

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.33060 of 2003

Dharma Punjai Nilam Trust
Represented by its Trustee
P.Narayana Reddiyar

.. Petitioner

Vs.

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The Tahsildar,
Kamuthi Taluk,
Ramanathapuram District.
3. The Village Administration Officer,
41, P.Muthuramalingapuram Group,
Perunali Firka
Kamuthi Taluk,
Ramanathapuram District.
4. The President,
Pappureddiayapatti Village Panchayat,
Kamuthi Taluk,
Ramanathapuram District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the letter dated 08.05.2003 in Na.Ka.B3/2421/2001 on the file of the Tahsildar, Kamuthi, Ramanathapuram District, the second respondent and quash the same in so far as the petitioner's land in S.No.359/1 in 41 Muthuramalingapuram Village. Perunali Firka, Kamuthi Taluk, Ramanathapuram District is concerned and consequently direct the Village Administrative Officer, 41 P.Muthuramalingapuram Group, Perunali Firka, Kamuthi Taluk, Ramanathapuram District, the third respondent herein to restore the village accounts in respect of S.No.359/1 as patta land in the name of the petitioner as before.

For Petitioner : Mr.A.V.Arun
For Respondent : Mr.R.Venkatesh, AGP, for R1 to R3
Mr.N.Subbarayalu, for R4

ORDER

The petitioner has come forward with above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the letter dated 08.05.2003 in Na.Ka.B3/2421/2001 on the file of the Tahsildar, Kamuthi, Ramanathapuram District, the second respondent and quash the same insofar as the petitioner's land in S.No.359/1 in 41 Muthuramalingapuram Village, Perunali Firka, Kamuthi Taluk, Ramanathapuram District is concerned and consequently direct the Village Administrative Officer, 41 P.Muthuramalingapuram Group, Perunali Firka, Kamuthi Taluk, Ramanathapuram District, the third respondent herein to restore the village accounts in respect of S.No.359/1 as patta land in the name of the petitioner as before.

2. The case of the petitioner is that the oral community trust is in existence for several decades and that Trust is in enjoyment and possession of the lands in survey Nos. 302/5A, 302/5C, 302/5D, 343/1, 352/2, 356/2 and 359/1 in 41 Muthuramalingapuram Village, which formed part of Ramanathapuram Zamin Estate, which was notified in G.O.Ms.No.2003, Revenue Department, dated 11.08.1949 and the same was taken over on 07.09.1949 (Fasli 1359) under the provisions of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. Thereafter, the Ryotwari Settlement was introduced in the estate in Fasli 1369, i.e. in the year 1959.

3. After survey, the land in S.No.359/1 co-related to Paimash No.181 and 46/1, which was treated as patta dry land and included in old patta No.103 as "GRAMA POTHU KUMARASAMY REDDI". Thereafter, during settlement, Ryotwari Patta No.302 was issued under Section 11(a) of the said Act in favour of the petitioner in the name of the "Dharma Punjai Nilam" and Trustee is Narayana Reddiar, son of Perumal Reddiar in respect of the lands comprising in S.Nos.302/5A, 302/5C, 302/5D, 343/1, 352/2, 356/2, including the said S.No.359/1 and Ryotwari patta was issued in favour of the petitioner. The petitioner in Oorani (tank) in S.No.359/1 used the tank for drinking purposes and that the same are in the petitioner's patta land and the petitioner has never objected to its use by the community. There are also several yielding tamarind trees in and around the Oorani and the petitioner trust has been maintaining the Oorani from and out of common funds derived from the tamarind trees.

4. The Assistant Settlement Officer, Kovilpatti, in terms of Section 14-A of the Act, dated 22.10.1975, cancelled the Ryotwari patta issued in favour of the petitioner in S.No. 359/1 and the said order pertains to "Rani Sethupuram Urani". Aggrieved by the said order, the Revision petition was filed in R.P.No. 29 of 1977 before the Director of Survey and Settlement in order dated 17.03.1977 who passed the following order while allowing the revision petition,

"From the entire position based on facts and evidence on record, I find that the suit land is a pucca urani on ground intended for the use of the public for drinking purposes also. There are number of yielding tamarind tree around the urani and the community is maintaining this urani from and out of the common fund. It is also on record that this is not intended to any other purposes other than drinking purposes. The declaration of the suit land as a communal puramboke will only destroy the purpose to which is is put. I, therefore, set aside the order of the Lower Settlement and restore the registry of the suit land an patta land under Section 19 of the Abolition Act subject to the condition that the Revision Petitioner should not interfered with the user of the suit land by the public in future also. With tis condition, the Revision Petition is allowed".

