

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	21.11.2023
Delivered On	:	22.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.P(MD).No.1507 of 2021

D.Devasahayam

... Petitioner

Vs.

1. Central Bureau of Investigation,
Plot No.5B, CGO Complex,
Ladhi Road,
New Delhi-1100033.

2. The Joint Director,
Chennai Zone,
Central Bureau of Investigation,
III Floor,
E.V.K.Sambath Building,
College Road,
Chennai-6.

3. The Secretary to Government,
The state of Tamil Nadu,
Revenue Department,
Fort St. George Secretariat,
Chennai-600 009.

(R3 impleaded vide Court order dated 30.03.2021
in W.M.P.(MD).No.5520 of 2021)

4. Church of South India,
Madurai-Ramnad Diocese,
Lay Secretary,



No.162, Eastveli Street,
Madurai-625 001.

... Respondents

(R4 is impleaded vide Court order dated 10.08.2023
in W.M.P.(MD).No.15499 of 2023)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to pass an Order or Direction or Writ more particularly in the nature of Writ of Mandamus by directing the respondents to dispose the petitioner's representation dated 25.01.2020 according to law within stipulated time.

For Petitioner : Mr.M.R.Thangaia

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor (for R1& R2)

: Mr.R.Baskaran,
Additional Advocate General,
Assisted by
Mr.M.Muthumanikkam
Government Advocate (Civil Side)
for R3

:Mr.M.Ajmal Khan,
Senior Counsel
for M/J Ajmal Associates (for R4)

ORDER

This writ petition has been filed to direct the official respondents to dispose the petitioner's representation dated 25.01.2020,in accordance with law.



WEB COPY 2.The writ petitioner is the President of Christian Minorities Unit.

It is alleged in the writ petition that by order No.3581, Revenue, dated 29.11.1912, the subject lands measuring a total extent of 31.10 acres in Tallakulam Village, Madurai Taluk, Madurai District, were assigned by the Government to Americal Board of Commissioners for Foreign Missions (ABCFM), which is an American Christian Missionary Organization, for the purpose of establishing an industrial home for needy women, subject to certain conditions and assigned the land only to cultivate the land and use its income for the industrial home for orphans and destitute women. The said land, in violation of the assignment condition was fraudulently alienated by the 4th respondent namely Church of South India, Madurai – Ramnad Diocese, Lay Secretary, Madurai without any title. Therefore, he made several complaints to the local police and they did not properly respond to the allegation. In the said transaction a huge amount was misappropriated illegally with active connivance of many of government officials and the same is to be investigated by the CBI. Therefore, he made a complaint to the CBI and has filed this writ petition to consider his representation dated 21.01.2020.



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2.1. In this case, when the matter came up before this Court on various dates, the impleading petition in W.M.P.(MD).No.15499 of 2023, was filed by the Lay Secretary, Church of South India, Madurai-Ramnad Diocese. In the impleading petition, it is stated that they are the owners of the properties. The impleading petition was also ordered and they were added as party to the proceedings and they were also making their submissions in the writ petition.

3. Mr. M. Ajmal Khan, learned Senior counsel appearing on behalf of the impleaded fourth respondent made a submission that the writ petition is not maintainable. He placed reliance on the judgment of the Division Bench of this Court in the case of ***G. Prabhakaran Vs. Superintendent of Police***, reported in ***2018 (5) CTC 623***. On the basis of the above said judgment, the learned Senior counsel submitted that any person intended to take action against the irregularities relating to the commission of the offence, first he has to approach the jurisdictional police Station and if no action is taken by the Jurisdictional Police, he has to approach the Superintendent of Police of the said District under Section 154(3) of Cr.P.C. Thereafter he has to file the petition under Section 156 (3) of Cr.P.C., before the Jurisdictional Magistrate Court and



then only, he has right to move before this Court. Therefore, the learned Senior Counsel submitted that the said Writ petition is not maintainable.

