

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.10.2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.509 of 2013 &
M.P.No.1 of 2013

A.AMMAIYAPPAN

Vs

....Appellant/Petitioner

1 THE STATE OF TAMILNADU
2 REPTD BY ITS COMMISSIONER LAND
3 ADMINISTRATION CHEPAUK, CHENNAI-5

4 THE DIST REVENUE OFFICER,
5 KARUR.

6 THE REVENUE DIVISIONAL OFFICER,
7 KARUR.

8 THE TAHSILDAR,
9 KARUR.

10 M.DURAISAMY
11 KUPPUSAMY
12 NITHYANANDAM
13 KARUPPA GOUNDER
14 AMMAIYAPPAN

15 SUBRAMANI
16 PALANIAPPA GOUNDER
17 AMMAIYAPPA GOUNDER

18 N.AMMAIYAPPAN

19 SELVAMBAL

20 SAKUNTHALADEVI

21 VIJAYALAKSHMI

22 PARAMESWARI

23 N.KARUPPANNAN

24 M.MUTHUSAMY

25 RAMASAMY

KANDASAMY

PONNUSAMY

A.PALANIAPPA GOUNDER

M.ARUNACHALAM

ARUMUGAM

26 RAMASAMY
27 SAMIYATHAL
28 MR.BALASUBRAMANI
29 SUDHA
30 KALA
31 SURESH
32 RAMESH
33 SOLIAMMAL
34 KARUNAMBAL
35 PALANISAMY
36 MANOHARAN
37 MARAYEE
38 KUPPUSAMY
39 SELVARAJ
40 LAKSHMI

... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 15.11.2012 made in W.P.No.42464 of 2002, on the file of this Court.

Prayer in W.P. No 42464/2002:

Writ petition under article 226 of the constitution of India praying for the issuance to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in P.K.M.3.22925/2002DT.12.11.2002 on the file of the 1st respondent unenforceable in law and consequently direct the respondents 1 to 4 to grant independent patta in petitioners name for S.NO.379 1B ,and 379 1C karur village 7.65 acres based on revenue records.

For Appellant : Mr.V.Raghavachari

For Respondents: Mr.A.Zakir Hussain
Government Advocate for R1 to R4

Mr.R.G.Narendhiran
for R5 to R7, 10, 18,
20 to 22, 24, 34 & 35

For R8, 13 to 17, 23, 25 to 28,
30 to 33,

36 to 39 - notice served

For R40 (Dispensed with)

J U D G M E N T

[Order of the Court was made by P.VELMURUGAN, J.]

The writ appeal is arising out of the judgment dated 15.11.2012 made in W.P.No.42464 of 2002, on the file of this Court.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the writ petitioners aggrieved by the orders passed by the first respondent pertaining to his proceedings in P.K.M.3.22925/2002 DT.12.11.2002 and for a direction to the respondents 1 to 4 to grant independent patta in petitioner's name for S.NO.379 1A, 379 1B and 379 1C, Karur village 7.65 acres based on revenue records.

3. The case of the writ petitioner, before the writ Court, is as follows:-

3.1 According to the petitioner, though inam patta was granted with reference to the above said area in favour of the petitioner, subsequently, some of the Pattadars who are the respondents herein were also given joint patta in respect of the above said lands. Aggrieved against the same, the petitioner had preferred an appeal before the District Revenue Officer, Karur. By order dated 13.03.2002, the District Revenue Officer, Karur, has deferred the proceedings in view of pendency of Second Appeal before the Madurai Bench of this Court in Second Appeal No.42 of 2002. The Commissioner also confirmed the said order. Aggrieved against the same, this writ petition is filed.

3.2. According to the petitioner, as per the order under challenge, action has been deferred in view of pendency of the Second Appeal in S.A.No.42 of 2002. Further, according to the petitioner, by order dated 10.03.2011, the Second Appeal has ended in favour of the petitioner. Apart from this, according to the learned counsel, as per the finding in the said Judgment, the petitioner is the owner of the entire area of 9 acres 82 cents. Consequently, according to him, as on date, the issue has come to an end.

4. After considering the materials placed before writ Court, the learned Single Judge has disposed the Writ Petition.

5. Aggrieved against the order of the learned Single Judge, the appellant / petitioner has filed the present Writ Appeal.

6. The learned counsel for the appellant would submit that the learned Single Judge ought to have appreciated that the dispute had been ultimately concluded in the Civil Proceedings

in O.S.No.283 of 1996 on the file of the Subordinate Judge, Karur, dated 25.08.2000 and on appeal in A.S.No.95 of 2001, the District Judge also affirmed the right of the appellant to the property and it was challenged before this Court in S.A.No.42 of 2002 and this Court vide judgement dated 10.03.2011, confirmed that the appellant alone is entitled to the property situate in Survey No.379 of Karur Village. The said order was challenged before the Hon'ble Supreme Court in S.L.P.No.7812 of 2012, which came to be dismissed on 27.02.2012. It was the contention of the contesting respondents before the Writ Court that the review application was admitted and notice was ordered. Factually, the statement was wrong as no notice was served on the appellant. Be that as it may, once the civil Court had conclusively held that the appellant is the owner of the property, it is not open to the writ Court while adjudicating the case in the writ jurisdiction to call upon Revenue Officers to test the correctness of the Judgment of this Court and such a direction issued by the learned Single Judge in paragraph No.10 of the order is palpably erroneous.

