

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.5489 of 2008

and

MP.No.1 of 2008

V.Palanimuthu (deceased)

1.P.Periyasamy

2.P.Kangarathinam ... Petitioners

[Petitioners 1 and 2 impleaded as LR's of the deceased Petitioner as per Court Order dated 01.09.2008 in MP.No.2/2008 in W.P.NO.5489 of 2008.]

Versus

1.The District Revenue Officer,
Salem District.

2.The Revenue Divisional Officer,
Athur Division, Athur,
Salem District.

3.The Tahsildar, Athur Taluk,
Athur, Salem District.

4.P.Subramanian ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent issued in his proceedings No.Ni.Mu.51069/05/C1, dated 27.11.2007 and quash the same and consequently to direct the third respondent to enter the name of the petitioner's sons namely Periyasamy and Kangarathinam in all the revenue records as per the Settlement Deed dated 13.10.2004 executed in Document Nos.1909/2004 by the petitioner in favour of his namely

Kangarathinam and Periyasamy before the Sub-Registrar Office, Thalaivasal, Salem District.

For Petitioners : Mr.P.I. Thirumoorthy

For Respondents : Mr.R.S. Selvam,
Government Advocate, for R1 to R3

: Mr. L. Mouli, for R4

O R D E R

The prayer sought for in the present writ petition is to call for the records relating to the order of the first respondent issued the proceedings in No.Ni.Mu.51069/05/C1, dated 27.11.2007, and quash the same and consequently to direct the third respondent to enter the name of the petitioner's sons namely Periyasamy and Kangarathinam in all the revenue records as per the Settlement Deed dated 13.10.2004 executed in Document Nos.1909/2004 and 1910/2004 by the petitioner in favour of his sons namely Kangarathinam and Periyasamy before the Sub-Registrar Office, Thalaivasal, Salem District.

2. The petitioners would contend that they are enjoying the property to the extent of 0.0737.0 square meter situated in Natham New Survey No.287/2 of Sitheri Village, Athur Taluk, Salem District for more than 50 years. Their father applied for Patta before the third respondent under the Natham Nilavari Thittam and the third respondent, by his proceedings dated 27.04.1992 has issued Patta No.315/1992. To that effect, the petitioner's father paid the tax to the respondents and the Chitta also stands in his name. Meanwhile, one Kanagamuthu, who is a neighboring land owner had interfered with the peaceful possession of the said land by their father, which forced their father to file a suit for permanent injunction against the said Kangamuthu and his son Duraisamy before the District Munsif, Athur in O.S.No.99 of 1994, and the suit was also decreed in his favour and no appeal was filed and the said decree has become final and binding till date.

3. The petitioners would also further contend that their father's brother namely one Periyannan was enjoying the property to the extent of 18 cents situated in Survey No.287/1 of the above said Village, who did not apply for Patta under the Natham Nilavari Thittam. Even though he enjoyed the property without getting any Patta for the same, he died in the year 2002 leaving his three sons namely Thankarasu, Subramanian and Chinnaiyan to be his legal heirs.

4. Aggrieved by the Patta issued by the respondents to the father of the petitioners, the fourth respondent herein filed

the petition before the District Collector on 21.02.2002 requesting to cancel the Patta issued in favour of their father and enquiry was held on 18.03.2002 by the second respondent and spot inspection was also done by the same respondent on 13.05.2002. After the enquiry, the third respondent had relegated the parties to approach the Civil Court in his reference order dated 12.06.2002.

5. The petitioners also would contend that having failed in his attempt to the said Kanagamuthu, adjacent land owner has colluded to maintain that Sitheri Village, Panchayat President namely one Periyasamly and the then president presented a petition to the District Collector on 18.09.2002 seeking to evict the petitioners father from the land belonging to the Survey No.287/2. Again an enquiry was conducted on the said petition by the Survey Settlement Officer on 08.10.2002. After examining all the persons namely the Panchayat President, Village Administrative Officer and the Special Surveyor, the above said petition was dismissed on 18.11.2002 as false. Again the fourth respondent preferred a petition on 12.11.2003 on the same issue and the first respondent has rejected the said application on 11.12.2003 abserving that the aggrieved persons can approach this Civil Court.

