

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.33488 of 2013

and

M.P.No.1 of 2013

and

M.P.No.1 of 2014

K.Saroja

...Petitioner

vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Mayiladuthurai,
Nagapattinam District.
3. The Executive Officer,
Sri Naganathaswamy Thiurkoil,
Thirunageswaram,
Kumbakonam Taluk,
Thanjavur District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, forbearing the respondents from putting up any construction in the petitioner's Trust lands in R.S.No.89, Anakudi, Thiurnageswaram Village, Kumbakonam Taluk, Thanjavur District and direct them to restore it to its original condition as stood prior to the encroachment.

For Petitioner : Mr.A.Muthukumar
For Respondents : Mr.M.L.Mahendran,
Govt. Advocate for R1 & R2
Mr.K.Chandrasekaran for R3

O R D E R

The petitioner seeks for issuance of writ of mandamus, forbearing the respondents from putting up any construction in the the petitioner's Trust lands in R.S.No.89, Anakudi, Thiurnageswaram Village, Kumbakonam Taluk, Thanjavur District.

2. The petitioner is the hereditary trustee of Sri Naganathaswamy Koil Uchikala Kattalai, Thirunageswaram, Kumbakonam. The petitioner would state that the Kattalai has certain duties and it is endowed with several properties and the property in question comprised in S.No.89 is one among the properties, for which patta was granted in favour of the petitioner's Kattalai by the Settlement Tahsildar (SE) V, Thanjavur vide order dated 07.06.1967. Copy of the said order has been filed in the typed set of papers, from which, it is seen that apart from the property in R.S.No.89, measuring to an extent of 1 acre and 33 cents, patta has been granted in favour of the petitioner's Kattalai in respect of the lands in S.Nos.44, 46-3 and 62-3. However, in this writ petition we are concerned only with the lands in S.No.89. The reason for the petitioner approaching this Court and praying for such a relief against the respondent is on account of the action taken by the 3rd respondent in putting up a guest house along with other facilities in a portion of the said land. According to the petitioner, the 3rd respondent has absolutely no right to encroach the properties as the patta stands in the name of the petitioner.

3. At the time, when the writ petition was entertained, an interim order was passed on 11.12.2013. It was reported by the respondents that construction of guest house has already commenced and was in the completion stage and construction was being made on in an extent of 5946 sq. ft. and the petitioner claims that they own 1 acre and 33 cents. In order to protect the interest of parties, the respondents were granted liberty to proceed with the construction of the guest house. However, status quo was directed to be maintained in respect of the remaining extent.

4. It is submitted that as on date, construction is over except for certain finishing work, which has been mentioned in the affidavit filed in support of M.P.No.1 of 2014. The third respondent would state that the remaining works are the verandah around the building, unfinished compound wall, toilets and other connected works. From the averments made in the affidavit filed by the 3rd respondent, it is seen that the pending works are not any new works but for the purpose of completion of the verandah around the building and other connected works. It is further submitted that a compound wall has already been erected around the entire land area and if the 3rd respondent is not permitted to throw open the rest house for public use, it will be against the interest of public and the devotees of the temple will be put to great hardship.

5. In the counter affidavit filed by the 3rd respondent it is submitted that the Devasthanam is the absolute owner of the lands comprised in various survey numbers including R.S.No.89 and the properties are covered under Inam grant in favour of the 3rd respondent-Devasthanam under Title Deed No.754 during the British regime. Therefore, it is claimed that the Devasthanam is the owner of the property and the petitioner had no right to deal with the properties. Further, it is stated that by an efflux of time the Devasthanam rights will not lapse. Further, the 3rd respondent would contend that the order passed by the Settlement Tahsildar granting patta in favour of petitioner's Kattalai has no legal force. Further, it is stated that the proceeding of the Settlement Tahsildar is against the provisions of Tamil Nadu Minor Inam Abolition Act 30/1963 and therefore it is invalid. The 3rd respondent would admit that the dispute between the parties can be put to rest only by the competent civil Court and unless that stage is reached, the petitioner is not entitled to rely upon the order of settlement. Apart from the above, the other averments in the counter affidavit are that the petitioner's Kattali has no legal right and the settlement proceedings granting patta in favour of the petitioner's Kattalai has no legal force.

6. Heard the learned counsel for the parties.

7. After hearing the learned counsel for the parties and perusing the materials placed on record it is seen that the dispute raised in this writ petition pertains to the ownership of the property. The petitioner claims a right based on a settlement patta given by the Settlement Tahsildar by its proceedings dated 07.06.1967. The 3rd respondent, on the other hand, would contend that

the land belongs to the Devasthanam and not to the Kattalai and therefore, the proceedings of the Settlement Tahsildar is invalid. However, unless the competent forum declares the patta granted in favour of the petitioner as invalid, merely because the 3rd respondent takes a stand that proceedings are not valid that by itself cannot nullified the settlement proceedings. Therefore, this issue has been necessary left open for the parties to agitate the same before the appropriate forum. In the interregnum it has to be noted that the rest house has been constructed with the main building and another building for driver's rest room etc. Further, the rest house to have an entrance for the devotees to enter into the rest house area. In a rough sketch produced before this Court, it is seen that there is a proposed entrance on the western side. But, however, the same has not been clearly shown. In any event, the rest house having been constructed, the 3rd respondent should be entitled to use the rest house. However, in respect of the remaining land, the third respondent is not entitled to put up any construction and the status quo prevailing as on date shall be maintained till the 3rd respondent agitate his claim in the manner known to law. In the affidavit filed in support of the miscellaneous petition in M.P.No.1 of 2014, it has been stated that certain development works are to be done and therefore, the 3rd respondent is permitted to complete the verandah and other semi completed works including the semi constructed compound wall and also provide gate/entrance at the appropriate place. However, as observed earlier, there shall not be further construction put up in the property in question except the developmental/completion work and providing gate/entrance.

6. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsm

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To

1. The Commissioner,
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Kumbakonam Taluk,
Thanjavur District.

- 1 CC to Mr.A.Muthukumar, Advocate SR.No. 15077
- 3 CCs to Mr.K.Chandrasekaran, Advocate SR.No. 15078, 15240
- 1 CC to the Spl. Government Pleader (HR & CE), SR.No. 15440

W.P.No.33488 of 2013
and Connected MPs

GR (CO)
PSI (30.03.2015)

सत्यमेव जयते

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