7. The learned counsel for the appellant further would submit that the learned Single Judge failed to appreciate that the District Revenue Officer/first respondent had refused to concede to alter the names in the revenue patta on account of the pendency of the Second Appeal No.42 of 2002 on the file of this Court. The District Revenue Officer had observed it while passing the order on 15.05.2002. The Commissioner in its order dated 12.11.2002 had confirmed the order. In both the proceedings, reliance had been placed on the grant of stay in C.M.P.No.18 of 2002 in S.A.No.42 of 2002 as a fetter for grant of revenue patta in the name of the appellant. When the appeal itself was dismissed pending the writ petition, the Court is under obligation to take into consideration only the fact that was viewed against the appellant and ought not to have ordered a de novo enquiry. He would further submit that the learned Single Judge ought not to have called upon a "Revenue Divisional Officer" to review the judgment of a High Court, particularly when the High Court given findings regarding the ownership of the property. Hence, the finding of the learned Single Judge in the Writ petition is palpably erroneous and the same is liable to be set aside.

8. Per contra, learned Government Advocate appearing for the respondents 1 to 4 and other respondents would submit that the learned Single Judge, on a thorough consideration of the materials, has disposed the writ petition and hence, prayed for dismissal of this writ appeal.

9. Heard Mr.V.Raghavachari, learned counsel appearing for the appellant; Mr.A.Zakir Hussain, learned Government Advocate appearing for the respondents 1 to 4 and Mr.R.G.Narendhiran, learned counsel appearing for R5 to R7, 10, 18, 20 to 22, 24, 34 & 35.

10. The property in dispute and other properties are originally comprised in S.No.379 admeasuring 9 acres 82 cents. The property in dispute is situate in Karur Village and the same has been taken over by the Government under Act 26 of 1948 and subsequently settlement proceedings have been conducted. According to the petitioner, though inam patta was granted with reference to the above said area in favour of the appellant, subsequently, some of the Pattadars, who are the respondents herein were also given joint patta in respect of the above said lands. Aggrieved against the same, the appellant had preferred an appeal before the District Revenue Officer, Karur. By order dated 13.03.2002, the District Revenue Officer, Karur, has deferred the proceedings in view of pendency of Second Appeal before the Madurai Bench of this Court in Second Appeal No.42 of 2002 and the Commissioner also confirmed the said order. Subsequently, by an order dated 10.03.2011, S.A.No.42 of 2002 has ended in favour of the appellant / petitioner and the relevant paragraph is extracted hereunder:-

" 16. ... Therefore on the basis of the documents filed on the side of the first claimant, the Court can very well come to a conclusion that the first claimant is the owner of the entire survey number 379 admeasuring 9 acres and 82 cents. The property acquired is nothing but an extent of 2 acres 17 cents and the same forms part of 9 acres 82 cents. "

11. Therefore, the main contention of learned counsel for the appellant is that since the dispute had been ultimately concluded in the Civil Proceedings, by a judgment dated 25.08.2000, in O.S.No.283 of 1996 on the file of Subordinate Judge, Karur and on Appeal in A.S.No.95 of 2001, the District Judge also affirmed the right of the appellant to the property and against that in the appeal filed before this Court in S.A.No.42 of 2002 also, this Court, by an order dated 10.03.2011 confirmed that the appellant alone is entitled to the property situate in Survey No.379 of Karur Village.

12. The contention of the learned counsel for the appellant is not acceptable. The Second Appeal in SA.No.42 of 2002 is nothing to do with AS.No.95 of 2001 and OS.No.283 of 1996. The Second Appeal in SA.No.42 of 2002 is only against the judgment

and decree dated 10.08.2001 in AS.No.102 of 2002 which was against the order passed by reference Court in LAOP.No.6 of 1988 on the file of the Subordinate Judge, Karur. Against the judgment of the single judge of this Court in SA.No.42 of 2002 dated 10.03.2011 some of the respondents preferred SLP(c). No.7812 of 2012 the same was dismissed on 27.02.2012. The said proceedings are arising out of land acquisition proceedings in respect of 2.17 acres only not in respect of remaining extent of 7.65 acres of lands.

13. The issue is relating to issuance of patta. It is not in dispute that Patta was issued with reference to 9.82 acres, out of which, 2.17 acres have been acquired by the Government and compensation has also been paid. It is the case of the respondents 5, 6, 7, 9, 12, 21, 23, 24, 26, 29, 38 to 40 that originally patta was given for 27 Pattadars, but according to the learned counsel for the appellant, initially only 14 pattadars claimed ownership and not by 27 Pattadars, as claimed by the above said respondents. But, neither the appellant nor the above said respondents has filed the original patta granted either in favour of the 27 Pattadars or with reference to 14 Pattadars.

