

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018
Pronounced on : 11.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.17092 of 2008
and
M.P.No.1 of 2008

Errappa

.. petitioner

Vs.

1. Forest Settlement Officer,
Krishnagiri District.
2. District Forest Officer,
Krishnagiri District.
3. Collector of Krishnagiri,
Krishnagiri District.
4. Government of Tamilnadu,
rep. by its Secretary,
Forest Department,
Fort. St.George, Chennai-9.

... Respondents

(R4 is impleaded as per order dated
08.01.2010 by KSAJ in M.P.No.1 of
2009 in W.P.No.17092 of 2008)

This Writ Petition filed has been filed for issuance of a
Writ of Certiorari to call for the records of the first
respondent herein in Na.Ka.O.M.241/2007, dated 26.02.2008 and to
quash the same.

For petitioner : Mr.V.Krishnan

For Respondents : S.N.Kirubanandam

Special Government Pleader (Forest)

O R D E R

This writ petition has been filed to call for the records
of the 1st respondent in Na.Ka.O.M.241/2007 daated 26.02.2008 and
to quash the same.

2.The learned counsel for the petitioner sent a legal notice dated 26.09.2007 to the District Collector of Krishnagiri. In the said legal notice, the petitioner had sought for a clarification as is extracted below:

"I trust that my client's lands an extent of 13 acres in Surevy Nos.243/G, 243/H and 243/H2 have not been taken over by the Government as Forest Land. However if the Government have passed any orders treating these lands as Forest lands the copy of the orders may be furnished to my clients. If the Government has passed orders taking over these lands as Forest Lands my client seeks the deletion of his lands from the list of lands taken as Forest Lands in Berikai Village. I request you to consider the above request of my client favourably and I await your communication to this notice within two weeks of its receipts."

3.It is the case of the petitioner that patta in respect of 13 acres of land in Survey Nos.243/G, 243/H and 243/H2, Hosur Taluk, Krishnagiri was granted to one V.P.Raja by the then Zamindar wat back in the year 1938 and that the petitioner's ancestors had spent considerable amount in levelling the land and making the land fit for cultivation. The petitioner stated that after the demise of his father in 1960, he was in absolute and exclusive possession and enjoyment of the lands and there was no encumbrance over the property till 1960.

4.It is the case of the petitioner that the land came to be classified as forest land is in violation and without any notice and therefore the impugned communication in Na.Ka.O.M.241/2007 dated 26.02.2008 should be quashed.

5.The learned counsel for the respondents filed their counter and stated that the writ petition is not maintainable.

6.It was further submitted that the petitioner has no right over the land in question as it has been classified as forest land "Kadu" under Section 63 of Madras Estate (Abolition and Conversion into Ryotwari) Act, 1948 in S.R No.23/57 noted in SLR maintained by the Revenue Department and was subsequently declared as reserved land under Section 4 of Tamilnadu Forest Act, 1882 vide G.O.Ms No.137 F & F Department dated 02.08.1975 and was subsequently the same also declared as Reserve Forest Lands under Section 16 of the Tamilnadu Forest Act, 1882 vide Government letter No.55285/FRIII/80-5 F & F Department dated 06.03.1981 after following due procedure under Tamilnadu Forest Act, 1882.

7.It is further averred in the counter that the petitioner did not appear for enquiry before the authority concerned nor

furnished any document in support his claim but merely issued a legal notice dated 26.09.2007 and that the land in Survey No.243/1 to an extent of 202.96 acres (82.14 Hec.) in Berigai village had already been taken over by the Government and mentioned as forest land "Kadu" under Section 63 of the Madras Estate (Abolition and Conversion into Ryotwari) Act, 1948 vide G.O. Ms. No.3212 Revenue dated 19.12.1950 after that settlement were made party No.IV of Salem during the year 1958.

8.It has been further averred that the land in Survey No.243/1 measures to an extent of 202.96 acres and that the land in Survey No.255 has been co-related to Survey No.243/H2 and has been renumbered as Survey No.255 during the settlement to the extent of 1.75 acres.

9.It is further submitted, ryotwari patta has been granted to K.Muniappa under settlement procedure. The petitioner has not been in possession of the land as is evident from the legal notice dated 26.09.2007. The petitioner merely sought for clarification eventhough the land relating to the property had been declared as a Kadu, thereafter as reserved land and thereafter as reserve forest. The patta given by the erstwhile Zamindhar has no consequence. The writ petition had been filed in the year 2008 after issuing legal notice and is belated and is liable to be dismissed.

10.In Mariabackiammal (deceased) Vs. The District Forest Officer 1990-2-L.W. 478, this Court while dealing with the failure of a ryout to obtain patta under Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 held that it does not have the effect of changing the character of the land it will continue to be ryoti land.

11.The Court also held that there is no extinguishment of the rights of a ryot with the notification of the Estate under Act 26 of 1948 in I.L.R. 1970-2-Madras 788.

12.In the present case, the learned counsel has produced the patta given by the Zamindar to show that his ancestors were in possession of the land.

13.Dealing with the same issue, the Court in Mariabackiammal case supra noted that the claimant there had brought evidence and unbroken chain of title from the year 1943 and she produced a registered sale deed whose genuineness and authenticity has not been questioned. The receipts for payment of kist to the State government long after the notified date had been filed and that neither the forest Settlement Officer nor the District Judge have bestowed any attention to this evidence.

14.I am of the view that the impugned letter is a mere communication and therefore cannot be quashed to give any

meaningful relief. It is a reply by the respondent to the legal notice dated 27.05.2008 issued by the counsel for the petitioner. It does not give a cause of action. It has not determined rights but merely informs the status of the land. If the petitioner is entitled to claim any right over the land, he has to work out his remedy under the law to establish possession and for issue of patta under the relevant law.

15.The petitioner may therefore work out his remedy if such remedy is available to him under law. Dismissal of the writ petition and the observation in this order shall not be construed adversely or considered prejudicially to the petitioner in subsequent proceedings.

16.In view of the above observations, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

// True Copy//

Sub Assistant Registrar

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To:

1. Forest Settlement Officer,
Krishnagiri District.
2. District Forest Officer,
Krishnagiri District.
3. Collector of Krishnagiri,
Krishnagiri District.
4. The Secretary,
Government of Tamilnadu,
Forest Department,
Fort. St.George, Chennai-9.

+1cc to The Government Pleader, sr.no.62777

W.P.No.17092 of 2008

RMP (28/09/2018)