5. The petitioner stated that based on the order passed in the Revision, his request may be implemented and the ryotwari patta granted in favour of the petitioner in respect of S.No. 359/1 may be restored. The petitioner's request was considered and the petitioner was issued patta No.932 in respect of the aforesaid survey number, namely S.No.359/1 and necessary charges have been paid to the Revenue without any default. Accordingly, the second respondent issued direction to the Village Administrative Officer / the third respondent. The writ petitioner submits that the village accounts have not been changed in respect of Ooranis, pursuant to the amended Acts 49/74 and 2/76 and therefore to record necessary changes in the village accounts and report compliance, he has filed this writ petition.

6. The learned counsel for the petitioner has stated that there was litigation and that he is armed with an order of the Director of Survey and Settlement. The third respondent has changed the village accounts knowing fully well that the petitioner had the benefit of the order of the Director of Survey and Settlement, who has set aside the cancellation of Ryotwari Patta issued in favour of the petitioner and that the

same has been restored and the petitioner is in enjoyment of the property in respect of S.No.359/1. According to the petitioner, no notice was given to him before cancellation of Ryotwari Patta and the direction issued by the third respondent could not apply to the petitioner's land and such change made in the village accounts of the third respondent is clearly in violation of the orders of the Director of Survey and Settlement mentioned supra. When the Ryotwari Patta granted to the petitioner, has been restored by the Director, namely the Appellate Authority, no charges can be effected by the third respondent in respect of the petitioner's land.

7. According to the petitioner, the third respondent has not verified with the second respondent before effecting the changes in the village accounts. The respondents ought to have noticed that the petitioner have been paying retrospective from 1977 pursuant to the order passed by the revision and that the petitioner was entitled to Ryotwari Patta in respect of S.No. 359/1 where the Oorani is also situated. The changes made in the village accounts without considering the orders passed in the Revision, violates the entire proceedings and the impugned order suffers from non application of mind and that the impugned order dated 08.05.2003 on the file of the Tahsildar got to be interfered with. According to the learned counsel for the petitioner, the revisional authority is superior to the Tahsildar who ought not to have interfered with the orders of the revision. It is further contended that if the respondents are aggrieved, they should have been challenged the order passed in the revision, but they have not done so.

8. The learned Additional Government Pleader appearing for the respondents 1 to 3 and he filed counter affidavit denying the averments of the petitioners the learned counsel for the fourth respondent contended that the land for which the patta has been issued, is meant for public purpose and that the entire community is entitled to draw water for the said Oorani. It is further submitted that the Oorani is not stated in the SLR Register of the year 1953 and it is classified as "Rani Sethupuram Oorani". The Revenue records shows that the Survey No.359/1 to an extent of 2.85.0 ares land in 41, Muthuramalingapuram Village, Perunali Firka, Kamuthi Taluk, Ramanathapuram District, is classified as Oorani. The character of Oorani is unchanged for more than five decades and it is the only source of drinking water for the Rani Sethupram Village residents. It is further stated that the petitioner has no title or any right over the land and has no locus standi to maintain the writ petition. It is further stated that the entire revenue records stands as Oorani and not in the name of the petitioner, except the patta and the same satisfies the water requirements of the village.

9. According to the respondents, patta cannot be issued to the water source like Oorani etc., and there is no dispute that the Oorani belongs to the petitioner's trust and as the entire Oorani is a water body, the petitioner is not entitled to any patta. According to the respondents, the petitioner is trying to encroach upon the water body, which is the main water source to the villagers. If the writ petitioner uses the land, the livelihood of the entire village would be affected and the writ petition has to be dismissed.

10. In reply, learned counsel for the petitioner drew the attention of this Court to Section 19 of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Act XXVI of 1948, which reads as follows;

"19. Rights of persons admitted into possession of ryoti land for non-agricultural purpose. - Where any person has been admitted into possession of any ryoti land by any landholder for a non-agricultural purpose, that person shall be entitled to remain in possession of the land subject however to the payment by him to the Government of the ryotwari or other assessment or the ground rent which may be imposed upon the land for each fasli year commencing with the fasli year in which the estate is notified.

Provided that such transaction was not void or illegal under any law in force at the time.

Provided further that a person who has been admitted into possession of any ryoti land on or after the first day of July 1945 shall be entitled to no rights in respect of such land except where the Government otherwise direct".

11. According to the petitioner, if the respondents are aggrieved by the orders of the Revision Authority, they should have preferred an appeal or challenge the same in the manner known to law. Since, the petitioner is having a favourable order, the respondents cannot contend that the patta issued for the land in Survey No.359/1 is not correct.

12. Heard both sides and perused the materials available on record.

13. It is not in dispute that the patta has been issued in favour of the petitioner in S.No.359/1, which has been interfered with by the Assistant Settlement Officer in his order dated 22.10.1975. Aggrieved by the said order, the petitioner preferred revision to the Director of Survey and Settlement and by proceedings dated 17.03.1977, the Director has passed the order extracted supra.

