

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.11.2018

CORAM :
THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.2855 of 2013
and
M.P.No.1 of 2013

R.Shanmugaraj
S/o. Rajamanickam,
No.2/11, Sri Sakthi Garden,
T.V.S.Nagar Road,
Kavundampalayam,
Coimbatore - 30

... Petitioner

Vs

1.The District Collector,
Tiruppur District,
Tiruppur.

2.The Tahsildar,
Avinashi Taluk,
Tiruppur District.

3.The Block Development Officer,
Avinashi Panchayat Union,
Avinashi, Tiruppur District.

4.The President,
Cheyur Panchayat,
Avinashi Taluk, Tiruppur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the respondents from putting up any construction on Panthampalayam Natham S.No.568, Cheyur Village, Avinashi Taluk, Tiruppur District by considering my representation dated 07.01.2013.

For Petitioner : M/s. M.A.P.Thangavel

For Respondent : Mr.R.S.Selvam for R1 to R3
Government Advocate
Mr.R.A.S.Senthil Vel for R4

O R D E R

The relief sought for in the present writ petition is to forbear the respondents from putting up any construction on Panthampalayam Natham S.No.568, Cheyur Village, Avinashi Taluk, Tiruppur District by considering my representation dated 07.01.2013.

2. The learned counsel for the writ petitioner made a submission that the properties situated at Panthampalayam Natham S.No.568, Cheyur Village, Avinashi Taluk, Tiruppur District originally belonged to one Nachi Achari, who is none other than great grand father of the writ petitioner. The total extent of the property is about 5,400 sq. ft. Thereafter, on 06.03.1945, the grand father of the writ petitioner namely Shri.Ramalingam and his sons Avinashiappa Achari, Marappa Achari and Rangasamy Achari had divided the property in dispute in the present writ petition and other properties. As far as the property at Panthampalayam Nantham S.No.568 is concerned, it was allotted to the grand father of the writ petitioner and his brothers Ramalingam and Rangasamy Achari.

3. The petitioner states that his father Shri.Rajamanickam had inherited the property and now the petitioner is the absolute owner of the property. The property in question is a vacant land and the local Authority has not assessed the same for tax and there is no demand. The petitioner has not paid any tax to the Authorities concerned. On 07.01.2013, the respondents trespassed in to the property and attempted to construct the pucca structure. When the writ petitioner objected the same, they informed that they are going to construct Government Hostel in the property described in the present writ petition which is not permissible.

4. The learned counsel for the writ petitioner states that, the petitioner cannot be evicted without following the due process of law. In this regard, the petitioner raised an objection and sent a representation on 07.01.2013 through registered post. However, no action has been taken and therefore the petitioner is constrained to move the present writ petition. The learned counsel for the writ petitioner mainly contended that the writ petitioner inherited the property from his father who in turn inherited from his grand father and from his great grand father. Thus, the writ petitioner is the absolute owner of the land in question.

5. The Learned Government Advocate appearing on behalf of the respondents disputed the contentions raised by the writ petitioner's by stating that the writ petitioner is not at all the owner of the property described in the present writ petition. Relying on the counter affidavit filed by the 2nd

respondent, the Learned Government Advocate states that as per the revenue records (Village A Register) in S.Field.No.568 of Cheyur Village, Avinashi Taluk, Tiruppur District is classified as "Natham". The extent of the said Survey Field is 0.76.P. Hecter. As per the Natham Land Development Scheme, 1994 the said S.F.No.568 of Cheyur Village was subdivided as S.F.Nos.568/1, 568/2, 703/1, 703/2, 704/1, 704/2, 704/1, 704/2, 704/3, 704/4, 705/1, 705/2, 705/3.

6. On 29.04.2015, S.F.No.704/2 was subdivided as S.F.No.703/2, S.F.No.703/3 and on 30.12.2002, S.F.No.704/1 was subdivided as S.F.No.704/1 and S.F.No.704/7 and S.F.No.704/2 was subdivided as S.F.No.704/2, 704/5, 704/6. In the year of 2005 S.F.No.705/3 was subdivided as S.F.No.705/3, 705/4, 705/5. It is further contended that as per the village adangal the S.F.No.568/1 is classified as "Natham Vacant Land". S.F.No.568/2, 703/1, 704/1, 704/2, 705/1, 705/2 are classified as "Natham" in village adangal. Hence, the said survey fields are vested with the Government. The said fields are not assessed with any tax and not granted any patta to any private persons.

