

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2008

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.3286 of 2004
WAMP No.6195 and 6196 of 2004

Hatsun Agro Product Limited, rep. by its
Managing Director R.G.Chandramogan Appellant/Third party

v.

1. P.Rajaram
 2. Kumar Chidambaram
 3. The State of Tamilnadu, represented
by its Secretary,
Revenue Department,
Fort St. George, Chennai 9.
 4. The Collector of Chennai, Chennai.
 5. N. Kumar
 6. The Executive Officer,
Marundeeswaran Devasthanam,
Thiruvanmiyur, Chennai 41.
- Respondents/Petitioners
Respondents 1 to 4

Writ Appeal filed under clause 15 of the Letters Patent against the order of the learned single Judge of this Court dated 25.03.2004 made in writ petition No.13009 of 1997. Writ petition praying to writ of Certiorari calling for the records connected with proceedings made in G.O.Ms.No.828 dated 25.8.95 on the file of the Secretary Revenue Department, Government of Tamil Nadu, Secretariat, Madras-9 the first respondent herein and quash the said proceedings granting costs of the petitioners.

For appellant : Mr.R.Viduthalai, Senior Counsel,
for Ms.N.Kavitha

For respondents : Mr.P.Subramanian, (R3 & R4)
Additional Government Pleader
Mr.A.S.Kailasam (R6)

JUDGMENT

K.RAVIRAJA PANDIAN, J.

The appeal is filed against the order dated 25.03.2004 made in writ petition No.13009 of 1997 setting aside the order of the Government in G.O. Ms. No.828 Revenue Department dated 25.08.1995 issued by the Revenue Department, Government of Tamilnadu in and by which the fourth respondent, the District Collector, Chennai was directed to issue patta to one Kumar in respect of an extent of 110 feet x 40 feet piece of land comprised in survey No.126/10 situated at Thiruvanmiyur village, Mylapore, Thiruvallikeni Taluk, Chennai, after obtaining 1½ times of the amount as per the market value of the aforesaid land. The appellant, the purchaser of the subject land, filed the present appeal after obtaining leave from this Court. The litigation started in the following manner.

2. The Tiruvanmiyur was an inam village. Consequent on the enactment of Tamilnadu Estates (Abolition and Conversion into Ryotwari) Act 1948 (Tamilnadu Act XXVI of 1948), there was a survey and settlement of the village. The 6th respondent - Executive Officer of Marundeeswaran Devasthanam, claimed patta in respect of the above said land under Act 26 of 1948 and the authorities under the Act have ultimately rejected the claim of Devasthanam as well as the tenants and held that the land be vested with the Government under section 3(b) of the Act 26 of 1948. The revision petitions filed to the Settlement Officer by the Devasthanam and private persons have been dismissed on 14.02.1983 and that was confirmed by the Director of Survey and Settlement, by his order dated 08.08.1983.

3. The Executive Officer of the temple filed suit in C.S.No.1028 of 1994 by arraying the Secretary to the Government, Revenue Department; the Commissioner of Land Reforms; the Director of Survey and Settlement; the District Collector of Chennai; the Tahsildar of Mylapore-Triplicane Taluk and eight others (M/s.Savitri Ammal, Ethiraj, Venkatesa Pillai, Balaraman, Srinivasan, Bommi, Kannan, Dr.Hari Ramesh) as defendants praying for declaration that the temple is the sole and absolute owner of the land in survey No.126/10 at Thiruvanmiyur village.

4. In the plaint, the proceedings before the authorities under the Act 26 of 1948 and their decisions declaring the land be vested with the Government are averred and it is also stated that the correctness of the same is questioned in the suit and declaration is sought for on the basis of possession. It is also further stated that the 13th defendant Dr. Hari Ramesh was attempting to get the land assigned in his favour and for that purpose he has submitted an application to the fourth defendant - District Collector. The 13th defendant, with his influence over the 5th defendant, the Tahsildar has arranged for a favourable report and the fourth defendant decided to issue patta. If patta has been granted to

the 13th defendant, the interest of the plaintiff temple will be seriously prejudiced.

