

SUPREME COURT OF INDIA

The Government of Tamil Nadu

Vs.

Arulmighu Kallalagar Thirukoil Alagar Koil

C.A.No.559- 560 of 2008

(L.Nageswara Rao and Hemant Gupta,JJ.,)

06.11.2019

JUDGMENT

L.Nageswara Rao,J.,

1. H.H. Sri Sundara Ramanuja Periya Jeer Swamigal of Periya Jeer Swamigal Mutt, Tirupati and five others (hereinafter referred to as "devotees") filed O.S.No.178 of 1982 in the Court of Subordinate Judge, Madurai for a declaration that the entire forest area in Alagar Hills belongs to Sri Arulmighu Kallalagar also called Sri Sundarajasami or Sundara Bahu or Paramasamy, the Presiding Deity of the Respondent-temple. A consequential relief of possession of the said forest area was also sought. O.S. No.171 of 1987 was filed by Arulmigu Kallalagar Thirukoil Alagar Koil (for short "the Respondent") in the Court of Subordinate Judge, Madurai for a direction to the Government of Tamil Nadu (for short "the Appellant") to deliver possession of the schedule mentioned property i.e. Alagar hills. Relief of permanent injunction restraining the Defendant i.e. the Appellant-herein and the Chief Conservator of Forest Department from disturbing the underground water reserves by digging wells or in any other manner was also sought. The schedule mentioned property is to an extent of 15,838.4 acres at Sellappa Naickenpatti Village. O.S. No.171 of 1987 filed by the Respondent, was dismissed by a judgment dated 14.03.1988 and O.S. No.178 of 1982 filed by the devotees was dismissed on 28.09.1995. The Appeals filed against the judgments of the trial Court were allowed by the High Court of Judicature at Madras vide judgment dated 27.06.2003. Aggrieved by the judgment, the Appellant approached this Court by filing the above Appeals.

2. In O.S. No.178 of 1982 filed by the devotees, it was averred that the entire Alagar Malai was the property of Lord Sri Kallalagar. The devotees further pleaded that from the historical records and Sthalapurana that the Government which was in management of the temple handed over the temple to the Manager or the temple Committee members but failed to hand over the forest area which is the subject matter of the dispute. The devotees contended that the provisions of the Madras Forest Act, 1882 (for short "the Act") were not complied with before declaring Alagar Hills as a reserved forest. Claiming themselves to be members of the Vaishnava Community who are deeply interested in the preservation of

the entire Alagarmalai as the property of Lord Sri Arulmighu Kallalagar, the devotees filed a comprehensive suit for declaration of title.

3. The Appellant filed a written statement contending that the entirety of Alagar Hills belongs to the Government. According to the Appellant, Alagar Hills have been classified as reserved forest by the Government Notification No.187 dated 11.10.1883. It was argued that the entire suit schedule property i.e. Alagar Hills was in possession, control and management of the Forest Department.

4. The trial Court dismissed the suit filed by the Respondent by holding that no evidence was produced to show that the suit property belonged to the Respondent- temple. The contention of the Government that the suit property was declared as a reserved forest in 1881 was accepted by the trial Court. The Notification dated 11.10.1883 under Section 25 of the Act was relied upon by the trial Court to hold that the Respondent-temple cannot claim any right over the forest land on Alagar Hills.

5. The suit filed by the devotees was also dismissed by the trial Court on the ground that the Notification dated 11.10.1883 under Section 25 of the Act was valid and it was issued after following the procedure prescribed by the Act. The trial Court also held that no evidence has been produced by the devotees to show that the temple had any right over the Alagar Hills. As the issue was substantially the same as that in O.S. No.171 of 1987, the trial Court held that O.S. No.178 of 1982 is hit by res judicata.

6. The High Court heard the Appeals filed against the two judgments of the trial Court together and disposed them off by a common judgment. The High Court framed the following questions for determination:

"1. Whether Azhagar Hills belong to Azhagar Temple?

2. Whether they were in the possession and management of the first defendant Government in their capacity as trustee and therefore, Section 10 of the Limitation Act would apply?

