

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14/08/2019
Delivered on	30/08/2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.30006 of 2008 & M.P.No.1 of 2008 &
W.P.No.2054 of 2009 & M.P.No.1 of 2009 &
W.P.No.459 of 2012 & M.P.No.1 of 2012

W.P.No.3006 of 2008

1.G.Ranganathan
2.Balarama Mandhiri
3.Venkatesan Petitioners

Vs

1.The Special Commissioner and
The Commissioner for Land Administration,
Chepauk, Chennai - 600 005.
2.The District Revenue Officer,
Thiruvannamalai.
3.The Revenue Divisional Officer,
Cheyyar, Thiruvannamalai District.
4.The Tahsildar,
Cheyyar Taluk,
Thiruvannamalai District. Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his proceedings No.M9685/2003 and quash his order dated 13.04.2005 and direct the respondents 2 to 4 to grant patta to the petitioners with respect to the dry lands situated in Survey No.413 to an extent of 13 acres 40 cents in Natterri Village, Cheyyar Taluk, Thiruvannamalai District.

For Petitioners : Mr.S.Balasubramanian

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

* * *

W.P.No.2054 of 2009

Natteri Panchayat Board,
Rep. by its President,
R.Palani,
Residing at Koneri Street,
Natteri Village and Post,
Chakramallur (Via),
Thiruvannamalai District.

... Petitioner

Vs

- 1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
- 2.The District Revenue Officer,
Thiruvannamalai District.
- 3.The Revenue Divisional Officer,
Cheyyar, Thiruvannamalai District.
- 4.The Tahsildar,
Cheyyar,
Thiruvannamalai District.
- 5.The Commissioner,
Panchayat Union,
Venbakkam, Cheyyar Taluk,
Thiruvannamalai District.

- 6.Ranganathan
- 7.Balaraman Mandhri
- 8.Gantha @ Mannarsami
- 9.Krishnan

... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, forbearing the respondents from interfering with the right of Natteri Panchayat Board in conducting the auction of standing trees in Natteri in S.No.413, Eri Poramboke in Cheyyar Taluk, Thiruvannamalai District.

For Petitioner : Mr.M.P.Jayaprakash

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader for
R1 to R4
Ms.C.K.Vishnupriya for R5
Mr.S.Balasubramanian for R6 to R9

* * *

W.P.No.459 of 2012

G.Ranganathan ... Petitioner

Vs

1.The President,
Natteri Panchayat Board,
Natteri Village and Post,
Via Chakkamalur, Cheyyar Taluk,
Thiruvannamalai District.

2.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

3.The Block Development Officer,
(Village Panchayat),
Venbakkam, Cheyyar Taluk,
Thiruvannamalai District. Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents not to conduct the public auction of the trees situated in Survey No.413 of Natteri Village, Cheyyar Taluk, Thiruvannamalai District.

For Petitioner : Mr.S.Balasubramanian

For Respondents : Mrs.D.Malarvizi for R1

Mr.A.N.Thambidurai
Special Government Pleader for R2 & R3

* * *

C O M M O N O R D E R

1.1 W.P.No.30006 of 2008 has been filed for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent / District Revenue Officer, Thiruvannamalai, in his proceedings No.M9685/2003, dated 13.04.2005 and quash the same and consequently direct the respondents 2 to 4 to grant patta to the petitioners in respect of land situated in S.No.413 to an extent of 13.40 acres in Natteri Village, Cheyyar Taluk, Thiruvannamalai District.

1.2. According to the petitioners, their grandfather Balu Mandhiri purchased the dry lands situated in Survey No.413 measuring to an extent of 13 acres and 40 cents in Natteri Village, by a sale deed dated 30.01.1952. Since then, he was in possession and after his life time, the petitioners are in possession of lands.

1.3. The petitioners would state that originally patta was granted with patta No.1367, dated 31.10.1974 in favour of the petitioners under Sections 9(1)(a) of Act 26/1963, however, the Assistant Settlement Officer, Chengalpattu, cancelled the patta in view of the Act 2/1976, holding that the property is classified as "tank". The Tribunal, confirmed the order of the Assistant Settlement Officer and hence, they preferred an Appeal in S.T.A.No.9 of 1982 and this Court, directed the petitioners to establish their title in a Civil Suit. Hence, they have instituted a suit in O.S.No.440 of 1989 before the District Munsif Court, Cheyyar for declaration and permanent injunction.