4.The learned counsel for the petitioner by way of reply submitted that the said judgment is not applicable to the present case. The petitioner's prayer is to take action against the persons involved in the fraudulent transaction by the first respondent namely CBI. As per the CBI manual, there is no priority system or pecking order as in the State Police system. Therefore, he sent a complaint to the respondents 1 and 2 and the same has to be redressed by the CBI. He also stated that in this case, CBI is the competent person to investigate the matter in multiple angles namely about the fraudulent transaction and take custody of the properties of Government. The learned counsel further submitted that the impleaded respondents continue to do illegal activities including collection of the amount deposited by the Church members to the tune of several crores of rupees and the same is not accounted and hence, he made a complaint about the attitude of the impleaded respondents. In the said circumstances, he produced number of acknowledgements for sending complaints to the jurisdictional police namely the Commissioner of Police, Madurai. Hence, the present petition is filed seeking the above



said relief.

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5.The learned Special Public Prosecutor appearing on behalf of the CBI submitted that CBI has no role in this case. Only local police has role in this case. There is no material warranting investigation by the CBI. The value of the properties mentioned in the sale deed is only meagre and the same was not within the pecuniary jurisdiction of the CBI. Therefore, he seeks for dismissal of this petition.

6.The learned Additional Advocate General appearing for the State/third respondent submitted that this Court earlier directed in W.P. (MD).No.24352 of 2022, the Principal Secretary to Government, Revenue and Disaster Management Department, to look into the allegation made by the petitioner and recover the land. He also stated that as per the direction of this Court, notice was issued to the impleaded respondents and the enquiry was not completed. In the said circumstances, the learned Additional Advocate General submitted that after outcome of the enquiry the Principal Secretary has sent the file to Government and the Government is taking necessary action to recover the land. He also produced the Xerox copy of the file, pending with the



Government. Therefore, he seeks for dismissal of this petition.

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7.This Court considered the submissions made on either side and also perused the entire records and precedents relied upon by them.

8. The land measuring 31.10 acres of Government land was assigned with certain conditions. One of the conditions was that the land was granted for the purpose of establishing an industrial home for needy women I.e., it shall be used only for industrial and charitable purposes. It is specifically assigned only to cultivate the lands and use its income for the industrial home for orphans and destitutes.

The assignment was granted with the following conditions.

Order No.3581, Revenue, dated 29.11.1912:

2.The assignment will be subject to the following conditions:-

(1)The Board shall pay the full market value of the land fixed by the Collector;

(2)The land shall be assessed at the rate fixed by the Collector which rate will be liable to periodical revision at resettlement;

(3)The land shall be used only for industrial and charitable purposes, and if the land is not used



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*for such purposes, the Government may resume it;
and*

(4)In the event of such resumption or in the event of the compulsory acquisition of the land by Government for any purpose the compensation payable therefore shall not exceed the initial cost or the value at the time of presumption or acquisition, whichever shall be the less, of any buildings erected or other work executed on the land by the Board of Commissioners for Foreign Missions.

9.The said ABCFM changed its name as United Church Board for World Ministries and abided the conditions of assignment by cultivating the lands and used its income for industrial home for orphans and destitutes till 1973. *There is a clause in the assignment and there cannot be a transfer of the land.* That being so, the properties of the United Church Board for World Ministries were transferred to Church of South India Trust Association (CSITA). The Directors of the said CSITA conspired and colluded with the administrators of the CSI Madurai Ramnad Diocese, with the dishonest intention to sell the assigned properties of Government illegally and fabricated the power deed and sold the property in favour of persons namely Hussain Abdul Khader,



Hariharan, Ganesan, Dhanapal and Hidayatullah. Therefore, the petitioner sent a detailed complaint dated 25.01.2020 to the first respondent and the second respondent to take action against the persons involved in the fraudulent transaction and filed this writ petition.

