

IN THE HIGH COURT OF JUDICATURE AT MADRAS

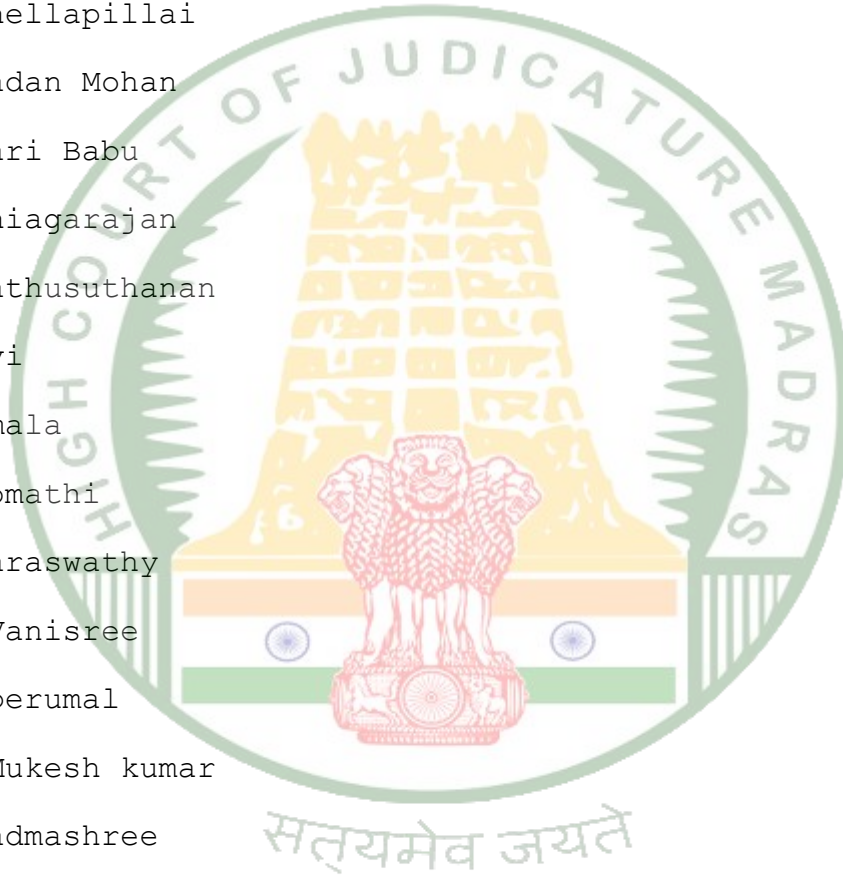
DATED: 20.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10166 of 2004
and
W.P.M.P.No.11835 of 2004

- 1) M.C. Chellapillai
- 2) M.C. Madan Mohan
- 3) M.C. Hari Babu
- 4) M.C. Thiagarajan
- 5) M.C. Mathusuthanan
- 6) M.C.Ravi
- 7) M. Nirmala
- 8) K.G. Gomathi
- 9) K.T. Saraswathy
- 10) K.T. Vanisree
- 11) K.V Emperumal
- 12) K.E. Mukesh kumar
- 13) M.T.Padmashree
- 14) K.E.Dhanalakshmi
- 15) K.B.Samantha Kamani
- 16) K.B. Hari Krishnan
- 17) K.B. Kamal
- 18) M. Kavitha
- 19) K.V.Govindarajulu



WEB COPY

20) K.G.Thulasiram

21) K.G.Lakshminarayanan

22) K.G.Poornima

23) K.G. Yuvarakha

Represented by their General Power of Attorney

Agent P.Raju, No.485, P.H.Road,

Arumbakkam, Chennai 600 106

.. Petitioners

Vs.

