



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 02.12.2016

Order Pronounced on : 21.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Writ Petition (MD)No.1315 of 2015

and

M.P. (MD)No.1 of 2015

AL.Manikandan

Trustee, Sri Kailasa Vinayagar Koil,

Rep. by his Power of Attorney AL.Visalakshi

Pillaiyarendhal,

Chinnavengavayal Village,

Karaikudi Taluk, Sivagangai District.

...Petitioner

vs.

1.The District Collector,
Sivagangai.

2.The Revenue Divisional Officer,
Sivagangai District.

3.The Tahsildar, Karaikudi.

4.The President,
Vengavayal Village, Karaikudi Taluk,
Sivagangai District.

5.The Village Administrative Officer,
Vengavayal Panchayat,
Karaikudi Taluk, Sivagangai District.

6.The Superintendent of Police,
Sakkotai Police Station,
Vengavayal, Karaikudi Taluk,
Sivagangai District.

7.Kuppusamy

8.Chinnasamy

9.Dhanushkodi

10.Vasanth

11.Arumugam

12.Parvathy

13.Murugesan

14.Silambayee

<https://hcservices.ecourts.gov.in/hcservices/>

15.Alagappan

16.Muthuvel



17.Kannan
18.Nesavalli
19.Vairavan
20.Meena
21.Vellaisamy
22.Veeramani
23.Pitchumani Asari
24.Ganesan
25.Chelliah
26.Kamaraj
27.Chellayee

..Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the respondents 1 to 6 herein to forthwith cancel the patta granted in favour of the respondents 7 to 27 herein and restore the patta in the name of the petitioner temple Sri Kailasa Vinayagar Koil, Pillaiyarendhal, Chinnavengavayal Village, Karaikudi Taluk, Sivagangai District rep. by its Trustee in respect of the lands of an extent of 14.93 acres in Survey No.236/1 subsequently sub divided as Survey Nos.236/37, 60, 38-A, 38-NB, 39, 55, 41-A, 41-B, 5, 8, 9, 10, 3, 42, 43, 45, 44, 47, 50, 51, 52, 53, 56, 57, 7, 8, 58, 31, 32, 33, 35, 36, 1, 15, 19, 23, 3, 6, 10, 30, 18, 2, 8, 9, 3, 11, 14, 22, 5, 17, 23, 25, 7, 12, 16, 24, 26, 29, 34, 30 of Pillaiyarendhal Village, Karaikudi Taluk, Sivagangai District.

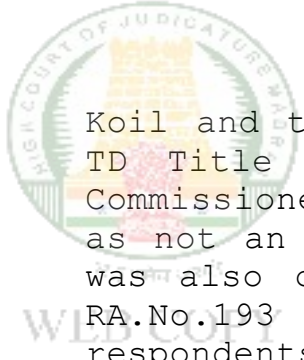
For Petitioner : Mr.ARL. Sunderesan,
Senior Counsel for
M/s.AL.Gandhimathi

For Respondents : Mr.R.Anandharaj
for R-1 to 3 and 5 and 6.
Government Advocate
Mr.V.K.Vijayaragavan
for R9,R11 to R13, R-15 to 18
and 21 to 23

ORDER

This writ petition has been filed seeking a direction to the respondents 1 to 6 to cancel the patta granted in favour of the respondents 7 to 27 herein and restore the patta in the name of the petitioner temple, namely, Sri Kailasa Vinayagar Koil, Pillaiyarendhal, Chinnavengavayal Village, Karaikudi Taluk, Sivagangai District

2. According to the petitioner, properties to an extent of 14.53 acres of agricultural lands comprised in Survey No.236/1 of Pillaiyarendhal, a hamlet of Chinnavengavayal in Sivagangai District. The said properties belongs to one late SP.Palaniappan Chettiar, the then Trustee of Sri Kailasa Vinayagar



