IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.09.2018

Pronounced on : 05-10-2018

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Review Application (W) Nos. 27 and 28 of 2018
--

D. Manjula Kuppusamy .. Petitioner in Rev. A. No. 27

D. Manjula Kuppusamy
represented by her power agent
Mr. Prem Anand
No.236, New Additional Law Chambers
High Court Campus
Chennai - 600 104 .. Petitioner in Rev. A. No. 28

Versus

1. The District Revenue Officer
O/o. District Collector
Sathuvacherry
Vellore - 632 009

2. The Tahsildar
Taluk Office
Vellore .. Respondents in both
Vellore District the Review Applications

Review Applications filed under Order XLVII Rule 1 read with Section 114 and Section 151 of Code of Civil Procedure praying to review the Common Order dated 05.04.2016 passed in WP Nos. 23964 of 2013 and 11271 of 2015 respectively.

For Petitioner : Mr. V. Srikanth
for Mr. V. Chandrasekaran
in both the Review Applications

For Respondents : Mr. M. Elumalai
Government Advocate
in both the Review Applications

COMMON ORDER

Both these Review Applications have been filed praying to review the Common Order dated

05.04.2016 passed by this Court in WP Nos. 23964 of 2013 and 11271 of 2015.

2. The Review Applicant in both the Review Application is one and the same person viz., D. Manjula Kuppusamy, represented by Mr. Prem Anand, who is her power of attorney agent. The Review Application No. 27 of 2018 has been filed as against the order dated 05.04.2016 passed in Writ Petition No. 23964 of 2013. The said Writ Petition No. 23964 of 2013 was filed for issuance of a Writ of Declaration declaring that the action of the respondents in attempting to take away the land in Survey No.194, 194A1 (New Survey No.290/10) in Pillaiyar Koil Street to the extent of 3375 square feet in Anaicut Village without following due process of law as illegal and arbitrary.

3. Review Application No. 28 of 2008 has been filed as against the order passed in Writ Petition No. 11271 of 2015, which was filed to quash the proceedings dated 25.04.2013 of the first respondent with a consequential direction to direct the first respondent to rectify the wrong entry made in the Village Register as Grama Savadi at the time of UDR and to issue patta in favour of the petitioner's mother Tmt. D. Manjula Kuppusamy in respect of the lands in Old Survey No.194, 194/A1 (New Survey No.290/10) in pilliyar Koil Street to the extent of 3375 square feet in Anaicut Village, within the jurisdiction of the Sub-Registrar, Pallikonda, Vellore Taluk.

4. The case of the Review Applicants, as could be culled out from the affidavits filed in support of WP No. 23964 of 2013 is that the lands in Old Survey No.194, 194/A1 (New Survey No.290/10) in Pilliyar Koil Street measuring 3375 square feet in Anaicut Village, Vellore District originally belonged to Venkatachalapathy Naidu, son of Krishnasamy Naidu, from whom the Grand mother of the Review Applicant namely Mrs. G. Jayalakshmi purchased it on 09.12.1966 by a registered sale deed bearing document No. 2491 of 1966 on the file of Sub-Registrar, Gudiyatham. From the date of such purchase, the grand mother of the Review Applicant was in continuous possession and enjoyment of the lands for more than four decades and ultimately on 20.01.2011, she executed a settlement deed dated 20.01.2011 in favour of the Review Applicant which was registered as document No. 224 of 2011 on the file of Sub-Registrar, Pallikonda. According to the Review Applicant, originally the lands were classified in the Village records as Grama Natham and the adjacent land owners in the very same survey number have been issued with Patta in their name but in the case of the Review Applicant, patta was not issued. When it was questioned, it was informed that the lands in question are classified as Grama Chavadi over which the Review Applicant cannot assert any right. According to the Review Applicant, during the UDR updation of records, the classification of the lands in question has been mistakenly changed as Grama Chavadi instead of Gramanatham. The Review Applicant therefore submitted a representation dated 02.07.2012 to the first respondent to rectify the error crept in classifying the land in the 'A' Register. On the basis of such representation, the respondents and other revenue officials have conducted a detailed enquiry and decided to issue patta in the name of the Review Applicant, but in fact, the respondents did not issue patta. Therefore, the Review Applicant has earlier filed WP No. 3099 of 2013 before this Court for a Mandamus. By order dated 07.02.2013, this Court disposed of the writ petition with a direction to the respondents therein to consider granting patta in favour of the Review Applicant within two months therefrom. Pursuant to the order passed by this Court, the first respondent has conducted an enquiry on 22.04.2013 in which the Review Applicant participated and her statement was also recorded. Thereafter, nothing was heard from the respondents, therefore, a Contempt Petition No. 1172 of 2013 was filed before this Court in which notice was ordered to the first respondent. On receipt of the notice in the contempt petition, the first respondent allegedly trespassed into the lands of the Review Applicant purportedly on the ground that the land is required for putting up a construction of Village Administrative Office. In such circumstances, the petitioner has filed the first writ petition, being WP No. 23964 of 2013 for a declaratory relief. When the first writ petition in WP No. 23964 of 2013 was pending, the first respondent passed an order dated 25.04.2013 rejecting the claim of the petitioner for issuaance of patta on the ground that the land in question exclusively