10. Pending this writ petition, Since no action was taken, the petitioner filed a writ petition in W.P.(MD).No.24352 of 2022 a public interest litigation before this Court seeking relief to recover the land to the Government. The Hon'ble Division Bench of this court comprising Hon'ble Thiru Justice R.Mahadevan (as he then was)and Hon'ble Thiru Justice Sathiyarayan Prasad J) issued a direction to the government in W.P.(MD).No.24352 of 2022, dated 13.12.2022

10. It is the specific case of the petitioner that the subject lands were originally assigned by the Government, to the ABCFM, which is an American Christian Missionary, for the purpose of establishing a home for needy women, subject to certain conditions, vide Order No. 3581, Revenue dated 29th November, 1912; and the same were transferred to the CSITA, in the year 1973. Thereafter, the members of the CSITA created forged documents and sold some of the properties fraudulently to the third parties for valuable



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consideration, in violation of the conditions stipulated in the assignment order. Though complaint to CBI and representation to the respondent authorities, were made by the petitioner, seeking to take appropriate action and resume the lands assigned by the government, both the attempts did not evoke any fruitful result. Therefore, this writ petition.

11. On the contrary, the allegations raised by the petitioner have been stoutly refuted on the side of the fourth respondent and according to them, they have acted only in terms of the conditions stipulated in the assignment order.

12. While appreciating the rival contentions, it could be seen that the land was granted for the purpose of establishing an Industrial Home for needy women. The grant was subjected to the condition that the land shall be used "only for industrial and charitable purposes". The condition also provides for the resumption of land, if the land is not used or ceases to be used for such purposes and the compensation payable in the event of resumption.

13. In this context, it would be apropos to refer to the Board Standing Order No.15(1-A)(i), which



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stipulates that lands granted by the Government are governed by the Government Grants Act, 1895. Under section 3 of the Government Grants Act, 1895, the conditions and limitations contained in the grant shall be given effect, notwithstanding anything contrary and the Government has discretion to fix conditions in grants and enforce the same.

14. The purport of sections 2 and 3 was explained by the Hon'ble Supreme Court in M/s. Hajee SVM Mohammed Jamaludeen Bros and Co. v Government of Tamil Nadu [1997 (3) SCC 466] and the same is usefully extracted hereunder: "The combined effect of the above two sections of the Grants Act is that terms of any grant of terms of any transfer of land made by a government would stand insulated from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The two provisions are so framed as to confer unfettered discretion on the government to enforce any condition or limitation or restriction in all types of grants made by the government to any person. In other words, the



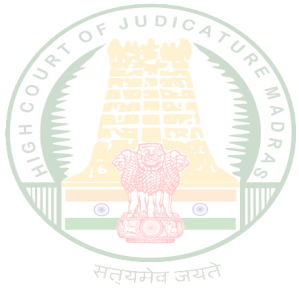
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rights, privileges and obligations of any grantee of the government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law." Thus, the limitations, conditions and restrictions contained in the grant will continue to operate irrespective of anything contrary in the Transfer of Property Act, 1883 or any other statute.

15. Such being the legal position, this court, considering the facts and circumstances of the case, wherein, the petitioner raised serious allegation against the fourth respondent, deems it appropriate to direct the second respondent to consider the petitioner's representation dated 22.08.2022, conduct enquiry and verify as to whether the conditions stipulated in the assignment order have been violated by the fourth respondent and thereafter, pass appropriate orders, on merits and in accordance with law, that too, after affording due opportunities to all necessary parties, within a period of twelve weeks from the date of receipt of a copy of this order.

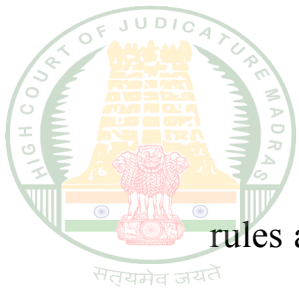
*With the above direction, the Writ Petition is disposed.
There is no order as to costs.*



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11.As per direction of this court,the Principal Secretary to Government, Revenue and Disaster Management Department has issued notice to the impleaded respondents and proceeded further to cancel and recover the land. This court perused the above order of the Hon'ble Division bench of this court to arrive a conclusion that the material does disclose a prima facie case for investigation by CBI.

