaiammal through a sale deed dated 16.04.1940 before the Sub Registrar, Vaniyambadi. The said Pachaiammal died intestate leaving behind her two sons Munusamy and Thirupathi.

4. It is the further case of the petitioners that Munusamy, the elder son of Pachaiammal died intestate and is survived by his three sons, viz., Samikannu, Settu and Samudi. While Samikannu and Shanmugam have died and they are survived by his legal heirs, the other son Settu has two sons. The younger son of Pachaiammal, viz., Thirupathi, died intestate and is survived by his five sons. The writ petitions are filed by the petitioners, who branch out of the sons of Pachaiammal, viz., Munuswamy and Thirupathi.

5. It is the further case of the petitioners that during the year 1956. The then trustees of the 6th respondent temple, one Muthu Gounder and Thirupathi Gounder filed a suit against the sons of Pachaiammal, viz., Munuswamy Gounder and Thirupathi Gounder in O.S. No.53 of 1956 before the District Munsif Court, Tirupattur praying to vacate them from the above said property alleging that the

property is owned by the 1st plaintiff in the suit, viz., Swamy Perumal Temple. The said suit, upon contest, came to be dismissed on 29.11.1958.

6. Against the said decree and judgment, the then trustees of the 6th respondent filed appeal before the Subordinate Court, Vellore, in A.S. No.353 of 1959, in which the appellate court held that the appellants in the suit had failed to prove their right over the said property and dismissed the appeal on 27.02.1961. Against the said order, no appeal has been preferred. It is therefore the case of the petitioner that the order passed by the Subordinate Court, Vellore, stands till date, without it being appealed.

7. It is the further case of the petitioners that the legal heirs of Pachaiammal are now in possession and enjoyment of the property in Survey No.84/1, which has since been sub-divided into different survey numbers and that their occupation dates back to more than 73 years without any let or hindrance. The petitioners in the various petitions have acquired a portion of the property from out of the larger extent of land from their ancestors in the various

sub-divided survey numbers and they are doing cultivation and also constructed a house thereon in the said property.

8. It is the further case of the petitioners that after about 60 years from the date of the order in the suit, miscellaneous petitions were filed by the Assistant Commissioner, HR & CE Department and the Fit Person/Executive Officer of the temple u/s 78 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 (for short 'HR & CE Act') claiming that the temple is the owner of the said property and prayed to evict the petitioners from the property by declaring the petitioners as encroachers of the said property.

9. It is the further averment of the petitioners that the petitioners entered appearance through counsel and filed vakkalath and as the documents pertaining to the property were very old documents, going back by a century, the petitioners were not able to produce the documents to their counsel in time to file their counter. The matter was adjourned by the Joint Commissioner, HR & CE Department on various dates and curiously, the petitioners were set ex parte and recording the evidence of the Assistant Commissioner and the Fit

Person/Executive Officer of the Temple, common order came to be passed, which was served on the petitioners.

10. It is the further grievance of the petitioners that inspite of the fact that the documents were very old documents and sufficient time was not given to the petitioners to produce the same, the Joint Commissioner conducted the proceedings as summary trial without giving the petitioners reasonable time for filing counter. It is the further averment of the petitioners that the Joint Commissioner is bound to follow the procedures as prescribed under the Code of Civil Procedure and the petitioners, who were the respondents therein, were entitled to file their written statement within 90 days of receipt of summons. However, even before the expiry of the 90 days period, setting the petitioners ex parte, the orders have come to be passed, which is highly arbitrary, unreasonable, perverse and against the principles of natural justice.

11. It is the further averment of the petitioners that against the said common order, revision petitions were preferred before the Commissioner of HR & CE. It is the further averment of the petitioners that though the revision

petitions were filed within the statutorily prescribed period of 90 days and the same were pending consideration, which was also brought to the notice of the Assistant Commissioner of HR & CE Dept., however, without considering the same, eviction notice dated 30.03.2023 was issued to be evicted before 5.4.2023. Against the said eviction notice, writ petitions in W.P. Nos.11250/2023, etc., were preferred and this Court, vide common order dated 19.4.2023, set aside the evition notice and directed the Commissioner of HR & CE to take up the revision petition and dispose of the same in accordance with law within a prescribed period after affording opportunity to the petitioners as also the Temple.

12. It is the further averment of the petitioners that the 2nd respondent, vide order dated 15.7.2024, dismissed all the revision petitions in R.P. Nos.220 to 225. The main grievance canvassed by the petitioners is that the 2nd respondent has exceeded the scope of the revision petition. The scope of the 2nd respondent is to consider whether sufficient opportunity was given to the respondent in the application filed u/s 78 of the HR & CE Act before passing the ex parte order on 1.3.2023. However, the Commissioner/2nd respondent had gone beyond his scope and confirmed the ex parte order of the Joint Commissioner on merits of

the documents filed u/s 78 of the HR & CE Act on the basis of certain new documents filed by the Assistant Commissioner and the Temple. Further, the 7th respondent herein, who is not a party either to the Section 78 application or before this Court in W.P. No.11250/2023 was impleaded as party in the revision petitions inspite of the objections voiced by the petitioners.

13. It is the further averment of the petitioners that the 7th respondent was impleaded as a party respondent merely on the basis that he is a party in W.P. No.26574/2021. Though no orders were passed against the 7th respondent, the 7th respondent had been erroneously impleaded as party respondent in the revision petition. Though the 7th respondent claims that his father was a trustee in the alleged temple, however, no documents evidencing the same were produced to prove the same. It is the further averment of the petitioners that the 7th respondent is related to the petitioners and is attempting to illegally seize the property from the petitioners on the basis of false averments. No relief having been claimed against the 7th respondent, he is not a necessary party, however, without considering the same, the 7th respondent was impleaded as a party respondent, which is grossly illegal and unreasonable.

14. It is the further averment of the petitioners that the 2nd respondent, without considering the crux of the submissions of the petitioners had dismissed the revision petitions. It is the further averment of the petitioners that the application u/s 78 of the HR & CE Act should not be conducted as a summary trial; rather it should be conducted as a regular trial by following the Code of Civil Procedure. However, without following the procedures prescribed under the Code of Civil Procedure, more particularly with reference to grant of time for filing the written statements and filing counter, the 3rd respondent had set the petitioners ex parte and had passed the order on 1.3.2023. It is the further averment of the petitioner that the order was passed by the 3rd respondent before the expiry of 390 days, which is earmarked for filing the written statement. Further, it is averred that in the revision petitions new facts were placed by the 4th and 6th respondents, which did not form part of the deliberations in the application u/s 78 of the HR & CE Act and no documents evidencing the veracity of the said statements/documents were produced by the 6th respondent to prove the same.

15. It is the further averment of the petitioners that the issue with regard to the Minor Inam Abolition Tribunal's order with respect to the above property, which was placed before the 2nd respondent by the 6th respondent pertained only with regard to O.S. No.53/1956 and it did not take into account the order passed in A.S. No.353/1961. It is the further averment of the petitioners that the Civil Courts have passed an order with respect to the title of the property and, therefore, neither the Minor Inam Abolition Tribunal nor the 2nd respondent has any right to cancel the order of the civil court, without it being challenged before the appropriate forum.