3. Whether the Government Order dated 11.10.1883 had been properly issued or is illegal and invalid for non observance of the provisions of the Tamil Nadu Forest Act, 1882? "

7. The Applications filed by the Respondent under Order 41 Rule 27 of the Civil Procedure Code, 1908 (CPC) were allowed and the documents produced by the Respondent were marked as Exhibit A-46 to A-56. While referring to Section 25 of the Act, the High Court held that there is no order of reservation as contemplated in Section 25 of the Act. It was further observed by the High Court that the procedure prescribed under Sections 6 and 8 of the Act was not complied with. The Notification dated 11.10.1883 under Section 25 of the Act was held to be illegal and void. It was held that the suits were not barred by limitation as Section 10 of the Act would apply. The submission that the

Appellant had willfully suppressed material documents and so the presumption of lost grant arises, was accepted by the High Court. Being of the opinion that adequate material has been produced by the Respondent-temple to prove its title of the temple over Alagar Hills, the High Court held that the Respondent was entitled to succeed. The entire land in Alagar Hills which was hitherto being treated as a reserved forest was directed to be reverted to the Respondent- temple.

8. We have heard Mr. Balaji Srinivasan, learned Additional Advocate General for the State of Tamil Nadu, Mr. Mohan Parasaran, learned Senior Counsel for the Respondent- temple and Mr. V. Ramasubramanian, learned counsel for the devotees.

9. It is the case of the Respondent that the entire land in Alagar Hills belongs to the temple. The Appellant denied the title of the Respondent over the Alagar Hills. According to the Appellant, Alagar Hills Reserved Forest was notified by Notification No.187 of 11.10.1883. Merely because a temple was situated at the foothill of the Alagar Hills, the Respondent cannot claim title or possession over the reserved forest. According to the Appellant, all the grazing land and other leases, revenue and expenditure in the Alagar Hills Reserved Forest have been under the control of the Forest Department.

10. It is not necessary for us to delve into the events prior to 1881 for the purpose of determining the controversy in this case. We proceed to examine the material on record. The first document of relevance is Proceeding No.85 dated 20.01.1881 of the Board of Revenue. The Conservator of Forests, Colonel R.H. Beddome inspected the forest tracks and found that the area of the hills and forest in Madura Forest Division was 1,098 sq. miles. An area of 305.48 sq. miles was selected for reservation. Alagarmalai having an area of 20.37 sq. miles was included in the proposed reserves. The recommendation of the Conservator of Forests was sent to the Superintendent of Revenue Survey by the Board of Revenue to prepare the outline map as suggested by the Conservator of Forests. By Proceeding No.626 dated 09.04.1881, the Board of Revenue proposed 20.37 sq. miles of Alagarmalai, "all Government property and hill tracks" to be reserved for climatic reasons as well as for fuel demands of the future. By an Order No.1284 dated 29.08.1881, the proposal made by the Committee to reserve 305.48 sq. miles in Madura District was approved. The statement showing the area of reserves in Madura District is annexed therewith, which includes Alagarmalai.

11. The Madras Forest Act, 1882 was promulgated for the protection and management of forests in the Presidency of Madras which came into effect on 01.01.1883. A Notification was issued on 13.11.1883 under Section 25 of the Act, declaring the blocks of forests described in the schedule thereto as reserved forests. Alagarmalai is found at Serial No.XXI. At this point, it is relevant to refer to Section 25 of the Act which is as follows:

" 25. The "Government may, by notification⁴ in the 3 (Official Gazette) declare any forest which has been reserved by order of the Government previous to the day on which this Act comes into force to be a reserved forest under this Act: Provided that if the rights of the Government or of private persons to or over any land or forest

produce in such forest have not been inquired into, settled and recorded in manner which the Government thinks sufficient, the same shall be inquired into settled and recorded in the manner provided by this Act for reserved forest, before the date on which the notification declaring the forest to be reserved takes effect. AH questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared hereunder, and the provisions of this Act relating to reserved forest, shall apply to such forests."

