



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.09.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A. (MD) No.295 of 2011

and

M.P (MD) No.1 of 2011

1.Nagamoni Sashta (Died) ...1st Appellant/petitioner

2.S.Nagamoni

3.S.Subramaniam ...2nd & 3rd Appellants

(Appellants 2 and 3 are the Lrs. of the deceased 1st appellant, vide Court order dated 27.01.2017 made in C.M.P(MD) No.12206 of 2016 in W.A(MD) No.295 of 2011 by (RPSJ & JNB).)

Vs.

The Special Commissioner &
Commissioner of Land Administration,
Chepauk,
Chennai.

.. Respondent / Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 19.01.2011 made in W.P(MD) No.10857 of 2005 on the file of this Court.

Prayer in WP(MD).10857 of 2005:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari by calling for the records of the respondent made in R.Dis(K1) RP.4/2002 dated 21.10.2005 and quash the same.

For Appellants

: Mr.M.Suri

For Respondent

: Mr.Ayiram K.Selvakumar,
Additional Government Pleader



JUDGMENT

[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]

This writ appeal is filed by the first appellant / writ petitioner, aggrieved by the order passed in W.P(MD)No.10857 of 2005, wherein he sought for issuance of a Writ of Certiorari and quash the order passed by the first respondent, dated 21.10.2005.

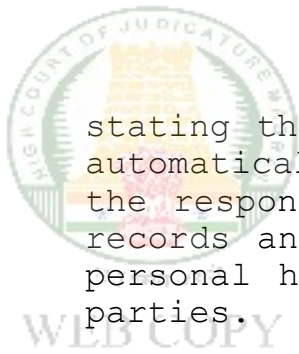
2. Originally, the present writ appeal was filed by the first appellant. Pending writ appeal, he died. Hence, his legal heirs were brought on record as appellants 2 and 3.

3. It is the case of the appellants 2 and 3 that in the year 1945, his grandfather one S.Nagamony purchased 21 cents of land in survey no.1012, 1.60 acres of land in survey no.1015 and 53 cents of land in 1013, which were situate in part of Thovalai village. At the time of re-settlement, it is stated that the above said survey numbers had become part of Aralvoimozhi. While so, the grandfather of the appellants 2 and 3 had executed a registered gift deed dated 03.12.1959 in favour of the first appellant and from the said date, the first appellant was said to be in possession of the same. Though the gift deed refers to various lands, the writ petition is only with respect to 21 cents in old survey no.1012.

4. It is the further case of the appellants 2 and 3 that the lands have been wrongly classified in the year 1993 and in which, the lands in survey no.1012, which is equivalent to new survey no.263/4 have been omitted. Hence, the first appellant filed a petition before the Assistant Settlement Officer requesting to make corrections of the wrong entries with regard to new survey no.263/4. After a detailed enquiry and considering the documents including A-Register, Field Map Book, Adangal Extracts and Tasildhar's report etc., the Assistant Settlement Officer had found that it is a mistake and the lands had been wrongly classified as a road poramboke and substituted the following entry in new survey no.263/4 ie., out of the total extent of 20 ares, 16 ares is to be shown as 'police parade ground' and 4 ares is to be shown as the land belonging to first appellant. Further, the Assistant Settlement Officer directed to issue patta in favour of the first appellant, with respect to 4 ares of the land.

5. Against the said order, the Tahsildar, Thovalai filed an appeal before the Director of Survey and Settlement, which was dismissed for non-appearance of parties on 23.06.1999. Against the said dismissal order, a revision was filed before the respondent herein. The respondent in his order dated 21.10.2005 in R.Dis(K1) RP4/2002 held that all the proceedings of the settlement forums are null and void as the original documents have not been produced by the father of the appellants.

6. According to the appellants 2 and 3, the respondent without considering the documents that were produced before the Assistant Settlement Officer by their father had simply rejected his claim



stating that in the absence of any documentary evidence, his claim automatically becomes null and void, which is incorrect. Further, the respondent / revisional authority ought to have called for the records and conducted an enquiry after affording an opportunity of personal hearing to substantiate the contentions of the respective parties.

7. Therefore, aggrieved by the order passed by the respondent dated 21.10.2005, the first appellant filed the writ petition. The learned single Judge dismissed the writ petition and directed the first appellant to resort to a remedy before the civil Court. Hence, the first appellant had preferred the present writ appeal.

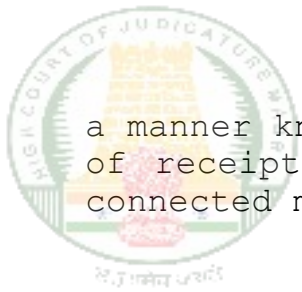
8. It is the contention of the learned counsel for the appellants 2 and 3 that first appellant viz., Nagamoni Sastha was in possession of the original documents and he had produced only photocopy of the same during enquiry. Had the respondent afforded a personal hearing, original documents could have been produced to substantiate his case. However, without even giving an opportunity of personal hearing, the respondent has passed the impugned order and hence, the same is liable to be set aside.

9. We have heard the submissions made on either side and perused the materials placed before us.

10. We are of the view that the respondent being a revisional authority ought to have called for the records and conducted a detailed enquiry with respect to the mistakes pointed out by the father of the appellants 2 and 3 ie., the first appellant. Even without going through the documents, the respondent has set aside the order of the Assistant Settlement Officer, which appears to be a colourable exercise of power even without appreciating the claim of the father of the appellants 2 and 3. As the order of the respondent is without any application of mind, we are of the considered view that the order of the respondent has to be set aside and the matter is to be remitted back to him for fresh consideration.

11. Thus, the learned single Judge without even discussing the order passed by the respondent directed the first appellant / writ petitioner to resort to a civil remedy before the civil Court. Therefore, the order of the learned single Judge has to be set aside.

12. In the result, the writ appeal is allowed. The order of the learned single Judge, dated 19.01.2011 made in W.P(MD)No.10857 of 2005, is set aside and the matter is remitted back to the respondent, by setting aside the order passed by the respondent dated, 21.10.2005, for fresh consideration. The respondent is directed to issue notice to both the parties after fixing the date of enquiry and allowing them to produce documents in original and also affording them a personal hearing and dispose of the matter in



a manner known to law, within a period of four months, from the date of receipt of a copy of this judgment. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (RTI)

/True copy/

WEB COPY

Sub Assistant Registrar (CS-I)

To:

The Special Commissioner &
Commissioner of Land Administration,
Chepauk,
Chennai.

+1cc to Mr.M.SURI, Advocate, SR.No.86477

+1cc to M/s.Special Government Pleader, SR.No. 86743

W.A(MD) No.295 of 2011
25.09.2018

PM

KK/RSK/SAR-1/27.10.2018/4P-4C