1.4. The petitioners would further state that the defendants remained exparte and hence, an exparte decree was passed on 12.06.1990 and the application filed to condone the delay in filing set-aside petition was dismissed and the same was upheld in C.R.P.No.365 of 1995. After the decree had become final, the Headquarters Tahsildar, Cheyyar granted patta in favour of the petitioners, by his proceedings dated 03.09.1994. But the Tahsildar, Cheyyar cancelled the patta by his order dated 26.10.1994, without issuing notice to the petitioners. Later, as per the directions issued in W.P.No.4202 of 1996, a fresh enquiry was conducted, but the Tahsildar, Cheyyar without taking note of the decree passed in the Civil Court, rejected the application for grant of patta. On an appeal, the second respondent confirmed the order of Tahsildar and the second revision preferred before the first respondent was returned as the power of revision was taken away by issuing G.O.No.409, Revenue, dated 02.07.2008. Hence, the present Writ Petition.

1.5. A detailed counter has been filed by the fourth respondent stating that the decree in O.S.No.440 of 1989 is only an exparte decree and not a judgment, after contest. The Tahsildar, Cheyyar and higher authorities have gone through the subject matter carefully and after due enquiry with the applicants and the villagers came to the conclusion that the land in Survey No.413, measuring 13.32 acres are Thangal Poramboke, hence, the petitioners are not entitled for patta in favour of them.

2.1. W.P.No.2054 of 2009 has been filed by the President of Natteri Panchayat Board, seeking issuance of Writ of Mandamus forbearing the respondents from interfering with the right of Natteri Panchayat Board in conducting the auction of standing trees in Natteri Survey No.413, Eri Poramboke in Cheyyar Taluk, Thiruvannamalai District.

2.2. The President of the Panchayat would state that the land measuring an extent of 5.59.5 hectares in Survey No.413 at Natteri Village is an Eri Poramboke land and it is the irrigation source of 50 acres of land in Bokka Samudhiram Village. In the said lake, water is stored for irrigation and there are grown up trees and the property is vested with Natteri Panchayat Board. The said Panchayat Board used to auction the trees and the amount is credited to Natteri Panchayat Board, however, one Gopala Mandhiri and others by playing fraud on Court, got an exparte decree in O.S.No.268 of 1994.

2.3. The fifth respondent has filed a counter, contending that no law permits the Village Panchayat to conduct auction of trees on its own accord and without getting any concurrence from the superiors, the Village Panchayat cannot act suo motu in issues like this. If an auction has to be conducted regarding cutting of trees, first resolution at the level of Village Panchayat must be passed and it has to be sent to Block Development Officer, who in turn, after getting Valuation Certificate from the Forest Department, conduct auction directly himself or by the Officer, who has been nominated for this purpose and the auctioned amount will be remitted into the Village Panchayat account. It is further stated that the issue of title to the property is pending in W.P.No.30006 of 2008 and on the outcome of the verdict in the Writ Petition, the Revenue Department will handover the land to Natteri Village Panchayat. As soon as the property vested with the Village Panchayat, appropriate auction will be conducted by following the procedures.

2.4. The respondents 6 to 9 opposed the prayer sought for in the Writ Petition by contending that by virtue of the Decree passed in O.S.No.440 of 1989, the prayer in the Writ Petition is to be rejected.

3.1. W.P.No.459 of 2012 has been filed to issue a Writ of Mandamus, directing the respondents herein not to conduct the auction of the trees situated in Survey No.413 of Natteri Village, Cheyyar Taluk, Thiruvannamalai District.

3.2. The petitioner would claim that when W.P.No.30006 of 2008 is pending consideration and despite

a decree granted in O.S.No.268 of 1994 by the Additional District Munsif Court, the respondents are taking steps to auction the trees in S.No.413 of Natteri Village.

3.3. A counter affidavit has been filed by the President of the Panchayat, opposing the prayer in the Writ Petition, by contending that the land belongs to the Panchayat and the private respondents have no right over the same.

4. Mr.S.Balasubramanian, learned counsel for the petitioners would urge that the land in dispute absolutely belongs to the petitioners in W.P.No.30006 of 2008 and their right has been established in O.S.No.440 of 1989. Further he would add that the suit itself came to be instituted pursuant to the order of the Division Bench in S.T.A.No.9 of 1982, but the second respondent without appreciating the order passed in W.P.No.4202 of 1995, rejected the application of the petitioners. It is also contended that the Advocate Commissioner's Report filed in O.S.No.190 of 1992 would prove that the land is in possession of the petitioners and hence, the petitioners are entitled for grant of patta and the local body cannot claim any right over the property in question.

5. Per contra Mr.A.N.Thambidurai, learned Special Government Pleader would argue that the Exparte Decree passed in O.S.No.440 of 1989 is not in consonance with the provisions of the Civil Procedure Code. The learned Special Government Pleader by placing reliance on the decision of this Court in Meenakshisundaram Textiles vs. Valliammal Textiles Ltd. [2011 (3) CTC 168] and an unreported judgment in W.P.No.21619 of 2013, dated 18.09.2013 would urge that the exparte decree is of no use, so no relief can be sought for on the basis of the exparte decree. It is further contended that on field verification, the Authorities found that there is no cultivation in S.No.413 and it has been used as water body. Photographs have been produced to substantiate his arguments.