12. From the material adduced before this court and the order of the Hon'ble Division Bench, it is clear that assignment granted by the government in favour of the American Board of Commissioners for Foreign Mission (ABCFM), a resumption clause also is available i.e., if the land is not used for the purposes, land should be restored to the Government. Now the alienation was made by the (CSITA) without any right over the said properties with active collusion of number of government officials and sold the property to the 3rd parties namely Hussian Abdul Kadhar, Hariharan, Ganesan, Dhanapal and Hidayathullah, etc., showing in the sale deeds a minimum price for the property. The worth of the property is more than 22 crores. The valuation mentioned is only as one crore twenty one lakhs forty three thousands four hundred and seventy two only. As against all banking rules, trust



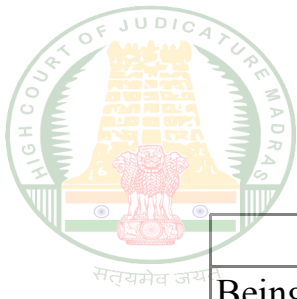
rules and income tax rules they are said to have received the cash receipt for Rs.91,43,472/- only.

13. Only objection raised by the learned senior counsel appearing for the 4th respondent is that this writ petition is not maintainable. According to the learned senior counsel the petitioner shall approach the learned judicial magistrate under section 156 (3) of Cr.P.C. The said submission is misconceived. As per the law laid down by the Hon'ble Supreme Court reported in 2001 3 SCC 333 and 2007 6 SCC 156, the jurisdictional magistrate has no jurisdiction to issue direction under Section 156 of Cr.P.C, to the CBI to register the case. Further, the CBI manual prescribes that if the aggrieved person sent a complaint to the jurisdictional Joint Director, Jurisdictional Superintendent of Police, then, the jurisdictional Joint Director/jurisdictional Superintendent of Police alone is/are entitled to peruse the complaint and take a decision on the complaint. Hence, the applicability of the Hon'ble Division Bench Judgement is not applicable to the facts of the present case. The Division Bench of this Court has held that in the event of non-receipt of the complaint by the jurisdictional Police within the state of Tamil Nadu, the complainant can make a further complaint to the Superintendent of



Police under Section 154 of Cr.P.C., and the said system of hierarchy is not available in the CBI. Further, there is no rigid formula to entertain the writ petition. The availability of the alternative remedy is not a bar to entertain the writ petition. The Honourable Supreme Court in various occasions discussed the above issue. As per the CBI manual, no mandate is there that every citizen has to approach the State Head quarters namely the first and second respondents first. Hence, the CBI has jurisdiction to look into the allegation made by the petitioner.

14. Right to fair investigation is victim's fundamental right guaranteed under the part III of the constitution of India. To enforce the said constitutional right, invoking Article 226 is also a part of the fundamental right. Hence, the Hon'ble Supreme Court on various occasions clearly stated that in the exceptional cases, the CBI can entertain the petition and also this Court has power to issue a direction to CBI under Article 226 of Constitution of India and the same is fortified by the following paragraph of the Hon'ble constitution bench of Supreme Court judgment in the case of *State of West Bengal and othres Vs Committee for protection of Democratic Rights, West Bengal and others* reported in *AIR 2010 SC 1476*:-

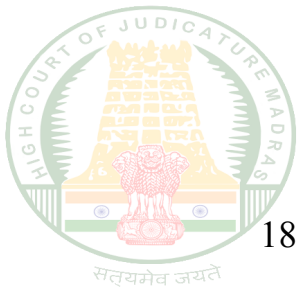


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<i>Para 45</i>	<i>Para 46</i>
Being the protectors of civil liberties of the citizens, this court and the High courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by part III in general and under Article 21 of the Constitution in particular, Zealously and vigilantly.	This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and in still confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

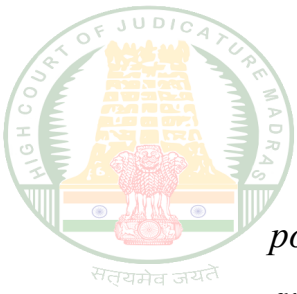
In view of the above discussion, *this Court is not inclined to accept the argument of the learned Senior Counsel on behalf of the fourth respondent that this Court has no jurisdiction to entertain the writ petition.*

17. In this case, there was fraudulent transactions of astronomical level and further, there was the illegal transfer of the money. The administration of the CSI/fourth respondent was questioned by the petitioner, who is the none other than the member of the said society. But no proper rely was given. In this case, the property was dedicated for development of poor women. Even in the assignment condition, it is stated that the amount is to be utilized for the development of the needy women.