7. The S.F.No.703/2 is classified as "Aathidravidar Government Hostel". Agricultural Officer's quarters is situated in S.F.No.704/3. In S.F.No.704/3 patta is granted in favour of A.Mariappanpandadi in S.F.No.704/5 patta is granted in favour of M.Nahendran and 7 others. In S.F.No.704/6 patta is granted in favour of Periasamy. In S.F.No.704/7 patta is granted in favour of M.Nahendran and 7 others. In S.F.No.705/4 patta is granted in favour of V.Radha. The said facts revealed in the village adangal. In the above said fields the respective persons are possession and enjoyment of their respective survey fields.

8. In S.F.No.568/1, an extent of 1780 square meter is decided to use as a play ground for Government Aathidravidar hostel students or to build backward class student's hostel and also Government has decided to used the lands for other Government scheme purposes. In S.F.No.568/2 Government Aathidravidar Students Hostel is now functioning. A Civil Suit in O.S.No.727/2012 is pending before the Hon'ble District Munsif Court of Avinashi with respect of S.F.No.568. One Manickam and 26 others filed the said suit with the prayer of declaration. The said suit is still pending with the said persons on the file of the District Munsif Court of Avinashi and it is post for further defendant side witness.

9. The Learned Government Advocate states that the petitioner himself admits the fact that he is neither residing in S.F.No.568 nor in Cheyur Village. Neither the petitioner nor his forefathers were not in possession and enjoyment of property in S.F.No.568 of Cheyur Village. The petitioner has not approached this Court with clean hands and therefore the present

writ petition is liable to be rejected. This apart, the Government Aathidraavidar Hostel is now functioning and large number of Aathidraavidar Students are staying in the hostel and studying in Educational Institutions. Thus, the writ petition is to be rejected.

10. The learned counsel for the writ petitioner in support of his arguments submitted the judgement of this Court passed in A.R.Meenakshi & Others Vs. State of Tamil Nadu & Others reported in 2013-4-L.W 76. The relevant paragraph 28 is extracted here under:-

"28. In view of the above, the writ petitions are allowed and the common impugned order is set aside. But, since the respondents took possession of the lands by virtue of an order passed by a Division Bench of this Court for the purpose of formation of a subway, it is not possible now to put the petitioners back into possession. The land and building belonging to the petitioners should be taken only to have been acquired for the purpose of formation of the subway and compensation worked out both for the land and building. Therefore, the respondents are directed to initiate proceedings for the determination of compensation payable to the petitioners, both in respect of the land and in respect of the superstructures. The proceedings for compensation shall be commenced and concluded within three months and the petitioners are entitled to an opportunity of being heard. No costs."

11. The judgement in the case of The Executive Officer, Kadathur Town Panchayat, Harur Taluk Vs. V.Swaminathan & 3 others reported in 2004-3-L.W.278 is also referred in relevant paragraph 13 which is extracted here under:-

"13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. In as much as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further such a summarily eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions."

12. The learned counsel for the writ petitioner states that in respect of "Natham" land, the Government cannot claim any ownership. In the present case, the writ petitioner is in

possession and enjoyment of the property in question. Therefore, the Government has no authority to take possession in respect of such "Natham" land. It is contended that in the judgement cited supra, the Court held that Natham lands do not belongs to the Government and it is to be treated as belong to the person who is in possession and enjoyment of the same.

13. The Learned Government Advocate filed a report submitted by the Tahsildar, Avinashi Taluk, in respect of the property situated in S.F.No.568 and the report is extracted here under:-

"திருப்பூர் மாவட்டம், அவிநாசி வட்டம், 11,சேலூர் கிராமம் க.ச.568 நெ.காலை குறித்து எனது அறிக்கையை பின்வருமாறு சமர்ப்பிக்கின்றேன்.

திருப்பூர் மாவட்டம், அவிநாசி வட்டம், 11,சேலூர் கிராமம் க.ச. 568 நெ.காலையானது கிராம அபதிவேட்டின்படி (நில உரிமை மேம்பாட்டுத் திட்டம் 1987) பந்தம்பாளையம் நத்தம் என்று வகைபாடு கொண்ட பு.ஹெக்டர் 0.76.0 விஸ்தீரணமுடைய பூமியாக பதிவாகியுள்ளது.

