THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.40697 of 2015

and M.P.No.1 of 2015

1.G.Asir Packiyanathan
2.G.Thomas Bauliah
3.B.S.R.Mohan ... Petitioners

vs.

1.The Commissioner,
Land Survey and Revenue Settlement,
Government of Tamil Nadu,
Chepauk, Chennai-5.

2.The District Collector,
Tirunelveli District,
Tirunelveli.

3.The Tahsildar,
Tirunelveli Taluk,
Tirunelveli District.

4.The Village Administrative Officer,
Nanjankulam Village,
Tirunelveli Taluk and District.

5.The Tahsildar,
Maanur Taluk,
Tirunelveli District. ... Respondents
(R.5 impleaded asper order dated
28.3.2016 made in W.M.P.No.
9833/2016)

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the respondents to exercise their statutory duty of collecting the revenue taxes from the petitioners in respect of their legitimate property situated at Nanjankulam Village, Thiruvelveli Taluk, Thirunelveli District comprised in Survey No.177/1 measuring to an extent of 10.95 acres of land covered under New Patta No.792 and issue due receipts thereof after removing the illegal entries as Pond on the revenue village records of the said property.

For Petitioners : Mr.AR.L.Sundaresan, SC for Mr.P.Kamarasu

For Respondents : Mrs.P.Rajalakshmi Govt. Advocate

ORDER

The petitioners have come up with the present writ petition for a mandamus, directing the respondents to exercise their statutory duty of collecting the revenue taxes from them in respect of their legitimate property situated at Nanjankulam Village, Thiruvelveli Taluk, Thirunelveli District comprised in Survey No.177/1 measuring to an extent of 10.95 acres of land covered under New Patta No.792 and issue due receipts thereof after removing the illegal entries as Pond in the revenue village records of the said property.

2. The case of the petitioners, in brief, is as follows:-

(a) The second petitioner is one among the co-owners of the immovable property situated at Nanjankulam Village, Thiruvelveli Taluk, Thirunelveli District comprised in Re-Survey No.177/1 measuring to an extent of 10.95 acres (Hec.4.43 ares) of land covered under New Revenue Patta No.792 issued by the Head Quarters Deputy Tahsildar, Thirunelveli Taluk, standing in the names of the petitioners 1 and 2 and their mother late Vedha Sundaram and the father of the third petitioner viz., late Bauliah Vathiyar.

(b) Originally, the properties measuring to an extent of 11.95 acres of land comprised in Survey No.177 of Nanjankulam Village, Thiruvelveli Taluk, Thirunelveli District were purchased by the petitioners' ancestors by registered sale deeds vide document Nos.2681/1940 and 1883/1941 on the file of the Sub Registrar, Thirunelveli. The revenue authorities concerned had issued patta bearing Old Revenue Patta No.601 for the said properties in favour of the petitioners' ancestors. After the life time of the petitioners' father Gnaniah, the revenue records of the said properties were mutated in the names of their mother Vedha Sundaram and two children including the petitioners 1 and 2 and their uncle late Bauliah Vathiyar, the father of the third petitioner.

(c) Thereafter, the petitioners dug a small Pond in their property being patta land for irrigation purpose and the extent of the Pond was less than 1 acre out of the said total extent of 11.95 acres of land. The 'A' register extract and the patta pass book clearly show their legitimate ownership over the said property. They have been in absolute ownership, possession and enjoyment of the said property by performing cultivation activities. The revenue authorities concerned had levied the land tax for the said property from the petitioners periodically.

(d) In the year 1975, during the passing of the Abolition of Private Tanks and Urunis Act by the Government of Tamil Nadu, the Assistant Settlement Officer, Kovilpatti, erroneously passed an order in ROC No.B1/13162/75 dated 24.1.1975 in respect of their property comprised in Survey No.177 covering the entire area. The said order was challenged by the petitioners by filing a writ petition before this Court in W.P.No.1178 of 1977. After considering the facts and on the basis of the counter affidavit filed by the respondent therein, this Court passed an order on 9.12.1977 in the said writ petition. The relevant portion of the said order is as follows:-

> " In fact, except the portion occupied by the Pond, cultivation is feasible in the rest of the land and it is not therefore an "Uruni" or "Pond" in public use. It is also stated that the cancellation orders were issued without actual verification on ground but with reference to records. In view of these reasons, the cancellation of the patta already granted for the entire extent of 11.95 acres is not correct. Hence this respondent states that the writ petitioner's claim for patta will be conceded by the Board of Revenue (SE) excluding 1.00 acre of land covered by Pond in the middle of the suit land on the disposal of this writ petitions. Recording this statement, the writ petition will stand allowed. No costs."

