

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.8653 of 2010
and MP Nos.1 & 3 of 2010

L.Paramasivam

... Petitioner

Vs.

- 1 The District Collector,
Namakkal District,
Namakkal.
- 2 The Revenue Divisional Officer,
Namakkal.
- 3 The Tahsildar,
Rasipuram,
Namakkal District.
- 4 The Village Administrative Officer,
Muthukalipatty Village,
Rasipuram Taluk,
Namakkal District.
- 5 S.Velu
- 6 Jayaraman
- 7 Ramasamy @ Ramu
- 8 P.Kandasamy @ Kandhan

... Respondents

R5 to R8 impleaded by order dated 27.9.10 by NPVJ
in MP No.2/10 in WP 8653/10

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Mandamus, forbearing
the Respondents from interfering with the possession and
enjoyment of the Petitioner's property in Survey No.105/136 and
105/137 at Muthukalipatty Village, Rasipuram Taluk, Namakkal
District.

For Petitioner : Mr.V.Ramana Reddy

For RR 1 to 3 : Mr.Jaya Prakash Narayanan
Special Govt. Pleader

For RR 5 to 8 : Mr.I.C.Vasudevan

O R D E R

This Writ Petition has been filed seeking for a Writ of Mandamus, forbearing the Respondents from interfering with the possession and enjoyment of the Petitioner's property in Survey No.105/136 and 105/137 at Muthukalipatty Village, Rasipuram Taluk, Namakkal District.

2. The case of the petitioner is that the petitioner claimed to be the absolute owner of the property comprised in Survey No.105/136 and 105/137 at the said village. He has constructed a house and is residing with his family in the land which is categorised as Gramma Natham. The Zonal Deputy Tahsildar has already given Patta for the Survey No.105/136 in favour of the petitioner. However, in respect of Survey No.105/137, no patta has been issued. The said land in Survey No. 105/137 is classified as Gramma Natham Vacant. The petitioner's grandmother had purchased the said property from one Rangasamy, through a Registered Sale Deed bearing Doc.No.694/1965 dated 09.04.1965 ad-measuring to an extent of 0.0214.5 sq. mts.. And thereafter, he was in possession and enjoyment of the same where he put up a compound around the property. The possession of the petitioner has not been properly recognized hence the patta in the said land was not given to the petitioner.

3. The land owners adjacent to the petitioner's land who are impleaded as respondents 5 to 8 had claimed that the land belong to them as if that they were using the said land during the time of festival. Though the petitioner is in possession of the said land which is classified as Gramma Natham he is facing trouble from the official respondents as well as from the private respondents. Therefore, the petitioner has come out the Writ Petition for the above said relief.

4. Heard Mr.V.Ramana Reddy, learned counsel appearing for the petitioner and Mr.Jaya Prakash Narayanan, learned Special Government Pleader appearing on behalf of the respondents 1 to 4 and Mr.I.C.Vasudevan, learned counsel appearing for the respondents 5 to 8.

5. During the pendency of the Writ Petition, the Civil Suit filed by the petitioner against the respondents 5 to 8 was decided and by decree dated 04.09.2010, an order of prohibitory injunction was granted, restraining the respondents 5 to 8 herein from interfering with the possession of the petitioner in the said property. Be that as it may, even though the prohibitory injunction was granted in the said suit that would not confer the title on the petitioner in the Gramma Natham land.

6. The learned counsel for the petitioner would submit that since the petitioner had purchased the above said land in the year 1965 and from that date the petitioner has been in possession and enjoyment of the same he is fully entitled to get patta for the said land. Therefore, the petitioner, according to the learned counsel, is entitled for the relief sought for.

7. Per Contra, the learned Special Government Pleader would contend that for the land at Survey No.105/136 the petitioner has already been issued with patta and he is enjoying the same. In so far as the land in Survey No.105/137, it is classified as Gramma Natham Vacant site. Though the petitioner's grand mother had purchased the said land from one Rangasamy, in the year 1965 vide a registered sale deed dated 09.04.1965, the status of the land has not been changed from Gramma Natham vacant site in the village accounts. Considering the said situation only nearby people of that village have requested to vacate the petitioner, and remove the encroachment and to give the patta in the name of Mariamman Kovil, which is located therein for the nearby village people's worship.

8. The learned Special Government Pleader would further submit that no patta or valid title was granted in the name of the petitioner even though the petitioner is in possession. As the said land is the Gramma Natham land the petitioner cannot seek any prohibitory order against the respondents, especially the official respondents as all lands including the gramma natham land belong to the Government. Therefore, the learned Special Government Pleader prays for dismissed of the writ petitions.

9. The learned counsel appearing for the respondents 5 to 8 would contend that even according to the petitioner, based on the Sale deed said to have been executed in favour of grandmother of the petitioner, there is no clear boundary mentioned in the schedule, hence, based on that Sale Deed, no claim can be made by the petitioner.

10. The learned counsel for R5 to 8 would further submit that moreover, as per the averments made by the 3rd respondent in the counter affidavit the village people also, during the festival time, had been using the land in question. If at all the petitioner had any right or possession, the same can be agitated before the competent Civil Court as only a Civil Court can decide the title. Without availing such course of remedy, the petitioner has come out with the present Writ Petition and therefore the same cannot be entertained and accordingly it is liable to be dismissed.

