



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 10.08.2017

Pronounced on : 08.09.2017
CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4429 of 2017
and
W.M.P(MD)Nos.3564 & 4353 of 2017

Pavakkai Mandapam Trust,
Madurai
Represented by its Trustee,
R.K.Ramachandran @ Ramesh

... Petitioner

Vs.

1. Tamil Nadu Housing Board,
Madurai Division,
Rep.by its Executive Engineer,
Ellis Nagar, Madurai - 625 016.

2.A.Shankaran

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in issuance of letter dated 02.03.2017 in Ref.No.M.H.7/16067-14 and quash the same.

For Petitioner : Mr.R.M.Makesh Kumaravel
For Respondents : Mr.M.Saravanan for Mr.S.Nagarajan
for R1
No appearance for R2

O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The writ petitioner is a Charitable Trust. It owns 20 cents of land in Survey Nos.1/1 Part and 3/1 Part and 7 in Villapuram Village, Madurai South Taluk. It constructed a few shops in the said survey numbers after obtaining permission from the Madurai Corporation way back in the years 1974 and 1980. The rent received from the said shops is utilized for funding its religious and charitable activities. On the 4th day of annual Chithirai festival celebrated in Madurai, Goddess Meenakshi visits the Pavakkai Mandapam situated in the said land. The adjoining lands are owned by Tamil Nadu Housing Board. Since there was no right



of access from the highway, the petitioner Trust at the request of Madurai Corporation executed a sale deed dated 29.04.1994 in favour of the first respondent Board conveying a portion of their land measuring 572 Sq.ft.

2. While so, at the instance of the second respondent herein, the first respondent Board issued the impugned communication dated 02.03.2017 calling upon the trustee to remove the shops in question. The first respondent has stated in the impugned communication that the shops in question have been unauthorizedly put up on the land belonging to the first respondent Board. It is made clear in the said communication that if the petitioner does not remove the shops, the same would be demolished with the aid of police and taken possession thereafter. Aggrieved by the said communication dated 02.03.2017, the petitioner Trust filed this writ petition.

3. It is the stand of the writ petitioner that the land in question is their absolute property. They have enclosed materials dating back to 1969. The trust itself is a very old one. The trust had applied under the provisions of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and obtained patta for an extent of 10 cents in Survey No.1/1 Part, 6 cents in 3/1 Part and 4 cents in Survey No.7 Part (Total 20 cents) in Villapuram Village. They have enclosed a copy of the proceedings bearing R.Dis.3405/G/74, dated 28.02.1974. The Assistant Settlement Officer, Madurai-2 had recommended grant of patta in favour of the trustee of Pavakkai Mandapam Trust. That is how, patta came to be issued in favour of the Trust way back on 09.04.1974. The petitioner has also enclosed the correspondence that took place between them and the Madurai Corporation for conveying a portion of their land measuring an extent of 572 Sq.ft in favour of the first respondent Board. It is also a matter of record that the shops in question were constructed only after getting prior approval from the local body. While so, it appears that the second respondent has been complaining to the authorities that the petitioner Trust had committed encroachment on the lands belonging to the Tamil Nadu Housing Board. That led to be initiation of the present proceedings by the first respondent.

4. The first respondent Board had filed their counter affidavit. In the counter affidavit, the first respondent placed reliance on the proceedings of the District Collector, Madurai dated 17.02.1988 whereunder permission was accorded to the Board to enter upon the land measuring an extent of 54.87 acres in S.No.1/1 in Villapuram village and an extent of 220.46 acres in S.No.411/1 in Avaniapuram village. According to the first respondent, the entire S.No.1/1 of Villapuram village belongs to the Housing Board.



5. In view of the said proceedings of the District Collector, Madurai, the first respondent had issued show cause notice dated 29.07.2016, directing the writ petitioner to furnish documents to prove their right over the same. Since no reply was received, the impugned order came to be passed. The first respondent prayed for dismissal of the writ petition.

6. Heard the learned counsel for the parties.

7. Tamil Nadu Housing Board is a body corporate having been constituted by the Tamil Nadu State Housing Board Act, 1961. It is a self contained Statute. The Act enables the Board to evict unauthorized occupants. The expression "unauthorized occupants" has been inclusively defined. It includes those who are occupying the property of the Board devoid of title.

8. Section 84 of the Act states that if the competent authority is satisfied, he may call upon the unauthorized occupants to vacate the land within one month of the date of service of notice. Before passing an order, the competent authority shall inform the person by notice of the ground on which the proposed order is to be made. He should also give him a reasonable opportunity of tendering an explanation and producing evidence if any and to show cause why such order should not be made within a period to be specified in the notice. The power of the Board to evict those who are in unauthorized occupation of its premises is thus undisputed. But the question is whether the land in question can be said to be the absolute property of the Board. All that the first respondent could show in support of their stand before this Court is the copy of the proceeding dated 17.02.1988 issued by the District Collector, Madurai according permission to the Board to enter upon the land to an extent of 54.87 acres in Survey No.1/1 of Villapuram Village. But the writ petitioner has produced materials that are earlier in point of time to show that 10 cents in Survey No.1/1 Part in Villapuram Village belongs to the petitioner Trust. Settlement patta has been issued in favour of the Trust. Thus legally acceptable materials have been placed before this Court to sustain the petitioner's claim of title. It cannot be stated that the writ petitioner has not raised a bonafide dispute.

9. We are clearly of the view that the materials produced before us *prima facie* indicate that the petitioner Trust owns 10 cents of land in Survey No.1/1 in Villapuram Village. There is nothing on record to show that this was acquired from the petitioner Trust in the manner known to law. The petitioner is not a party to the proceeding by which the District Collector granted permission to the first respondent Board to enter upon the land in Survey No.1/1. It is a settled principle of law that a party to a lis cannot arrogate to itself the power to adjudicate



the dispute. That would be a grave violation of the principles of natural justice. Since a bonafide title dispute has been raised, it would not be fair to remit the matter to the file of the first respondent. When there is a genuine title dispute between the writ petitioner and the first respondent Board, the first respondent board cannot be conferred with the authority to decide the dispute. Section 84 of Tamil Nadu Housing Board Act 1961 is not intended to cover cases where there is a bonafide civil dispute involving Board itself. The said provision can be invoked only when it is absolutely clear that the property in question belongs to the Board.

10.We therefore quash the order dated 02.03.2017 issued by the first respondent calling upon the writ petitioner to remove the shops in question. It is also to be pointed out that the impugned communication is absolutely vague. It has not even mentioned the survey number in which the shops are located. On the ground of vagueness also the impugned communication is liable to be quashed. It is certainly open to the first respondent Board to move the Civil Court for establishing its title over the disputed property and claim the relief of possession. Admittedly, as on date, it is the writ petitioner who is in possession of 10 cents of land in Survey No.1/1 in Villapuram Village. They have constructed shops after getting approval from the local body. Patta is also in their favour. The land in question is linked to the celebration of Chithirai festival from time immemorial. Therefore, if at all the Housing Board is having any claim, it is for the Housing Board to move the Civil Court.

11.This writ petition thus stands allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

+1 cc to Mr.S.Nagarajan , Advocate in SR.No. 77775

+1 cc to Mr.R.M.Makesh Kumaravel , Advocate in SR.No. 77375

Skm/Arul

AE/SV MMS/SAR4/18.09.2017/3C/4P

**order made in
W.P(MD)No.4429 of 2017
and
W.M.P(MD)Nos.3564 and
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