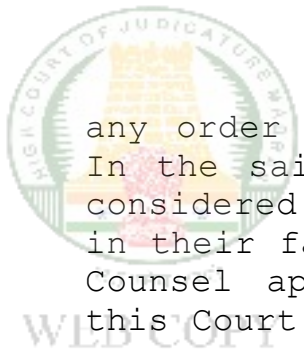
Koil and the lands were given as grant to his fore fathers under TD Title Deed 867 under Iruvaram Pannai Right, by the Inam Commissioner in 1864. Subsequently, the above village was declared as not an Inam Estate by the competent authority. The said order was also confirmed by the Estate Abolition Tribunal, Madurai in RA.No.193 of 1950 dated 05.10.1950. The predecessors of the respondents 7 to 27 encroached upon the lands in November and December, 1951. Hence, a suit in O.S.No.151 of 1957 was filed by the said SP Palaniappa Chettiar, before the District Munsif Court, Devakottai the same was also decreed. Against the said judgment and decree, the encroachers filed an appeal in A.S.No.50 of 1959, on the file of the Sub Court, Devakottai. The said Appeal Suit was also dismissed. Subsequently, a Second Appeal in S.A.No.934 of 1965 was filed before this Court and the same was also dismissed. Thereafter, a LPA was filed which was also decided in favour of the temple. In the meanwhile, the possession of the lands were taken over by the Trustee, Palaniappa Chettiar through Court. Subsequent thereto, during survey settlement, the lands were surveyed as RS.No.236/1, to an extent of 14.93 acres. The Assistant Settlement Officer, Sivagangai taking into consideration the facts Iruvaram Pannai Right of the petitioner's grand father by order dated 15.10.1973, granted a Ryotwari patta under Section 9(1) r/w Section 12(1) of the Act 26 of 1963, in respect of the property in RS.No.236/1 measuring to an extent of 14.83 acres, in favour of Sri Kailasa Vinayagar Koil Temple at Pillayarendal, represented by its Trustee Palaniappa Chettiar and it was also directed that the lands will be classified a Non Ryotwari Dry land. Even though the delivery was taken through Court, the predecessors of the respondents 2 to 27 encroached the lands in portions. Hence, a suit came to be filed against one of the encroachers by name Pappathy in O.S.No.106 of 1980 for declaration and recovery of possession. The said suit was decreed in favour of the plaintiff therein and as against which an appeal was filed in A.S.No.47 of 1981, before the Sub Court, Devakottai. The above said appeal came to be allowed, against the same, a second appeal in S.A.No.756 of 1984 was filed by the grand father of the petitioner before this Court and the above said appeal was allowed by this Court confirming the title of the appellant therein, and it was clearly observed that the above judgment is a judgment in rem and it is not a judgment in personam, and the title of the appellant therein holds good against all persons. Subsequently, suppressing all the aforesaid facts, the respondents 7 to 27 filed an application for grant of patta under Act 26 of 1963, before the Assistant Settlement Officer, Madurai in the year 1992, and the Assistant Settlement Officer, Madurai also granted patta without considering any of the grounds and without issued notice to the legal heirs of the said Palaniappa Chettiar. Challenging the above order of the Assistant Settlement Officer, Madurai an appeal in RA No.6 of 1999 was filed before the Inam Abolition Tribunal, (Subordinate Judge, Sivagangai) after considering the judgment of this Court in S.A.No.756 of 1984 and



other related records, the Inam Abolition Tribunal, (Subordinate Judge, Sivagangai) allowed the appeal and directed the authorities to issue Ryotwari Patta in favour of the petitioner herein. Challenging the above said order of the Inam Abolition Tribunal, Sivagangai, the respondents 7 to 27 filed an appeal in STA No.1 of 2013 before this Court. Even though the appeal is admitted, this Court did not stay the order of the Tribunal. Now, taking advantage of the order passed by the Tribunal, the respondents 2 to 27 are trying to encroach the properties and some of the respondents also in possession of the properties. The petitioner has taken steps to evict them by appropriate proceedings. In the above circumstances, the petitioner sent a representation to the respondents 1 to 6 to cancel the patta granted in favour of the respondents 7 to 27 and so far no action has taken on the representation given by the petitioner, hence the present writ petition has been filed.

