

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 296 of 2011

and

M.P. No. 2 of 2011

Paramayi

.. Petitioner

Vs.

1.The District Revenue Officer cum
Nilavarithitta Revisional Authority,
Nagapattinam.

2.The Sub Collector,
Nagapattinam.

3.The Tahsildar,
Nagapattinam.

4.Naina Mohammed

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings Na.Ka.33484/Aa4/2008 dated 24.07.2010 confirming the orders of the 2nd respondent in his proceedings Pa.Mu.6646/01/A4 dated 09.10.2004 and setting aside the orders of the 3rd respondent in his proceedings Na.Ka.No.11742/2000/E1 dated 21.03.2001 and quash the same and further direct the first respondent to confirm and implement the orders of the 3rd respondent in Na.Ka.No.11742/2000/E1 dated 21.03.2001.

For Petitioner : Mr.S.Sounthar

For R1 to R3 : Mr.S.Diwakar,
Spl.Govt.Pleader

For R4 : Mr.T.A.Shaguhameed

O R D E R

The petitioner, in this writ petition, seeks for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings Na.Ka.33484/Aa4/2008 dated 24.07.2010 confirming the orders of the 2nd respondent in his proceedings Pa.Mu.6646/01/A4 dated 09.10.2004 and setting aside the orders of the 3rd respondent in his proceedings Na.Ka.No.11742/2000/E1 dated 21.03.2001 and quash the same and further direct the first respondent to confirm and implement the orders of the 3rd respondent in Na.Ka.No.11742/2000/E1 dated 21.03.2001.

2. The learned counsel for the petitioner has submitted that the petitioner has been in possession and enjoyment of lands in Nagapattinam District, in Survey No.152/7 to an extent of 0.210sq.mts, Survey No.152/8 to an extent of 0.293 sq.mts, Survey No.152/9 to an extent of 0.550 sq.mts. The fourth respondent has tried to interfere with the possession of the said property in the year 1973. The petitioner filed a suit for injunction against the fourth respondent and 6 others in O.S.No.34/1973, on the file of the District Munsif Court, Nagapattinam. The aforesaid suit was decreed on 31.08.1974 and therefore the petitioner's possession and enjoyment of the aforesaid property has been recognised by the Civil Court. The First Appeal was filed by the fourth respondent in A.S.No.96 of 1975, on the file of the Sub Court, Nagapattinam which was dismissed on 13.09.1976. Therefore, the aforesaid ruling of the Sub-Court with respect to the petitioner's right and possession over the property had become final. An application was made to the third respondent for the grant of patta in the petitioner's name. The above said lands were classified as "natham". Thereafter, the third respondent conducted an enquiry and granted patta for the above said land in the name of the petitioner in proceeding No.Na.Ka.11742/2000/E1, dated 21.03.2001. The fourth respondent herein challenged the said order passed by the third respondent before the second respondent. The second respondent on an erroneous view allowed the appeal and set aside the third respondent's order. Subsequently, the first respondent confirmed the order passed by the third respondent (Tahsildar) in which patta for 26 cents was issued in favour of the Writ Petitioner by setting aside the order of second respondent by order dated 07.01.2005 in Na.Ka.52585/2004/Aa4. The fourth respondent then challenged the order of the first respondent in W.P.No.5044 of 2005 on the ground that no fair opportunity was afforded to him. This Court by order dated 01.07.2008 allowed the Writ Petition and remanded the matter back to the file of the first respondent. After remand, the first respondent passed impugned order on 24.07.2010 in his proceedings Na.Ka.33484/Aa4/2008 wherein he confirmed the

order of the second respondent. Aggrieved by the said order, the petitioner has filed the above Writ Petition.

3. The first respondent has filed a counter affidavit by submitting that the lands in question in this case are classified as "Natham" which is a Government Poramboke vested for construction of houses. While Natham Settlement Scheme was implemented, the old S.No.61/3 was made into many sub divisional in New S.No.152. As such the lands in question were Sub divided into R.S.No.152/7, 152/8 and 152/9 and were kept as vacant site since there was no enjoyment in these lands by the Special Tahsildar, Natham settlement who is the competent authority to issue patta to the enjoyers of the lands. Therefore, the second respondent has allowed the appeal and set aside the patta granted in favour of the writ petitioner. The order passed in R.C.No.33484/08/B4 dated 24.07.2008 was in order. Having said that, keeping in mind the fact that the writ petitioner in this case is already having own land, it is justifiable to keep the land in question as "Natham vacant site" for the future requirement of the society.

4. The learned counsel for the fourth respondent would submit that the order passed by the revenue authority by confirming the order passed by the second respondent is just and valid.

5. The learned counsel for the petitioner would further submit that at the time of hearing, before the revisional authority, the notice has been served to the Annamalainathaswamy Devasthanam. The above said Devasthanam made an objection before the District Revenue Officer stating that the lease was granted in favour of the petitioner and the above said Devasthanam is the owner of the land and the petitioner has paid rent to the Temple. The said objection was taken on record while passing the impugned order, but however, no opportunity was granted to put forth their case. At present, the dispute is between the petitioner and the fourth respondent for granting a patta in favour of the writ petitioner by the third respondent/Tahsildar. The first respondent and second respondent have not revised or modified the order passed by the third respondent.

6. On a perusal of the judgment passed in O.S.No.34/73, it is seen that the aforesaid suit was filed by the petitioner for permanent injunction. The specific pleadings of the petitioner is that the petitioner has been in possession of the property and release deed was executed by the Temple. Therefore, the petitioner has now made an application for grant of patta before the Civil Court. But the petitioner is not having any documentary evidence for claiming the ownership of the property and both the authorities including the second

respondent categorically stated that the classification of the land as per the Revenue records is Natham land. Therefore, if they want to modify or change the classification, it is for the concerned authority to pursue his claim of the ownership of the property by approaching the competent forum for the classification. Hence, the impugned order passed by the authority cannot be interfered by this Court, however the learned counsel for the petitioner seeks liberty to approach the Civil Court and raise all the allegations made in this writ petition. Further, in the decision of this Court in Kuppuswami Nainar Vs. The District Revenue Officer reported in 1995(1) MLJ Page No.426, this Court has held that if there is a dispute regarding any patta in respect of private property, concerned person can approach the civil Court. In view of the same, the Writ Petition fails and deserves to be dismissed.

7. In the result, the Writ Petition is dismissed, with liberty to any aggrieved person, to approach the appropriate forum by redressing their reliefs. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nvi
To

1.The District Revenue Officer cum
Nilavarithitta Revisional Authority,
Nagapattinam.

2.The Sub Collector,Nagapattinam.

3.The Tahsildar,Nagapattinam.

+1cc to The Government Pleader sr.3042

+1cc to M/s.T.A.Shahul Hamed,Advocate sr.2523

+1cc to Mr.S.Sounthar,Advocate sr.2689

W.P. No. 296 of 2011 and
M.P.No.2 of 2011

ppa(co)
ss(9/3/2017)