5. Pending suit, this Court by order dated 13.12.1995 made in O.A. No.770 and 771 of 1994 directed the parties to maintain status quo. In the meantime, the Government by its order G.O. Ms. No.828 Revenue Department dated 25.08.1995 directed the District Collector, Chennai to receive the petition of Dr.Hari Ramesh, the 13th defendant and examine the same for the issuance of patta after obtaining 1½ times of the market value of the extent of the land as per G.O. Ms. No. 303, Commercial Tax and H.R & C.E Department dated 24.03.1987. One Kumar had represented that Dr. Hari Ramesh and Dr.Padmaja Hari Ramesh had sold the land to him on 03.02.1993 and therefore requested to issue patta to him for the said land for which orders were passed on 02.12.1993 as per G.O. Ms. No.(1D) 837 Revenue Department. On that basis the Government Order directed the Chennai District Collector to issue patta to Kumar over an extent of land above referred to in survey No.126/10 at Tiruvanmiyur village. Pursuant to the same, the District Collector, by proceedings dated 21.11.1995, by referring to the G.O. Ms. No.828 Revenue Department dated 25.08.1995 assigned 3300 sq. ft. (excluding the common passage) in survey No.126/10 at Tiruvanmiyur village to N. Kumar subject to payment of Rs.7,85,214/-, being 1½ times of the market value as on 1995 on certain further conditions, which are not relevant to the present proceedings.

6. While that being so, one Rajaram and three others as the trustees and devotees of the Devasthanam filed writ petition No.17786 of 1995 to quash the proceedings of the Collector dated 21.11.1995 assigning the land in favour of Kumar, on the same line of the grounds as stated in the suit. The interlocutory application Nos.770 and 771 of 1994 in C.S.NO.1028 of 1994 and WPMP Nos.28053 and 28054 of 1995 in writ petition No.17786 of 1995 have been taken up together for orders and after narrating the facts in an elaborate manner by the learned single Judge passed order on 07.01.1998 to the effect that the disputed question of title over the land based on possession has to be decided in the suit and it cannot be gone into in the writ petition and made the interim order absolute, in the sense, staying of the order of the District Collector dated 21.11.1995 assigning the land in favour of Kumar and also observed that the writ petition No.17786 of 1995 and WPMP Nos.28053 and 28054 of 1995 can be heard together along with the suit as the result of the suit will have a bearing on the very writ petition itself. But the writ petition was dismissed by the Writ Court for non-prosecution. Even the Executive Officer, who was one of the respondent, has not brought to the notice of the Court about the civil suit and the order made therein or advanced any argument as done in this case.

7. The first two petitioners in the writ petition No.17786 of 1995 filed writ petition No.13009 of 1997 challenging G.O. Ms. No.828 Revenue Department dated 25.08.1995.

8. It is seen from the order impugned that when the writ petition was taken up for disposal, there was no representation on behalf of the petitioners. The second petitioner was no more by then. The learned counsel for the sixth respondent - the Executive Officer submitted before the Court that the interest of the temple was directly affected by the order impugned in the writ petition that notwithstanding the fact that the petitioners are not prosecuting the writ petition, the sixth respondent may be permitted to argue on behalf of the petitioners. The writ Court exercised 'parens patriae' principle and heard the matter and set aside the Government Order made therein. The correctness of the said order is now canvassed before this Court by the appellant.

9. It was argued on merits that after the order passed by the Settlement Officer, by his proceedings dated 14.02.1983, which was confirmed by the Director of Settlement by his proceedings dated 08.08.1993, the fact that the land vests in the Government under the Act 26 of 1948 and the right of the Government over the property attained finality, the Government assigned the land on the application made by Dr. Hari Ramesh to his nominee from whom the appellant purchased the subject property along with various other properties by sale deed dated 14.07.2000. The Government (Revenue Department) passed G.O. Ms. No.828 dated 25.08.1995 directing the Collector Chennai to issue patta to Kumar, the vendor of the appellant and consequential order dated 21.11.1995 was passed by the competent authority assigning the land and issuing patta in favour of Kumar who has sold the property to the appellant. On the very same cause of action, a Civil suit in C.S. No.1028 of 1994 is pending before this Court at the instance of Temple. The writ petitioner originally filed writ petition No.17786 of 1995 challenging the order of assignment dated 21.11.1995, which is a consequential order passed pursuant to G.O.Ms.No.828 dated 25.08.1995 and obtained an interim order in their favour. However, the said writ petition was allowed to be dismissed for non prosecution. Hence, the interim order passed in that application merged with the order of dismissal of writ petition Nos.17786 of 1995 and 13009 of 1997.

10. It was specifically averred in both the writ petitions. The writ petitions ought to have been filed by the Executive Officer. But since the Executive Officer cannot file a writ petition on behalf of the Government, without proper permission and the process of getting permission may take time, the petitioners, as trustees and devotees of the Devasthanam, filed the writ petition. Despite the same, the petitioner have not prosecuted these writ petitions. The Executive Officer appointed under the Hindu Religious and Charitable Endowments, (hereinafter referred to as "H.R. & C.E.") Act is not competent in law to transpose himself as the petitioner and as such, the action would not only be improper, but also illegal. Invocation of the doctrine of 'parens patriae' is also erroneous in law as the doctrine does not apply when the administration of the temple and its properties are

covered by the statutory provision contained in the enactment HR & CE Act, 1959. Even assuming, the H.R. & C.E. Department can maintain a litigation before this Court against the revenue department, which are two wings of the State Government, the Executive Officer should have obtained clearance from CoD which has not been done in this case and on that ground the writ Court would not have proceeded with the writ petition at the instance of the fourth respondent- Executive Officer.