belongs to the government as it is classified as "gramachavadi" in the revenue records. Challenging the same, the petitioner has filed the second writ petition No. 11271 of 2015 seeking to quash the order dated 25.04.2013 of the first respondent.

5. When the writ petitions were taken up for hearing, it was argued on behalf of the writ petitioners/review applicant that the respondents failed to take note of the continued possession and enjoyment of the land in question by the mother of the Review Applicant as well as the review applicant herself. The land in question was purchased by the grand mother of the Review Applicant by a registered sale deed dated 09.12.1966 and if really the lands in question is not classified as gramanatham lands, the registering authority would not have entertained the sale deed for registration. Therefore, once the land is classified as gramanatham lands it can be construed that it was earmarked for private use of the possessor. It was therefore reiterated in the writ petition that the land in question was only classified as Gramanatham and not as Gramachavadi, as alleged by the respondents.

6. Opposing the writ petition, on behalf of the respondents, it was contended that a detailed enquiry was conducted, preceded by a field inspection and a report was also submitted to the first respondent stating that the land in question is classified as gramachavadi in the revenue records. It was also stated that the Review Applicant has also appeared for enquiry on 22.04.2013 and after hearing her, the order dated 25.04.2013 was passed rejecting her claim. It was further argued that in the order dated 25.04.2013, the history of the title of the land has been traced and ultimately it was concluded that the land was classified only as "gramachavadi" which is a government poromboke land as per the revenue records. It was also stated that based on the available records. the first respondent has concluded that there was no error during the UDR updation proceedings and the classification of the land continued to remain as "gramachavadi".

7. In the light of the above arguments made in the writ petitions, this Court, passed the following Order:-
"6. I heard the learned senior counsel appearing for the petitioner in WP No. 23964 of 2013, the learned counsel for the petitioner in WP No. 11271 of 2015 and the learned Additional Government Pleader for the respondents in both the writ petition. I have carefully perused the materials placed before this Court. The only question that arise for consideration in this writ petition is whether the land in question was originally classified as "gramanatham" and subsequently, during updating of the revenue records it was erroneously re-classified as "gramachavadi". If the land is classified as "gramanatham" then the resultant conclusion to be arrived at is that it was earmarked for private use of the possessor. If the land is classified as "gramachavadi" it has to be held that the government is the paramount title holder of such land in which a private person cannot assert a right or interest as a matter of right.
7. In this case, as per the counter affidavit of the first respondent, it is stated that at the time when the mother of the petitioner purchased the lands in question by way of registered sale deed dated 09.12.1966, the lands in question remained as "gramachavadi" in the revenue records and at any point of time it was classified as "gramanatham". Further, in the order dated 25.04.2013, it was stated that during the settlement proceedings, if really the character of the land has been re-classified by mistake, the petitioner, who claims to be in possession for more than 47 years, would have given an objection to the settlement officer. On the other hand, the petitioner has not given any such objection at the earliest point of time. It is further stated that the Natham Settlement Officer, after considering all the records placed before him has taken a final decision in respect of all the lands situated in Anaicut Village, Vellore District on 30.06.1992. If there is any error in the classification of the lands, the Settlement Officer himself would have rectified it, however, since the lands were classified as "gramachavadi" the quesiton of re-classifying the land does not arise.
8. This order of the first respondent is challenged in WP No. 11271 of 2015 by specifically