11. This Court heard the rival submissions made on either side. Though the petitioner has claimed relief in respect of the two lands namely 105/136 and 105/137, in the said village, there is no dispute with regard to the ownership of the Survey No.105/136 as admittedly patta has been given in the name of the petitioner for that portion of the land. Only for the land at Survey No.105/137 a dispute exists. The petitioner claims that it was purchased by the petitioner's grand mother in the year 1965, from that date, the petitioner has been in possession and enjoyment of the same and has put up some construction also. In this regard, in the proceedings dated 20.04.2010 issued by the 3rd respondent as has been referred by the learned counsel for the petitioner, the 3rd respondent has stated that the land in Survey No.105/137 to the extent of 0.0214.5 sq. mts. is classified as Grama Natham vacant land in the village account.

12. However, in the said land the petitioner has constructed some stone wall long back, though such construction had been made in the said land, which is still lying as a vacant land. In this regard, the petitioner had produced old sale deed to substantiate his claim. After recording all these findings the Tahsildar recommended to the RDO to remove any encroachment in the said land.

13. From the above documents of the 3rd respondent it could be easily found that the land is a Gramma Natham Vacant land. Even according to the village accounts some construction had been made only by the petitioner and he had been in possession of the said land. These factors are not disputed. Only based on these aspects the Civil Court also in its decree dated 04.09.2010 has given an order restraining the private respondents 5 to 8 from interfering with the possession of the petitioner in the said land. With the help of these documents the petitioner can very well approach the respondents to get patta in the said land. And once the respondents decide the same for grant of patta, then only the title of the said land can be confirmed. Unless and until the patta for the said land is issued to the petitioner, the petitioner cannot seek any permanent relief even a prohibitory order of restraining the respondents, either

officials respondents or private respondents, as has been claimed in this Writ Petition.

14. In view of the said facts and circumstances, this Court is of the view that the Writ Petition can be disposed of by directing the petitioner to make a request to the 3rd respondent to issue patta for the land in Survey No.105/137 in the said village on the strength of the documents which are in possession of the petitioner to state that he is in continuous enjoyment and possession of the property.

15. Once such representation is made by the petitioner seeking patta of the said land the 3rd respondent shall decide the same on merits and in accordance with law of course after affording an opportunity of hearing to the petitioner and to the private respondents 5 to 8 and pass a reasoned order. Till such a decision is taken by the 3rd respondent the possession of the petitioner in the said land shall not be disturbed. At any rate the petitioner shall make the said representation within four weeks from the date of receipt of a copy of this order and on receipt of the same, the 3rd respondent shall decide the issue as indicated above within three months thereafter. The Writ Petition is disposed of with the above directions. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

jv
To

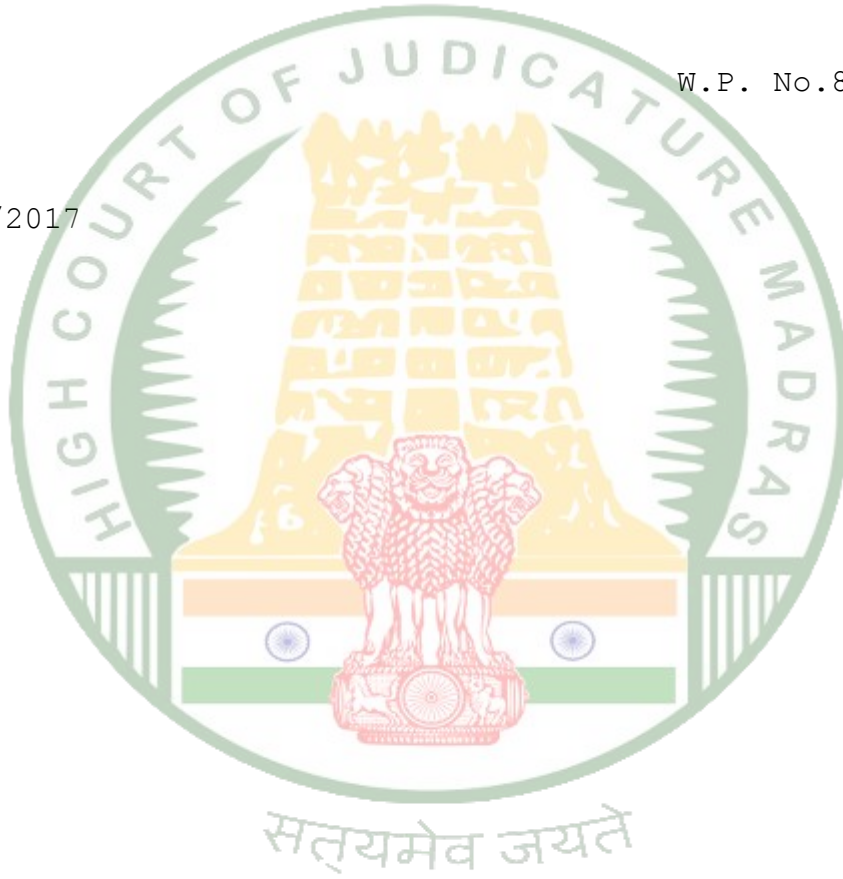
- सत्यमेव जयते
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+1cc to Mr.I.C.Vasudevan, Advocate Sr.70381
+1cc to Mr.V.Ramanareddy, Advocate Sr.69372
+1cc to the Government Pleader Sr.69663

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