12. For a better understanding of Section 25, it is necessary to refer to the other relevant provisions of the Act. Section 3 of the Act empowers the Government to constitute a reserved forest. Section 4 provides that a notification shall be published by the Government in the Official Gazette of the district whenever it is proposed to constitute any land as reserved forest by specifying the details of such land. According to Section 6, the Forest Settlement Officer shall publish a proclamation after issuing the notification under Section 4 specifying the particulars of the property and fixing the time for receiving objections from interested persons. Section 16 of the Act postulates issuance of a notification declaring the forest as reserved after disposal of the claims pursuant to the proclamation under Section 6, specifying the limitations of the forests which are intended to be reserved from a date to be fixed by the notification. As per Section 25, the Government may issue a notification in the Official Gazette declaring the area which was already reserved by the Government prior to the Act coming into force to be a reserved forest under the Act. Unsettled claims shall be considered before the notification takes effect, according to the proviso to Section 25 of the Act.

13. While examining the contention of the Respondent that the Notification dated 11.10.1883 was issued without complying the requirements of Section 25 of the Act, the High Court committed an error in finding that there is no order of Reservation prior to 01.01.1883. The High Court referred to Exhibit B-6 which contains Order No.187 issued under Section 4 of the Act, to arrive at a conclusion that there is no order of reservation. Exhibit B-6 also contains the Notification dated 13.11.1883 by which certain blocks of forest land described in the Schedule annexed thereto have been declared as reserved forests. Serial No.XXI of the said Schedule covers Alagar Hills which is the subject matter of the suit. Order No.189 was issued under Section 4 of the Act notifying the proposal to constitute certain area in Madura District as reserved forest. The area mentioned therein pertains to Aggamalais. Mr. F.E Robinson, Assistant Collector, was appointed as the Forest Settlement Officer and District Forest Officer of Madura to conduct the inquiry under Section 4. The Notification pertaining to the suit schedule land i.e. Alagarmalai was under Section 25 of the Act whereas the Notification in respect of Aggamalais was issued under Section 4 of the Act.

14. The High Court mixed-up the two Notifications to hold that a reservation was not made in respect of Alagarmalai prior to the Act coming into force. Relying on Order No.189 pertaining to Aggamalais, the High Court erroneously held that the notification under Section 4 of the Act relates to Alagarmalais. On such basis the High Court held that there

was no order passed by the Government declaring the Alagarmalai as reserved forest prior to 01.01.1883 i.e. the date on which the Act came into force. Proceeding No.1284 dated 23.08.1881 would clearly demonstrate that the proposal for reserving forest area in Alagarmalai was approved by the Government prior to the commencement of the Act.

15. Due to the misconception that Order No.189 issued under Section 4 of the Act is applicable to Alagarmalai, the High Court proceeded further to hold that the inquiry under Sections 6 and 8 have not been conducted. Section 6, as stated above, provides for an inquiry to be conducted pursuant to the notification issued under Section 4. Section 8 is connected to the inquiry to be conducted under Section 6. Neither Section 6 nor Section 8 are applicable to a notification issued under Section 25 of the Act which deals with forests which were already reserved by the Government prior to the Act. Therefore, the finding of the High Court that mandatory requirements of the Act were not complied with before issuing Notification dated 11.10.1883 under Section 25 is not correct. The judgments relied upon by the High Court in *Sri Perarula Ramanuja Jeer Swami v. The Secretary of State for India*¹ in Council through the Collector of Tinnevely and *Mysore Baiakrishna Rao v. The Secretary of State for India in Council*² are not applicable to the facts of this case.

16. As the suit filed by the respondent was not dismissed as barred by limitation, it is not necessary for us to examine the point relating to Section 10 of the Limitation Act. Another point decided in favour of the Respondent is that lost grant has to be presumed. On the basis that the Respondent-temple had been in long and continuous possession of Alagar hills, the High Court was of the opinion that lost grant was to be presumed. The High Court observed that the Respondent-temple had been exercising acts of ownership over the suit hills for several centuries. The Application filed under Order 41 Rule 27 of the C.P.C. by the Respondent was allowed and the documents produced by them were marked as Exhibits A-46 to A-56. We have carefully examined those documents which only show that honey and other forest produce were being collected by those who were permitted by the Respondent-temple. The right, title or possession of the temple over Alagar hills cannot be determined on the basis of the above documents.