14. It is seen from the documents that the adjudication between the appellant and respondents before the reference Court, appellate Court, this Court and Supreme Court, is only with reference to 2.17 acres and not 9.82 acres. As far as the Land Acquisition Proceedings is concerned, it is only with reference to 2.17 acres and the decree passed in O.P.No.6 of 1988 is also only with reference to 2.17 acres. As far as the Second Appeal is concerned, there is a finding in the said judgment that the appellant is the owner of the entire extent of 9 acres and 82 cents. Hence, the learned Single Judge held in the impugned order that "this Court is not able to understand as to what is the need to give a finding in the Second Appeal with reference to the entire area of land viz., 9.82 acres". Hence, we do not find any merit in the contention of the learned counsel for the appellant and the same is rejected.

15. The other contention made by the learned counsel for the appellant is that once the learned Single Judge in S.A.No.42 of 2002 held that "Therefore on the basis of the documents filed on the side of the first claimant, the Court can very well come to a conclusion that the first claimant is the owner of the entire survey number 379 admeasuring 9 acres and 82 cents. The property acquired is nothing but an extent of 2 acres 17 cents and the same forms part of 9 acres 82 cents." , the finding of the learned Single Judge in the Writ Petition is palpably erroneous

and judicially incorrect and directed the revenue authorities in paragraph No.9 of the impugned order to adjudicate as the case of the respondents for joint patta in the land and patta has to be given in favour of the appellant. As per the judgment reported in 1995 1 MLJ 427 (Kuppuswami Nainar Vs. The District Revenue Officer, Thiruvannamalai and others), only Civil Court can decide the title over the property. With reference to the lands in question, no Civil Court has so far given declaration and consequently based on the judgment passed in the Second Appeal, the appellant does not have any right in respect of entire extent of the lands in question. Since because some observation made in the Second Appeal is not an automatic to grant relief to the appellant, since the L.A.O.P.No.6 of 1988 filed before the Subordinate Judge, Karur, by the appellant and appeal filed by the respective respondents before the Additional District and Chief Judicial Magistrate Court, Karur in A.S.No.102 of 2001, is only with reference to 2.17 acres. Hence, the learned Single Judge disposed the Writ Petition on the following observations:-

"10. Consequently, the District Revenue Officer, Karur is directed to deal with the issue of granting of patta to the lands comprised in S.NO.379 1A, 379 1B and 379 1C with reference to 9.82 acres minus 2.17 acres to which already award has been passed under the Land Acquisition proceedings, after providing a reasonable opportunity to the parties concerned. The respondents before this Court are also at liberty to furnish a copy of the review application filed and also if it is admitted, the document to that effect can also be produced before the District Revenue Officer, Karur. The District Revenue Officer, Karur also is directed to consider whether joint patta has been given in favour of 27 Pattadars on the date of O.P. viz., in the year 1988. If it is so, since only a few of Pattadars have been included in the said O.P., the District Revenue Officer, Karur is directed to issue notice to other Pattadars and give a reasonable opportunity to them and also the parties are at liberty to mark all the documents before the District Revenue Officer, and after hearing the parties, after providing them a reasonable opportunity, the District Revenue Officer is directed to pass orders, within a period of six months. In case, the review application has been admitted, that can also be taken into account and appropriate orders can be passed, taking into account the pendency of the review application before the Hon'ble Apex Court."

16. We have carefully gone through the entire material records placed before this Court, by way of typed set of papers, so far no civil Court has given any declaratory relief to any of the parties to the proceedings in respect of 9.82acres minus 2.17acres to which already award has been passed under land acquisition proceedings in S.No.379 of Karur Village. In view of the discussions held above, this Court does not find any infirmity in the order passed by the learned Single Judge. However, the District Revenue Officer, Karur is directed to pass orders within a period of three months from the date of receipt of a copy of this order, after giving notice to all the pattadars and in all other respects, the order of the learned Single Judge is confirmed.

17. With the above direction, the writ appeal is disposed of. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

-s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

r n s
To

1. THE COMMISSIONER LAND ADMINISTRATION,
GOVERNMENT OF TAMIL NADU, CHEPAUK,
CHENNAI-5
2. THE DIST REVENUE OFFICER,
KARUR.
3. THE REVENUE DIVISIONAL OFFICER,
KARUR.
4. THE TAHSILDAR,
KARUR.

+1 CC to Mr.R.G. Narendran, advocate sr 72213.
+1 Cc to Govt. Pleader sr 72689.
+1 CC to Mr.V.Raghavachari, Advocate sr 72556(28/11/2017)

W.A.No.509 of 2013 &
M.P.No.1 of 2013

SR(CO)
SP(07/11/2017)