
(2010) 12 MAD CK 0049

Madras High Court

Case No: Writ Petition No. 9851 of 2003

K.S. Raja Shanmugavel

APPELLANT

Vs

The State of Tamil
Nadu and Others

RESPONDENT

Date of Decision: Dec. 16, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 60
- Constitution of India, 1950 - Article 226
- Transfer of Property Act, 1882 - Section 6

Citation: (2011) 1 LW 626

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: M. Venkatachalapathy for M. Sriram, for the Appellant; N. Senthilkumaran, Addl. Govt. Pleader for R. to R.4 and P. Gopalan, for R.5, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The writ petition is directed against the proceedings of the second respondent, the Special Commissioner and

Commissioner of Land Administration dated 21.1.2003, by which the revision filed by the 5th respondent against the order of the third respondent

dated 28.5.2002 came to be allowed by the second respondent.

2. The short facts leading to the passing of the impugned order in the revision are as under:

a) The Punja land in old survey No. 14, new survey No. 27 to an extent of 0.95.5 hectares in S. Kannanoor (West) village, Manachanallore taluk,

Tiruchy District was given to two persons performing Nadhaswaram service in the temple. However, they were not in enjoyment of the same and

even before that, the lands were in possession of third parties. From 1930 onwards one Angappan was in possession of the land and cultivating

crops. He sold the property to one Muthuswami Pillai under a registered sale deed dated 31.10.1950, from whom one Rajaiya purchased the

same under a sale deed dated 16.6.1959. He constructed a school by name Shri Mariamman School which was upgraded as Higher Secondary

School. Since he was unable to manage the school, he sold the property along with the constructed building of the school to one Raju Pillai.

b) The petitioner is the foster son of the said Raju Pillai. After the death of the said Raju Pillai, the petitioner inherited the property by way of a Will

executed by Raju Pillai on 24.5.1982 and therefore, he became the absolute owner and has been in possession from 1982. The petitioner as the

Secretary of the School has got recognition from various authorities and the building plans have also been approved in his name. The 5th

respondent temple has claimed title over the property based on the patta given in terms of the Tamil Nadu Minor Inams (Abolition and Conversion

into Ryotwari) Act, 30 of 1963 which was granted 31.1.1970.

c) After the above said fact was revealed, the petitioner made representation to the authorities for transfer of patta on the basis that the petitioner

and his predecessor-in-title have been in possession from 1959 onwards and therefore, the petitioner is entitled for the patta as per the Revenue

Standing Order 31(7). On such 4 representation, the 4th respondent, the Revenue Divisional Officer found that there was no correlation between

the property owned by the petitioner and the claim made by the 5th respondent and having found that the property was given as service inam to

some other persons who were in possession of the property and the same was purchased by the predecessor-in-title of the petitioner and the

petitioner is in possession of the property from 1959 onwards and the proceedings under the Act 30 of 1963 were not conducted following the

procedures and without notice to the petitioner.

d) The 4th respondent also found that the enquiry conducted from 22.1.1970 to 31.1.1970 was suo motu in nature, without notice to the petitioner

or any publication and as such the patta granted to the 5th respondent is not valid under law. In the said order it was stated that the Revenue

Standing Order 31(7) would apply since the petitioner and his predecessor have been in possession conducting the school for more than 40 years.

It is against the said order of the Revenue Divisional Officer, dated 12.7.2000, the 5th respondent temple filed an appeal before the third

respondent, the District Revenue Officer who confirmed the order of the 4th respondent on the ground that the petitioner and his predecessor have

been in 5 possession for more than 70 years and that order was passed by the third respondent on 28.5.2002.

e) It was against the said order, the 5th respondent filed a revision before the second respondent and that revision came to be allowed setting aside

the orders of the 3rd and 4th respondents, against which the present writ petition has been filed by the petitioner.