மேற்படி க.ச.568 நெ.காலையானது நத்தம் நில உடமை மேம்பாட்டுத் திட்டம் 1994ன் படி 568/1,2, 703/1,2, 704/1,2,3,4, 705/1,2,3 என உட்பிரிவுகளாக பிரிக்கப்பட்டுள்ளது. பின்பு 703/2 ஆனது 703/2,3 என 29.04.2015 அன்றும் 704/1 ஆனது 704/1,7 எனவும், 704/2 ஆனது 704/2,5,6 எனவும் 30.12.2002 அன்றும் 705/3 ஆனது 705/3,4,5 எனவும் 2005 அன்றும் உட்பிரிவுகளாக பிரிக்கப்பட்டுள்ளது அதன் விவரம் பின்வருமாறு,

வ.எண்	நத்தம் புதிய புல எண்	நத்தம் பழைய புல எண்	பரப்பு ஏர் சமீ	குறிப்பு
1	568/1	568	17.80	நத்தம் காலியிடம்
2	568/2	568	10.00	நத்தம்
3	703/1	568	01.02	நத்தம்
4	703/2	568	17.06	ஆதிதிராவிடர் அரசினர் மாணவர் விடுதி
5	703/3	568	18.68	நத்தம் காலியிடம்
6	704/1	568	00.23	நத்தம்
7	704/2	568	03.59	நத்தம்
8	704/3	568	01.37	பட்டா எண் 753 அ.மாரியப்பன் பண்ணாடி
9	704/4	568	07.30	வேளாண்துறை அலுவலர் குடியுறுப்பு
10	704/5	568	00.23	பட்டா எண் 876 ம.நாகேந்திரன் மற்றும் 7 பேர்
11	704/6	568	02.78	பட்டா எண் 874 மாரப்பன் மகன் பெரியசாமி
12	704/7	568	02.00	பட்டா எண் 876 ம.நாகேந்திரன் மற்றும் 7 பேர்
13	705/1	568	06.15	நத்தம்

வ.எண்	நத்தம் புதிய புல எண்	நத்தம் பழைய புல எண்	பரப்பு ஏர் சமீ	குறிப்பு
14	705/2	568	01.40	நத்தம்
15	705/3	568	00.08	நத்தம்
16	705/4	568	02.81	பட்டா எண் 877 ஏ.சி.வெங்கடேஸ்வரன் மனைவி வி.ராதா
17	705/5	568	00.56	நத்தம்

மேற்படி க.ச.568/1ன் விஸ்தீரணம் 1780 ச.மீட்டர் பூமியில் பிற்படுத்தப்பட்டோர் மாணவர் விடுதி, ஆதி திராவிட மாணவர் விடுதியில் உள்ள மாணவர்களுக்கு விளையாட்டு திடல் மற்றும் அடகு திட்ட பயன்பாடுகளுக்கு பயன்படுத்த உத்தேசிக்கப்பட்டுள்ளதாக விசாரணையில் தெரியவருகிறது எனவும் பணிவுடன் தெரிவித்துக் கொள்கிறேன். க.ச.568/2ல் தற்போது ஆதிதிராவிடர் மாணவர் விடுதி இயங்கி வருகிறது எனவும் தெரிவித்துக் கொள்கிறேன்."

The factual details in respect of the land in question are enumerated in the said report.

14. Relying on the counter affidavit and the report submitted by the Tahsildar, Avinashi Taluk, the Learned Government Advocate states that, even in case of allotment of Natham Land, the same is allotted to the landless poor people to the extent of 3 cents per person alone. Thus, the claim of the writ petitioner for such a larger extent of the land is impermissible. It is not as if the petitioner can claim possession and enjoyment in respect of all such Natham Land to the vast extent and file a writ petition with an idea to grab the Government land. Though it is stated that the Natham Lands are not Government lands, it is equally cannot be construed as the land belongs to the writ petitioner.

15. The writ petitioner cannot claim such Natham Land to a larger extent by citing certain documents created by his father or his great grand father. Even in case of assignment by the Government in respect of Natham Land, the said assignment is to be made only for the purpose of leading livelihood and more specifically 3 cents of land alone is assigned in favour of all such poor landless people for the purpose of constructing houses and residing in the said Natham Land. The Government has never assigned such a vast extent of land for the purpose of possession and enjoyment. Then the same is to be construed that the actions of the Government itself is irregular.

16. This Court is of an opinion that even assignment of Natham Lands or other Government lands ought to be made only with reference to the scheme to be formulated. Terms and conditions stipulated in the welfare scheme ought to be

implemented scrupulously and without any deviation. Land cannot be assigned for a larger extent for personal gains and unlawful entrenchments.

17. Even in respect of the Government lands or the Natham Lands the State is bound to ascertain the facts and other details and thereafter grant assignment in favour of landless poor people for leading their livelihood. Therefore, assignment of such valuable lands for larger extent even by the Government is impermissible. It is the Constitutional mandate on the part of the State to ensure that all such public lands and Government lands are maintained only for the welfare of the public and in the interest of the public Administration. It is not as if the Government can assign land at their whims and fancies. If such assignment goes in violation of the Constitutional principles and perspectives, this Court is of an opinion that, such assignment is to be construed as invalid and unconstitutional.

