



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.10250 of 2018

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1.Y.Sathyabama

2.A.Masilamani

... Petitioners

Vs.

The Thasildar,
Thanjavur Taluk,
Thanjavur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondent to delete the word Anadeenam and to mutate patta in petitioners' name for (DR S.No.136/1 Western 1 Acre 15 cents (Old RS No.136) and mutate patta in the name of the second petitioner in (1) R.S.No.136/1 Eastern 50 cents (Old R.S.No.136) and (2) an extent of 2 Acres 2 cents in R.S.No.136/4 in favour of the second petitioner.

For Petitioners: Mr.Veera Kathiravan
Senior Counsel
for Mr.N.Balakrishnan

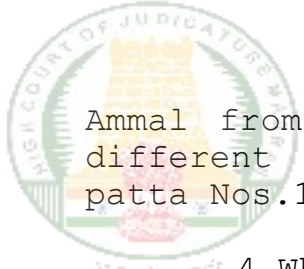
For Respondent : Mr.S.Dhayalan,
Government Advocate.

ORDER

The present writ petition has been filed by the petitioners seeking for a writ of Mandamus, directing the respondent/the Thasildar to mutate patta in the first petitioner's name for DR S.No.136/1, Western 1 Acre 15 cents (Old RS No.136) and in the name of the second petitioner in R.S.No.136/1 Eastern 50 cents (Old R.S.No.136) and an extent of 2 Acres and 2 cents in R.S.No.136/4.

2.The petitioners claim that the total extent of 3.67 acres were purchased by them on two different dates, which originally belongs to one Appavoo Pillai @ Veerappa Pillai, who had purchased the same in a Court auction on the file of the Sub Court, Thanjavur and he had two sons, by name Sachidhanandam Pillai and Saminathan Pillai.

3.In the partition between the brothers, who are the sons of Appavoo Pillai @ Veerappa Pillai, the present extent of 3 acres 67 cents under the possession of the petitioners, the disputed property was allotted to Sachithandam Pillai, who had mutated his name in the revenue records as early as 1935. Upon the death of the said Sachithandam Pillai, his son Vasudeva Pillai inherited the property and sold the extent of 3.67 acres in favour of one Savithri



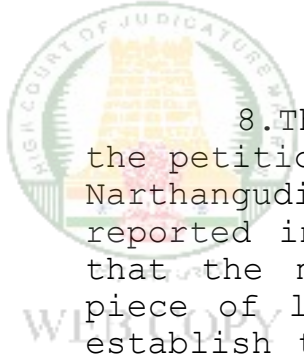
Ammal from whom the petitioners have purchased 3.67 acres in two different sale deeds, dated 19.08.2004 and had jointly obtained patta Nos.1078 and 1079 and paid kist separately to the Government.

4.While so, the petitioners claim that when pattas were granted in their favour, however, not mutated in the revenue records, they approached the counsel at Chennai and the counsel by mistakenly filed a petition before the Additional Chief Secretary/Commissioner of Land Administration, Ezhilagam, Chempauk, Chennai, for change of classification of land, which ought not to have been filed and the same came to be dismissed by the Additional Chief Secretary/Commissioner of Land Administration. The dismissal order of the land was challenged in W.P(MD)No.3624 of 2013 and the order of the Additional Chief Secretary/Commissioner of Land Administration was set aside on 11.02.2013 with a direction to consider their fresh application and pass appropriate orders. The Additional Chief Secretary/Commissioner of Land Administration once again dismissed their petition on 09.07.2016 holding that the subject property was taken over by the Government under Act 26 of 1948 and the last date for applying patta was on 20.08.1987 and therefore, rejected their plea on the ground of limitation.

5.The petitioners further claim that challenging the order passed by the Additional Chief Secretary/Commissioner of Land Administration, they again filed W.P(MD)No.26746 of 2016 and he would further contend that they came to know that the Writ Petition filed for change of classification of land is totally misconceived and unwarranted, as the title, interest and possession of predecessor interest and the petitioners' title have been recognised by the Government and patta has been mutated even during in the year 2004 and 2011 and subsequent filing of the Writ Petition is purely out of ignorance as due to the Court proceedings and the counsel failed to note that patta for subject property has already been granted in favour of the petitioners and accordingly, the Writ Petition challenging the order of the Additional Chief Secretary/Commissioner of Land Administration, in W.P(MD)No.26746 of 2016 was withdrawn by filing a memo with a liberty to file a fresh petition with appropriate relief. Under these circumstances, the petitioners have made representations to the respondent to mutate patta for the respect land in the revenue records and thereafter, filed the present Writ Petition.

6.The learned counsel appearing for the petitioners relied on the Judgment of this Court in S.Kuppuswamy Odayar and another vs. The Panchayat Narthangudi represented by its President Murugayyan and others reported in 1971 (1) MLJ 190, and also the Judgment of this Court in Executive Officer Vs. V.Swaminathan and others reported in 2004 (3) CTC 270.