16. It is the further stand of the petitioners that the 2nd respondent did not consider the averments as also the order passed in O.S. No.53/1956 before the District Munsif Court, Tirupathur in the earlier round of litigation, wherein the suit instituted at the behest of the then trustees relating to the title of the property was dismissed by judgment dated 29.11.1958. Further, in the appeal suit in A.S. No.353/1959, the appellate court held that the appellants had failed to prove the title over the said property, wherein an issue was framed as to whether the Temple, viz., the 6th respondent had any title over the property and

held that the Temple did not have any right over the said property. Till date, the order in A.S. No.353/1959 had not been put to challenge and, therefore, for more than 60 years back, the property has been under the enjoyment of the petitioners and their forefathers. However, without considering the same, the 2nd respondent had dismissed the revision petitions filed by the petitioners.

17. It is the further averment of the petitioners that the title to the above properties having already been adjudicated by the competent civil court as early as 60 years back, the same cannot once again be agitated before another forum u/s 78 of the HR & CE Act as the earlier order acts as *res judicata* for deciding the revision. However, without considering the same, the 4th and 6th respondents have approached another forum, which has dealt with the same, which is nothing but sheer abuse of process of law.

18. It is the further averment of the petitioners that the 6th respondent having been adjudicated as not being the owner of the property more than 60 years back by the civil court in appeal, without challenging the said order, the claim of title before another forum, claimed by the 6th respondent is wholly

illegal. The 6th respondent has not filed any parent document or relevant document to prove the title and prove ownership over the property. It is the further averment of the petitioner that the village field map of the year 1920 only shows the 6th respondent to own about 45 cents in the northwest corner in the said survey number and the present new village map produced by the 6th respondent is a forged document to create a false case against the petitioners. Further, it has been the consistent ratio of the courts that revenue records cannot be taken as proof to decide the title or ownership of the property. However, the 6th respondent has claimed title over the property based on the corrected 'A' register and the 2nd respondent without considering the aforesaid facts and also the relevant provision of law, has erroneously decided the title in favour of the 6th respondent based on 'A' register and patta.

19. It is the further averment of the petitioners that the 2nd respondent/Commissioner, HR & CE Department has dismissed the revision petitions without considering the facts and law on merits and has exceeded its limit and gone beyond the issue in deciding the revision petitions without giving opportunity to the petitioners to prove the case.

20. It is the further averment of the petitioner that there is no material to show that any notice had been given by the 6th respondent to the petitioners with regard to their encroachment on the property in the Section 78 application and without considering the same, the revision petitions have come to be allowed, which is illegal and arbitrary.

21. The notice has come to be issued by the 4th respondent pursuant to the order passed by the 2nd respondent inspite of the fact that the petitioners have been in occupation of the property for more than 80 years and that a house has been constructed in the said property and the house is assessed to house tax and electricity connection is also in the name of the petitioners. The issuance of notice to evict the petitioners from the above premises without following the procedure and giving ample opportunity to defend the case is illegal and contrary to law. Therefore, the present petitions have been filed assailing the order of the 2nd respondent and the consequential notice issued by the 4th respondent.

22. Learned counsel appearing for the petitioners submitted that as back as six decades back, the suit filed in O.S. No.53/1956 was dismissed on 29.11.1958 in and by which the trial court held that the plaintiffs therein had not proved their title to the property. It is further submitted that the appeal against the said judgment and decree in A.S. No.353/1959 was also dismissed confirming the said order, vide judgment dated 27.02.1961. It is pointed out by the learned counsel that against the said order, no appeal was filed before this Court and, thereby, the said order attained finality.

23. It is the further submission of the learned counsel that though in the appeal, a fresh document, Ex.A-1 was marked, which is the extract of the Special Register maintained as per Section 17 (1)(b)(ii) of the Madras estates Abolition Act, 1948, the appellate court had held that in the absence of the 'B' Inam Register being filed, which alone could conclusively establish the nature and character of the land, the document under Ex.A-1, which is of recent existence could not form the basis to hold with regard to the nature of original grant as claimed by the plaintiff.

24. It is the further submission of the learned counsel that though the document revealed that the property is described as “Perumal Kudi Inam”, however, the nature of grant and the title therefrom could not be ascertained on the basis of the said document. Taking this Court through the order of the Sub Court, learned counsel submitted that the court below, in the said appeal, has held that the suit property is not a “Devadayam Land” and neither Chennadasari nor the third defendant were performing pooja to the deity in the temple and that the suit property was originally granted as a personal inam to the predecessor in title of Chennadasari and that Chennadasari and, thereafter, her son was in enjoyment of the property. Pursuant to the said enjoyment, the property was sold to Pachaiyammal, the mother of defendants 1 and 2 in the year 1940 from where the petitioners, who are successors in interest of Chennadasari claim title.

25. It is the further submission of the learned counsel that there is a categorical observation by the courts below, in the suit that the land in dispute is not a Devadayam land. It is the specific finding of the courts below that the land was given to the predecessor of Chennadasari from out of a larger extent of land

through personal inam and that neither Chennadasari nor the 3rd defendant was performing pooja. It is therefore the submission of the learned counsel that the land, which was given as a personal inam, had been sold to the ancestor of the petitioners, viz., Pachaiyammal more than 80 years back and that Pachaiyammal and, thereafter, the petitioners have been in continuous occupation and enjoyment of the same.

26. It is the further submission of the learned counsel that almost 60 years, in the year 2021, one Sekar, claiming to be the son of a former trustee of the 6th respondent temple filed a PIL in W.P. No.26574/2021 seeking removal of encroachments in which direction was issued vide order dated 15.12.2021 to consider the representation of the petitioner therein for removal of encroachments and take action in accordance with law. However, it is the further submission of the learned counsel that the said Sekar suppressed the fact that he is a distant relative of the petitioners and is an interested party in the property.

27. It is the further submission of the learned counsel that proceedings were thereafter initiated u/s 78 of the HR & CE Act and inspite of the fact that the petitioners entered appearance, they were set ex parte and order was passed on 1.3.2023 against which revision petitions were preferred u/s 21 of the HR & CE Act.

28. It is the further submission of the learned counsel that pending the revisions, the 4th respondent issued notice for eviction against which W.P. No.11250/2023, etc. Batch was filed in which this court set aside the notice and directed the 2nd respondent to dispose of the writ petitions after affording opportunity of hearing to the parties, whereinafter, the 2nd respondent passed the order dated 15.07.2024, which is impunged herein.

29. It is the specific contention of the learned counsel that the order passed by the 2nd respondent is beyond the scope of the revision petition. It is the specific plea of the petitioners that sufficient opportunity was not granted to the petitioners while dealing with the applications u/s 78 of the HR & CE Act. However, the 2nd respondent exceeded his limit and went beyond the scope and

power in the revision petition and confirmed the ex parte order passed by the 3rd respondent.

