



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.21762 of 2018

and

W.M.P.(MD) Nos.19685 & 19686 of 2018

WEB COPY

S.Manohar

... Petitioner

Vs.

1.The Sub Collector
Cheranmahadevi
Tirunelveli District

2.The Thasildar
Nanguneri
Tirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the 2nd respondent in his proceedings Na.Ka.A2/506/2017 dated 7.3.2017 as confirmed on appeal by the 1st respondent in his proceedings no.A3/5/18 dated 28.9.2018 and quash the same and consequently direct the respondents to grant patta to the petitioner in respect of the 18 ½ cents of Nathamlands in Survey No.1092 in Thirukurunkudi Village in Tirunelveli District.

For Petitioner : Mr.V.Vijayshankar
For Respondents : Mr.A.Muthu Karuppan
Additional Government Pleader

ORDER

The case of the petitioner is as follows:

(i) According to the petitioner, the land measuring an extent of 39 Cents in Thirukurunkudi Village, Tirunelveli District, comprised in Survey No.1092, classified as "Natham Land", has been in possession and enjoyment of his fore-fathers for several decades. An adjoining land, measuring an extent of 37 Cents, comprised in Survey No.1093, belongs to Thiruvavaduthurai Adheenam and the said land had been taken on lease by the petitioner's father from the Adheenam, way back in the year 1963. Since both the lands, comprised in Survey Nos.1092 and 1093, were contiguous, they were in possession and enjoyment of the petitioner's father over the years. A small hut was erected in the Natham land in Survey No.1092 and cultivation was carried out in the adjoining land in Survey No.1093 taken on lease from the Adheenam.

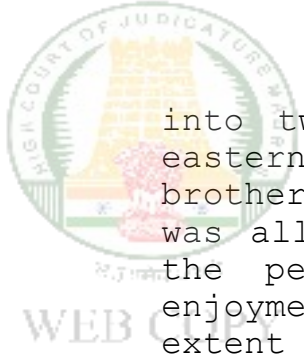


(ii) In the year 1995, when an attempt was made by the Trustees of the Adheenam to interfere with the possession and enjoyment of the lands, which are under the occupation of the petitioner's father, he filed a suit in O.S.No.87 of 1996, before the learned District Munsif, Nanguneri, seeking bare injunction restraining the Trustees of the Adheenam from interfering with his peaceful possession and enjoyment of the lands. In the said suit, the lands comprised in Survey Nos.1092 and 1093 were described separately under Schedule No.II and I respectively, since the Trustees of the Adheenam were attempting to interfere with the possession and enjoyment of the Natham land also, in which the petitioner's father had independent right.

(iii) The suit in O.S.No.87 of 1996 was ultimately decreed in favour of the petitioner's father, by the learned District Munsif, Nanguneri, vide Judgment and Decree dated 17.06.1999. Challenging the same, an appeal was filed by the Trustees of the Adheenam in A.S.No.166 of 1999, before the learned I Additional District Judge, Tirunelveli. However, by Judgment and Decree, dated 18.08.2000, the appeal was dismissed confirming the Judgment and Decree passed by the Trial Court in O.S.No.87 of 1996. Thereafter, no further appeal was filed and the Judgment and Decree of the lower Appellate Court in A.S.No.166 of 1999 had reached finality.

(iv) Subsequently, on 08.12.2004, the petitioner's father had executed a Will bequeathing all the immovable properties belonging to him in favour of his two sons, namely, petitioner herein and the other son, namely, Suthanthiramani. By virtue of the said Will, both the petitioner and his brother Suthanthiramani were entitled to half share in the Natham land in Survey No.1092, measuring an extent of 39 Cents,.

(v) Thereafter, in order to effect partition by metes and bounds and to ensure equitable and fair enjoyment of the respective portion of lands between himself and his brother, the petitioner had filed a suit in O.S.No.44 of 2008, before the learned Sub Judge, Valliyoor, against his brother Suthanthiramani, inter alia including the lands in question. In the said suit, an Advocate Commissioner was appointed and pursuant to the report submitted by the Advocate Commissioner, a final decree was passed in I.A.No.328 of 2009 dividing the immovable properties between the petitioner and his brother. Insofar as Item No.5 being Natham land in Survey No.1092 is concerned, the Sub Court directed the parties to segregate a portion of land, measuring an extent of 02 Cents out of 39 Cents for the purpose of preserving tomb of the petitioner's ancestors and the remaining 37 Cents of land was divided



into two equal shares. Accordingly, 18 ½ Cents on the eastern side was allotted to the share of the petitioner's brother Suthanthiramani and 18 ½ Cents on the western side was allotted to the share of the petitioner. Since then, the petitioner and his brother are in possession and enjoyment of their respective lands, each measuring an extent of 18 ½ Cents, allotted to them in the partition suit. The petitioner had also constructed a house in the land allotted to him and the same has been assessed to house tax with Thirukurunkudi Town Panchayat.

(vi) The petitioner is an employee of Central Government working as Senior Private Secretary in IGCAR Kalpakkam and he has completed more than 37 years of service having one year of service left for superannuation. In view of his employment in Kalpakkam, he has been residing with his family in Kalpakkam. However, according to the petitioner, for all the religious and other local festivals and functions, he is used to visit his native village, namely, Thirukurunkudi. Further, according to the petitioner, he is planning to settle down in his native village after his superannuation.