18. The church has become voiceless since its administrators muzzled the voice of the persons who questioned their illegal activities of alienating huge property of the church. Therefore, the petitioner as a member of the church made a complaint to various police officers of the State police and all were not concerned about the grievance of the petitioner for some reason, and he sent a complaint to the CBI. This is an extra ordinary circumstance. The property is still government property and the church authority has no jurisdiction to sell the property. Therefore this court has a duty to protect the interest of the church by exercising the parens patriae jurisdiction. Therefore, this Court is duty bound to extend the principle applicable in the case of the temple property on the concept that idol is not a juristic person. The Hon'ble Supreme Court also in the case of **A.A. Gopalakrishnan v. Cochin Devaswom Board, (2007) 7 SCC 482** has held as follows:

“10.The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is



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possible only with the passive or active collusion of the authorities concerned. Such acts of “fences eating the crops” should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation”.

19. Earlier days, funds flowed from homes to the Church. Now, the conscientious are not occupying the chair of the Church administration. Hence, the Church properties are being swindled by the administrators against the tenets of the bible. The bishop and other administrators of the Church are duty bound to keep the property, for which the property was dedicated. Unfortunately, now a days all over the India, all the Church properties are not properly managed by the administrators of the Church. Some of such fraudulent transfers are noted in the book called “Dalit Christians Crucified” authored by K.Samuelraj, General Secretary. In the said book an example of various alienation of the valuable property of the church in part of the District of Tamil Nadu are given. Similarly, the book published by Oxford University by the author Joseph Gnanaseelan Muthuraj captioned as



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“Corporate Governance for churches” stated various misdeeds committed by the administrators of the church. In the said book siphoning of the corporate funds by the dominant members are clearly portrayed by the author. Earlier, the Missionaries, brothers, sisters and all the persons connected with the church got assignment from the British Government with the noble object to cater to the needs of the women and needy persons. Such assignment was made with the noble object of providing empowerment to women folk and for other specific purpose. Now, no one carried the purpose for which the land was assigned. All the administrators of the Church never bothered about the object, for which the society was formed and the properties were entrusted. But they used the land for some selfish purpose. Every religion is aimed to give charities to the needy persons with the belief that charities are done by God Himself. It is the faith of the all religious that wherever there is miserable condition, the God sent persons come and do the charities. The said persons are now a days doing against their own religion and faith.

20. In this case, as already observed by this Court that they committed many illegalities in making the fraudulent transactions of the



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land is government assigned land with a resumption clause. CSITA and the administrators of CSI, Madurai Ramnad Diocese, with dishonest intention to sell the said assigned property of Government illegally created power deed without any right over the said property with active connivance of many government officials and sold the property to 3rd parties namely Hussian Abdul Kadhar, Hariharan, Ganesan, Dhanapal and Hidayathullah, etc., and shown a minimum value of the property. Even during the said transaction, they have violated banking rules, trust rules and income tax rules and received the cash receipt only for Rs.91,43,472/- which is worth more than Rs. 22 crores. The Government property was illegally transferred by the 4th respondent and other persons without any title for the value of only one crore and twenty laksh forty three thousand four hundred and seventy two. The local police officers are not inclined to show any interest in the investigation about the illegal transfer. The said allegation is supported by material documents and this Court is *prima facie* satisfied to order investigation by the CBI. Therefore in view of the above factual circumstances, this case comes under the extraordinary exceptional circumstances to invoke the jurisdiction under section 226 of the constitution of India to issue direction to the CBI to register the case against the persons connected



with the fraudulent transaction and conduct the investigation in a proper manner. Therefore this court inclines to allow this writ petition.

21. Accordingly this writ petition is allowed in the following

terms:-

The CBI/respondents 1 and 2 are hereby directed to register the case on the basis of the complaint given by the petitioner.

22.11.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To

1. The Inspector of Police,
Vigilance and Anti-Corruption,
Tenkasi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VERDICTUM.IN



W.P(MD).No.1507 of 2021

K.K. RAMAKRISHNAN. J.,

vsg

Pre-delivery order made in
W.P(MD).No.1507 of 2021

Dated : 22 .11.2024