3. The 15th respondent filed a counter affidavit which was adopted by some other respondents, namely, 8, 9, 11 to 13, 16 to 18 and 21 to 23 stating that this petition relates to the subject matter pending in S.T.A.(MD) No.1 of 2013 before this Court, hence both the writ petition and S.T.A.(MD) No.1 of 2013 have to be heard together to arrive at a just conclusion. The petitioner without seeking any relief in pending S.T.A.(MD) No.1 of 2013, has filed separate writ petition for causing inconvenience to the respondent and which is an abuse of process of Court. It is further stated that they are not aware of the order passed by the Miscellaneous Settlement Officer, Manamadurai in the year 1950 and the Second Appeal preferred by the petitioner, they were not party to the suit and the judgment is also not binding on them. Now, against the order passed by the settlement officer, an appeal is pending before this Court, and therefore the rights of the parties to the litigation have to be decided only in the pending STA. Now, the respondents 7, 14 and 27 in the writ petition were died and memo also filed by the respondents before this Court to that effect. As directed by this Court, the learned counsel for the respondents has given a details of the legal heirs. The learned counsel for the petitioner did not take any step and some other respondents was also not served.

4. Mr.ARL.Sunderasan, the learned Senior Counsel appearing for the petitioner would submit that the Inam abolition Tribunal by order dated 07.01.2013, set aside the order passed by the Settlement Officer and directed the Settlement Officer to issue Ryotwari Patta in favour of the petitioner. Against the judgment and decree, the respondents 7 to 27 filed an appeal in STA.No.1 of 2013 before this Court. At the time of admitting the appeal, the Court did not inclined to stay the order passed by the Tribunal, and mere pendency of STA is not a bar for considering the the claim of the petitioner, in the absence of



any order staying the operation of the judgment of the Tribunal. In the said circumstances, the respondents 1 to 6 ought to have considered the petitioner's representation and transfer the patta in their favour. In support of his contention, the learned Senior Counsel appearing for the petitioner rely upon the judgment of this Court reported in 2011 (5) CTC 252.

5. On the other hand, Mr.V.K.Vijayaraghavan, the learned counsel appearing for the respondents 7 to 27 would submit that now against the order of the Tribunal, the appeal is pending before the Division Bench of this Court, hence, the issue involved in the writ petition and the appeal are one and the same, both are necessarily be heard together. Apart from that the learned counsel appearing for the respondents 2 to 27 would submit that under Section 46(4) of the Act 26 of 1963, the decision of the Special Appellate Tribunal subject to such decision, the decision of the Tribunal shall be final, so unless STA is disposed of, the decision of the Tribunal cannot be considered as final decision. Hence, the petitioner has to wait for the decision in STA No.1 of 2013 pending before this Court.

6. I have considered the rival submissions and perused the records carefully.

7. So far as the contention of the learned counsel appearing for the respondents 2 to 27 regarding the scope of Section 46(4) of the Act 26 of 1963, and the finality of the order passed by the Tribunal, it is useful to refer Section 46(4) of the Act 26 of 1963, which reads as follows :-

"4. The decision of the Special Appellate Tribunal and subjects to such decision, the decision of the Tribunal shall be final."

8. A careful reading of the above said provision would shows that the Tribunal being a statutory authority has been conferred with the power to determine the dispute regarding granting of Ryotwari Patta and the decision of the Tribunal thereupon is final and the correctness of such decision can be questioned before the Special Appellate Tribunal constituting two Judges Bench of the High Court nominated from time to time to the Chief Justice of High Court and subject to the decision of the Special Appellate Tribunal, the decision of the Tribunal is final and binding all the parties.

