IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. No. 4715 of 2015

C.Dayananda .. Petitioner

Vs.

1. The District Collector,
Krishnagiri, Krishnagiri District.

2. The District Revenue Officer,
Krishnagiri, Krishnagiri District.

3. The Sub Collector,
Hosur, Krishnagiri District.

4. The Tahsildar,
Hosur Taluk, Krishnagiri District.

5. P.Ponnusamy. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus, calling for the records of the 4th respondent issued in Na.Ka.28453/2014/C4, dated 28.11.2014 quash the same and consequently direct the respondents 1 to 4 to issue patta to the petitioner in respect of 1.34.0 hectares in Survey No.33/3 of Attaguriki Village, Housur Taluk, Krishnagiri District in view of the judgment dated 13.06.1990 made in S.T.A.Nos.12 and 13 of 1984 and S.A.Nos.2135 of 1979 and 2017 of 1987 on the file of this Court within the time to the stipulated by this Court.

WEB COPY

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Akhil Akbar Ali, G.A. (R1 to 4)
No Appearance (R5)

O R D E R

It is the case of the petitioner that the land measuring an extent of 6.62 acres in Survey No.33/1 of Hosur Taluk, is originally owned by N.S.Krishnamoorty,

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

N.S.Venkataramaiah and cousin brother Srikanthiah. They sold the said properties in favour of S.V.Venkataramiah and Venkatasamy under sale deeds. The said sale deeds were also attested by K.S.Ramachandriah @ Ramachandra Rao, who was a Village Munsif at that point of time. The said properties are Inam properties and the aforesaid N.S.Krishnamoorty and others were Inamdars. The above said properties were taken over by the Government under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and K.S.Ramachandriah has deposed accepting the ownership of Venkataramiah and others.

2. It is also submitted that an enquiry was held as per the said Inam Abolition Act before the Settlement Tahsildar, Salem and the Settlement Tahsildar passed an order dated 27.08.1971, wherein Ramachandriah got patta and based on the patta, he sold the said land to the 5th respondent, vide sale deed dated 05.02.1973.

3. Aggrieved by the grant of patta in favour of the said Ramachandriah, the petitioner's grand father S.V.Venkataramiah and his brother Venkatasamy preferred an appeal before the Inam Abolition Tribunal and the Tribunal, presided over by Sub-Judge, by order dated 12.12.1977 interfered with the order of the Settlement Tahsildar and remanded the matter for fresh enquiry. After remand, the Assistant Settlement Officer, Salem by order dated 15.06.1981, cancelled the order already granted in favour of Ramachandriah and the said land, which vested with the Government, should be registered as "Assessed Waste Dry"

4. Aggrieved by that order, Ponnusamy, who is the 5th respondent herein, preferred S.T.A. Nos.12 and 13 of 1984 before the Inam Abolition Tribunal. The Tribunal, by a common order dated 16.08.1983, dismissed the appeal of Ponnusamy and upheld the contention of the S.V.Venkataramiah and Venkatasamy that they are entitled to patta and Ponnusamy and others have not established the claim of patta. However, the Tribunal confirmed the order, insofar as the declaration of land as "Assessed Waste dry". During the pendency of the proceedings before the Settlement Officer and Inam Abolition Tribunal, the parties concerned have preferred O.S.No.541 of 1974 (filed by S.V.Venkataramiah) and O.S.No.589 of 1974 (filed by Ponnusamy) both seeking declaration of title and consequential relief. The Munsif Court granted declaration of title and consequential injunction insofar as the relief sought for by S.V.Venkataramiah and others and rejected the relief sought for by Ponnusamy.

5. Aggrieved by the judgment and decree of the District Munsif, Ponnusamy preferred two appeals against the finding that has gone against him. The appeals were taken up by

WEB COPY

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

the District Judge, Dharmapuri and by a common judgment and decree dated 28.02.1978, A.S.Nos.68 of 1978 and 164 of 1978 were dismissed with costs confirming the judgment and decree of the Principal District Munsif, Hosur.

6. Aggrieved by the Appellate Court's judgment, Ponnusamy preferred Second Appeals in S.A.Nos.2135 of 1979 and 201 of 1987 and this Court has taken up these two Second Appeals along with the aforesaid S.T.As. and by a common judgment dated 13.06.1990, dismissed all the 4 matters and issued the relief of declaration of title and patta that has been granted in favour of S.V.Venkataramiah has become final and no further appeal has been preferred to the Supreme Court by the person who has got an adverse order.

7. It is further submitted that subsequently, there was partition among the family members and a portion of land has been allotted to the present petitioner and that he has succeeded as a legal heir, after the demise of S.V.Venkataramiah. That being the case, the petitioner moved an application before the Tahsildar, who has originally granted relief in favour of Ponnusamy and sought for patta in his favour. The fourth respondent, after conducting enquiry, has come to the conclusion that there should be cancellation of patta issued in favour of 5th respondent, by proceedings dated 03.04.2010 and the third respondent, vide proceedings in Pa.Mu./2005/2011(P3), dated 21.11.2011 cancelled the patta. The appeal against the cancellation of patta filed by the 5th respondent was dismissed on 04.07.2012 and the request of Ponnusamy was rejected and that order has become final.