(vii) In these circumstances, on 01.07.2016, the petitioner applied for issuance of individual Patta in respect of the land allotted to him, before the second respondent, enclosing all the relevant documents, including, the Judgments and Decrees of the Civil Courts, Will, house tax receipt etc. Initially, when no order was passed by the second respondent, the petitioner approached this Court by filing a writ petition in W.P.(MD) No.23770 of 2016 seeking a direction to the second respondent to issue individual Patta for the land in Survey No.1092, measuring an extent of 18 ½ Cents, allotted to him. This Court, by order dated 18.12.2016, disposed of the writ petition directing the second respondent to consider and dispose of the application submitted by the petitioner. Thereafter, since no order was passed by the second respondent pursuant to the directions of this Court in the aforesaid writ petition, a contempt petition in Cont.P.(MD) No.1037 of 2017 was filed by the petitioner and on receipt of notice in the contempt petition, the second respondent passed an order, dated 07.03.2017, rejecting the request of the petitioner on the ground that there was no evidence to prove that he is in possession and enjoyment of the subject land, particularly, in view of the fact that he is residing with his family in Kalpakkam and not in Thirukurungudi Village, wherein the subject land is situated.

(viii) Challenging the order of the second respondent, the petitioner filed an appeal before the first respondent. In the appeal before the first respondent, the petitioner



had submitted all the necessary documents once again in support of his claim and also assailed the order of the second respondent as being unsustainable on both law and facts. However, it appears that the first respondent, without proper application of mind, has dismissed the appeal by order dated 28.09.2018. Both the orders, dated 07.03.2017 and 28.09.2018, passed by the respondents 2 and 1 respectively, are put to challenge in this writ petition.

2. Mr.A.Muthu Karuppan, learned Additional Government Pleader, takes notice for the respondent.

3. Mr.V.Vijayshankar, learned counsel appearing for the petitioner, would at the outset submit that although he has challenged both the orders of the respondents 2 and 1 rejecting the request of the petitioner for grant of Patta in respect of the land allotted to him under the Judgment and Decree passed in the partition suit in O.S.No.44 of 2008, he would confine his relief to the effect that the second respondent has not considered the claim of the petitioner in proper perspective as he was merely guided by the fact that the petitioner was residing in Kalpakkam and not in his native village, namely, Thirukurunkudi, wherein the subject land is situated and therefore, he was not entitled for issuance of Patta for the subject land. Moreover, according to the learned counsel for the petitioner, number of documents have been furnished by the petitioner in support of his claim, like, Civil Court's Judgments and Decrees in O.S.Nos.87 of 1996 and 44 of 2008, Will executed by his father, copy of house tax receipt etc. It appears that the second respondent has completely overlooked all the crucial documents and mechanically proceeded to dispose of the same and rejected the request of the petitioner on untenable appreciation of facts and grounds.

4. Further, the learned counsel for the petitioner would submit that the Appellate Authority, namely, first respondent herein has dutifully confirmed the order passed by the second respondent, without any application of mind and he was also merely guided by certain untenable observations made by the second respondent in his order dated 07.03.2017. Even the first respondent has not appreciated the claim of the petitioner with reference to the crucial documents submitted by the petitioner in support of his claim. Therefore, the learned counsel for the petitioner would submit that the second respondent may be directed to revisit the order passed by him in respect of the petitioner's claim for issuance of Patta in respect of the subject land, after taking note of various documents submitted by the petitioner and the contents of his representation and application for issuance of individual Patta.

5. Since the petitioner has confined his relief only for reconsideration of the entire issue afresh with reference to the materials relied on by him in support of his claim, this Court is of the view that in the fitness of things, the writ petition can be



disposed of at the admission stage itself, for which, the learned Additional Government Pleader appearing for the respondents would have no legitimate objection.

6. This Court, while considering the submissions of the learned counsel appearing for the petitioner, is in agreement with the submission that the second respondent appears to have not considered the documents submitted by the petitioner in support of his claim in proper perspective and not given enough importance to the crucial documents submitted by the petitioner with reference to his claim of possession and enjoyment of the land under his occupation. The second respondent appears to have solely guided by the fact that the petitioner was residing in Kalpakkam, without basic understanding of the situation, where he was employed in Central Government as Senior Private Secretary in IGCAR and therefore, he has to necessarily reside in Kalpakkam. In any event, mere place of residence of the petitioner cannot be a sole deciding factor for taking a decision one way or the other in respect of the claim of the petitioner for issuance of Patta. It appears that the second respondent has not taken a considered decision in this matter and there appears to be non proper application of mind in regard to the documents relied on by the petitioner in support of his claim.

7. In view of the above, the writ petition is disposed of with the following directions:

- (i) The impugned orders, dated 07.03.2017 and 28.09.2018, passed by the respondents 2 and 1 respectively, are hereby set aside.
- (ii) The matter is remitted back to the file of the second respondent for fresh consideration.
- (iii) The second respondent is directed to consider the claim of the petitioner by passing a reasoned order, after giving due appreciation and examination of all the documents relied on by the petitioner in support of his claim for issuance of Patta in respect of the subject land / property.
- (iv) It is open to the petitioner to make any fresh representation in this regard, within a reasonable time, along with supportive additional documents if any.
- (v) On such representation being made and any additional documents being submitted by the petitioner in support of his claim, the second respondent is directed to afford an opportunity of personal hearing to the petitioner and pass appropriate orders on the basis of the materials



relied on by the petitioner in support of his claim.

(vi) Such an order shall be passed by the second respondent within a period of eight weeks from the date of receipt of a copy of this order.

(vii) No costs. Consequently, connected miscellaneous petitions are closed.

/True Copy/

Sd/-

Assistant Registrar(Records)

Sub Assistant Registrar(CS-I)

To:

1.The Sub Collector,
Cheranmahadevi,
Tirunelveli District.

2.The Thasildar,
Nanguneri,
Tirunelveli District.

+2CC to Mr.V.KARTHIKEYAN, Advocate, SR.No.91603

W.P.(MD) No.21762 of 2018 and
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24.10.2018

KRK

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