14. It has been categorically observed that the Settlement Deputy Tahsildar, after personal inspection in the land in question has reported that it is a pucca Oorani used by the public and his report is extracted below:

"Survey No.359/1 (7.04 Acres)

This field situates in Rani Sethupuram Village of Muthurmalingapuram Group. S.No.359/1 (7.04) has been correlated to Paimash No.181 (4-95) and 46/1 pt. The prior registry of these paimash numbers stand registered in holding No.103 under the description () Kumarasamy Reddiar, Patta was granted in Settlement following the prior registry. It was notified under the Act 49/1874. I have inspected this field which is even now a pucca Urani surrounded by well maintained bunds. A numerous number of yielding tamarind trees are standing on all sides of the bunds. A well formed culvert has been provided to receive the rain water. The rain water so received in the first block, will be stagnated and after filling the rubbish the second block of tank will be filled up. The water stag noted in this block is used exclusively for drinking purpose. The Urani is maintained by the Reddiar community on the repairs are carried out by the common fund of their community. It is said that excellent drinking purpose, no one will be allowed to use the water for other purposes like bathing etc. it is reported that the Urani is a hereditary property of the community. There is no mistake in correlation".

15. Though the order of the Settlement Officer has been interfered with by the Director in the Revision Petition, a reading of the entire order would make it very clear that the entire land can be used only for the public purpose. Even though the patta stands in the name of the petitioner, he has no right over the property in question. It is the public, who is entitled to use the land and that the Revenue had collected from and out of the tamarind trees and it will have to be used only by the fourth respondent for the welfare of the village people.

16. Even though the petitioner is having a favourable order, admittedly, the petitioner cannot enjoy any benefit out of that, except having the benefit on par with other villagers. Though there is a force in the contention of the respondents that no patta can be issued with regard to Oorani, in this case, patta has been issued to the petitioner, which has not been

challenged by any of the respondents by either preferring appeal or any other means under law and fortunately, the order of the Revision has not in any way affected the villagers.

17. In view of the observations extracted supra, this Court is inclined to accept the contentions of the respondents. Even though the petitioner is having a patta, the petitioner cannot have any right over the property of the entire Survey No.359/1. At no point of time, the petitioner has right to claim title over the property in Survey No.359/1.

18. Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mm/kas

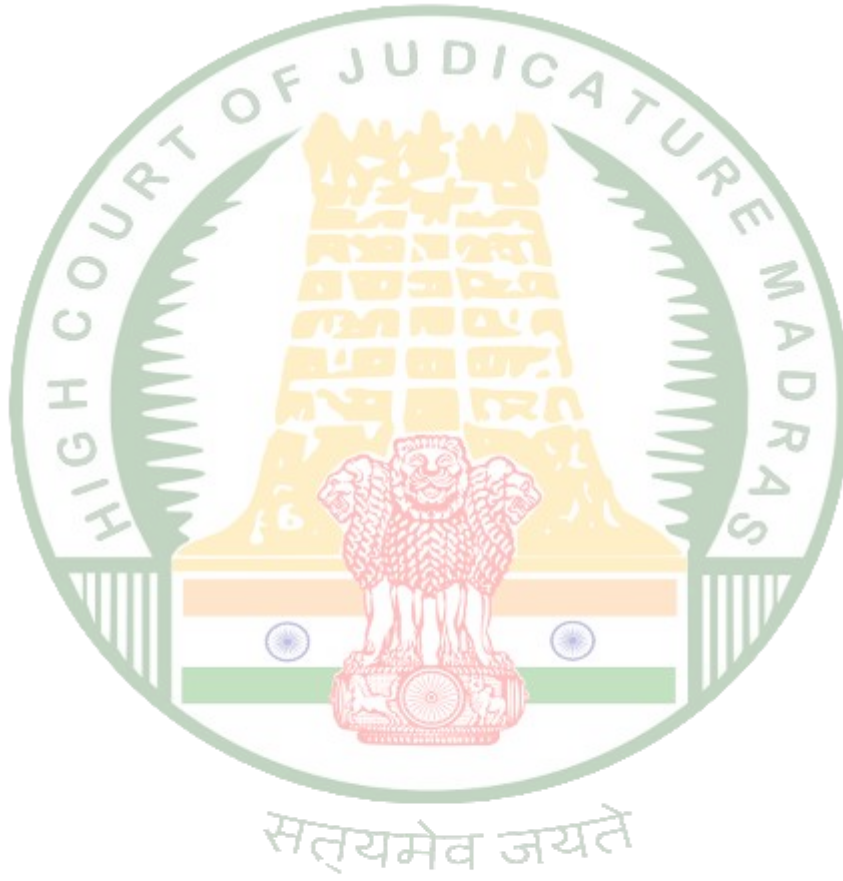
To:

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Kamuthi Taluk,
Ramanathapuram District

+1 cc to Mr.A.V.Arun Advocate sr 78150
+1 cc to Govt Pleader sr 77939

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