1) The Executive Officer,
Arulmigu Kurungaleeswarar,
Koyambedu, Chennai 600 107

2) The Executive Officer,
Vaigundavasa Perumal Thirukoil,
Koyambedu, Chennai 600 107

3) The Inspector of Police,
Thiruverkadu, Chennai 600 077

4) The Thasildar,
Ambathur Taluk,
Thiruvallur District, Chennai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 4th respondent to issue patta to the petitioners after holding a thorough enquiry relating to the property bearing Survey No.176/2, Ayanambakkam Village, Ambathur Taluk, Thiruvallore District in accordance with law.

For Petitioner : Mr.N.Basskaran

For R1 : Mr.G.Rajan

For R2 : Mr.M.Maharaja

Special Government Prosecutor

For RR3 & 4 : Mr. Akhil Akbar Ali,
Government Advocate

ORDER

The petitioners have come forward with this Writ Petition seeking a direction to the 4th respondent to issue patta to them after holding a thorough enquiry relating to the property bearing Survey No.176/2, Ayanambakkam Village, Ambathur Taluk,

Thiruvallore District.

2. According to the petitioners, they are the owners of the land in various survey numbers viz., 150, 175/1, 175/2, 175/3, 176/1, 177, 178, 179 & 188 of Ayanambakkam Village, Ambathur Taluk, Thiruvallur District measuring a total extent of 9.36 acres and other properties. In the year 1941, there was a partition of the aforesaid family properties and the properties were registered as Document No.2223 of 1941 at the office of the Sub Registrar, Madras and Chengalpet and the properties devolved upon one K.V.Varadarajulu Chetty and his sons as mentioned in Schedule 'B' of the Partition Deed and after the demise of K.V.Varadarajulu Chetty in the year 1961, the properties devolved upon his children and his wife K.V.Pappammal, who died in the year 1979.

3. According to the petitioners, now they are the joint owners of the above property concerned in this writ petition. The petitioners stated that they have executed sale deeds dated 23.08.2002 and registered the same as Document No.4763 of 2002 at the office of the Sub Registrar of Ambattur and conveyed 5/6th of the undivided share in favour of the Chennai Metropolitan Co-operative Housing Society Limited to an extent of 1.24 acres in Survey No.176/1 of Ayanambakkam Village, Ambathur Taluk, Thiruvallur District. Similarly, the third petitioner executed the sale deed dated 08.05.2003 and registered as document No.2741 of 2003 at the office of the Sub Registrar of Ambathur and conveyed 1/6th of the undivided share in favour of the said society. According to the petitioners, they have retained the property land to an extent of 1.24 acres in Survey No.176/1 in Ayanambakkam Village, Ambattur Taluk, Thiruvallur.

4. The learned counsel for the petitioners contended that the respondents 1 and 2 with the help of respondent/police attempted to trespass into the property on 19.03.2004 and a complaint was made to the third respondent/ Police. Since, the complaint was refused to be accepted by the third respondent/police, it was sent through registered post. According to the petitioners, the Chennai Metropolitan Development Authority processed for the approval of reclassification of lay out. Paper publication was caused on 18.12.2002 in "Daily Thanthi" calling for objections and after satisfaction of the title of the petitioner, Chennai Metropolitan Development Authority approved the layout in PPD/LO No.141 of 2003 communicated in CMDA's letter L1/24708/2003 dated 24.12.2003.

5. Respondents 1 and 2 without any right over the said land published a public notice in the newspaper and claimed that the land in Survey No.176/2 to an extent of 1.23 acres in

Ayanambakkam Village, Ambathur Taluk, Thiruvallore District belongs to Arulmigu Kurungaleeswarar & Vaigundavasa Perumal Thirukoil, Koyambedu, Chennai 600 107. After seeing the public notice, the petitioners sent an objection on 17.03.2004, that there was an attempt to trespass into the property with the help of rowdy elements and when the petitioners tried to take photos, the police seized the camera and threatened the petitioners.