7.Heard the learned counsel appearing on either side and perused the materials available on record.



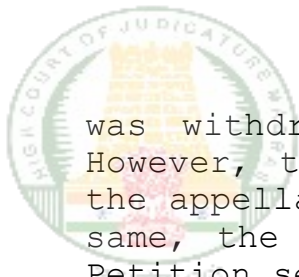
8.The Judgment relied on by the learned counsel appearing for the petitioners in S.Kuppuswamy Odayar and another vs. The Panchayat Narthangudi represented by its President Murugayyan and others reported in 1971 (1) MLJ 190, wherein it has been repeatedly held that the mere fact that in re-settlement register, a particular piece of land has been described as poramboke will not by itself establish title of the Government to the land is question and this case will not apply to the case of the petitioners.

9.The another Judgment relied on by the learned counsel appearing for the petitioners in Executive Officer Vs. V.Swaminathan and others reported in 2004 (3) CTC 270, wherein in paragraph No.10 it is stated that "we draw inference for the above view from the decision rendered by this Court in S.Rangaraja Iyengar Vs. Achi Kannu Ammal, 1959 (2) MLJ 513 : 1959 (72) L.W 767. A similar view is expressed by the Apex Court in its decision rendered in C.V.Subbaya vs. P.Anjayya, AIR 1972 SC 1421, while referring to Section 3(b) of the Madras Act XXVI of 1948, it is held therein that the communal lands, poramboke, other ryotwari lands, waste lands, forests, mines and minerals, quarries, rivers and streams tanks and irrigation works etc., vest with the Government other than the land classified as 'Grama Natham'. This Court in its decision rendered in N.S.Kuppuswamy Odayar Vs. Narthangudi Panchayat, 1971 MLJ reports 190 has held that the classification of 'Natham Poramboke' and the description of 'poramboke' in the settlement register will not, by itself, establish title of the Government to the land in question".

10.In the absence of any classification by the authorities, who purchased from the vendors, even without verifying the same, the same cannot be now come and say that the mistake committed should be rectified.

11.The present claim made by the petitioners to mutate patta, which had been granted already in the name of the petitioners to the respective lands, who had suffered an order of the Additional Chief Secretary/Commissioner of Land Administration, Ezhilagam, Chepauk, Chennai. As seen from the documents filed by the Additional Government Pleader by order, dated 09.07.2017 passed by the Additional Chief Secretary/Commissioner of Land Administration, where the petitioners have appeared before the same through their counsel and finally the Additional Chief Secretary/Commissioner of Land Administration, has passed a detailed order relying on various revenue records available.

12.It is seen from the order the petitioners have filed an appeal before the Additional Chief Secretary/Commissioner of Land Administration, Ezhilagam, Chennai, which came to be dismissed for conversion of land from classification of 'Anathenam' to ryotwari land. The appeal was dismissed as the land was taken over by the Government under Act 26 of 1948 which specifies for filing an appeal implementation of the Act from 20.08.1997. Challenging the order, the Writ Petition filed by the petitioner in W.P(MD)No.26746 of 2016



was withdrawn with liberty to approach the appellate Authority. However, the petitioner seems to have not filed any appeal before the appellate authority as contemplated under the act. Bypassing the same, the petitioners have now come forward with the present Writ Petition seeking mutation of patta in their names.

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13. It is clear from the records that the Additional Chief Secretary/Commissioner of Land Administration, has already rejected the claim of the petitioners which was challenged by the petitioners. There is a reference made by the Additional Chief Secretary/Commissioner of Land Administration, with regard to erroneous patta transfer and the entries made in the chitta. As per the register as extracted in the order passed by the Additional Chief Secretary/Commissioner of Land Administration, the classification of the land stands as 'Anathenam'.

14. On perusal of the documents and the arguments put forth by the learned counsel appearing for the petitioners, the prayer in the Writ Petition cannot be granted as the petitioners suffered an order, dated 09.07.2016, which is an order passed by the Additional Chief Secretary/Commissioner of Land Administration on an appeal filed by the petitioner. Unless the order, dated 09.07.2016 is challenged in the manner known to law, the petitioners cannot seek any prayer directing the respondent to mutate the revenue records based on the patta issued in their favour, that too, in the order passed by the Additional Chief Secretary/Commissioner of Land Administration. There is a reference that the patta has been effected erroneously and granted to the petitioners.

15. Under these circumstances, this Court is of the view that there is no merit in the Writ Petition and a direction cannot be issued to the respondent. However, the petitioners are at liberty to challenge the order, dated 09.07.2016 in the manner known to law.

16. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar (CS-III)

To
The Thasildar,
Thanjavur Taluk, Thanjavur.

+1CC to Mr. N. Balakrishnan, Advocate, SR.No.97016
+1CC to the Special Government Pleader SR.No.97375

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