3. It is the case of the petitioner that the 5th respondent did not file the revision in time and there was a delay and in spite of the fact that the 5th

respondent filed an application to condone the delay, without condoning the delay, the main revision was taken up for orders and orders were

passed. It is stated by the petitioner that the petitioner required for personal hearing by the second respondent and that opportunity was not given.

The order of the second respondent has been challenged on various grounds including that the same is contrary to law and there is no reason for

reversing the well-founded orders of the third and fourth respondents based on the Revenue Standing Order 31(7); that the order in revision

passed by the 2nd respondent without hearing the petitioner is opposed to the principles of natural justice; that copies of records have not been

furnished by the 6 second respondent before passing the impugned order; that the second respondent has failed to take note of the fact that the

petitioner and his predecessor-in-title have been in continuous possession of the property for more than 70 years; that the patta proceedings under

the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 30 of 1963 are against the law and without giving notice to the parties

and that the patta proceedings were initiated and completed within 10 days without applying the legal requirements; that the 5th respondent ought

to have approached the civil Court against the orders of the 3rd and 4th respondents and the delayed revision filed by the 5th respondent is not

maintainable; that the second respondent erred in relying upon the judgment reported in Palaniappa Pandaram and Others Vs. The Special

Commissioner and Commissioner of Land Administration and Others, which has no application to the facts of the case and that the 5th respondent

cannot assert title against the petitioner and his predecessor-in-title who have been in continuous possession from 1959 onwards.

4. It is the counter affidavit filed by the 5th respondent that the writ petition is not maintainable in view of the fact that the Settlement Tahsildar by

virtue of 7 powers under the Act 30 of 1963 conducted the settlement enquiry and after enquiry, passed the final orders on 31.1.1970 granting

patta in favour of the 5th respondent temple to an extent of 0.95.6 hectares comprised in old survey No. 14 and new survey No. 27 along with the

land to an extent of 4.04 acres comprised in S.F. No. 36/1 situate in No. 29/1, S. Kannanur West Village, Mannachanallur taluk, Trichy District

and the said order of the Settlement Tahsildar has become final.

a) It is stated that the 3rd respondent and 4th respondent interfered with the statutory order passed by the Settlement Tahsildar under the said Act,

in spite of the fact that the judgment of the Division Bench of this Court reported in Palaniappa Pandaram and Others Vs. The Special

Commissioner and Commissioner of Land Administration and Others, to the effect that the Ryotwari patta granted in favour of the temple cannot

be interfered with by the Revenue Tahsildar or any other ordinary revenue authorities, was brought to notice to the 3rd and 4th respondent. It is

stated that due to the said reason, the second respondent rightly interfered with the orders of the 3rd and 4th respondent and set aside the same.

b) It is stated that admittedly the land was given as Inam under a title deed No. 151 and 8 confirmed in favour of the 5th respondent temple as

Devadayam Grant with Iruvaram rights for the purpose of rendering Nagaswaram service in the temple and it was later notified u/s 1(4) of the Act

30 of 1963 and therefore, the person who is in possession can utmost be a permissible occupier and cannot have a right to continue to be in

possession against the 5th respondent and the service holder having abandoned the service has no right in respect of the land and therefore, the

petitioner who is claimed to be the transferee, can have no right in respect of the land at all.

c) It is also stated that when the grant was given in favour of the temple permanently in respect of both warams viz., kudiwaram and melwaram, the

mere possession by any other person against the temple cannot have right to claim and therefore, the transferee from the permissible occupier

cannot be construed to have adverse possession against the religious institution and either Angappan or his transferees have no right over the

property.

d) It is stated that the petitioner can only be treated as a trespasser by unauthorisedly putting up the building and that will not affect the right of 5th

respondent temple in claiming possession based on the ryotwari patta granted by the Settlement Tahsildar in accordance with the statutory

powers. It is stated that the Devadayam grant given in favour of the 5th respondent is permanent in nature. It is the case of the 5th respondent that

the second respondent has rightly interfered with the unlawful orders of the 3rd and 4th respondents and set aside the same which cannot be found

fault with.

