

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.11791 of 2010
and M.P.No.1 of 2010

T.Gajendran

...Petitioner

Versus

1.The District Collector,
Ariyalur District.

2.The Tahsildar,
Jayankondan,
Ariyalur District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property having an extent of 30 cents of land comprised in Survey No.204/3, Thennavanallur Village, Vembakudi Panchayat, Udayarpalayam Taluk, Ariyalur District, except due process of law.

For Petitioner : Mr.S.Madhan Raj
for Mr.K.Balu

For Respondents : Mr.B.Anand,
Government Advocate

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O R D E R

With the consent of both sides, this writ petition is taken up for final disposal.

2. The relief sought for in the present writ petition is to forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property having an extent of 30 cents of land comprised in Survey No.204/3, Thennavanallur Village, Vembakudi Panchayat, Udayarpalayam Taluk, Ariyalur District, except due process of law.

3. It is the case of the writ petitioner that he is residing in the property comprised in S.No.204/3 situated at Thennavanallur Village, Vembakudi Panchayat, Udayarpalayam Taluk, measuring a larger extent of 1.68 Acres. His paternal aunt Mariammal had been in possession and enjoyment of 50 cents of land out of the larger extent of land in the above Survey Number and in possession for more than the statutory period and the said Mariammal had prescribed possessory title to the property.

4. Since the petitioner's aunt suffered interference by the neighbours, had filed a Suit in O.S.No.272 of 1968 against one Chandrahasa Padayachi and another, before the District Munsif Court, Ariyalur. The said suit was decreed on 05.03.1969. Against which, an Appeal was preferred in A.S.No.684 of 1969 before the Sub Court, Tiruchirappalli and the same was allowed. Against the said Appeal, a Second Appeal was preferred, however, the same was dismissed. Therefore, the decree passed in A.S.No.684 of 1969 has become final.

5. The petitioner's aunt had also filed a E.P.No.329 of 1969 seeking for possession of the property comprised in Survey No.204/3. The petitioner's aunt had been possessing and enjoying 8 tamarind trees which had been the part and parcel of the delivery warrant issued as per the decree in A.S.No.684/1969. She died leaving behind her son. Then his son also died at the age of 16 years. So as a legal heir, the petitioner's father had succeeded the estate of the petitioner's deceased aunt and had been in possession and enjoyment of the property.

6. After the death of petitioner's father, the petitioner and his brothers succeeded the estate of their father and UDR Patta was also granted in favour of them. They were in possession and enjoyment of the above said property. Out of the larger extent of 50 cents, the petitioner and his brothers had given 20 cents of land to the temple and other common purposes in the village. The remaining extent of 30 cents, is in their possession and enjoyment. In recognition of their possession and enjoyment of 8 tamarind trees, the second respondent had issued 2C Patta in favour of their father, which was transferred from the petitioner's paternal aunt Mariammal. The petitioner and his brothers had been in effective possession and enjoyment of the said trees by collecting the usufructs every year. Further, there was a small hut available in the property, that had been assessed to property tax and the petitioner paid the property tax from 1996 to till date regularly.

7. On instruction of the first respondent, the second respondent had inspected the property of the petitioner and his brothers during December 2009 along with Revenue Officials to measure the same. During inspection, the petitioner was informed that the second respondent is going to put up a construction in the property and convert the said property as a public property. Hence, the petitioner gave a representation to the respondents requesting them to consider the possession and enjoyment of the property by him and his brother and issue Patta in their respective names. The respondents received the said representation, however, did not consider the same.

8. Again, on instructions of the first respondent, the second respondent had inspected the property of the petitioner and his brothers on 05.06.2010 along with the Revenue Officials to measure the same. On measuring the property, the second respondent openly asserted that they are going to construct a school building over the property. Aggrieved by the unlawful act of the respondents, the petitioner has come before this Court with the present writ petition for the relief stated supra.