contending that even during the year 1966, the mother of the petitioner has purchased the lands in question by means of a registered sale deed. If really the land was classified as "gramachavadi" at that time, the registering authority would not have registered the same. Further, during the year 2011, the mother of the petitioner executed a settlement deed dated 20.01.2011 in her favour which was registered as document No. 224 of 2011 on the file of Sub-Registrar, Pallikonda. It is evident that this settlement deed came to be registered after the Natham Settlement Officer has passed a final order on 30.06.1992 in respect of classification of all the lands in Anaicut Village, Vellore District. If it is so, atleast, the registering authority would not have ventured to register the settlement deed dated 20.01.2011 by referring to the fact that the land in question is only classified as "gramachavadi". Apart from the above, it is the specific case of the petitioner that in the same survey Number namely Old Survey No.194, 194/A1 (New Survey No.290/10) in pilliyar Koil Street Anaicut Village, Vellore District, the adjacent land owners have been issued with Patta in their name but the petitioner alone is discriminated. It is seen that in the order dated 25.04.2013 which is impugned in WP No. 11271 of 2015, there is no findings relating to the above points.
9. In this background, it has to be stated that the first respondent is the competent authority to consider re-classifying a land. Even in the order dated 25.04.2013 or in the counter before this Court, the first respondent has not given reason as to how the registering authority had entertained the registration of sale deed as well as settlement deed and whether the adjacent land owners have been issued with patta, as claimed by the petitioner. It is also to be stated that this Court, in exercise of jurisdiction under Article 226 of The Constitution of India, cannot venture to give any finding as to the correctness or otherwise of the classification of the lands in question. While so, in the interest of justice, it is just and necessary that the matter has to be remitted back to the first repsondent for fresh consideration of the claim made by the petitioner.
10. Accordingly, the order dated 25.04.2013 of the first respondent, which is impugned in WP No. 11271 of 2015, is set aside. The matter is remitted back to the first respondent with a direction to consider the claim of the petitioner afresh after hearing the petitioner. The petitioner is directed to produce all the documentary evidence to the first respondent in support of his claim. The first respondent shall consider the documentary evidence that may be produced by the petitioner and thereafter pass orders on merits and in accordance with law.
11. In view of the order passed in WP No. 11271 of 2015, no further order is required to be passed in WP No. 23964 of 2013. No costs. Consequently, MP No. 1 of 2015 in WP No. 11271 of 2015 is closed.

8. It is the above order dated 05.04.2016 passed by this Court in the Writ Petitions referred to above, which is sought to be reviewed at the instance of the Review Applicants.

9. When the Review Applications are taken up for hearing, the learned counsel for the Review applicants would vehemently contend that the lands in question are classified only as "Gramanatham" which could be evident from the copy of the UDR updation register furnished to the Review Applicants, wherein, corresponding to the land in Survey No. 194/A-1, 194/A-2 and 194/A-3, it is clearly indicated that the lands are classified only as "Gramanatham". It is further submitted by the counsel for the Review Applicants that after the order dated 05.04.2016 was passed by this Honourable Court in the above said Writ Petitions, the Review Applicants have submitted an application dated 03.06.2017 invoking the Right to Information Act. On the basis of such application, a reply dated 05.07.2017 was issued by the Public Information Officer cum Head Quarters Deputy Tahsildar, Anaikattu. Along with the reply dated 05.07.2017, the Adangal Extract relating to the lands situated in Anaikattu Village has been enclosed and on perusal of the same, it is clearly stated that the land covered in the Review Applications are classified only as Gramanatham. However, in the counter affidavit filed in the above writ petitions, it was erroneously stated on behalf of the respondents that the lands are only classified as Grama Chavadi and on the basis of the averments in the counter affidavit, this Court has disposed of the above writ petitions. Thus, according to the