30. It is the further submission of the learned counsel that the 2nd respondent, on the basis of the new document submitted by the 4th and 6th respondents and without adverting to the documents, which were considered by the Joint Commissioner, without giving an opportunity to the petitioners to contest the case on merits, passed the impugned order, while also allowing the 7th respondent to implead himself as party respondent in the revision, though the said 7th respondent herein is in no way connected either with the suits or with the writ petition filed by the petitioners in W.P. No.11250/2023, etc. It is the submission of the learned counsel that when the 7th respondent was not a party till the said date, however, the documents, which were produced by the 7th respondent, which were not an integral part of the order passed in the Section 78 application, had formed the basis for the 2nd respondent in negativing the objections of the petitioners and holding the case in favour of the 6th respondent, which order is biased and arbitrary and passed without following the principles of natural justice.

31. It is the further submission of the learned counsel that the new document filed is an order dated 3.2.1977 passed in M.I.A.T. No.13/1976 passed by the Minor Inam Abolition Tribunal, North Arcot Vellore, which was filed by the trustees of the 6th respondent temple to cancel the pattas issued to the lands belonging to the petitioners. It is the submission of the learned counsel that inspite of the order in A.S. No.353/1959, which had attained finality, as it was not appealed against, the Tribunal, relied on a document, which was not produced at the time of O.S. No.53/1956 as also A.S. No.353/1961 and held that the lands belonged to the temple. It is the further submission of the learned counsel that the 2nd respondent failed to consider that Ex.A-1, which was filed in A.S. No.353/1961, was not considered to be an acceptable piece of evidence by the appellate court and suppressing the said fact, the orders were passed by the Inam Tribunal and, therefore, the 2nd respondent failed to take into account that no reliance can be placed on the said document as also the decision of the Inam Tribunal. In this regard, learned counsel placed reliance on the decision of this Court in ***Sellakumarasamy – Vs – P.Swaminathan & Ors. (S.A. No.166 & 177/2009 – Dated 17.03.2009).***

32. It is the further submission of the learned counsel that Pachaiyammal, the grandmother of the petitioners, through sale deed dated 16.04.1940, had purchased the lands and that the legal heirs of the said Pachaiyammal have been in uninterrupted possession and enjoyment of the lands for more than 80 years, which has been deposed by the prosecution witness in O.S. No.53/1956 to the effect that the legal heirs of Pachaiyammal have been cultivating the said lands, which clearly establishes the continuous possession of the petitioners through their ancestors. However, without considering the aforesaid aspect, the 2nd respondent gravelly erred in relying upon the order of the Tribunal to hold that the land belonged to the 6th respondent/temple.

33. It is the further submission of the learned counsel that before passing the order, the 2nd respondent has not granted opportunity to the petitioners to cross examine the witnesses with regard to the new facts and documents, which were introduced only at the time of the revision petitions. Once the issue relating to the title to the property has been decided 60 years back by the

competent civil court, the same issue cannot be agitated once again in another forum u/s 78 of the HR & CE Act.

34. It is the further submission of the learned counsel that the Apex Court has held that the civil court's jurisdiction to adjudicate title of the parties is not barred by virtue of the provisions of the Tamil Nadu Minor Inam (Abolition & Conversion into Ryotwari) Act and that this Court has also held that the enquiry contemplated u/s 78 (4) of the HR & CE Act is not summary in nature and it is an enquiry to be conducted, as far as practicable, like a suit and that it is more or less a full-fledged enquiry as that of a court. However, without considering all the aforesaid aspect, the impugned order had come to be passed, which is wholly in violation of principles of natural justice and is illegal, arbitrary and deserves to be set aside.

35. In support of the aforesaid submissions, learned counsel also placed reliance on the following decisions :-

i) *Rajendra Singh – Vs – State of Jammu & Kashmir & Ors. (Civil Appeal No.5269/2003 – Dated 11.07.2008);*

ii) *Union of India & Ors. – Vs – Vasavi Co-op. Housing Society Ltd. & Ors. (Civil Appeal No.4702/2004 – Dated 07.01.2014); and*

iii) *A.Ramamurthy & Ors. – Vs – The Commissioner, HR & CE (W.P. Nos.30923 to 30925/2008 – Dated 06.09.2011)*

36. Per contra, learned Special Government Pleader appearing for the HR & CE Department submitted that the judgment and decree in O.S. No.53/1956 as also in A.S. No.353/1961 had only held that the title to the lands in dispute have not been proved to have been vested with the temple/6th respondent. Therein in the said decisions, it has clearly been held that the right and title of the property with Pachaiyammal, who is alleged to have purchased the said property from one Chennadasari, has not been proved. However, the courts below have only held that the title of the plaintiffs therein have not been proved, which could, by no means, be meant that the title with the respondents therein stood proved.

37. It is the further submission of the learned Special Government Pleader that even with respect to the alleged purchased by Pachaiyammal from Chennadasari, the same has not been accepted by the courts below and the trial

court has only rendered a finding that at best, the occupation of the lands by Pachaiyammal could, even otherwise, only be held to be by adverse possession and the trial court has further held that even the alleged adverse possession of Pachaiyammal would not get transposed to the descendants of Pachaiyammal as they could not carry the adverse possession of Pachaiyammal, as it is for them to perfect title by adverse possession. Therefore, it is the submission of the learned Special Government Pleader that the title to the property having not been settled in the earlier round of litigation, the bar of *res judicata* does not get engrafted so as to deny the 6th respondent from proving its title before the Inam Tribunal.

38. It is the further submission of the learned Special Government Pleader that even otherwise, *res judicata* wouldnot come into operation as the suit has not been laid by the plaintiffs in O.S. No.53/1956; rather, the suit has been laid on the basis of certain other material records by one of the other trustees of the temple, who has been nominated. Further, the title to the property having not been settled, the bar of *res judicata* would not operate when the respondents are not the persons, who had laid the said petition before the Inam Tribunal.

39. It is the further submission of the learned Special Government Pleader that even otherwise, the prayer in the earlier suit was for recovery of possession, whereas the issue before the Inam Tribunal was with regard to the title to the property. Further, the suit was dismissed on the ground that no material was placed to establish title and, therefore, the civil court had held that recovery of possession cannot be granted in the absence of the plaintiffs therein proving their title to the property.

40. It is the further submission of the learned Special Government Pleader that according to the petitioners, the inam was a personal inam granted to Chennadasari, which was purchased by Pachaiyammal, the grandmother of the petitioners. However, no material has been placed to prove that the inam granted to Chennadasari was a personal inam. Contrary to the said stand, it is the case of the petitioners that Chennadasari was carrying on service to the temple and inam was granted to her, which was sold to Pachaiyammal. It is the submission of the learned Special Government Pleader that the said contention, even if accepted, it would only go to show that it is a service inam and, therefore, necessarily, Section 21 of the Tamil Nadu Minor Inams (Abolition & Conversion

into Ryotwari) Act, would stand attracted and without fulfilling the mandate u/s 21, the property allegedly to be at the hands of Chennadasari cannot be alienated by way of sale to the petitioners' grandmother.