e) It is stated that the 5th respondent has also filed a suit in O.S. No. 847 of 2000 on the file of District Munsif, Trichy and the same is pending and

the petitioner is effectively contesting the suit which is ripe for trial and there is no adverse possession which the petitioner can claim. It is stated that

the 5th respondent which is a public temple notified under the Tamil Nadu Hindu Religious and Endowments Act, 1959 having filed a suit for

recovery of possession, there is nothing warranting to interfere with the order of the 2nd respondent. It is stated that the writ petition filed against

the Government which is not a necessary party and therefore, the writ petition is liable to be dismissed on the ground of misjoinder of parties. When

the suit filed by the 5th respondent temple for recovery of possession is against the petitioner, there is no grievance against the Government at all.

5. Mr. K. Venkatachalapathy, learned senior counsel 10 appearing for the petitioner would mainly rely upon the Standing Orders of the Board of

Revenue, viz., RSO 31(7) which provides for transfer in favour of persons providing possession for 12 years by payment of revenue which is as

follows:

31. Rules for the transfer of Registry of Holdings:

1 to 6 xxxx 7. Transfer in favour of persons providing possession for twelve years.-When parties have no documents of title are shown in a

summary inquiry to have been in possession as reputed owners for twelve years or more, transfer of registry may be made after notice, etc., as

provided in Rule 3(i). The action contemplated in this paragraph may be taken by the revenue officers either on their own motion or on the

application presented by the parties concerned.

Payment of revenue as evidenced by the production of kist receipts or by the testimony of the village officers may be taken as proof of possession,

but the absence of such proof should not be considered entirely to invalidate the claim and oral evidence of possession may be accepted.

a) Therefore, according to him, the revenue authority, viz., the 4th respondent granted transfer of registry in the 11 name of the petitioner as per the

order dated 12.7.2000, on representation made by the petitioner and that was confirmed by the third respondent in the order dated 28.5.2002

after an elaborate enquiry and hence, as per Standing Orders, when the revenue authorities, after conducting enquiry, have specified about the

possession of the petitioner, the said orders do not require any interference by the second respondent and the second respondent's revisional

power is not permissible.

b) It is his further submission that even under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 when patta was

granted by the Settlement Tahsildar to the 5th respondent, that too, when the school was situate at that time, there was no enquiry conducted at all

while passing the order by the Settlement Tahsildar on 31.1.1970 and therefore, the proceedings under the Act 30 of 1963 have to be ignored

since the same has not been done in accordance with law.

c) While it is admitted that in recognition of Nadhaswaram service of one Angappan the property was given to him and when he sold it to one

Muthuswami Pillai on 31.10.1950 who in turn sold the same to one Rajaiya on 16.6.1959 from whom one Raju Pillai purchased the property from

whom the petitioner inherited the same by way of a 12 Will and a school in the name, Sri Mariamman Higher Secondary School has been

functioning in the property, according to the learned senior counsel, there was nothing for the second respondent to interfere.

d) It is his submission that when the dispute is of civil in nature, it is not for the settlement authorities to interfere by relying upon the judgments in

Periya Muthu Naicker v. Arulmighu Sevantheeswarar Koil rep. By its Trustee, Rengasami Naicker, The Assistant Settlement Officer, Thanjavur

[1997 (2) LW 159] and V.P. Kandasamy and 29 others v. Tahsildar, Coimbatore North Taluk, Coimbatore District and others [2009 (1) MLJ

93].

e) According to him, even if the 5th respondent is entitled for possession, inasmuch as the 5th respondent has already approached the civil Court, it

is for the 5th respondent to work out the remedy in the manner known to law and the 2nd respondent's order is detrimental to the interest of the

petitioner and therefore, it is liable to be set aside.