counsel for the petitioners, had the revenue records relating to the above lands been produced by the respondents, before this Court at the time when the writ petitions were heard, this Court would not have passed the order dated 05.04.2016 remanding the matter back to the respondents, instead, the writ petitions would have been allowed by this Court. The learned counsel for the Review Applicants would further contend that only after disposal of the writ petitions, the Review Applicants came to know about the fact that even at the time of UDR process, the subject matter of the land stood classified only as "Gramanatham" in the Village register. The name of the "A" register maintained in respect of the aforesaid Village itself is titled as "Natham Settlement" register and therefore, the respondents cannot deny that the land in question is classified as Gramanatham. The natham settlement scheme was introduced to issue patta to people who are in possession of Gramanatham lands. Once a land is classified as Gramanatham lands, the government cannot deny the right of a person to own and hold such land for his private use. Thus, it is the submission of the counsel for the petitioners that in view of the fact that the lands in question are classified as Gramanatham in the revenue records, the order dated 05.04.2016 passed in the writ petitions are to be reviewed by allowing the present Review Applications and consequently to issue a direction to the respondents to issue patta to the Review Applications in respect of the subject matter of the land.

10. Countering the submission of the counsel for the petitioners, the learned Government Advocate appearing for the respondents would contend that in the order dated 05.04.2016, this Court has not negatived the claim of the Review Applicants, While disposing of the writ petitions, this Court has issued a direction to the respondents to consider the claim of the Review Applicants afresh after affording them an opportunity of hearing. For maintaining a Review Application, it must be shown that there is an error apparent on the face of the record and in the absence of the same, the Review Applications cannot be maintained. While so, the question of reviewing the order dated 05.04.2016 passed by this Court is not warranted and he prayed for dismissal of the writ petition.

11. Heard the counsel for both sides. The present Review applications are filed by the Review Applicants mainly on the ground that the land in question is not classified as Grama Chavadi as has been alleged by the respondents in the counter affidavit filed before this Court and it is only classified as Gramanatham and therefore, the Review Applicants are entitled for issuance of Patta. In the light of the above dispute, this Court directed the learned Government Advocate to produce the records relating to the present case. Accordingly, the original records have been produced for perusal of this Court. On perusal of the records, particularly the copy of the "A" register, it is evident that the lands in question are only classified as "gramanatham" and not as "Gramachavadi" as has been indicated in the counter affidavit filed in the writ petitions by the respondents. As rightly pointed out by the counsel for the Review Applicants, had the original records relating to the land in question been produced at the time of hearing of the writ petitions, this Court would not have passed the order in the writ petitions remanding the matter back to the respondents for fresh consideration. At the same time, this Court finds that in the order dated 05.04.2016 passed in WP Nos. 23964 of 2013 and 11271 of 2015, this Court has not negatived the claim of the Review Applicants but directed the respondents only to consider the claim of the Review Applicants and to pass orders thereof. Therefore, the said direction issued in the order dated 05.04.2016 passed in WP Nos. 23964 of 2013 and 11271 of 2015 does not warrant any review. However, taking note of the classification of the land in question in the revenue records, as mentioned above, this Court hereby directs the respondents to consider the claim of the petitioner, during the course of enquiry, for issuance of Patta in their favour, on the basis of the revenue records, particularly the "A" register wherein, the land in question is classified as Gramanatham and to pass orders thereon.

12. Accordingly, both the Review Applications are disposed of. No costs.

05-10-2018

rsh

To

1. The District Revenue Officer
O/o. District Collector
Sathuvacherry
Vellore - 632 009

2. The Tahsildar
Taluk Office
Vellore
Vellore District

R. SUBBIAH, J

rsh

`

Common Order in

RA (W) Nos. 27 and 28/2018

05-10-2018