6. Mr.M.P.Jayaprakash, learned counsel appearing for the Panchayat would argue that private parties have no right over the property and the land in dispute is classified as "Thangal Poramboke" and it has been source of irrigation for the agricultural lands and for raising the water tank.

7. Heard the rival submissions and perused the

materials available on record.

8. The questions arise for consideration in these Writ Petitions, whether the petitioners in W.P.No.30006 of 2008 are entitled for issuance of patta in Survey No.413 of Thangal Village and whether Natteri Panchayat Board can be permitted to auction the trees grown in the land.

9. In the matter on hand, the petitioners were granted patta under Section 9(1)(a) of the Tamil Nadu Inam Estates (Abolition and Conversion Into Ryotwari) Act, 2 of 1963 and the patta was cancelled by virtue of Act 2 of 1976, by holding that the property in question is a tank. The Assistant Settlement Officer, Chengalpattu, cancelled the patta issued in favour of the petitioners and the same was confirmed by the Tribunal and this Court in S.T.A. No.9 of 1982. From the perusal of the order of this Court, it is evident that this Court was not inclined to interfere with the orders of the Assistant Settlement Officer and the Tribunal on the ground of violation of principles of natural justice, but directed the petitioners to pursue their rights in Civil Court. It is a case of the petitioners that pursuant to the order passed in S.T.A.No.9 of 1982, they instituted a suit in O.S.No.440 of 1989, but unfortunately, it was unopposed and an exparte decree was passed on 12.06.1990.

10. It is not disputed that the applications taken out on behalf of the District Collector, North Arcot District, Vellore and the Assistant Settlement Officer, Chengalpattu, seeking to condone the delay in filing application to set-aside the exparte decree was dismissed and the same was confirmed by this Court in a Civil Revision Petition. It is pertinent to note that even though, the petitioners have categorically stated that the property in dispute was purchased by their grandfather Balu Mandhiri in the year 1952 and right from the date of the purchase, they have been in possession of the property, however, no document was produced before the Civil Court to establish their case.

11. It is seen from the exparte decree passed in O.S.No.440 of 1989, the petitioners have produced the patta issued by the Settlement Officer; the order passed by the Special Tribunal, dated 09.08.1988; the notice issued under Section 80 CPC and the acknowledgments as Exs.A1 to A5. At the risk of the repetition, it is stated that no document was produced by the petitioners to prove either their title nor their continuous possession of the properties, since 1952.

12. The trial Court Decreed the suit by observing as follows:-

“இன்று வா.சா.1 விசாரிக்கப்பட்டார். வா.சா.ஆ.1 முதல் 5 குறிக்கப்பட்டன. தாவாக் கோரிக்கை நிரூபிக்கப்பட்டது. தாவாவில் கோரிய படி தாவா செலவ த்தொகையுடத் தீர்ப்பாகிறது.”

13. The Division Bench of this Court in Meenakshisundaram Textiles (supra), has held that in view of Section 2(9) and 33, every judgment should contain a concise statement of the case, points for determination, decision thereon and reasons for such decision. The judgment, which does not contain bare minimum facts, would not qualify itself to be called as “judgment”. The relevant paragraphs would run thus:-

17. Section 2(2) of the Code of Civil Procedure defines a “decree” as follows:

“2(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation -A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

In order to bring a decree within the provisions of Section 2(2), the following essential elements are necessary. There must be a suit, as such a decree could be given only in relation to a suit. There must be an adjudication of the dispute.

Adjudication means the judicial determination of the matter in dispute. Adjudication, in other words, also would mean that the Court must have applied its mind to the facts of the case to resolve the matter in dispute. Such adjudication must be about any or all the matters in controversy in the suit. After adjudication, there must be a conclusive determination of the rights of the parties. Finally, in order to pass a decree, the Court must formally express its decision in the manner provided by law. In this regard, the provisions of Section 33 of Code of Civil Procedure are also relevant to be kept in mind. That provision states that the decree shall follow on the basis of the judgment pronounced."

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22. If the above law is kept in mind, in our opinion, the judgment and decree dated 8.7.2009 passed by the Court below in O.S. No. 16 of 2005 are not in conformity with the provisions of the Code of Civil Procedure and are liable to be set aside. For the same reason, the order and decretal order dated 26.8.2010 in I.A. No. 1776 of 2009 in O.S. No. 16 of 2005 passed by the Court below are also liable to be set aside. Accordingly, the order and decretal order challenged in this appeal are set aside and the suit in O.S. No. 16 of 2005 is restored to file. Since the suit is of the year 2005, the learned trial Judge is directed to complete the recording of evidence by the end of April, 2011 and pronounce the judgment before 15th of June, 2011. Both the learned Counsel for the Appellant and the Respondent have agreed to co-operate with the trial Judge for pronouncement of the judgment within the stipulated time. The civil miscellaneous appeal is allowed with the aforesaid observations and directions. Consequently, M.P. No. 1 of 2010 is closed. No costs."