6. In the year, 2004, due to his ill health, the petitioner's father had settled the property to their sons namely Kanagarathinam and Periyasamy by the settlement deed dated 15.10.2004, which was registered in document No.1909/2004 and 1910/2004 before the Sub-registrar Office, Thalaivasal.

7. Based on the settlement deed, the above said two sons preferred their petitions to the third respondent on 08.11.2004 to include their name in the revenue records and Patta in Survey No.287/2 in Sitheri Village. Since, there were no orders passed in the above said petitions, another two petitions were filed before the District Collector by the petitioners on 25.11.2004.

8. Pursuant to the same, once again issued summons and all the parties were examined on 11.02.2005 by the second respondent namely the RDO, he had rejected the said application of the fourth respondent. When the first respondent attempted to dislocate the petitioners property, the petitioner's father had filed a Writ petition in W.P.No.9368 of 2005 to issue a writ of mandamus, directing the official respondents to treat the Patta issued by the third respondent in No.315/1992 to the extent of 0.0737.0 square meter as genuine and directing the third respondent to enter the second and the third petitioners name in the revenue records as per the settlement deed on 15.10.2004. On 19.03.2005, this Court directed the second respondent to conclude the enquiry proceedings and pass final orders within a

time frame and till then the official respondents were directed not to disturb the possession of the petitioner's herein.

9. According to the learned counsel for the petitioners, the second respondent herein passed a final order on 08.06.2005 rejecting the petition filed by the fourth respondent, stating that there was no evidence for cancelling the Patta.

10. Aggrieved by the said order of rejection, the fourth respondent filed a revision petition before the first respondent. The first respondent, with a predetermined mind, without going into details, has simply allowed the revision petition on the ground that the petitioners property has been utilized for commercial activities, which ground was not raised by the fourth respondent earlier. No opportunity was also given to the petitioners to put forth their arguments regarding the said usage. A counter affidavit has been filed by the first and second respondents, on perusal of the counter shows that the third respondent had conducted an enquiry/inspection and submitted his report by concerned authorities only.

11. Based on the above, after the second respondent had directed the parties to approach the Civil Court for title. The fourth respondent before going to Civil Court preferred an appeal before the first respondent. The first respondent, concluding that the petitioner was utilizing the dwelling house for commercial purpose, passed final orders for cancelling the Patta issued in favour of the petitioner's father.

12. The learned Government Advocate appearing for the respondents 2 and 3 would contend that pursuant to the records, it could be seen that Palanimuthu was got the Patta on 29.04.1992 by the Special Tahsildar under Natham Nilavari Thittam and also the said Chitta and tax receipts are also filed by the petitioner.

13. It could be seen that the suit was filed by Palanimuthu, the father of the petitioners against one Kanagamuthu and Duraisamy, and there is a decree passed against the Kangamuthu, holding that the petitioner is enjoying the said property in question, which has been also denied by the fourth respondent herein. It is also seen from the affidavit filed by one Thangarasu S/o. Periyannan, where he has stated that the oil mill was run in S.No.289/2 and not in the S.No.287/2.

14. Even though so many grounds have been raised by both the parties, the impugned order does not disclose the same and no valid reason stated for registration. The first respondent has come to the conclusion that the said land was not utilized for residential purpose. No evidence or any reason is

incorporated in the said order on the allegations and counter allegations made by both the parties and the facts and reasons are not discussed in the said order. The petitioners were not given any opportunity regarding the said conclusion whether the petitioners are using the said land for commercial purpose or for any other purpose. There was no proper adjudication of the facts, when the petitioners family have been in possession of the property for more than 50 years, an opportunity ought to have been given to them to explain the said enjoyment. Hence, the order of the first respondent has to be set aside.

15. Accordingly, the order of the first respondent is set aside and the first respondent is directed to conduct a fresh enquiry, after giving proper notice to the parties concerned and pass orders after giving reasonable opportunity to all the parties concerned, within a period of six weeks from the date of receipt of a copy of this order in accordance with law.

16. With the above observations and directions, the Writ Petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The District Revenue Officer,
Salem District.

2.The Revenue Divisional Officer,
Athur Division, Athur,
Salem District.

3.The Tahsildar, Athur Taluk,
Athur, Salem District.

+1cc to Mr.P.I.Thirumoorthy, Advocate SR.No.38120

+1cc to Government Pleader SR.No.38097

W.P.No.5489 of 2008
and
MP.No.1 of 2008

GMY (24/09/2018)