

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.8618 of 2011 and
M.P.No.1 of 2011

1.M.Kannan
2.K.Devaki

... Petitioners

Vs

1.A.Rajendran
2.The Revenue Divisional Officer,
Cuddalore.
3.The District Revenue Officer,
Cuddalore.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records and quash the order of the 2nd respondent in his proceeding Na.Ka.A8-1407-2010 dated 03.05.2010 as confirmed by the 3rd respondent in his proceedings Na.Ka.V3-16488/2010 dated 31.12.2010 and consequently, direct the respondents to restore patta in respect of Natham S.No.435/10 in Kurinjipadikuppam Village, Kurinjipadi Taluk, Cuddalore District to the name of the 2nd petitioner.

For Petitioners : Mr.R.Gururaj
For Respondents : Mr.K.A.Ravindran for R1
: Mr.P.P.Purushothaman,
Government Advocate for RR2 to 3

O R D E R

Heard Mr.R.Gururaj, learned counsel for the petitioners and Mr.K.A.Ravindran, learned counsel appearing for the first respondent and Mr.P.P.Purushothaman, learned Government Advocate appearing for the second and third respondents.

2. The petitioners have approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records and quash the order of the 2nd respondent in his proceeding Na.Ka.A8-1407-2010 dated 03.05.2010 as confirmed by the 3rd respondent in his

proceedings Na.Ka.V3-16488/2010 dated 31.12.2010 and consequently, direct the respondents to restore patta in respect of Natham S.No.435/10 in Kurinjipadikuppam Village, Kurinjipadi Taluk, Cuddalore District to the name of the 2nd petitioner."

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

The petitioners are the husband and wife and they are owning certain properties in various Survey Numbers which is the subject matter of dispute before this Court. According to the petitioners, the property is a natham property and not a poramboke property and the same is a house site. Under the natham scheme, the property was assigned in Survey Nos.435/9, 435/10. The petitioners purchased the property from one Mr.Subramanian by means of a registered sale deed dated 22.07.1993.

4. One Mrs.Bakkiam, wife of Mr.Abraham, owns the adjacent property and her property bears Survey Nos.434/25 and 434/10. The said Bakkiam filed O.S.No.351/2000 in the Court of the Additional District Munsif, Cuddalore, for permanent injunction against the petitioners. The suit related to Survey Nos.434/25, 434/10. However, the said Bakkiam had filed wrong description of the property by including the portion of the pathway belonging to the petitioners.

5. According to the petitioners, the said Bakkiam deliberately wanted to grab the property belonging to them. However, on merits, the suit was dismissed on 25.02.2005, specifically holding that the plan was wrong. According to the petitioners, the correct plan filed by the petitioners was accepted by the Civil Court, against which A.S.No.39 of 2005 was filed and the same was also dismissed on 31.08.2005 by the II Additional Sub-Judge, Cuddalore and the same became final.

6. According to the petitioners, patta has been given to the petitioners. The patta was issued under private property of Natham Upgradation Scheme. It was never classified as poramboke property. According to the petitioners, there was no pathway existing at any point of time in the subject property.

7. While matter stood thus, the first respondent approached the second respondent by giving representation on 03.03.2010. An enquiry was conducted and without proper enquiry, a report was submitted by the Tahsildar and on the basis of which, the second respondent on his own passed an order in his proceedings dated 03.05.2010, holding that there was a pathway in the subject property. Thereafter, a revision was filed before the third respondent. In the revision, several grounds were raised stating that principles of natural justice were not followed and it was not within the jurisdiction of the second respondent authority

to decide the issue of title over subject property. It was also contended that no proper opportunity was given to the petitioners, but, simply the order was passed by the second respondent.

8. It appears that the first petitioner was employed as Village Menial and the second petitioner was employed as Noon Meal Organizer. The second respondent happened to be their superior. Therefore, they could not voice grievances for enforcing their right effectively. While so, the third respondent by proceedings dated 31.12.2010, confirmed the order of the second respondent without going into various factors and issues raised in the revision petition and without giving due appreciation to the claim of the petitioners vis-a-vis the first respondent. The said orders are put to challenge in the present writ petition.

9. The learned counsel for the petitioners at the outset would submit that it was not within the power of the Revenue Authority to decide the title dispute between the parties and it is only the competent Civil Court which can adjudicate the rights of the parties in this regard. The orders passed by the second respondent as well as third respondent would amount to deciding the title of the petitioners and therefore, such order ought not to be countenanced in law or on facts.

10. The learned counsel appearing for the first respondent would submit that the authorities had taken into consideration the relevant factors before passing the impugned orders. Therefore, the orders do not call for interference.

11. The learned counsel appearing for the second and third respondents also filed counter affidavit and made his submissions.

12. Having considered the rival submissions of the learned counsels, this Court is of the view that there appears to be disputed questions of fact in regard to the nature of claim of the petitioners vis-a-vis the claim of the first respondent. Such dispute cannot be resolved before this court which is exercising its jurisdiction under Article 226 of the Constitution of India. In any case, the second and third respondents are not empowered to decide the title issues as between the private parties viz., the petitioners as well as the first respondent.

13. That being the case, the orders passed by the second and third respondents cannot held to be valid. Moreover, it appears from the records that no proper opportunity was afforded to the petitioners before the impugned orders came to be passed. In any event, such disputes squarely fall within the jurisdiction of

the competent Civil Court and the Revenue Authorities cannot arrogate the power to themselves as to decide the title issues between the parties.

14. For the above said reasons, the impugned orders in Na.Ka.A8-1407-2010 dated 03.05.2010 and Na.Ka.V3-16488/2010 dated 31.12.2010, are set aside. It is open to the parties to approach the competent Civil Court to establish their respective rights in regard to the subject property. In order to enable the parties to approach the competent Civil Court and also in regard to the facts and circumstances of the present case are concerned, the status quo as on today shall be continued for further period of eight weeks from the date of receipt of a copy of this order. It is upto the parties to approach the competent Civil Court, as they may be advised.

15. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gsk

To

1. The Revenue Divisional Officer,
Cuddalore.
2. The District Revenue Officer,
Cuddalore.

+1 CC to Govt. Pleader sr 26297

+1 CC to Mr.R. Gururaj, Advocate sr 26146.

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W.P.No.8618 of 2011

SSV(CO)
SP(14/05/2018)