14. A similar issue came up for consideration in W.P.No.21619 of 2013 and in that case also, based on a

decree passed in O.S.No.4413 of 2005, the petitioners therein sought for issuance of patta. Since the Civil Court has not given any finding on merits with respect to the title or possession, this Court hold that the exparte decree would not be help to the petitioners and the relevant paragraphs are extracted hereunder:-

"13. The Corporation of Chennai was not a party to the suit in O.S.No.4413 of 2005. The petitioner knowing very well that the property belongs to the Corporation, failed to implead the local body as a party to the writ petition. The Chennai Corporation purchased the subject property by way of a sale deed No.435 of 1956 dated 03 March, 1956. The petitioner wanted to create documents and for the said purpose by showing an artificial threat a Civil suit was filed before the City Civil Court impleading the District Collector and Tahsildar as parties. Since the Civil Court has not given any finding on merits with respect to the title or possession, the exparte decree would not be of any help to the petitioner in its contention that the property belongs to the society.

14. The revenue records clearly shows that the land was classified as "Sarkar Poramboke". It was described as "Chennai Corporation Vilayattu Maidanam".

15. According to the petitioner, they have been in possession and enjoyment of the property from 20 September 1886. The revenue records shows that the land mentioned in the document dated 20 September 1886 was registered in the name of Dr. Joseph Colgen Bishop of Oorur Village. However, there was no such entries showing the name of the predecessor-in-interest of petitioner in revenue records with respect to the subject property. The mere fact that all other properties owned by the petitioner were all recorded in the revenue records and that the disputed property was not the subject of any such registration or endorsement in revenue records, itself would prove the falsity of the case pleaded by the petitioner. Therefore I do not find any merit in the contention raised by the petitioner.

16. The Principal Secretary and Commissioner of Land Administration considered the factual matrix in the light of Revenue Records and arrived at a clear finding against the petitioner. The petitioner now wanted this

Court to sit on appeal over the said decision. Judicial review by a constitutional court in a matter of this nature is very limited. It is not open to the Court to substitute its opinion by re-appreciating the materials considered and rejected by the statutory authority. The court is concerned only with the decision making process. The petitioner has no case that the impugned order is perverse or capricious liable for correction by this Court."

15. In the instant case, as discussed above, no documentary evidence has been produced by the petitioners to prove their title and continuous possession of the property for more than 40 years. The District Munsif Court, Cheyyar in O.S.No.440 of 1989 decreed the suit by holding that P.W.1 was examined and Exs.A1 to A5 were marked and the claim of the plaintiffs was proved and hence, the suit was decreed as prayed for.

16. Keeping in view the principles laid down in the above decisions and also considering the facts of this case, the petitioners are not entitled to claim any right over the property on the basis of the Exparte Decree obtained in O.S.No.440 of 1989. Therefore, they are not entitled for issuance of patta based on the Exparte Decree and their claim is hereby rejected. In view of the above finding, the petitioners have no right to oppose the prayer of the Natterri Panchayat to auction the trees in Survey No.413. However, in the light of the counter filed by the Commissioner, Panchayat Union, Cheyyar Taluk-Natterri Panchayat is permitted to auction the trees, after obtaining necessary permission from the Revenue Authorities, if its is required.

17. For the foregoing reasons and findings, the Writ Petition filed by the President, Natterri Panchayat in W.P.No.2054 of 2009 is allowed. The Writ Petitions in W.P.No.30006 of 2008 and W.P.No.459 of 2012 are dismissed as devoid of merits. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Commissioner and
The Commissioner for Land Administration,
Chepauk, Chennai - 600 005.
- 2.The District Revenue Officer,
Thiruvannamalai.
- 3.The Revenue Divisional Officer,
Cheyyar, Thiruvannamalai District.
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(Village Panchayat),
Venbakkam, Cheyyar Taluk,
Thiruvannamalai District.

+1cc to Mr.R.Margabandhu , Advocate SR.No. 76064

+3ccs to Mr.S.Balasubramanian , Advocate SR.No. 75324

W.P.No.30006 of 2008 & M.P.No.1 of 2008 &

W.P.No.2054 of 2009 & M.P.No.1 of 2009 &

W.P.No.459 of 2012 & M.P.No.1 of 2012

A.SK(10/09/2019)

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