9. The second respondent has filed the counter affidavit, wherein, it is stated as follows:

(i) The Survey Field No.204/3 mentioned in the writ petition is incorrect. It is the Old S.F.No. of the property. In the re-Survey work which was done in the year 1993, by the department, Old S.F.No.204/3 and 204/4 had been subdivided as S.F.Nos.204/3 to 204/24 Thennavanallur Village. The property claimed by the petitioner in this writ petition relates to New S.F.Nos.204/11, 204/15 and 204/19. In the village accounts, these S.F numbers are classified as follows:

S.F.No.	Extent in Hect. (Sq.meters)	Classification
204/11	0.0778	Natham
204/15	0.0275	Cart Track
204/19	0.1550	Nathan 2C Tamarind
	0.26.03 (or) 64.29 cents	

All the Survey Fields mentioned above are Government Poramboke Lands vested with Thennavanallur Panchayat.

(ii) The petitioner's aunt Mariammal filed a suit O.S.No.272/68 against the defendants (D1-Chandrasahana & D2-Thiagarajan, father of the petitioner herein). The O.S.No.272/68 is a private suit, in which, the Government was not impleaded as a defendant.

(iii) The Pattas of the 2C trees were in the name of said

Mariamammal and she is no more. The petitioner has no rights over the 2C tamarind trees. The 2C Patta in respect of tamarind trees were cancelled by the Tahsildar, Jayankondam vide order No.RCA1/5522/2010 dated 05.06.2010. Therefore, the petitioner has no right to claim his possession granted in 2C Patta Tamarind trees in his name in S.F.Nos.204/11, 204/15 and 204/19.

(iv) The petitioner has a house in his own in S.F.No.204/18 and he has no house in S.F.No.204/19.

(v) On the request of the public of Thennavanallur village, the Panchayat union Elementary school had been upgraded as Panchayat Union, Middle School to facilitate the student of the Middle School. On the requisition of the Chief Education Officer, the land was selected for the construction of additional building. Accordingly, a Resolution No.159 dated 16.04.2009 was passed by the Vembukudi Panchayat giving approval for the construction of school building in S.F.No.204 under the S.S.A.scheme.

(vi) The encroachments mentioned in the Resolution relate to the 2C Patta trees only. The 2C Patta pertaining to the 8 tamarind trees were cancelled by the Tahsildar in his proceedings No.RC.No.A1/5522/10 dated 05.06.2010.

(vii) There are no encroachments at the site in which the school building is constructed.

(viii) The property in question is Natham Poramboke Land and that the petitioner has no right over the same. Neither, the petitioner nor his ancestors have any right over the Government Poramboke (Natham) Land.

10. The learned counsel for the petitioner submitted that though the petitioner's possession has been confirmed by the issuance of UDR Patta, the respondents are trying to unlawfully evict him from his property. He further submitted that without issuing any notice to the petitioner, the respondents were high-handedly interfering with his peaceful possession and enjoyment of the property. He therefore prayed that the relief sought for by the petitioner may be granted to him.

11. The learned Government Advocate appearing for the respondents would contend that the petitioner is originally residing in S.F.No.204/18 and not in S.F.No.204/19. The said fact came to light vide Proceeding No.AT/Mu.324/2010 dated Nil.06.2010. He would further contend that the property claimed by the petitioner in the petition is S.F.No.204/19 which is a vacant Natham Poramboke Land. Therefore, the writ petition is not maintainable and the same is liable to be dismissed.

12. Considering the submissions made by the parties and on perusal of the materials on record, the petitioner is actually residing in S.F.No.204/18 Thennavanallur Village, Udayarpalayam Taluk. Taking into account, the petitioner had been in possession and enjoyment of the property comprised in S.F.No.204/18, in order to protect the right of the writ petitioner and in the interest of justice, the respondents shall not evict the petitioner from the aforesaid property except under due process of law.

13. It is also made clear that the petitioner is not entitled for the relief sought for by him, since the property claimed by him in this writ petition is S.F.No.204/19 which is a Government Poromboke Land vested with Thennavanallur Panchayat.

14. This Writ Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mrr

To

1.The District Collector,
Ariyalur District.

2.The Tahsildar,
Jayankondan, Ariyalur District.

+1cc to the Government Pleader SR.93394

BR(CO)
CB(11/02/2020)

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W.P.No.11791 of 2010

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