

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.7437 of 2012

M.P.No.1 of 2012

A.K.Kamsa

... Petitioner

Vs

1.The Principal Secretary and
Commissioner for Land
Administration, Chepauk,
Chennai - 600 005.

2.The Assistant Settlement Officer,
Madurai now re designated as
Assistant Settlement Officer,
(South) and now functioning at the
Office of the Commissioner and
Director of Survey and
Settlements, Chepauk
Chennai - 600 005.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari and Mandamus, to call for records relating to the 2nd respondent proceeding in Na.Ka(Ea.1)15467/2010 dated 27.09.2011 and quash the same and direct the 2nd respondent to consider the petitioner's claim on merit and issue Ryotwari patta with respect to the lands comprised in S.Nos.753/1, 753/3, 856, 857/1 and 857/3, Sirumalai Village, Dindigul Taluk and District under the provisions of the Act 26 of 1948.

For Petitioner : Mr.M.Muthappan

For Respondents : Mrs.P.Rosekalam,
Additional Government Pleader

O R D E R

Heard Mr.M.Muthappan, learned counsel for the petitioner and Mrs.P.Rosekalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the 2nd respondent proceeding in Na.Ka(Ea.1)15467/2010 dated 27.09.2011 and quash the same and direct the 2nd respondent to consider the petitioner's claim on merit and issue Ryotwari patta with respect to the lands comprised in S.Nos.753/1, 753/3, 856, 857/1 and 857/3, Sirumalai Village, Dindigul Taluk and District under the provisions of the Act 26 of 1948."

3. The case of the petitioner is as follows:-

According to the petitioner, his grandfather Saidullah Marakayar and the brother of his grandfather acquired valid right and title to an extent of 500 acres in Sirumalai Village from a lawful ryot through registered documents bearing Nos.1403/1922 and 2074/1922. The lands so purchased were properly included within the holdings of his grandfather and the brother of his grandfather.

4. According to the petitioner, Ammainaickanur Zamin Estate was notified in G.O.Ms.No.3157, Revenue Department dated 09.12.1950 and was taken over on 03.01.1951 under the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. Thereafter, ryotwari settlement was introduced in Fasli 1371. According to the petitioner, his predecessors in title were not aware of the settlement proceedings and no proper notice was issued during the settlement proceedings.

5. In this Connection, the petitioner being entitled to succeed to the estate, has submitted an application before the Tahsildar, Dindigul, for grant of patta for the lands belong to him by claiming his right through registered document of title. The Tahsildar included his name as joint pattadar along with other parties. The said order of the Tahsildar came to be cancelled by Revenue Divisional Officer. The cancellation was on the basis that the Tahsildar has no power or authority to correct or revise the registry as finalized by the survey authorities.

6. On advice, the petitioner submitted a representation on 27.09.1997 before the Secretary to Government, Revenue Department. However, the said representation was not disposed of, inspite of enquiry notice issued to the petitioner on various dates and the petitioner having attended the same. In the said circumstances, the petitioner approached this Court in W.P.No.14993 of 2001, seeking direction to the respondent to dispose of the claim petition submitted by him. This Court by

order dated 26.10.2010, directed the second respondent herein to pass orders within a period of four weeks from the date of receipt of a copy of that order. In pursuance of the direction passed by this Court, an order was issued on 27.09.2011, rejecting the claim of the petitioner. The said proceedings of the second respondent is put to challenge in the present writ petition.

7. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

8. The learned counsel for the petitioner would submit that the petitioner claims right through registered sale document through his grandfather and therefore, he is entitled to grant patta for the subject lands. However, without appreciating the claim of the petitioner in proper perspective, the second respondent rejected the same and directed the petitioner to approach the Civil Court for establishing his claim.

9. Per Contra, learned Additional Government Pleader appearing for the respondents would submit that the petitioner was unable to establish before the second respondent about the factum of having any title through his ancestors and about his possession of the subject land. In the counter affidavit, the following averments were stated to resist the claim of the petitioner in paragraph Nos.6 and 7, which are reproduced below:-

"6. It is submitted that in pursuance of the order of the Hon'ble High Court dated 26.10.2010, enquiry notices have been sent to the petitioner and Tahsildar of Dindugal and statement and related documents are obtained from them. After taking into consideration of the revenue records, enquiry papers and statements, 'A' Register, Chitta and Adangal of the Revenue Department, the second respondent herein passed an order directing the petitioner to approach the Civil Court as the petitioner's name is not found in the 'A' Register, Chitta and Adangal extracts vide Na.Ka.(Ea.1)15467/2010, dated 27.09.2011.

7. It is submitted that it is pertinent to note that the petitioner during the enquiry submitted Sale Deed No.1403/1922, legal heir certificate of Tr.A.K.Kamsa Pattanar A.S.Syedullah Meer issued by the Tahsildar, Tiruchendur vide Mu.Mu.No.A8/1035/88 in March 1988 and legal heir certificate of Tr.P.K.Jabarullah Pattanar A.Sahul Hameed Meer issued by Tahsildar, Tiruchendur in Mu.Mu.No.A8/1037/88 in March 1988. Taking into consideration of the above said documents, the said A.S.Syed Meer died on 17.02.1927 and A.S.Sahul Hameed Meer died on 22.11.1937 and the legal heir certificate issued as

early as 60 years before and hence the same cannot be accepted and also there is no evidence produced for their title or possession in respect of subject lands further on verification from the revenue records in Chitta the S.Nos.753/1A, 856 is in the name of Sirumalai Kanaga Sabapathy Poonjolai Company Ltd., and as per 'A' Register also it is recorded in the name of Sirumalai Kanaga Sabapathy Poonjolai Company Ltd. Hence, after taking into consideration of all the revenue records and careful verification, the order has been passed and so the claim of the petitioner is unacceptable. Hence, the writ petition filed by the petitioner is not maintainable either in law or in facts and is liable to be dismissed."

10. This Court has considered the rival submissions of the learned counsel appearing for the parties. As rightly contended by the learned Additional Government Pleader appearing for the respondents that in the absence of any evidence in support of the claim of the petitioner, no relief could be granted to him in the writ petition. As rightly held by the second respondent that it is a clear case where the petitioner has to approach the competent Civil Court for establishing his right to claim title over the property. It is needless to mention that the documents cited by the petitioner were several decades old and after passage of so many decades, this Court is unable to appreciate how the petitioner could lay a claim without any valid title and documents to the property concerned.

11. Moreover, this Court does not find any worthwhile grounds raised in the writ petition in assailing the impugned proceedings of the second respondent. As per the case in hand is concerned, it requires factual adjudication of dispute and this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot adjudicate the factual disputes raised in the present writ petition. Therefore, the writ petition is not maintainable. It is always open to the petitioner to approach the appropriate Civil Court to establish his right over the subject lands.

12. Therefore, the writ petition is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1.The Principal Secretary and
Commissioner for Land
Administration, Chepauk,
Chennai - 600 005.

2.The Assistant Settlement Officer,
Madurai now re designated as
Assistant Settlement Officer,
(South) and now functioning at the
Office of the Commissioner and
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Settlements, Chepauk
Chennai - 600 005.

+lcc to Government Pleader sr.38280

+lcc to Mr.M.Muthappan, Advocate sr.no.37802

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nr 17/07/2018



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