6. On the other hand, it is the contention of Mr. P. Gopalan, learned Counsel for the 5th respondent/temple that the petitioner and his

predecessors-in-title can only be claimed to be the permissible occupiers and cannot have 13 right over the property and inasmuch as it is a service

inam vesting the right with the temple, as long as the service is rendered, the person holding possession will be entitled to continue to be in

possession and when such person fails to render service and transfers the property, that transfer is against the settlement law. He would rely upon

the judgment in C. Muthu Bhattar v. The Authorised Officer, Land Reforms, Madurai [1992 LW 212] to substantiate his contention that by the

service inam, neither the ownership is granted, nor the person is entitled to be treated as a tenant, but the persons can only be a permissible

occupier.

a) It is his submission that the patta granted in the year 1970 under the Act 30 of 1963 as on date is standing in the name of 5th respondent temple

and the Revenue Divisional Officer or District Revenue Officer has no jurisdiction when the Settlement Tahsildar as per the provisions of the Act

30 of 1963 decided the issue.

b) It is his submission that in the presence of statutory provisions under the Act the Board's Standing Orders have no application. He would rely

upon the judgment in Palaniappa Pandaram and Others Vs. The Special Commissioner and Commissioner of Land Administration and Others,

apart from the 14 judgment in A. Shankar Suresh and Ors. v. Revenue Divisional Officer, Madurai and others [2007 (6) MLJ 955].

c) It is his submission that in fact when there was a delay in filing the revision, the delay was condoned after the pleadings were filed. It is his

submission that even if a person is in possession for 100 years as against the patta holder under the settlement proceedings, he cannot get right

over the property. He would rely upon the judgment in Periya Muthu Naicker and Anr. v. Arulmighu Sevanteeswarar Koil rep. By its Trustee,

Rengasami Naicker, The Assistant Settlement Officer, Thanjavur [1997 (2) LW 159] to substantiate his contention that the temple has got

absolute right over the property. He would also rely upon the judgment in Joint Commissioner, H.R. & C.E. Administration Department v.

Jayaraman and Ors. [2006 (1) L.W. 306 (SC)] .

7. I have heard the learned senior counsel for the petitioner and learned Counsel for the respondents and given my anxious thoughts to the issues

involved in this case.

8. The facts are not much in dispute. It is admitted by both the parties that originally the land belonged to the temple and that was given as a service

grant for 15 Nadhaswaram service rendered to Sri Mariamman Temple, Samayapuram by one Angappan. Since admittedly the grantee

abandoned the service, by virtue of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act 30 of 1963) which

came into force with effect from 5th February, 1964 with an object of acquisition of rights of inamdars in minor inams, on the 5th

respondent/temple approaching the Settlement Tahsildar, the Settlement Tahsildar, by a suo motu enquiry initiated as per the Act 30 of 1963

granted patta in favour of the 5th respondent temple. Admittedly, the said land was minor inam land and it was originally standing in the name of

Mariamman Pagoda for Nadhaswaram service, as it is seen in the records of the year 1964. The said inam comprised in Devadhayam grant as

confirmed in T.D. No. 151 and that was notified by the Assistant Settlement Officer on 15.2.1965 u/s 1(5) of the Act which is as follows:

Section 1(5) The Assistant Settlement Officer shall, immediately after the date of the publication of the notification under Sub-section (4), publish in

the District Gazette, a copy of the notification under Sub-section (4) and shall also cause to be published in a conspicuous place in the village in

which the minor inam is situated a copy of the notification under subsection(

4) together with such particulars as may be prescribed.

Therefore, after notification, the tenure of inam stood abolished and the land vested with the Government free from all encumbrances.

9. It was, thereafter, as per Section 11 of the Act which empowers the Assistant Settlement Officer to determine the entitlement of ryotwari patta

in respect of inam lands which were vested with the Government, orders were passed on 31.1.1970 and patta was granted in respect of the land in

dispute in favour of the temple u/s 8(2)(ii) of the Act, which is as follows:

Section 8. Grant of ryotwari pattas.

(1)xxx

(2)(i)xxx

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

ryotwari patta in respect of that land.

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

and additional water-cess.