41. It is the further submission of the learned Special Government Pleader that Exs.P-1 and R-4, which are old official records, which were produced before the Inam Tribunal by the Department, had conclusively proved the inam to belong to the temple and the said documents, being Government documents, are unimpeachable and there arises no necessity for grant of an opportunity to dispute the said documents. Further, if the petitioners claim fraudulent acts in the said documents, then it is the duty of the petitioners to have let in evidence to disprove the said documents and mere cross-examination would not be the basis to discredit the said documents.

42. In fine, it is the submission of the learned Special Government Pleader that merely on the claim of *res judicata,* the petitioners cannot claim that the order passed by the 2nd respondent is bad, moreso, when the appeal filed as against the order passed by the Inam Tribunal by the predecessors of the

petitioners ended in dismissal relegating the appellants therein to go before the civil court. Therefore, really if aggrieved, the petitioners ought to have move the civil court and it is not open to the petitioners to challenge the order of the 2nd respondent and the consequential notice issued by the 4th respondent by invoking the extraordinary jurisdiction of this Court and, therefore, the present petitions deserve to be dismissed.

43. Learned Addl. Government Pleader appearing for the other official respondents, in sum and substance, adopted the arguments advanced by the learned Special Government Pleader and submitted that the order passed by the 2nd respondent does not suffer any infirmity or illegality and the same does not warrant any interference at the hands of this Court and, accordingly, prays for dismissal of the present petition.

44. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on, on behalf of the petitioners.

45. Before transcending any further on the contentions raised before this Court with regard to the right of the petitioners to possession over the disputed property and the right of the 6th respondent to claim title over the property, it would be apt to refer to the findings recorded in the earlier round of litigation between the plaintiffs therein and the predecessors of the petitioners herein.

46. Persons, claiming to be trustees of the 6th respondent temple, on the basis of certain resolution, had filed a suit in O.S. No.53/1956 before the learned District Munsif Court, Tirupathur, claiming recovery of possession of the properties from the hands of the defendants therein, who are the predecessors of the petitioners herein, as according to them, the lands were given as inam to the temple for being utilised towards the performance of pooja to the deity. While the trial court, in the said suit, framed, seven issues, out of which issue Nos.1 to 3 and 11 are of importance and the same are quoted hereunder :-

i) *Whether plaintiffs 2 and 3 are trustees of "Sami Perumal" appointed by the devotees of the idol and if so, whether such appointment is valid.*

ii) *Whether the suit property is the property of Sami Perumal, 1st plaintiff.*

iii) *Whether plaintiffs are entitled to possession of the suit property without a prayer for declaration.*

iv) *Whether the suit is barred by limitation and adverse possession.*

47. After considering the pleadings and the materials placed, the trial court, on the first issue, while held that plaintiffs 2 and 3 have not been appointed as trustees of the suit temple, but notwithstanding their non-appointment as such, the present suit by the 1st plaintiff through its next friend, the 2nd plaintiff is maintainable.

48. On the 2nd issue, based on Ex.B-1, the sale deed executed by the 3rd defendant to one Pachaiyammal on 16.4.1940, the mother of defendants 1 and 2 in the suit, there is a reference to the suit property describing it as 'Perumal Gudi Inam'. Though it was contended on behalf of the plaintiffs that the suit property, therefore, belongs to the deity, however, the trial court disagreed with the said contention by holding that the expression *'Perumal Gudi Inam' is only the Tamil equivalent of the word 'Devadayam' and Devadayam may mean either the property belongs absolutely to the deity as owner, or that it is a service tenure*

granted in inam to the holder thereof for performing some service to the temple. Further, reliance was also placed on Ex.B-2 by the plaintiffs, which are certain observations made by the Assistant Settlement Officer in his proceedings dated 30.11.1957 to the effect that in the village accounts, the suit land has been registered as 'Perumal Gudi Devadayam Inam'. However, a finding on the above contention had been rendered by the trial court to the effect that presumption of the suit lands being given in inam to the deity cannot be presumed in the absence of any documentary proof as no reliable evidence has been let in to show that the suit property has been granted to the temple, but although there are some inferences that could be drawn to the effect that the poojaris of the temple were admittedly in possession. Therefore, the inam at the hands of the deity, according to the trial court, was not established by the plaintiffs.

49. In the above backdrop of the findings, the trial court has further gone on to hold as under, more particularly with regard to issue No.11, wherein the trial court has made the following observations :-

> *"20. ..... The defendants 1 and 2 accordingly contend that by virtue of their continuous possession as owners of the suit property they have acquired title thereto by adverse possession.*

Although adverse possession against a deity is possible (vide Damodar Das v. Lakhan Das and Periannan Chetty & Ors. V. R.B.M.R.Govinda Rao) in this case there is one circumstance which makes it impossible for the defendants to prescribe by adverse possession as against he deity. Ex.B-1 dated the 16th April, 1940 is by the 3rd defendant who admittedly was performing the pooja of the suit temple and therefore its poojari. Now, in Paddinti Venkatanarasimha Charyulu Paddinti v. Rayasam Gangamma Pantulu and others it has been observed that in order to make time run against a deity the Archaka in possession would have to surrender the property to the proper custodian or mutavalli and then enter upon it as a trespasser, and it is only in such circumstances either he or those claiming under him can justifiably say that their title has become adverse. Again in Sree Sree Wshwar Sridhar Jew vs. Kst.Sushila Bala Dasi and others it has been held by the Supreme Court that no shebait can, so long as he continues to be the sevait, ever claim adverse possession against the idol and that no dealing of his with the property dedicated to the idol could afford the basis of a claim by him for adverse possession of the property against the idol. Therefore, in view of these decisions and in view of the admitted status of the 3rd defendant in connection with the temple, I am of the view that neither he nor his successors-in-title the 1st and 2nd defendants herein, can prescribe against the deity by adverse possession and thereby get title."

50. It has further been held by the trial court with regard to effecting of improvements by the defendants and their entitlement to recover the cost of improvements from the plaintiffs to the property in their possession, it has been held as under :-

> *"24. ..... The provisions of Section 51 of the Transfer of Property Act will apply only where the improvements are made by a person who in good faith believes that he is the owner of the property. There is no evidence in this case to show that defendants 1 and 2 in making the purchase from Raghavalu Naidu, the 3rd defendant and the poojari of the suit temple were acting in good faith. Any one who with open eyes purchases the property of a temple from its poojari cannot be said to be acting in good faith and to believe in such faith that he is the owner of the property. I accordingly find this issue against the defendants."*

51. From a careful perusal of the judgment and decree passed by the trial court, which has been affirmed by the appellate court in A.S. No.353/1961, it clearly crystallises that the plaintiffs in the suit have not proved the title of the property to the temple. However, in the same stretch, the trial court has also held that the defendants 1 and 2 therein, who are the predecessors of the

petitioners herein, cannot claim ownership to the suit property based on the purchase alleged to have been made by Pachaiyammal from the 3rd defendant therein, who is the heir of Chennadasari, as Ragavalu Naidu, the legal heir of Chennadasari, did not have any right as owner over the property, as the property belonged to the temple.