6. According to the petitioners, if the property belongs to the respondent Temple, respondents 1 & 2 have to follow the procedures established by law and they have no right to adopt any method other than those except by due process of law. The petitioners made a representation to the fourth respondent alongwith all the title deeds of the property for issuance of patta. Since no action was taken till date, the petitioners have approached this Court with the present writ petition. Learned counsel for the petitioners stated that no procedure muchless the procedure contemplated in Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 is to be followed. Even though the petitioners have sought for the relief in the aforesaid prayer, the same was amended by an order of this Court dated 27.04.2004 in W.M.P.No.12216/2004 in this writ petition.

7. The 2nd respondent has filed a counter affidavit, wherein, it has been stated that the respondent Temple has preferred an application before the D.R.O. on 12/05/2012 with regard to correction of erroneous entries made during UDR Scheme in respect of Temple land in S.No.176/2 to an extent of 1.23 acres of Ayanampakkam Village, Ambattur Taluk, Tiruvallur District. He submitted that S.No.176 measuring an extent of 2.74 acres was gifted by one S.Subramanian, who was the trustee of Arulmighu Kurungaleeswarar Temple under document No.860 of 1892 to the respondent Temple. Patta was granted under TD No.202 during the re-survey. The said land was under the enjoyment of the respondent Temple and it was leased out to one K. Ramachandran and during the pendency of the lease period, it was sub divided as S.No.176/1 measuring 1.24 acres and S.No.176/2 measuring 1.23 acres and the same were registered in the names of Arulmighu Kurungaleeswarar Temple and K.Ramachandran, during the UDR scheme. As per directions of this Court in W.P.No.23324 of 2004 dated 17.08.2004, the Tahsildar, Ambattur gave an endorsement in R.C.No.9799 of 2004(C.2) dated 15.10.2004 stating that the land in S.No.176/2 belongs to the respondent Temple. However, in the revenue records, it was mentioned that it belongs to K.Ramachandran insofar as the land in S.No.176/2 measuring an extent of 1.23 acres is concerned. The District Revenue Officer after scrutinizing the revenue records ordered that the erroneous entry made in the name of K.Ramachandran during UDR scheme shall be corrected and that the land in S.No.176/2 measuring 0.50 Hectares of Ayanampakkam Village,

Ambattur Taluk, Tiruvallur District shall be registered in the name of Executive Officer of Arulmighu Kurungaleeswarar Temple.

8. Learned counsel for the 2nd respondent submitted that the petitioner had filed O.S.No.197 of 2004 on the file of Principal District Munsif Court, Poonamallee for a permanent injunction restraining the defendant in the said suit viz., the Executive Officer, Arul mighu Kurungaleeswarar Temple and Vaikundavasal Perumal Temple, Koyambedu and Fit person/ Assistant Commissioner, HR & CE Department, Arul Mighu Kurungaleeswarar Temple and Vaikundavasal Perumal Temple, Koyambedu and one Janaki Ammal from interfering with the peaceful possession and enjoyment of the plaintiffs therein in respect of the property comprised in S.No.176/1 mentioned supra. The suit was dismissed and the patta was granted infavour of the respondent Temple under patta No.337.

9. It is his further submission that the kist to the said property was being paid by the respondent Temple and it is the petitioners who are the land grabbers claiming rights through some fictitious documents. Though the suit was dismissed for default on 02.02.2011, no appeal was preferred against the order passed by the Principal District Munsif Court, Poonamallee. Thereafter, the petitioners tried to grab the other portion of the Temple property comprised in S.No.176/2.

10. According to the learned counsel appearing for the 2nd respondent, patta in respect of the said property stands in the name of the respondent Temple. Knowing fully well that the said land belongs to the respondent Temple, the writ petitioners have filed the above Writ Petition for a direction, to the Tahsildhar to issue patta for the said property bearing S.No.176/2, Ayanampakkam Village. Ambattur Taluk, Tiruvallur District which is not sustainable in law.

11. In reply, learned counsel for the petitioners submitted that the property belongs to the petitioners and it has devolved upon them from different persons and now finally the petitioners are the owners of the said property. He submitted that even assuming that if the respondent Temple is the owner of the said property, before deciding the issue, an opportunity of hearing should be given to the petitioners.