Therefore, the ryotwari patta in favour of Mariamman temple represented by its Executive Officer as on 31.1.1970 was issued in accordance

with the statutory powers conferred under Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act 30 of 1963) and

admittedly, that order remains as on date and nobody has questioned the same in the manner known to law.

10. In the light of the above said legal position, now we have to decide as to the powers of the revenue authorities in respect of the lands relating to

which ryotwari patta under the Act 30 of 1963 was already granted. It is true that as per the Board Standing Orders, the revenue authorities are

entitled for such change of registry in the revenue records based on the possession for 12 years but that right cannot be in supersession of the

statutory orders passed by the Assistant Settlement Officer by virtue of the powers conferred under the Act 30 of 1963.

Even if the ryotwari patta granted under the Act 30 of 1963 is either by not giving adequate opportunity to any person or by not following the

provisions in the said Act, as long as the patta issued under the said Act remains as on date, without being not challenged by any person in the

manner known to law, in my considered view, it is certainly not open to the revenue authorities to enter into the said field by applying the executive

powers conferred under the 18 Board Standing Orders.

11. Even in the judgment relied upon by the learned senior counsel for the petitioner, the Division Bench of this Court in Periya Muthu Naicker and

Anr. v. Arulmighu Sevanteeswarar Koil rep. By its Trustee, Rengasami Naicker, The Assistant Settlement Officer, Thanjavur [1997 (2) LW

159], while referring to the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, (30 of 1963) and also the earlier judgment of

the Andhra Pradesh High Court, held that as against the temple or religious institution, there cannot be any claim of adverse possession, of course,

in the light of Limitation Act, 1908, in the following words:

9. Even in the decision reported 1967 1 AWR 141 (Srinivasa Reddiar v. Ramasamy Reddiar) the Apex Court impliedly in our view, approved the

said principle though in respect of application of the relevant article in the Schedule to the Limitation Act, 1908 (Article 134-B). It was considered

that the possession of the transferee cannot be considered to be adverse to the religious endowment from the very beginning and the succeeding

manager's right to challenge the said transfer could not be held to have been lost. Apparently, the provisions contained in Article 134-B having

been specially 19 divided to protect the interests of the religious institutions and trusts, their Lordships of the Supreme Court have chosen to view

the position that the first column of Article 134-B do not permit the making of any difference whether the property was sold as belonging to the

temple or trust concerned or as belong to the trustee or the manager for the time being himself and once it is proved that the property really

belonged to the religious institution Article 134-B applied to all such cases in respect of suits filed by the succeeding trustee or manager.

Consequently, the claim on behalf of the appellants that they have lawfully acquired or succeeded to the rights and interest of the inamdar, which

happens to be in the present case the temple itself cannot merit our acceptance and their possession under such void and illegal documents has

equally to be only unlawful possession.....

12. A reference made by the learned senior counsel for the petitioner to the judgment rendered by me in V.P. Kandasamy and 29 others v.

Tahsildar, Coimbatore North Taluk, Coimbatore District and others [2009 (1) MLJ 93], is not helpful to the petitioner. In fact, in that case, the

Settlement Tahsildar granted patta in favour of a private individual as per the Act 30 of 1963 against the temple and the temple had not challenged

the conferring of such patta for 40 years and the same became final and it was in those 20 circumstances, the Settlement Tahsildar's order was

upheld by me and in my considered view, the said judgment does not advance the case of the petitioner herein at all.