18. Thus, even in case of assignment by the Government for a larger extent of land in favour of certain individuals for their personal gains and for unlawful entrenchment, then such an assignment to be treated as unconstitutional and opposed to public policy. The public policies ought to be formulated for the welfare of the people at large and in the interest of the Public Administration. Any public policy which is opposed to the Constitutional principles are liable to be declared as unconstitutional. This being the Constitutional philosophy and ethos, this Court is of an opinion that assignment of vast extent of land which is classified as "Natham Land" in favour of the individual for their personal gain is certainly impermissible.

19. In respect of the submission made by the learned counsel for the writ petitioner, he claims the land in question on the ground that his great grand father was in possession and enjoyment of the land and by way of the partition deed in document No.493/1945. The father of the writ petitioner inherited the property and thereafter the writ petitioner became the owner of the property. In the affidavit filed in support of the writ petition, the petitioner has not stated that the land is classified as "Natham Land" in the revenue records.

20. The petitioner claims based on the partition deed which is enclosed in the typeset of papers. The partition deed was executed within the family members of the writ petitioner. Thus, the said documents cannot be trusted upon or relied upon for the purpose of declaring the title, ownership or possession of the writ petitioner in respect of the property described in the present writ petition.

21. Even in case of possession of the certain documents it is left open to the writ petitioner to approach the Competent Civil Court of Law for the purpose of establishing his title, ownership or possession by submitting the original documents and by adducing evidences. Such an exercise of identifying the title and ownership can never be done in the writ jurisdiction under Article 226 of the Constitution of India.

22. Thus, this Court is of an opinion that complex facts and circumstances arising on account of the disputes in relation to title, ownership and possession can never be adjudicated nor be entertained by way of a writ petition under Article 226 of the Constitution of India. All such disputes are to be resolved by the respective parties by producing original documents and by adducing evidences before the Competent Civil Court of Law.

23. The report of the Tahsildar, Avinashi Taluk is unambiguous that the land in question was already dealt with by the Government and now Aathidraavidar Government boys hostel is functioning. The hostel building is situated in the land described in the present writ petition and poor Aathidraavidar students are staying and pursuing their education. This apart, the report further states that the remaining vacant land are utilized as play ground for the benefit of the student who all are staying in the hostel. This being the factum of the case, the said land cannot be assigned or the relief as such sought for to restrain the respondents cannot be granted.

24. In respect of Natham Land, the Additional Chief Secretary / Commissioner of Land Administration issued a Circular in reference No.K3/14710/2015 dated 07.08.2015. The Circular provides various guidelines for dealing with the Natham Land. In para 2 of the said circular, it has been explicitly stated that the vacant lands available in Natham shall be recorded as "Vacant Site" and can be assigned to the weaker sections of the rural population. One of the purposes of the Scheme is to identify vacant lands and preserve them for the use of future public purposes. Public properties such as temple, school buildings etc., will be separately distinguished and this will be useful for administrative and various development activities.

25. Para 5 of the circular reads as under:-

"5. As far as Natham lands are concerned, though they are clearly government lands, the titular rights of the people enjoying the same as house site cannot be denied. Moreover as a matter of practice Natham lands are being registered by the registering authorities of registration department for long time. The said title should be followed by enjoyment. While sending proposals the District Revenue Officers should ensure that the

"Vacant Site" is under the enjoyment of the claimant along with clear documentary evidence to prove the title. Since the Natham settlement scheme was completed in the year 1996, the parent documents relied on by the claimants must have been registered before the year 1966 i.e thirty years prior to 1996. It is pertinent to mention that as the land value in the State has been soaring many times, there are possibilities of creating rights in the "Natham Vacant Site" by newly registering documents by the persons who have no title or enjoyment. Hence unregistered documents or documents registered after 1996 cannot be used to claim patta under this scheme. Another important fact to be verified is that the registered documents relate to the land for which they are sending proposals and the boundaries are correctly tallied without matching the boundaries, it is not possible to correlate these documents to the vacant site being cleared as "Natham" sites were not fully subdivided earlier under the Natham Settlement Scheme, patta was issued on the basis of enjoyment and the rules of darkast were not applied except for fixing the ceiling of 35 cents."

26. Para 6 of the Circular prescribes the procedures to be followed as under:-

"6. In view of the above discussion, the following criteria shall be adopted to consider the proposals received from the District Revenue Officers.