12. A summon was served to the respondent Temple that they are entitled to continue. Learned counsel for the respondents states that no opportunity should be given to the petitioners and that the relief sought for by the petitioners in the aforesaid prayer is completely different from the relief sought for in the present writ petition. In this regard, a copy of the patta has not been produced nor furnished to the respondent

temple. He further submitted that the petitioners have come forward with the present Writ Petition seeking a direction for granting an opportunity to be heard and also submitted that the petitioners are in possession of the property by an interim order passed in O.S.No.197 of 2004.

13. Learned Government Advocate appearing for the respondents 3 & 4 stated that the property in S.No.176 measuring 2.74 Acres was gifted by one S.Subramanian and that the properties to an extent of 1.24 acres in S.No.176/1 and 1.23 Acres in S.No.176/2 belongs to the respondent Temple and the other extent of land in S.No.176/2 measuring 0.50.0 hectares belongs to the respondent Temple. The petitioners are concerned with regard to S.No.176/2, as the entire property has been gifted to the respondent Temple by one S.Subramanian in 1982, and therefore the petitioners are land grabbers and are trying to usurp the Temple property. Further, the learned counsel contended that the petitioners have filed O.S.No.197 of 2004 for an injunction of the property in question against the defendants and that they should not be entertained to claim right over the alleged property in S.No.176/1, when patta is already granted in favour of the respondent Temple vide No.337.

14. Admittedly, the petitioners are not the owners of the property. The petitioners have not sought for any declaration of title but only sought for injunction. It is not correct to state that no opportunity of hearing was given to the petitioners. The fact that there was a property to the extent of S.Nos.176/1 and 176/2 in Ayanambakkam village as contented by the respondents, has been settled by O.S.No.197 of 2004 in favour of the respondent Temple. Though the petitioners have produced the layout, they have only given the approved copy given by CMDA and there was no patta in favour of petitioners.

15. The respondent Temple is the owner of the property and CMDA has given an approved layout which shows that the property does not belong to anyone except the respondent Temple and that there is no patta in favour of the persons, who claim that the said land belongs to them. Though assuming that it is a question of dispute, there is no need for this Court to direct the fourth respondent/ Tahsildar or other respondents as prayed for by the petitioners, so as to approach the Civil forum and seek for a declaration that they are the owners of the property and for an interim injunction. Admittedly, there is no declaration sought for by the petitioners and much water has flown and that the suit filed by the petitioners was also dismissed. As on date, as admitted by the petitioners, they are not in possession of the property. As the patta stands in the name of the respondent Temple and that the land was given to the Temple by one S. Subramanian, as early as 1892, the petitioners

are only permitted as lessees and not as owners, as they have assumed themselves to be, because they have not produced any document of title to establish purchase of the land in question.

16. In view of the above, this Court finds that the petitioners are not entitled to any relief sought for in this writ petition. The third respondent is expected to remove the encroachments with the help of the fourth respondent forthwith and ensure that the land belongs only to the respondent temple and the property is protected from the land grabbers, like the petitioners. Land grabber cannot contend violation of principles of natural justice, as prejudice is caused to the temple and not to the petitioner.

Accordingly, this Writ Petition is Dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

(sts)
To

- 1)The Executive Officer,
Arulmigu Kurungaleeswarar,
Koyambedu, Chennai 600 107
 - 2)The Executive Officer,
Vaigundavasa Perumal Thirukoil,
Koyambedu, Chennai 600 107
 - 3)The Inspector of Police,
Thiruverkadu, Chennai 600 077
 - 4)The Thasildar,
Ambathur Taluk,
Thiruvallur District, Chennai
- +1cc to Mr.V.Sathyamoorthi, Advocate, S.R.No.69177
+1cc to Mr.N.Basskaran, Advocate, S.R.No.68648
+1cc to the Government Pleader, S.R.No.69899

W.P.No.10166 of 2004

klr(10.02.2018)