13. In fact, by hierarchy of judgments, the law has been well settled now that when as per the provisions of the Tamil Nadu Minor Inams

(Abolition and Conversion into Ryotwari) Act (30 of 1963), after enquiry patta has been granted in favour of pagoda, ordinarily the revenue

authorities under the Board Standing Orders lose their right of deciding otherwise. It was in Palaniappa Pandaram and Others Vs. The Special

Commissioner and Commissioner of Land Administration and Others,

the Division of this Court consisting of K.A. Swamy,CJ. and D. Raju,J. (as Their Lordships then were) in categorical terms laid down the law in

this regard as follows:

4. Heard the learned Counsel on either side.

The order of the learned single Judge is as well merited one not warranting any interference. As noticed by the learned single Judge, the statutory

Authority has issued a ryotwari patta under a special enactment in favour of the deity. The nature of the grant which has been confirmed also is in

favour of the temple. The proceedings by which the patta was issued in favour of the deity was subject to a statutory right of appeal before the

concerned Sub Court constituted as a tribunal and thereafter a further appeal to a Division 21 Bench of this Court and subject to such remedies as

noticed above, the other granting patta is rendered final under the statute. Of course, this Court as well as the Apex Court have declared the

position that even thereafter, the parties are at liberty to vindicate their respective claims before a civil court, if they so desire. So far as the facts on

hand before us are concerned, the order granting patta in 1969 in favour of the deity remains in full force and effect and has not been also

challenged. If that be the position, it was most improper on the part of the appellants who claim to be pujaris/service holders and also on the part

of the Tahsildar, to order for the transfer of patta in favour of the appellants replying upon a provision which in our view is totally irrelevant, Section

21 of the Act has relevance only to service inams and the grant of the patta in the name of the deity and for the support of the Pagoda cannot be

said to be a service inam. If the inam is really a service inam, Patta would have been granted only in favour of the service holders subject to the

condition of performance of the service. It is only in such cases, there is scope for having recourse to Section 21 and not a case like the one

concerned before us. That apart, the Regular Tahsildar of the Taluk under the Revenue side has no power to deal with claims under the special

enactment in question. The patta granted in favour of the temple cannot be interfered with by the Tahsildar or any of the ordinary revenue

authorities 22 exercising their powers under the Revenue Standing Orders and the patta granted under the said Special enactment under a

particular provision can, if at all, be interfered or modified only by the statutory authorities provided under the statute itself in the manner and the

extent provided therein. The District Revenue Officer has only set right the grave irregularity and the illegality committed by the appellants in

connivance, as we are constrained to observe, with the Tahsildar, Perunduri relying upon some irrelevant provisions for surreptitiously getting a

transfer of patta in the name of the appellants, thereby denying the temple and the deity the lands and the title to a large extent and very valuable

property. We are constrained to observe that the Tahsildar, Perundurai, has not only exceeded his limits, but has passed the order dated

21.1.1994 in gross abuse of his powers.

14. By referring to Section 8(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 30 of 1963 P.R.

Gokulakrishnan, J. (as His Lordship then was) in C. Muthu Bhattar v. The Authorised Officer, Land Reforms Madurai [92 LW 212] observed as

follows:

14. From the abovesaid provisions, it is clear that if the service-holder fails to render the service, the institution shall be at liberty to make such

arrangement as it thinks fit for the purposes of service and shall be entitled to hold the land as its absolute property.

While referring to the transfer effected in respect of properties of the temple either by way of mortgage or otherwise as per the Board Standing

Orders, His Lordship, after referring to various judgments including the judgment in Ramanathan Chettiar v. Kalidasa Kavandan [71 MLJ 398],

held that the alienee from such service holder who failed to perform the service is not entitled to claim any share in the property and such transfer is

opposed to public policy. It is useful to extract the following portion for the better appreciation of the issue in this case:

18. The next decision cited by the learned Counsel is the one reported in Ramanathan Chettiar v. Kalidas Kavandan (71 MLJ 398) wherein

Venkataramana Rao, J. has stated:

A mortgage of a temple service inam land is invalid as opposed to public policy, at any rate where the mortgage does not provide for payment to

the institution or in support of the services a sum not less than the net assessment of the land, as contemplated by Standing Order No. 54 Clause

(2) of the Board of Revenue.