52. On the aforesaid reasoning, while the trial court dismissed the suit for recovery of possession of the property from the defendants, which has been affirmed by the appellate court, however, with regard to the title to the property, the same was left open, undetermined. In the backdrop of the aforesaid position, the plea of *res judicata* cannot be sustained, as the title to the property has not been dealt with by the trial court and the appellate court in the suit. When the title to the suit property was not the issue, but the issue related only to recovery of possession, the plea before the Inam Tribunal related to cancellation of patta issued to the predecessors of the petitioners herein, the said petition cannot be said to be not maintained as it is hit by the principles of *res judicata.* Therefore, there was nothing wrong in the Inam Tribunal entertaining the plea and adjudicating the same on merits.

53. The adjudication proceedings before the Inam Tribunal centered only upon the plea of *res judicata* and this Court having negatived the said plea, the order passed by the Inam Tribunal with regard to cancellation of patta issued in favour of the predecessors of the petitioners survives and the same can be relied upon by the authorities while adjudicating the application u/s 78 and also the appeal arising out of the same.

54. Before dwelling into the adjudication proceedings of the Inam Tribunal, it is to be pointed out that the suit was laid on behalf of the deity by a devotee, whereas, the adjudication proceedings before the Inam Tribunal was by the objector, who was the Managing Director of the Perumalsami Temple at Kathari Village. Therefore, even on this score, the plea of *res judicata* would not survive consideration, as the Managing Director of the temple had taken up the issue with regard to grant of patta in respect of the lands dedicated by the then Zamindar of Kangunthi to the temple for the purpose of utilising the income generated from the said lands for the performance of pooja in the temple in

which orders have come to be passed, which will be discussed at the appropriate place.

55. Be that as it may. In the year 2021, W.P. No.26574/2021 had come to be filed by one R.Sekar, the petitioner, praying for a writ of mandamus directing the respondents 1 to 4 to remove the encroachments in the lands belonging to the 5th respondent, viz., the 6th respondent herein in an extent of 2.80.50 hectares in Survey No.63/4, 84/2-11 of Kathari Revenue Village, Nattrampalli Taluk, Tirupathoor District, bearing Patta No.268 on the basis of the representation of the petitioner.

56. This Court, in the said petition, vide order dated 15.12.2021, without going into the merits of the issue, directed respondents 2 to 4 therein to consider the representation of the petition and take action in accordance with law after providing ample opportunity to all the necessary parties as per Section 78 (ii) of the HR & CE Act within a particular time frame.

57. Consequent to the said direction, on the basis of the petitions filed by the 4th and 6th respondents against the petitioners, action was taken by the 3rdrespondent u/s 78 (2) of the HR & CE Act and common order had come to be passed on 1.3.2023 in and by which the 3rd respondent had passed the order directing removal of the petitioners from the property by deeming them as encroachers, as the said possession of the petitioners were without any documents and against the authority of law.

58. The main grievance espoused in this regard by the petitioners is that they were not given sufficient opportunity to submit the relevant materials and, therefore, the order passed by the 3rd respondent is arbitrary and unsustainable and on this grievance, revision petitions were filed before the 2nd respondent.

59. Pending the review, notice was issued to the petitioners by the 4th respondent to vacate the property and hand over possession of the same, against which the petitioners preferred W.P. No.11250/2023. The main grievance expressed by the petitioners therein is that they were not granted opportunity and they were set ex parte without hearing them. The Court, after granting

opportunity to either party therein, has extracted the order of the 3rd respondent, which clearly shows that ample opportunity was granted to the petitioners before passing the order. The above is evident from the order passed therein, dated 19.04.2023. However, the only ground on which the notices were interfered with was that the decree of the civil court was not taken into consideration while passing the order and, therefore, the revision petitions were directed to be considered expeditiously before action could be initiated against the alleged encroachment.

60. It has been specifically pointed out by the learned single Judge in the aforesaid writ petition that though the proceedings u/s 78 of the HR & CE Act has the trappings of a Civil Court, but the same must be conducted on a day-to-day basis. However, the opportunities granted to the petitioners though did not require interference of the order, but only on account of the decree of the civil court not having been dealt with, the revision petitions were directed to be disposed of expeditiously. In this regard, though the decision in *Sellakumarasamy case (supra)* has been pressed into service by the petitioners, which mandates that the powers of the statutory authority with regard to the

manner of adjudication of the claims of the occupants, however, in the present case, it is to be pointed out that the petitioners were afforded adequate opportunities to put forth their case by the 3rd respondent and inspite of grant of sufficient opportunities, which has been recorded in the order passed in W.P. No.11250/2023, etc., the petitioners not having diligently partaken in the proceedings cannot now come and claim that no opportunity was granted to them. When the petitioners have failed to utilise the opportunities granted to them to put forth their case, they cannot come before this Court with stained hands claiming that sufficient opportunity was not granted to them. Therefore, the said contention deserves to be rejected.

61. In such a backdrop, the order, which is impugned in the present petitions had come to be passed, in and by which the subject property was directed to be the properties of the temple, but, nevertheless, the grievance of the petitioners herein is that the issue raised in the revision petitions was on the ground that the order of the 3rd respondent had not granted sufficient opportunities to the petitioners and, therefore, the said order has to be set aside and the matter has to be looked at afresh. However, as elucidated in the order

passed in W.P. No.11250/2023, it is clear that adequate and sufficient opportunity was granted to the petitioners to put forth their case and, therefore, the plea of the petitioners that the 2nd respondent cannot go beyond the grievance expressed by the petitioners and is bound only with regard to the grievance is wholly misconceived. If the stand of the petitioners that the 2nd respondent cannot go beyond the grievances canvassed in the revision petitions, the order of this Court in W.P. No.11250/2023 staring writ large on the face of the petitioners with regard to the grant of sufficient opportunity, the course open to the 2nd respondent would only have been to dismiss the revision petitions, which would only mean that the order passed by the 3rd respondent stood confirmed, the further appreciation of the material by the 2nd respondent cannot be said to be erroneous, given the fact that as the appellate authority, the 2nd respondent is bound to consider the review in toto before passing the order, which cannot be found fault with

62. Insofar as the contention with regard to the 7th respondent being impleaded as a party in the review petition before the 2nd respondent, it is to be pointed out that the 7th respondent was the writ petitioner in W.P.

No.26574/2021, who was instrumental in getting an order which set in motion the petition u/s 78 of HR & CE Act. Though the said 7th respondent is neither a party in the suit nor in the writ petitions filed by the petitioners challenging the notice issued by the 4th respondent pursuant to the orders passed by the 3rd respondent, notwithstanding the said fact that the 7th respondent herein was the petitioner in W.P. No.26574/2021, the impleadment of the said person in the review petition cannot be said to be erroneous. Further, for rendering substantial justice, if the 2nd respondent had thought it fit to implead the 7th respondent herein in the revision petitions, on the materials above, this Court does not find any infirmity with the same and, therefore, the contention with regard to the same deserves to be rejected.