Pursuant to the said order, the revenue authorities concerned effected re-survey of the entire extent of the said land and assigned Sub Division as Re-survey No.177/1 measuring to an extent of 10.95 acres of land for their legitimate punja land and Re-survey No.177/2 measuring to an extent of 1 acre for the Pond area and a clear revised notification was also issued by the revenue authorities concerned viz., the Assistant Settlement Officer, Madurai-2 vide proceedings in B1.3872/78 dated

10.8.1978 confirming that the land measuring to an extent of 1 acre in which the Pond is situated was declared as Uruni and the remaining extent of the land measuring to an extent of 10.95 acres is their punja land. The concerned Tahsildar had also issued a new revenue patta bearing No.792 for their land comprised in Re-survey No.177/1 measuring to an extent of 10.95 acres and ever since, the petitioners being the absolute owners, have been in possession and enjoyment of the same.

(e) While so, on 23.11.2009, when the petitioners approached the fourth respondent in order to pay the property tax and revenue charges for subsequent faslis in Re-survey No.177/1, the fourth respondent refused to receive the tax amounts saying that the said property was a Pond. In this regard, a representation dated 24.11.2009 was also submitted before the third respondent to accept the revenue tax. Even after that, the fourth respondent refused to receive the revenue tax for their property.

(f) In these situation, in January 2014, the fourth respondent orally informed the petitioners that because of the communication dated 4.4.2000 of the first respondent, the fourth respondent was unable to receive the revenue tax from them for their legitimate property. Later, the petitioners came to know the proceedings said to have been initiated relating to the legitimate property of the petitioner, which is in violation of the order of this Court dated 9.12.1977 passed in W.P.No.1178 of 1977. After making several representations, the petitioners approached the second respondent requesting him to clarify as to on what basis they refused to collect the revenue tax from them. The second respondent through the third respondent sent a memo dated 29.11.2013 stating that the property comprised in Re-Survey No.177/1 is Pond. Hence, left with no other alternative, the petitioners have come up with the present writ petition for the relief set out earlier.

3. It is the main submission of the learned senior counsel appearing for the petitioners that pursuant to the order of this Court dated 9.12.1977 made in W.P.No.1178 of 1977, as early as in the year 1978, the revenue authorities concerned effected Re-survey of the entire extent of land and assigned sub-division as Re-survey No.177/1 measuring to an extent of 10.95 acres of land for the petitioners' legitimate punja land and Re-survey No.177/2 measuring to an extent of 1 acre for the Pond area. Thereafter, the petitioners are regularly paying kist, tax and revenue charges for the said land. While so, in total violation of the order of this Court referred to above, the third respondent sent a communication dated 29.11.2013 stating that the property comprised in Re-survey No.177/1 is Pond. Hence, challenging the same, the petitioners have come up with the present writ petition seeking a direction to the

respondents to exercise their statutory duty of collecting the revenue taxes from them in respect of their legitimate property situated at Nanjankulam Village, Thiruvelveli Taluk, Thirunelveli District comprised in Survey No.177/1 measuring to an extent of 10.95 acres of land covered under New Patta No.792 and issue due receipts thereof after removing the illegal entries as Pond on the revenue village records of the said property.

4. I have heard the learned Government Advocate appearing for the respondents.

5. Considering the facts and circumstances of the case and considering the submissions made on either side, without going into the merits of the claim made by the petitioners, this Court directs the petitioners to give a fresh representation with regard to payment of revenue tax in respect of the land in Survey No.177/1 measuring to an extent of 10.95 acres of land covered under New Patta No.792, situated at Nanjankulam Village, Thiruvelveli Taluk, Thirunelveli District, along with a copy of this order, to the respondents 1 and 2 within a period of two weeks from the date of receipt of a copy of this order, and on receipt of the same, the respondents 1 and 2 are directed to consider the same and pass appropriate orders, on merits and in accordance with law and in the light of the order of this Court dated 9.12.1977 made in W.P.No.1178 of 1977 as well as by taking note of the re-survey effected pursuant to the abovesaid order of this Court and by affording an opportunity of personal hearing to the petitioners as well as to the other necessary parties, if any, within a period of six weeks thereafter. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

sbi

To

1.The Commissioner,
Land Survey and Revenue
Settlement,
Government of Tamil Nadu,
Chepauk, Chennai-5.

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5.The Tahsildar,
Maanur Taluk,
Tirunelveli District.

+1 cc to Mr.P.Kamarasu Advocate sr.23722
+1 cc to the Government Pleader High Court Madras sr.23186

W.P.No.40697 of 2015

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