

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Writ Appeal No.2211 of 2018

V.P.Jayakumar

... Appellant

Vs.

1. The Principal Secretary and
Commissioner,
Land Administration,
Chepauk, Chennai 600 005.
2. The District Revenue Officer,
Coimbatore.
3. The Revenue Divisional Officer,
Coimbatore.
4. Shri. Varadharaja Perumal Thirukoil
Thirupanikuzhu Committee,
rep. By its President,
Mr.P.Balasubramaniam,
Vellalur, Coimbatore - 641 111.
5. Sri. Karivaradaraja Perumal
Thirukoil Thirupanikkuzhu,
rep. By its President,
P.Balasubramaniam, सतयमेव जयते
1-A, Subbia Gounder Street,
Vellalur, Coimbatore - 641 111.
6. A.Gopalakrishnan
7. Pattakkara Arusamy
8. Kannan
9. K.Murugesan
10. Kumaran @ Kumar
11. V.Senthil Kumar
12. K.Radhakrishnan
13. R.Kanagaraj
14. V.Sethuram Subbiah @ Sethu

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 17.09.2018 passed by a learned Single Judge of this Court in W.P.No.6193 of 2014. Petition filed to issue a writ of certiorarified Mandamus calling for the records relating to the 1st respondent in her proceedings vide No.K4/1086/ 2014 dated 21.1.2014 quash the same and consequently direct the 1st respondent to issue patta in favour of the petitioner after rectifying the error crept in the Re-survey and Re-settlement together with the order of substitution for the classification of Nanja Land in the place of Tharisu land in respect of S.No.764/5 of Vellalur Village Coimbatore South Taluk into UDR;

For Appellant : Mr.D.Veerasekaran

For Respondents 1 to 3 : Mr.V.Anandhamoorthy,
Additional Government Pleader

For Respondents 4 to 14 : Mr.R.Bharath Kumar

J U D G M E N T

(Judgment of the Court was delivered by R.SUBBIAH,J.)

Being aggrieved by the order dated 17.09.2018 passed by the learned Single Judge in W.P.No.6193 of 2014, the Writ Petitioner has come up with the above Writ Appeal.

2. According to the Appellant/Writ Petitioner, he and his forefathers are in continuous possession and enjoyment of the land comprised in S.No.764/5 and the Writ Petitioner is paying kist to the said land continuously. While carrying out the re-survey and settlement, the Writ Petitioner's forefather's name had not been mentioned. Further, in the course of carrying out UDR, the above said Survey Number alone was erroneously classified as "Tharisu" without verifying the valid and lawful title of the Petitioner's forefather. Though there is a Government Order and well established procedures contained in the manual of re-settlement, both were conveniently ignored and the 2nd Respondent, vide proceedings dated 04.12.2013, arbitrarily rejected the Writ Petitioner's lawful and genuine grievance and passed an exfacie illegal order.

3. Challenging the said proceedings dated 04.12.2013 passed by the 2nd Respondent, the Appellant/Writ Petitioner preferred an Appeal before the 1st Respondent on 09.01.2014. The 1st Respondent, vide order dated 21.01.2014, simply rejected the Writ Petitioner's Appeal, stating that there is no valid ground to pass orders at that stage. It is further stated by the Writ Petitioner that based on the Proceedings dated 04.12.2013 of the

2nd Respondent and the Proceedings dated 21.01.2014 of the 1st Respondent, the 3rd Respondent had been warning him to remove the live fencing and the barbed wire fencing put up in and around the four sides of S.No.764/5. Also, on 30.01.2014, the 3rd Respondent mobilized JCB (Earthmover) with men and material to break open the live and barbed fencing put up by the Writ Petitioner, so as to take over the land comprised in S.No.764/5 of Vellalur Village from the Writ Petitioner's possession.

4. The said act of the 3rd Respondent, according to the Writ Petitioner, is to hand over the said land to lawless group of people, who are actively involving themselves in Real Estate activities, so as to make use of the land for the formation of a road connecting their huge housing layout comprised in Survey No.764/9A. Aggrieved by the order dated 21.01.2014 passed by the 1st Respondent, the Writ Petitioner filed W.P.No.6193 of 2014 and by an order dated 17.09.2018, this Court has issued the following direction:

"3. The learned Special Government Pleader appearing for the respondents on verification of files would inform this Court that the portion of the land belongs to the Government, which is classified as 'Tharisu', is under encroachment. This apart, a portion of the land is classified as 'Poramboke', which is the pathway for the people of that locality. All those pathway and Tharisu lands are under encroachment in the hands of few people.

4. Under these circumstances, this Court is of an opinion that there cannot be any compromise in respect of protecting the Government lands and the encroachments made in public lands can never be tolerated. Thus, the Tahsildar, Madukkarai Taluk, Coimbatore District, is directed to measure the entire lands belonging to the Government classified as 'Tharisu' or pathway or Poramboke or otherwise and identify the Government lands with the assistance of Assistant Director of Survey Land Records, Coimbatore District and submit a report before this Court on 28.09.2018.

5. Post the matter on 28.09.2018, 'for orders'."

5. Aggrieved by the said direction passed by this Court in W.P.No.6193 of 2014, the Writ Petitioner has rushed to this Court with the present Writ Appeal.

6. Learned counsel for the Appellant contended that the learned Single Judge failed to note that the subject matter of the land comprised in Survey No.764/5 of Vellalur Village is absolutely a Patta land and the title is in accordance with law, pursuant to the registered Sale Deed executed in favour of the Writ Petitioner's ancestor during 1913. He further contended that the learned Single Judge ought not to have issued such a direction to measure the Writ Petitioner's land, since, such a direction would totally deprive the legal right of the Writ Petitioner to pursue his appeal remedy.

7. On the other hand, learned Additional Government Pleader appearing for Respondents 1 to 3 submitted that the Writ Petitioner has hastily approached this Court by way of the present Writ Appeal, when the learned Single Judge had only issued a direction to the Tahsildar concerned to measure the entire lands in Survey No.764/9A and submit a Report to this Court.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. A perusal of the order dated 17.09.2018 passed by the learned Single Judge in W.P.No.6193 of 2014, clearly shows that the learned Single Judge had only directed the Tahsildar, Madukkarai Taluk, Coimbatore District, to measure the entire lands in question and submit a Report to this Court. Undoubtedly, the Writ Petitioner has hastily filed the present Writ Appeal. When there is a dispute as regards title of the property, the same has to be resolved legally by following the appropriate procedure. In our view, the Writ Appeal is premature and has to be dismissed.

10. Hence, we find no infirmity in the order dated 17.09.2018 passed by the learned Single Judge in W.P.No.6193 of 2014. Accordingly, the Writ Appeal is dismissed, confirming the order passed by the Learned Single Judge. No costs. Consequently, connected C.M.P.No.17335 of 2018 is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Principal Secretary and Commissioner,
Land Administration,
Chepauk, Chennai 600 005.
 2. The District Revenue Officer,
Coimbatore.
 3. The Revenue Divisional Officer,
Coimbatore.
- + 1 cc to the Government Pleader Sr.67809
+ 1 cc to Mr. R.Bharath Kumar, Advocate SR.67677
+ 1 cc to Mr. D. Veerasekaran, Advocate SR.66965

W.A.No.2211 of 2018

SS(CO)
EU(23/10/2018)



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