11. However, the learned counsel for the respondent Devasthanam argued the case on merits for sustaining the order of the writ Court by contending that the suit by the temple for declaration is maintainable despite the fact that the statutory authorities under Act 26 of 1948 held against the temple. As petitioners were not able to prosecute the writ petition, in order to protect and save the property of the temple, which is worth about several lakhs, the Executive Officer prosecuted the same for which he has power.

12. The Additional Government Pleader appearing for the third respondent - revenue Department has contended that as the claim of the temple over the land has been rejected and the lands are held to be vested with the Government, the Government i.e., revenue Department after following due process and after receiving 1 1/2 times of the market value of the land, passed the order impugned, which cannot be questioned by the H.R& C.E. Department.

13. We heard the learned counsel on either side and perused the materials available on record.

14. There is no dispute that after coming into force of the Tamilnadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, there was a resurvey and settlement of the village Tiruvanmiyur and after repeated rounds of litigation at the instance of Devasthanam and private parties, the authorities under the Act have held that Devasthanam was not able to produce any materials to sustain its claim as to the ownership of the land, and that the land vested with the Government. It is also true that Devasthanam filed a civil suit in respect of the subject property. Two writ petitions have been filed by the erstwhile trustees in the capacity of the trustees and Devotees of the Devasthanam by arraying State of Tamilnadu and also the statutory authorities and also the Executive Officer as respondents, one challenging the assignment order and the order challenging the G.O.Ms.No.828 Revenue Department dated 25.8.1995.

15. It is equally true that in both the affidavits filed in support of the writ petitions, it is averred by the deponent that the writ petition ought to have been filed by the Executive Officer, but such an exercise requires permission from the Deputy Commissioner of H.R. & C.E. Department and in view of the urgency to obtain an interim order the writ petition has been filed by them.

16. The crux of the dispute in both the writ petitions is that the property belongs to the temple which is under the custody of H.R. & C.E. Department of the State Government and it did not belong to the Revenue Department, as ordered by the authorities under the Act. The Revenue Department cannot deal with the property in any manner including assigning the property as done in this case. It is not disputed that the Devasthanam is governed by the H.R. & C.E. Department. One wing of the State Government and its dispute is against another wing of the Government - the Revenue Department. Virtually the dispute is between two wings of the State Government.

17. When a dispute or lis arises between the two wings of the Government what should be the procedure to be followed has been repeatedly held by the Supreme Court.

18. Somewhat comparable case was considered by the Supreme Court in the case of Chief Conservator of Forests, Government of A.P. v. Collector, (2003) 3 SCC 472. The subject matter of litigation was an extent of acres 2423.37 in Jatprole Jagir, Kollapur taluk, Mahboobnagar district in the erstwhile Nizam's State of Hyderabad. After the accession of the Nizam's State of Hyderabad with the Union of India, the Andhra Pradesh (Abolition of Jagirs) Regulations, 1358 Fasli came into force on 20.09.1949. Under these Regulations, all jagirs, including Jatprole Jagir, stood abolished from that date and their administration stood vested in the State. Raja S.V. Jagannadha Rao was the last Jagirdar. It was the case of the pattedars that when the State took over the jagir, the Forest Department of the State took under its control the forest land, measuring acres 1,20,824. However, the lands comprised in Survey No.11 of Asadpur village measuring acres 1523 and Survey No. 168 of Malachinthapalli village measuring acres 9000 continued to remain in the possession of the Raja as his patta lands. Soon thereafter, Notification No.282 under Section 29 of the Andhra Pradesh (Telangana Area) Forest Act, 1355 Fasli (for short "the Forest Act") was issued on 4-12-1950. The notification enumerated fourteen villages comprising an extent of 93,030 acres of Kollapur taluk, Mahboobnagar district, which was named as Kollapur range. In the year 1953, resurvey of the erstwhile jagir was conducted. The lands in question, namely, Survey No. 40 (old) was assigned with the resurvey Number. The pattadars filed an application under Section 87 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli to rectify the mistake noted in the settlement record pursuant to the said resurvey. The mistake was alleged to be that the name of the khatedar was not shown against the said survey numbers which were shown as "mahasura" (protected). The District Collector, after conducting the necessary enquiry and on a joint inspection, passed an order on 25.04.1966 directing rectification of the settlement record and as such the record was also rectified on 11.05.1966. The Chief Conservator of Forests expressed that the land in question was forest land and doubted the correctness of the records. In view of the doubt raised by the