9. Now, in the instant case, even though an appeal is filed before the Special Appellate Tribunal and it is pending, but order of the Tribunal is not stayed by the Special Appellate Tribunal. In the said circumstances, there is no impediment on the part of the authorities to obey the order passed by the Special Appellate Tribunal to transfer the patta. But, it is needless to say that any such transfer is subject to the decision of the Special Appellate Tribunal.



10. It has been consistently held by the Hon'ble Supreme Court and this Court that mere filing or pendency of appeal would not amount to automatic staying the operation of the judgment and decree of the lower court, the Hon'ble Supreme Court in 2009 (14) SCC 633, in *INDERCHAND JAIN (DEAD) THROUGH LRS Vs. MOTILAL (DEAD) THROUGH LRS*, has held as follows:-

"29. Order 41 Rule 1 of the Code stipulates that filing of an appeal would not amount to automatic stay of the execution of the decree. The law acknowledges that during pendency of the appeal it is possible for the decree holder to get the decree executed. The execution of the decree during pendency of the appeal would, thus, be subject to the restitution of the property in the event the appeal is allowed and the decree is set aside."

and this Court in a judgment reported in 2011 (5) CTC 252 in *GIRDHARILAL CHANDAK AND BROS.(HUF), REPRESENTED BY ITS KARTHA MR.GIRDHARILAL CHANDAK(DIED) AND OTHERS Vs. S.MEHDI ISPAHANI AND OTHERS*, has held as follows:-

"16. In *Kamla Devi v. Takhatmal*, AIR 1964 SC 859, the Supreme Court pointed out that Order 41, Rule 5, CPC, embodies the general principle of law that an Appeal shall not operate as a stay of proceedings under a decree. To hold that Order 41, Rule 5, CPC, embodies only the general principle of law, the Supreme Court quoted with approval the opinion of the Judicial Committee in *Juscurn Bold v. Pirthi Chand Lal*, 1918 LR 46 Indian Appeal 52, to the following effect:

"Under the India Law and procedure, a original decree is not suspended by presentation of an Appeal nor is its operation interrupted where the decree on appeal is one of dismissal."

17. Therefore, the petitioner cannot even contend that the principles of Order 41, Rule 5, C.P.C., cannot be invoked to the proceedings under the Rent Control Act, in view of the above observations of the Supreme Court that Order 41, Rule 5, embodies only a general principle of law.

11. So far as the next contention of the learned counsel for the respondents that since the issue involved in STA and the writ petition are one and the same and it should be heard together, even though the respondents 7 to 27 has filed the appeal before this Court and at the time of admitting the appeal, this Court cannot stay the operation of the judgment of the Inam Abolition Tribunal. In such circumstances, now the respondents cannot content that both the writ petition and STA are to be



heard together, since the issue involved in the writ petition is only transfer of patta in favour of the petitioner pursuant to the order passed by the Inam Abolition Tribunal.

12. In the result, the writ petition is allowed and the respondents 1 to 6 are directed to consider the representation of the petitioner dated 31.01.2015 and pass orders as per the orders passed by the Inam Abolition Tribunal (Subordinate Judge), Sivagangai, in RA. No.6 of 1999 dated 07.01.2013 within a period of 12 weeks from the date of receipt of a copy of this order. It is also made clear that the transfer of pata in favour of the petitioner is only subject to the result of STA No.1 of 2013 pending before this Court. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar (CS)

To

1. The District Collector, Sivagangai.

2. The Revenue Divisional Officer, Sivagangai District.

3. The Tahsildar, Karaikudi.

4. The President, Vengavayal Village, Karaikudi Taluk, Sivagangai District.

5. The Village Administrative Officer, Vengavayal Panchayat, Karaikudi Taluk, Sivagangai District.

6. The Superintendent of Police, Sakkotai Police Station, Vengavayal, Karaikudi Taluk, Sivagangai District.

+1cc to M/s. AL. Ganthimathi, Advocate in SR.82178

+1cc to M/s. V.K. Vijayaragavan, Advocate in SR.83401

W.P. (MD) No.1315 of 2015

DATED: 21.12.2016

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