63. Therefore, in the above backdrop, the issue that remains to be decided by this Court is with regard to the other limb of the order passed by the 2nd respondent in and by which the subject lands were held to be the lands of the temple, having been granted as inam to the deity. In this regard, the petitioners contend that revenue records cannot form the basis of title and, therefore, the property, which has been given to the temple on the basis of the revenue records

does not deserve acceptance. In this regard the decision of the Apex Court in *Vasavi Co-op. Housing Society and Rejinder Singh case (supra)* are pressed into service. This Court is conscious of the fact that the revenue records would not confer any title to any party and that necessary records evidencing title has to be placed, which alone would establish the title to the said lands. This is applicable in equal force to both the petitioners and the respondents and, therefore, it is necessary for this Court to find out whether there were material documents satisfying the prescription of title in favour of either party, which had prevailed upon the Inams Tribunal to pass an order, which had weighed with the 3rd respondent and the 2nd respondent to take cue from the said order to hold that the lands belongs to the temple.

64. The petitioners claim their ownership and title by virtue of the sale deed in the name of Pachaiyammal dated 16.4.1940 through which the lands were parted with by the legal heir of Chennadasari, viz., Raghavalu Naidu. To this end, the sale deed has been marked, the recitals of the said sale deed, which are material for the present issue are as under :-

"எங்களுக்கு பிதுர்ராஜ்ஜிதமாய் பாத்தியப்பட்டு எங்கள் சுவாதீன அனுபவத்திலிருக்கும் நிலத்தை கத்தாரி கிராமத்திலிருக்கும் முனுசாமி கவுண்டரிடம் நாங்கள் வாங்கியிருக்கும் நில அடமான கடன் தீர்ப்பதற்காக கீழ்கண்ட நிலத்தை நாளது தேதியில் நாங்கள் உமக்கு சுத்த கிரையப்படுத்தி ரூபாய் 200 மூபலகு இருநூ¯று ரூபாய் இன்று உம்மால் ரொக்கம் பெற்றுக்கொண்டு கிரைய சொத்தையும் இன்றே உம்முடைய சுவாதீனம் செய்து விட்டோம்."

65. The aforesaid document has been marked in the suit which has been taken note of by the Inam Tribunal also and perused and that the same has also been pointed out before the 2nd respondent. It is to be noted that in the suit, both the trial court and the appellate court have not rendered any finding with regard to the title to the lands being with the predecessors of the petitioners. The title of the plaintiffs alone was negatived as not having been established. Further, it is to be pointed out that suit, as has been stated above, had been filed for recovery of possession and no declaratory relief was sought for in the suit. The trial court and the appellate court had held that the plaintiffs in the suit had not established the title and had not sought declaratory relief. However, the said

finding of the courts below cannot be taken to mean that the title of the defendants therein, viz., the predecessors of the petitioners have been established.

66. In fact, there is a categorical finding by the trial court that there is no evidence to show that defendants 1 and 2 had made the purchase from Raghavalu Naidu, the 3rd defendant and the poojari of the suit temple and had further gone on to hold that anyone who with open eyes purchases the property of a temple from its poojari cannot be said to be acting in good faith and to believe in such faith that he is the owner of the property. Further, as stated above, the trial court has given a categorical finding that the predecessors of the petitioners, but for Pachaiyammal, also cannot be taken to have perfected title by adverse possession. Even insofar as Pachaiyammal, at best she could claim adverse possession and nothing beyond as, but for the sale deed, there is nothing to infer that the vendor, viz., Raghavalu Naidu, the legal heir of Chennadasiri had title to the property so as to enable him to part with the said property by way of sale in favour of Pachaiyammal.

67. In the backdrop of the aforesaid finding, it is further to be noted that even the sale deed, which is alleged to have been entered into between Pachaiyammal and the legal heir of Chennadasari, viz., Raghavalu Naidu, clearly expresses the land as “Perumal Gudi Inam”. The same has also been captured by the trial court in its finding. Further, the trial court, in the suit, has gone on to hold that “Perumal Gudi Inam” is only the Tamil equivalent of the word “Devadayam”, which means that the property either belongs to the deity absolutely or it is a service tenure granted in inam to the holder thereof for performing some service to the temple.

68. In a nutshell, the word “Perumal Gudi Inam”, as is meant in the sale deed, if construed to be the land belonging to the deity, then the deity is the sole owner of the property or at best, if it is given as a service tenure inam, then it would be a “Devadayam”and the holder of the service tenure inam has to perform the service to the temple and only till such time, the holder of the same performs the said service, the service holder could benefit from the said land and not otherwise.

69. In this regard, a careful perusal of Section 21 of the Tamil Nadu Minor Inams (Abolition & Conversion into Ryotwari) Act, deals with *"Service Inams".* If, as propounded by the trial court, the land is a service tenure granted as inam to the holder, then it would be for a purpose of doing some particular service. For better appreciation, the said provision is extracted hereunder:-

> *"**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 section 16-A, as the case may be], 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 section 16-A, as the case may be].

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."

70. From the above provision, it is abundantly clear that in respect of service inams, the service holder retains possession and enjoyment of the property so long as the service holder renders the service to the deity. If the service holder wants to get discharged from the said condition, then, for the purpose of discharge from the condition of service, either the amount towards the land as specified in sub-section 3 (i) (a) should be paid else the pattadar should continue to hold the land and do service as per the condition prescribed

under sub-section 3 (i) (b). However, it is to be noted that there is no patta, which was given to Chennadasiri. In fact, the alleged patta No.268, which has been granted, stands in the name of the temple.

71. In the backdrop of the above provision of law, it becomes imperative for this Court to find out whether the conclusions arrived at by the Inams Tribunal, which had formed the basis for the impugned order divesting the petitioners of the property had come to be passed.

72. Before the Inams Tribunal, the documents of the year 1890 has been placed, which are marked as Exs.R-3 and R-4, which are nabartathi chitta and settlement register of Kangunthi Village, in and by which the property under the present *lis* has been given to the temple for certain codified purposes and the same has been registered. It is to be noted that the said document was not available when the suit was considered in O.S. No.53/1956 and A.S. No.353/1961. The said document has been placed for consideration only before the Inams Tribunal by the respondents, viz., HR & CE Department.

73. It is the stand of the petitioners that the said document cannot be taken into consideration as they have not been given a chance to cross examine on the same. Further, it is their specific case that the said document had been created for the purpose of this case as it was not placed when the trial court and the appellate court were seized of the suit and judgment and decree came to be passed. Though such a contention has been advanced, it cannot be accepted for the simple reason that in the said suit, the HR & CE Department was not a party; rather the suit was laid on behalf of the deity by one of the devotee, though it was claimed therein that the devotee is a trustee, which has not been accepted by the trial court. In the absence of the said document being placed, the trial court had gone on to record a finding that there is no material to infer that the lands were given in inam to the temple for the purpose of performing Pooja to the deity.