In the decision reported in Masumayya v. Official Receiver, Kurnool (1943 Mad.72) a Division Bench of our High Court has stated thus:

The learned Judge also in Anjaneyalu v. Sri Venugopal Rice Mills Ltd. (45 Mad.620) have indicated their view that if the lands are alienated the

interest of the holder, and of those for whom he should perform the service will be prejudiced. It seems to follow from this that if the lands are

to go out of the control of an official such as the Officer Receiver in this case it must be remembered that the Official Receiver is a Hindu while the

insolvent is a Mohammedan-the performance of the services must obviously be in peril. The whole trend of the authority is that these lands not only

cannot be alienated, but cannot be transferred from the holder to an official such as the Official Receiver.

In the decision reported in Gopal Naidu v. Special Tahsildar for Land Acquisition, N.P. Madurai (87 L.W. 67) , a Bench of our High Court

considering a grant of land for Paricharakam service, the conclusiveness or otherwise of an admission by the inamdar describing himself as

melwaramdar and the alienability of the land, held:

The second claimant, appellant in Appl.769 of 1967 is the alienee of both melwaram and kudiwaram regarding a portion of the acquired property.

It is on that basis that he claims a portion of the compensation. The inam was personal and was inalienable as it was granted for the performance of

paricharagam service. The court below failed to consider the contention urged on behalf of the Devasthanam that the grant being personal for the

performance of paricharagam service in the temple, it was inalienable and that the alienee does not get any title that a personal service inam is

inalienable is well settled. In *Anjaneyalu v. Venugopal Rice Mill Ltd.* (45 Mad.620) it was held that a personal inam for public service is not a

property that is liable to attachment u/s 60 C.P.C. It is pointed out that where the land is personal inam for public service, Section 6(h) of the

Transfer of Property Act prohibits transfer of such property as it is opposed to public policy and the transfer cannot convey any title. In

Ramakrishnamma v. Venkatasubbiah (1935 Mad.252), it was held that the land burdened with the performance of a service of public nature is

inalienable being opposed to public policy and that *Deshbandam* inams being burdened with a service of a public nature are inalienable and cannot

be sold in execution of a decree against the inamdar. In *Masumayya Official Receiver, Kurnool* (45 Mad.620), the question arose whether on the

adjudication of a holder of certain inam as an insolvent, the inam land would vest in the Official Receiver.

The question was answered in the negative, holding that such land not only could not be alienated, but could not be transferred from the holder to

the Official Receiver. In *Ramanathan Chettiar Kalidasa Kavantan* (71 MLJ 398), it was held that the mortgage of a temple service inam is

opposed to public policy and is, therefore, invalid. The counsel appearing for the second claimant, who claims to have acquired title as an alienee

from the descendants of the original grantee, has no valid title to the acquired property and is therefore, not entitled to claim a share in the

compensation.

15. Recently, a Division Bench of this Court in *A. Shankar Suresh and Ors. v. Revenue Divisional Officer, Madurai 625 020 and others* [2007(6)

MLJ 955] held in respect of sale of inam land that the validity of such sale cannot be brought within the purview of Article 226 of the Constitution

of India and the parties have to work out their remedies in the civil forum.

16. The Supreme Court in *Joint Commissioner, H.R. & C.E., Administration Department v. Jayaraman and Ors.* [2006 (1) LW 306] held that in

respect of the land belonging to the temple, governed by the Hindu Religious and Charitable Endowments Act, no alienation is permissible and

even under the settlement proceedings, the alienation of the temple property to third party cannot be approved, if the property has been dedicated

for the purpose of the temple, as per Section 34 of the Hindu Religious and Charitable Endowments Act, 1959.

17. It is also not in dispute that the 5th respondent has in fact filed a suit for recovery of possession against the petitioner which is pending before

the Civil Court which is the authority competent to decide the issue involved, as stated above.

In such circumstances, looking into the matter from any angle, I am of the considered view that there is nothing to interfere with the impugned order

of the second respondent and the orders of the 3rd and 4th respondents are patently illegal and accordingly, the writ petition stands dismissed

leaving it open to the parties to work out their remedy in respect of the possession of the property in question in the Civil Court as stated above.

No costs.