8. It is stated that no patta has been issued, which made the petitioner to approach this Court by filing W.P.No.18658 of 2013. This Court, by order dated 08.10.2013, directed the 4th respondent to pass orders in accordance with law. As the order not been complied with, Contempt Petition in Cont.P.No.1932 of 2014 was filed and the 4th respondent rejected the request of the petitioner with regard to the issuance of patta in favour of the petitioner holding that Survey No.33/3 is classified as "Anadeenam", which belongs to the Government. It is submitted that the order of rejection passed by the 4th respondent is not only arbitrary and illegal, but also passed on non application of mind. None of the proceedings before the Settlement Officer and thereafter before Tribunal and Civil Suits, Appeal Suits and Second Appeals, have been taken note of. The Authority ought to have noticed the declaration of the land as "Assessed Waste Dry" and it has to be interfered with. That being the case, without taking note of the facts of the present case and the history from his grandfather's days, the request of patta was rejected, more particularly, when there is specific

WEB COPY

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

judgment and decree with regard to declaration of title granted in favour of the petitioner. With regard to the property in question, which devolved upon his father and thereafter, a portion of the land devolved upon the petitioner, based on the partition among the family members, the impugned order has got to be interfered with.

9. The respondents 1 to 4 have filed detailed counter affidavit stating that the land is "Podukal Poromboke" and that during the settlement, Survey No.33/1 was sub divided and the lands measuring an extent of 1.34.0 hectares in patta No.251 was granted to Venkatasamy and Venkataramiah and Survey No.33/3 in Patta No.256 was granted to Ramachandra Rao. It is stated that the Ponnusamy has purchased a land in Survey No.33/3 in 1973 and based on the sale deed, patta was granted in his favour. Though it has been stated in the counter affidavit that the land in question has been classified as "Inam Land", the proceedings before the Settlement Officer and Inam Abolition Tirbunal have not been taken note of by the authority, viz., 4th respondent. Probably, the 4th respondent has proceeded on the basis of the order of the original Settlement Officer. Taking note of the order of the Inam Abolition Tribunal that remanded the matter, subsequently fresh order dated 15.06.1981 has been passed in favour of the petitioner by the Settlement Officer, which has been confirmed by the Inam Tribunal, vide the order dated 16.08.1983 and that has been confirmed by this Court in S.T.A.Nos.12 and 13 of 1984 on 13.06.1990.

10. In reply, dated 4th July 1917, it has been categorically reiterated by the petitioner that in view of order passed by the Inam Tribunal dated 16.08.1983 and the common judgment of this Court dated 13.06.1990, in the Second Appeal Nos.2135 of 1979 and 201 of 1987 together with S.T.A.Nos.12 and 13 of 1984, the petitioner would be entitled to patta as requested by him and the reason given by the 4th respondent to reject the patta cannot stand in the eye of law. It is further stated that in the impugned order of the 4th respondent, there is no mention about the order dated 16.08.1983 passed by the Inam Abolition Tribunal, holding that the case of the District Collector, and the subject matter of the land, cannot be classified as "Assessed Waste Dry" and it is only a private land and if that is the case, the Revenue Department ought not to have classified the subject matter of land as "Podugal Poromboke". The above contentions of the Writ Petitioner are fair and the Writ Petition has to be allowed.

11. When the matter came up before this Court yesterday (05.07.2017), there was no representation for the 5th respondent. Even today, when the matter reached in the morning session, there was no representation for the 5th respondent and

WEB COPY

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

the name of the counsel was again called at 2.30pm and there was no representation and the matter taken up at 3.00 pm and orders are being passed.

12. For the foregoing discussions, the order of the 4th respondent, dated 28.11.2014 is set aside and the Writ Petition is allowed. No costs. Consequently, to the allowing of this Writ Petition and interfering with the 4th respondent order, patta shall be issued to the petitioner with in a period of six weeks from the date of receipt of a copy of this order. The impugned order of 4th respondent is interfered with and set aside in the light of the second order of settlement officer, which has been affirmed by this Court in STA Nos.12 and 13 of 1984 and the Suit seeking for declaration filed by the grand father, has been decreed, as there was a partition among the brothers and petitioner after the demise of the petitioner's father, who is one of the son of petitioner's grandfather, viz., Venkataramiah.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The District Collector,
   Krishnagiri, Krishnagiri District.

2. The District Revenue Officer,
   Krishnagiri, Krishnagiri District.

3. The Sub Collector,
   Hosur, Krishnagiri District.

4. The Tahsildar,
   Hosur Taluk, Krishnagiri District.

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.47180

WEB COPY

W.P. No. 4715 of 2015

MN(CO)
GN(18/08/2017)

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