74. In fact, it is to be pointed out that the extract of the special register maintained as per Section 17 (1)(b)(ii) of the Madras Estates Abolition Act has been placed, which was not accepted by the appellate court as the said document was not considered to be a contemporaneous document. In fact, a

specific finding has been rendered therein that if at all the title has to be proved, then it is necessary that the 'B' inam register, which ought to have been filed, which alone could have proved the title to have been with the temple.

75. The suit had come to be dismissed only on the ground that the requisite contemporaneous documents have not been filed to establish title. However, before the trial court and the appellate court, the HR & CE Department was not a party. But before the Inam Tribunal, the HR & CE Department was a party and at their behest, the document of the year 1890, viz., Ex.R-4 therein, which is an ancient document, had been filed to establish that the lands were, in fact, given by the Zamindar of Kangunthi as inam to the temple for performing Pooja to the deity.

76. In fact, as recorded above, the trial court, even in O.S. No.53/1956 had rendered a categorical finding that the inam is "Devadayam", meaning thereby, that it is either an absolute grant in favour of the temple or a service tenure grant in favour of the poojari. Further, the trial court had recorded a finding that the 3rd defendant therein, viz., Raghavalu Naidu, the legal heir of Chennadasari was

enjoying the lands under the service grant by rendering service to the deity. Therefore, so long as the said Raghavalu Naidu was rendering service to the deity, the lands could be enjoyed by the said individual and alienation is impermissible if not specifically spelled out in the grant. However, there is no material placed before this Court or even before the Inam Tribunal and also before the 2nd and 3rd respondents to even infer that the right of alienation was given to Chennadasari in the service tenure inam. In the absence of any explicit clause in the service tenure inam giving right of alienation to Chennadasari and her successors, the alienation of the lands by Raghavalu Naidu to Pachaiyammal, the grandmother of the petitioners is wholly impermissible and it is beyond the conditions prescribed in the service inam grant.

77. Further, a perusal of the order of the Inam Tribunal reveals that Chitta, Ex.R-3 was filed relating to Fasli 630 (1890). Under the said Ex.R-3, the property has been described as *"Perumalsami Kovil Inam"*, meaning thereby that the said land has been given as inam to the temple. Though it is contended on behalf of the petitioners that they have not been given any opportunity to cross examine on the said document, however, the fact remains that the said document is an

ancient document and the records clearly reveal that the lands were purchased by the Zamindar of Kaugunthi and granted as service inam to the temple. Further, Ex.R-4, the settlement register of the village and therein, S. No.84/1, which pertains to the lands in dispute herein, is shown with all its sub-divisions and patta has been noted as *"Perumal Koil - Poojai Koil"*. The aforesaid finding has been recorded in the order of the Inam Tribunal. The Inam Tribunal has further rendered a finding that it has not been denoted as "Poojari Inam".

78. Even if it is the case of the petitioners that it was granted to Chennadasari and later passed on to her legal heir Raghavalu Naidu from whom it is alleged to have been purchased by Pachaiyammal, it is to be pointed out that even at best, the said lands could be categorised only as service tenure inam, meaning thereby, that the lands could be enjoyed by Chennadasari and, thereafter, by her legal heirs, so long as they are rendering service to the deity. If the persons refrain from rendering service to the deity, the lands would stand vested with the deity and it could not be enjoyed by Chennadasari. Further, as stated above, if the lands are to be sold by the persons holding it in service tenure, then necessarily, it being a service inam, Section 21 of the Tamil Nadu

Minor Inams (Abolition & Conversion into Ryotwari) Act has to be followed. However, there is no material evidencing the following of the provisions of Section 21.

79. Returning back to the sale deed, which is alleged to have been executed by Raghavalu Naidu in favour of Pachaiyammal, which has been extracted supra, it is to be pointed out that there is no mention in the sale deed as to how the property had devolved on Raghavalu Naidu. There is a quirk mention that it had devolved on the vendor from his ancestors. But there is no material in the said sale deed to establish the manner in which Raghavalu Naidu had come in possession of the said property. Further, it transpires from the sale deed that the lands were being sold to settle the amount which is alleged to have been received by Raghavalu Naidu from Pachaiyammal.

80. In this regard, a perusal of the order passed by the Inam Tribunal reveals that the petitioners herein, whose ancestors, were the respondents therein, in their counter before the Settlement Tahsildar had averred that "*the suit lands were originally held by the original service holder Chennadasari, that*

his descendants Raghavalu Naidu, Thimma Dasari and Venkatapa Naidu (vendors of Ex.A-1) became owners of the land and they were doing poojari service in the Perumalsami Temple in the village. Thus when they say that their ancestors were the service holders and they have been rendering poojari service to the temple, it is surprising to note that this land is said to belong to them ancestrally as though it is their property left by their forefathers. Furthermore, the description in the sale deed that it is ancestral property will not be a source of title in itself in the absence of any documents to prove it".

81. A careful perusal of the aforesaid finding coupled with the sale deed, the relevant portion of which has been extracted supra, clearly reveals that the flow of the property to the hands of Raghavalu Naidu is said to be through their ancestors, which has been under their possession, but there is no material to show the ancestral nature of the property except for the aforesaid averment. Mere averment in the sale deed in the absence of any material as proof thereof would not suffice to treat the property as the ancestral property of Raghavalu Naidu, which could be parted with by way of sale to Pachaiyammal.

82. The aforesaid factum of title has been succinctly dealt with by the trial court while dealing with the issue of adverse possession of the property against the deity, wherein, it has been held that "*Therefore, in view of these decisions and in view of the admitted status of the 3rd defendant in connection with the temple, I am of the view that neither he nor his successors-in-title the 1st and 2nd defendants herein, can prescribe against the deity by adverse possession and thereby get title".*

83. From the aforesaid finding of the trial court, even way back in the suit in O.S. No.53/1956, there is a clear finding that the title to the property has not been established to be with the deity by the plaintiffs therein and, equally, it was held that even title by adverse possession against the deity has not been established as against the defendants therein, as neither the 3rd defendant therein or his successors-in-title and the 1st and 2nd defendants therein, who are the legal heirs of Pachaiyammal could prescribe title against the deity by adverse possession. Therefore, there is a clear finding recorded that title has not been established against the plaintiffs or the defendants in the suit and that being the

case, the only ground on which the defendants were given relief was that they were alleged to have been in possession of the property.

84. In the aforesaid backdrop, when the title has not been decided in the suit, the Inams Tribunal was not barred from dealing with the issuance of patta with respect to the subject property, which was granted by the Settlement Tahsildar in favour of the predecessors of the petitioners herein, when specifically, the ancient document of the year 1890 relating to fasli 630 was placed before it. Referencing the grant of inam in favour of the temple and the deity from the said document of the year 1890, which has not been discredited in any manner by the predecessors of the petitioners, the Inams Tribunal had gone on to hold that the property belonged to the temple, which was granted as service inam land by the Zamindar of Kangunthi. Not only that, the settlement register of the village also sheds light that patta is noted as “Perumal Koil-Poojai Kovil”.