A. In para 5 of the notification of the Natham Settlement Scheme, it has been stated that in cases where no assignment order has been issued by the Revenue Department, the Special Tahsildar will decide the ownership of the property on the basis of enjoyment for 30 years prior to the date of publication of the notification in T.N.G.G. The notification was issued on 14.10.1988 and the scheme was completed in the most parts of the State in the year 1996. Hence, in the proposals received from the District Revenue Officers now, 30 years of continuous enjoyment may be counted from the year 1966.

B. In the case of category I, where built-up structures have been wrongly classified as vacant sites, the claimant should furnish proof of the existence of the house at the time of settlement by detail in the FMB or other documentary proof and continuous possession and enjoyment by suitable documentary evidence.

C. In category II, where the land continues to be vacant / new structure has been built after the Natham Settlement, continuous chain of documents from prior to the year 1966 will have to be established. The boundaries mentioned in those documents should be matched with the

land for which claims are made and clearly colourmarked in the field sketch. This exercise should be done at Field level and a certificate in this regard should be furnished by the District Revenue Officer.

D. There are cases of claims for vacant Natham sites physically adjacent to Natham patta lands of the claimant that have already been issued patta under the Natham Settlement Scheme.

In such cases, the claim of the petitioner has already been evaluated during the Natham Settlement. The Natham patta has been granted after verifying the documents and possession during the Natham Settlement Scheme, and the vacant site not owned by the claimant has been settled as Natham vacant site, no further claim can be based made on the same documents (prior to 1996) which have been taken in to consideration during the scheme. Such petitions need not be entertained.

E. Under the Natham Settlement Scheme, the maximum area for which patta could be granted was 35 cents only. The scheme restricted the claims to a maximum of 35 cents only. Hence, for a valid claim over a vacant Natham site, all vendors and vendees including the present claimant in the unbroken chain of transactions since 1966 should have held less than 35 cents only at any point of time. A certificate should be furnished by the District Revenue Officer that

(i) The total Natham patta land of the claimant including the present claim, excluding patta lands purchased after the scheme, does not exceed 35 cents in that Revenue village.

(ii) all vendors and vendees in the unbroken chain of transactions since 1996 have held less than 35 cents only.

Therefore, the District Revenue Officers are requested to carefully examine the proposals received from the Revenue Divisional Offices and confirm that the above criteria are fulfilled before sending proposal to this office. It should be borne in mind that since the scheme was completed 28 years ago and there is no provision to apply under the scheme after the completion of the scheme. In the normal course, vacant Natham land should be assigned under RSO 21 as this is only a concession to those who have failed to get patta under Natham Settlement Scheme, though they were eligible. If the proposals received from the District Revenue Officer are found to be incomplete, they will be returned summarily."

27. In view of the circular issued by the Government, the writ petitioner cannot be declared as a owner of the property

which is described in the present writ petition. The writ petitioner has not establishing any valid assignment in his favour. Contrarily, the petitioner claims that he inherited the property from his great grand father. Such stale claims cannot be entertained in the writ petition. Even if the petitioner claims over the title of the property then it is left open to him to approach the Competent Civil Court of Law for establishing his title, possession or ownerhip. Contrarily, by merely submitting a partition deed registered between the family members of the writ petitioner cannot be relied upon for the purpose of granting the relief as such sought for in the present writ petition.

28. The judgement cited may not have any application in respect of the present facts and circumstances are concerned, in veiw of the fat that, such a larger extent of public land can never be granted by way of an assignment in favour of the individual for their personal gains and for unlawful entrenchments. Even in case of assignment of Natham Land the assignments are to be made equally to all the eligible poor landless people of that locality and without causing any discrimination. Such being the welfare scheme of the welfare State, this Court is of an opinion that the very claim made by the writ petitioner for a larger extent of Natham Land is impermissible and even the Government cannot assign such a larger extent of land in favour of the individual persons.

29. This apart, the Aathidravidar boys hostel is now functioning in the said land and the poor Aathidravidar students are staying, studying and utilizing the play ground situated adjascent to the hostel building. This being the factum of the case, the writ petitioner has not established even a semblance of legal right so as to consider the relief as such sought for in the present writ petition.

30. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pkn

To

1. The District Collector,
Tiruppur District,
Tiruppur.
2. The Tahsildar,
Avinashi Taluk,
Tiruppur District.
3. The Block Development Officer,
Avinashi Panchayat Union,
Avinashi, Tiruppur District.
4. The President,
Cheyur Panchayat,
Avinashi Taluk, Tiruppur District.

+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No.76264
+1cc to the Government Pleader, S.R.No.75902

W.P.No.2855 of 2013

PPA(CO)

rrs 03/12/2018



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