

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.524 of 2017

K.Shreenivasa Rao Appellant/Petitioner

Vs.

- 1.The Director of Survey and Settlement
Survey House, Chepauk
Chennai - 600 005
2. The District Collector
Krishnagiri District, Krishnagiri
- 3.The District Revenue Officer
Krishnagiri District, Krishnagiri
- 4.The Revenue Divisional Officer
Krishnagiri, Krishnagiri District
- 5.The Tahsildar
Krishnagiri Taluk, Krishnagiri Respondents/Respondents

Appeal filed under clause XV of Letters Patent, against the order dated 06.02.2017 made in W.P.No.1637 of 2016.

Prayer in WP.No.1637 of 2016:Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.No. 25894/2015 J2 dated 16.12.2015 and to quash the same and consequently directing the respondent to grant patta in respect of lands comprised in S.Nos. 19/1 19/2 & 19/3 to an extent of 21.39 acres and the land comprised in S.Nos. 44/3 44/4 & 44/9 to an extent of 7.38 acres Kothappettah Vilalge Krishnagiri Taluk & District in favour of the legal heirs of Thiru

R.Narasinga Rao and R.Krishnaji Rao the original land owners within a time frame.

For Appellants : Mr.AR.L.Sundaresan
Senior counsel
for Mr.AL.Ganthimathi

For Respondent : Mr.V.S.Sethuraman
Additional Advocate General -I
Assisted by Mr.Loganathan
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by RAJIV SHAKDER, J)

1. This is an appeal against an order of the learned single Judge dated 06.02.2017.

2. In the writ petition, the appellant had sought the following relief:

"for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.No.25894/2015 J2 dated 16.12.2015 and to quash the same and consequently directing the respondent to grant patta in respect of lands comprised in S.No.19/1, 19/2 and 19/3 to an extent of 21.39 acres and the land comprised in S.Nos.44/3, 44/4 and 44/9 to an extent of 7.38 acres, Kothappettah village, Krishnagiri Taluk and District in favour of the legal heirs of R.Narasinga Rao and R.Krishnaji Rao, the original land owners, within a time frame."

3. The learned single Judge dismissed the writ petition, essentially, on the ground that there was no clear cut finding with regard to the title in the property, qua, the petitioner's predecessor-in-interest.

4.It appears that in passing the said order, the learned single Judge failed to appreciate that while the original suit filed by the appellant was dismissed, in the first appeal i.e., A.S.No.104 of 1995, Additional District Judge, Dharmapuri, had passed a decree in favour of the appellant. The operative part of the decree reads as follows:

"1.This appeal is allowed and ordered accordingly.

2.The judgement and decree passed by the District Munsif Court, Krishnagiri in O.S.No.784/82 dated 31.01.1995 is hereby set aside.

3.It is have by declared that the suit properties belong to the plaintiffs.

4. Permanent injunction is hereby granted restraining the defendants or their men from in any way interfering with the peaceful possession of enjoyment of the suit properties by the plaintiffs.

5. It is hereby ordered that the plaintiffs are not entitled to possession of suit property in S.No.19/2 as it has been acquired by Government.

6. It is hereby ordered that the plaintiffs are entitled to receive the market value of S.No.19/2 as compensation.

7. It is ordered that the parties do bear their respective cost. The sum of Rs.6334/- being the cost of Appellants shall be borne by them."

5. Perusal of the aforesaid decree would show that one portion of the suit property which fell in S.No.19/2, according to the Additional District Judge, had been acquired by the respondents, i.e., the Government. As indicated above, the learned single Judge, despite having noticed the judgment and decree passed in A.S.No.104 of 1995, came to the conclusion that there was no finding in favour of the appellant that, he had title to the property. In our view, this is clearly contrary to the decree passed by the Additional District Judge i.e., the first appellate court.

6. It is not disputed before us that the Government preferred a second appeal to this Court. The said appeal was numbered as : S.A.No.531 of 1997. This appeal, however, stood abated on 28.01.2015. It appears that the Government filed petitions for condonation of delay, for setting aside this order and permission to bring legal heirs of the appellant herein on record which are still at the SR stage. The number accorded to these petitions is MP SR.Nos.63548, 63549 and 63550 of 2016. We are informed that these petitions are pending adjudication and have not come up for hearing before the concerned Court. This aspect is adverted to by the respondents in Paragraph 16 of their counter affidavit. We note that these petitions were filed by the Government in 2016, whereas the impugned judgment of the learned single Judge is dated 06.04.2017. It appears that this aspect of the matter was not brought to the notice of the learned single Judge.

7. Having regard to the aforesaid facts and circumstances of the case, we are inclined to allow the appeal and set aside the impugned judgment, with a direction to hear the writ petition afresh.

7.1. Accordingly, the writ petition will be put back on board and re-heard. The learned single Judge while adjudicating upon the writ petition will keep in mind the aforesaid aspect brought to our notice by the respondents herein, which is, that

the Government, has filed petitions for: condonation of delay, for setting aside the order of abatement, and to bring the legal heirs of the appellant on record.

7.2.The learned single Judge, therefore, would also decide as a preliminary issue as to whether the writ petition can be maintained, at this stage, given the pendency of the aforementioned proceedings taken out by the Government

8. List the writ petition before the learned single Judge for hearing on 20.11.2017.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

TO

- 1.The Director of Survey and Settlement
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Chennai - 600 005
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Krishnagiri District, Krishnagiri
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- 5.The Tahsildar
Krishnagiri Taluk, Krishnagiri

Copy To

The Section Officer, (Posting),
Writ Section, High Court, Madras.

+1cc to Mr.AL.Gandhimathi, Advocate, S.R.No.78771
+1cc to the Government Pleader, S.R.No.79904

W.A.No.524 of 2017

CP(CO)
GN(13/11/2017)