85. Reading the above finding of the Inams Tribunal harmoniously with the judgment passed in the suit, the trial court has, in unambiguous term, with

reference to the contention advanced on behalf of the plaintiffs therein had held that *"Perumal Gudi Inam" is only the Tamil equivalent of the word Devadayam and Devadayam may mean either that the property belongs absolutely to the deity as owner or that it is a service tenure granted in inam to the holder thereof for performing some service to the temple".* From the above finding of the trial court, it is implicitly clear that even if the property is granted as service inam to the poojari, then the inam would be only so long as the person renders service to the deity. In this regard, there is a categorical finding by the Inams tribunal that had it been an exclusive inam to the poojari for performance of service to the temple, then the inam ought to have been couched as "Perumal Kovil Poojari Inam". Rather, what is recorded is that the inam is shown as "Perumal Kovil-Poojai Kovil", which could only be taken to mean that the land is given as inam to the temple to be utilised by the poojaris for the purpose of doing poojas to the deity in the temple from out of the income generated by the lands, which falls under the said inam.

86. It is further to be pointed out that even in the suit in O.S. No.53/1956, there is a clear finding that there is no evidence with regard to the purchase

made by the defendants 1 and 2 from the 3rd defendant in the suit and a further finding has been recorded that purchase of the property belonging to the temple from its poojari cannot be said to be an act of acting in good faith so as to claim that they are the owners of the property.

87. Further, it is to be pointed out that the petitioners herein are blowing both hot and cold over a singular issue. While on the one hand, they contend that no appeal having been filed against the order passed in the suits by the trial court and the first appellate court and, therefore, the petition before the Inams Tribunal is barred by *res judicata,* however, they fail to notice the fact that though an order has been passed by the Inams Tribunal against the petitioners herein which was appealed against unsuccessfully, yet the petitioners have not taken it up higher, but have kept silent. It is only after a vigilant public had sought for certain directions from this Court to remove the encroachments on the lands belonging to the temple in which directions were given by this Court to the HR & CE Department to initiate action u/s 78 of the HR & CE Act, resulting in the orders being passed by the 3rd respondent, the petitioners have filed the revision petitions before the 2nd respondent against the said orders, which had

gone against them, as steps were taken by the authorities to remove the encroachments. Barring the same, the petitioners, since the order passed in their S.T. Appeal No.288/1978 on 4.7.1988, have not taken any steps to appeal against the said order before the civil court claiming title over the said property.

88. Therefore, the claim of the petitioners that they are owners of the land through the purchase by their predecessors is wholly erroneous as even if it is presumed to be a purchase, the said purchase is from a person, who had no title over the property, viz., Raghavalu Naidu and, therefore, the said purchase cannot be said to be purchase in the eye of law. Therefore, the document on which the purchase is claimed by the petitioners has no sanctity in the eye of law and, therefore, the contention of the petitioners that they had perfected title through the aforesaid purchase is liable to be dismissed.

89. All the aforesaid facts have been gone into, in detail by the Inams Tribunal, while setting aside the order passed by the Settlement Tahsildar and the possession, if any, by the respondents, even as of date, as held by the Inams

Tribunal, could only be deemed to be possession on behalf of the temple and they cannot claim possession in their names.

90. Rightly appreciating all the aforesaid materials, including the order passed by the Inams Tribunal, the 3rd respondent had passed the order, which has been confirmed by the 2nd respondent in the revisions filed against the said order and, therefore, the said order being just and reasonable and legally sustainable, no interference is warranted with the same and, accordingly, there are no merits in the present writ petitions and the same deserve to be dismissed.

91. **Accordingly, finding no infirmity with the order passed by the 2nd respondent writ petitions filed challenging the said orders are dismissed. Consequently, connected miscellaneous petitions are also dismissed. There shall be no order as to costs.**

92. Before parting with this case, it is to be stressed that due to the inaction on the part of the authorities then, the predecessors of the petitioners and, thereafter, the petitioners have been enjoying the lands to the detriment of

the deity, which was given for the purpose of being used for performing poojas. Only due to the vigilant act of a public interest litigant to remove the encroachments, the present action had come to be initiated. If not for the said act, the encroachments would have never seen the light of the day, thereby, the deity would have been robbed of its valuable lands, which was given to it for the purpose of uninterrupted conduct of poojas in the temple. It is to be stressed that when Section 78 applications are filed, the HR & CE authorities are duty bound to act on the same immediately and not put the same in cold storage, as the predominant purpose of such applications is to see that encroachments are removed and the lawful owner stands to benefit. The HR & CE authorities do not act on the Section 78 applications diligently, the intent and purpose of such dedication would get eroded and encroachers would have a field day by encroaching upon the said lands making the deities yearn for its due share which had been bestowed upon it from persons out of benevolence and devotion to the deity.

93. Once an application u/s 78 is filed the same has to be taken with judicious conscience and disposed of in all earnestness by the respective

jurisdictional Joint Commissioners at the earliest so that the encroachments are removed and the lands are put back in possession of its rightful owners for the purpose for which the lands have been dedicated. However, at the time of hearing the writ petitions, it came to the knowledge of this Court that numerous petitions u/s 78 of the HR & CE Act are pending consideration of the jurisdictional Joint Commissioners and due to such pendency, the alleged encroachments, as pointed out in the said petitions are still continuing. Though it is to be stated that there is no specific time limit fixed for the disposal of the said petitions, however, it is to be pointed out that the said petitions are to be disposed of expeditiously, as it is a facet of administrative procedure. But for the expeditious disposal, the encroachers are having a field day by occupying the said lands and, thereby, the purpose for which the lands have been earmarked, could not be realised.

94. In such view of the matter, this Court directs the 2nd respondent herein, viz., the Commissioner, HR & CE Department, to collect all the particulars from the respective jurisdictional Assistant/Joint Commissioners and Commissioner throughout the State and file a comprehensive report about the

status of such pending Section 78 applications before this Court by the next date of hearing.

95. **List the matter for filing comprehensive report, as aforesaid, by the 2nd respondent on 29th October, 2024.**

18.10.2024

Index : Yes / No
GLN

To

1. The District Collector
Tirupattur District
Tirupattur 635 601.

2. The Commissioner
Hindu Religious & Charitable Endowments Dept.
Nungambakkam, Chennai 600 034.

3. The Joint Commissioner
Hindu Religious & Charitable Endowments Dept.
Vellore, Vellore District.

4. The Assistant Commissioner
Hindu Religious & Charitable Endowments Dept.
Tirupattur, Tirupattur District.

5. The Tahsildar
Natrampalli Taluk
Tirupattur District 635 852.

6. The Fit Person/Executive Officer
(Arulmighu Perumal Swamy Thirukkoil)
Kathari Village, Natrampalli Taluk
Tirupattur District.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NOS.25908 OF 2024, etc. Batch

Pronounced on

18.10.2024