17. An adverse inference was drawn against the Appellant for not producing the relevant material. The High Court was of the opinion that the Appellant was guilty of suppression of the documents which were available. Hence, the High Court presumed lost grant. The circumstances in which the presumption of lost grant can be made has been settled by this Court in a judgment reported in *Sri Manohar Das Mohanta v. Charu Chandra Pal & Ors*³. as under ;

"7. The circumstances and conditions under which a presumption of lost grant could be made are well settled. When a person was found in possession and enjoyment of land for a considerable period of time under an assertion of title without challenge, Courts in England were inclined to ascribe a legal origin to such possession, and when on the facts a title by prescription could not be sustained, it was held that a presumption could be made that the possession was referable to a grant by the owner entitled to the land, but that such grant had been lost, it was a presumption

made for securing ancient and continued possession, which could not otherwise be reasonably accounted for. But it was not a *presumptio juris et de jure*, and the Courts were not bound to raise it, if the facts in evidence went against it. "it cannot be the duty of a Judge to presume a grant of the non-existence of which he is convinced" observed Farweii, J. in *Attorney-General v. Simpson* [(1901) 2 Ch D 671, 698]. So also the presumption was not made if there was any legal impediment to the making of it. Thus, it has been held that it could not be made, if there was no person competent to be the recipient of such a grant, as where the right is claimed by a fluctuating body of persons. That was held in *Raja Braja Sundar Deb v. Moni Behara* [1951 SCR 431, 446]. There will likewise be no scope for this presumption, if there is no person capable of making a grant: (Vide *Halsbury's Laws of England*, Vol. IV, p. 574, para 1074); or if the grant would have been illegal and beyond the powers of the grantor. (Vide *Barker v. Richardson* [4 B & Aid 579 : 106 ER 1048 at 1049] and *Rochdale Canal Company v. RadciHfe* [18 QB 287 : 118 ER 108 at 118])."

18. We do not agree that the respondent was in continuous possession under an assertion of title as there is no evidence on record to reach such a conclusion. The presumption of lost grant is therefore not permissible.

19. The finding recorded by the High Court that there is adequate material to hold that Alagar hills belong to the temple is erroneous. The trial Court is right in holding that the Respondent miserably failed in producing any material to prove its title.

20. On 02.04.2019, we were informed that the parties were attempting a settlement. This Court directed the Member Secretary, Hindu Religious and Charitable Endowments Board (HR & CE) to convene a meeting with all the stakeholders to facilitate a settlement. A meeting was conducted on 03.08.2019 in the Office of the Commissioner, HR & CE in which all the stakeholders participated. The significant proposals of the Respondent were that the title in respect of the Alagar Hills should be with that of the presiding deity of the Respondent-temple and that the income from the forest shall be shared equally by the Respondent-temple and the Forest Department. The Appellant did not accept the said proposals. After joint inspection by the Forest Department and the HR & CE Department, the Appellant was willing to divert an area of 18.3032 hectares of land including the various religious spots for ease of movement of the devotees. The Forest Department was willing to permit 50 ft. of pathway to reach all the spots and shrines from the foothill. The Forest Department was of the view that the temple should undertake very strict vigil on the ecosystem and environment and no non-forest activities shall be permitted within the 18.3032 hectares, except religious activities. We are in agreement with the proposal made by the Appellant. The Forest Department shall permit 50 ft. of pathway to reach all the spots and shrines from the foothills for which the earmarked area of 18.3032 hectares of land can be used. No non-forest activities shall be permitted to be undertaken by anybody, including the Respondent-temple administration within the 18.3032 hectares of land which is diverted for ease of movement of devotees to reach all the spots and shrines from the foothill.

21. In view of the above, the judgment of the High Court is set aside and the Appeals are allowed.

Judgment Referred

¹(1910) VI Indian Cases 0691

²(1915) XXIX M.L.J. 0276

³(1955) 1 SCR 1168