Conservator of Forests, the Government of Andhra Pradesh issued orders directing the Commissioner of Survey, Settlement and land records to make an enquiry and directed to pass a speaking order after hearing the parties. While the enquiry was pending, the pattadars filed a suit for a declaration of title. The same has been ordered. In the meanwhile, the Commissioner of Survey conducted the enquiry as directed and opined that the order of the Collector, passed under Section 87 of the Land Revenue Act, was correct. Even after that the doubt of the Chief Conservator of Forests continued to persist and he filed a writ petition before the Andhra Pradesh High court challenging the order of the Commissioner of Survey. When the matter reached the Supreme Court, the Supreme Court in that case observed as follows :

"14. Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all interdepartmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and the Union of India, this Court in *Oil and Natural Gas Commission v. CCE*, 1992 Supp(2) SCC 432 called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission v. CCE*, 1995 Suppl (4) SCC 541 this Court directed the Central Government to set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a tribunal without the

matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

15. The facts of this appeal, noticed above, make out a strong case that there is a felt need of setting up of similar committees by the State Government also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a committee consisting of the Chief Secretary of the State, the Secretaries of the departments concerned, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government."

19. The apex Court in the case of ONGC v. City & Industrial Development Corpn., Maharashtra Ltd., (2007) 7 SCC 39, after extracting the paragraphs 14 and 15 in the case of Conservator of Forests cited supra, held as follows :

"7. The directions as noted above were quoted in Mahanagar Telephone Nigam Ltd. v. Chairman, CBDT, (2004) 6 SCC 431 and were adopted in para 8. It was noted as follows: (SCC p.436)

'8. Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. The majority of such cases pertain to government departments and/or public sector undertakings. As is stated in Chief Conservator of Forests case it was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India and/or a department of the Government and a public sector undertaking fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in coordination and not confrontation. The mechanism set up by this Court is not, as suggested by Mr Andhyarujina, only to conciliate between the government departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High-Powered Committee. If it can, the High-Powered Committee will

resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High-Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High-Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the department/public sector undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done.'

20. In the case of *ONGC v. Collector of Central Excise*, (1995) Supp (4) SCC 541 the Supreme Court held that it shall be the obligation of every Court and every Tribunal where such a dispute is raised to demand a clearance from the Committee in case it has not been so pleaded and in the absence of clearance, the proceedings would not be proceeded with. Thus, the Supreme Court has cautioned the Court of its obligation to demand a clearance certificate from the Committee if such a lis is brought before it between two wings of the Government. If no such clearance is produced before it, the further obligation of the Courts is not to proceed with the proceedings before it.

21. Though the learned counsel appearing for the Executive Officer of the H.R. & C.E. Department has argued on merits, admitted across the Bar that no such clearance has been obtained from the CoD, as spelt out in the case of Chief Conservator of Forests. Apart from that, on the facts of the case, a comprehensive suit is pending before this Court for a declaration of title to Devasthanam by dislodging the order of the statutory authorities under the Act 26 of 1948. Further, the interim order granted by this court in OA is in existence and well in force.

22. From the foregoing discussion, we are of the view that the Executive Officer, who is the officer of H.R. & C.E. Department, which is one wing of Government of Tamilnadu, in the absence of any permission from the CoD as ruled in the Apex Court's judgments

cited supra, cannot be allowed to prosecute the writ petition. The order impugned in this appeal is passed without discharging the objection to demand the clearance certificate from CoD and for that reason liable to be set aside. The writ appeal is allowed. The writ petition is dismissed by giving liberty to the H.R. & C.E. Department, if so advised, to revive the matter further after obtaining the clearance from COD for adjudication. No costs. Consequently, the connected W.A.M.Ps are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mf/usk

Copy to:

1. The Secretary,
Revenue Department,
State of Tamilnadu,
Fort St. George, Chennai 9.
 2. The Collector of Chennai, Chennai.
 3. The Executive Officer,
Marundeeswaran Devasthanam,
Thiruvanmiyur, Chennai 41.
- + 1 CC To M/s.N.Kavitha, Advocate SR NO.44812
- + 1 CC To Mr.A.S.Kailasam, Advocate SR NO.44687
- + 1 CC to the Government Pleader SR NO.44878

Pre delivery Judgment in
W.A.No.3286 of 2004

GV {CO}
TP/19.8.08