

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.32323 of 2004

M.A.Jabbar,
The President,
Karaikudi Muslim Jamath Committee,
Bazaar Pallivasal, 46 Checkkalai Road,
Karaikudi, Sivaganga District.

... Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. by Secretary to Government,
Revenue Department,
Fort St. George, Chennai.

2.The Commissioner and Special Commissioner,
Land Administration , Chepauk, Madras 5

3.The District Collector,
Sivaganga District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in G.O.197 dated 21.04.2004 and quash the same as illegal, incompetent and further direct the respondents not to interfere with the petitioner's possession of T.S.16,18, 155, Kazanivasal village, karaikudi Taluk, Sivaganga District.

For Petitioner : Mr. V. Lakshminarayanan

For respondents : Mr. I. Satish,
AGP

O R D E R

This writ petition has been filed challenging the order passed by the first respondent dismissing the revision petition filed by the petitioner.

2. According to the petitioner, the petitioner Jamath owns a property in Survey Nos.16, 18 and 155 of Kazanivasal village, Karaikudi taluk, Sivaganga District. This property was dedicated to the petitioner's institution. In the year 1826 one Kaddar Hussain Maniyakkarar has purchased the property for the purpose of using it as a burial ground for the Mohammedans and also using it as a place for offering prayers. From the date of purchase, the petitioner/Jamath Committee is using the land only for the said purpose. In order to improve the income of the mosque, shops were constructed in a portion of the property and the entire area was shielded by a compound wall. As early in the year 1904, a suit was filed before the District Munsif Court Sivagangai in O.S.No.44/1904, and in the said suit it was held that the above property belongs to the Wakf Board. After the promulgation of abolition laws, the suit property was classified as a "Mohammedan Burial Poromboke" and the second respondent has passed an order under Tamil Nadu Inam (Estates Abolition and conversion into Ryotwari) Act, 26 of 1963.

3. According to the petitioner, it is a wrong classification and the patta land belonging to the petitioner cannot be classified into a poromboke land. It is further stated that this Court in S.A.Nos.834 and 882 of 1968 dated 20.07.1971 has observed that the suit property is a Wakf Property and the Mohammedans are managing the same. In the above circumstances, the second respondent without considering the same has come to a conclusion that it is a Government Poromboke Land. The first respondent has also dismissed the revision without considering the materials in proper perspective. As against the same, the present writ petition has been filed.

4. The respondents filed a counter affidavit stating that, Kalanivasal Village, in Karaikudi Taluk, was originally an Inam Estate notified and taken over by the Government under the Tamil Nadu Inam (Estates Abolition and conversion into Ryotwari) Act 1963, (Tamil Nadu Act 26 of 1963) and Ryotwari Settlement was introduced in the village during the year 1971 (fasli 1381). The land in T.S.No.16 and 18 were classified as Government Poramboke Mayanam, Pallivasal in Karaikudi Municipal Account. The land in T.S.No.155 was classified as Ryotwari and recorded in the name of one Janoon Pisariya Begum in Karaikudi Municipal Account. Earlier, the petitioner has applied for grant of patta for the disputed land in favour of Mosque under Section 15(4) of the Act, and he has also submitted a supplemental request to grant ancillary relief for construction and repair of the building by Jamath. The Government by order in G.O.(Ms) No.1125, dated 15.07.1989 permitted the Jamath to complete the

construction of shops for commercial purposes, which was left in an incomplete stage, and permitted them to remain in possession of the land in T.S.No.16 and 18, subject to various conditions imposed by the Commissioner of Land Administration. Thereafter, the District Revenue Officer, Sivaganga, in and by his proceedings in ROC NO.46464/1994, dated 17.04.1995, issued order under Section 7 r/w. 17 of the Act 26/1963, permitting the Muslim Jamath Karaikudi to remain in possession of the remaining area of the land in T.S.No.16 and 18 of Ward 6, Block 2 of the Kalanivasal Village, Karaikudi, excluding the area to be demarcated as building and appurtenant thereto. As the Government has only permitted the petitioner to use the land in T.S.Nos.16 and 18, the petitioner claim for grant of patta cannot be considered. It is also stated in the counter that suit lands are only communal lands vested with Government and if the conditions are not fulfilled or satisfied by the Jamath Muslim Committee, the Government have the revisionary right to review the orders issued by the Government in G.O.(Ms).No.1125, Revenue Department. dated 15.07.1989.

5. The learned counsel for the petitioner would contend that as early as in the year 1904, the lands in dispute were declared as the properties of the Wakf Board, that was also confirmed by this Court on 20.07.1971 in the Second Appeal Nos.834 and 882 of 1968. Without considering all those materials, the respondents had come to a conclusion that it is a communal land. The learned counsel further submits that now the petitioner is using the above said land as a Burrial Ground and mosque. Since the land is classified as a "Communal land" there is likelihood of other community people also claiming right over the property and hence, it should be classified as "Muslim Mayanam" and permit the petitioner Jamath to exclusively use the property.

6. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that it is a Inam Estate and taken over by the Government under the provisions of the 26 of 1963 Act, and the land was classified as a Government Poramboke Mayanam, Pallivasal and Compound wall. Since the petitioner/ Jamath Committee is using the land and, now that the order has been passed permitting the petitioner to be in possession of the property with certain conditions. As long as the petitioner/Jamath is using the land they will not be disposed of, if they complied the condition. In the order passed by the respondents 1 and 2, it is clearly stated that only in the event of the petitioner violating the condition, the earlier order of grant will be reviewed. He has also produced the Town Survey Register and other revenue documents for perusal of the Court.

7. I have considered the rival submissions and perused the materials available on records carefully.

8. From the perusal of the order passed by the second respondent/Commissioner, Land Administration dated 31.05.1991, it could be seen that the Commissioner has elaborately considered the documents available on record and came to a conclusion that in the earlier proceedings initiated under Section 26 of 2016, the land is classified as "Government Poromboke". On considering the fact that the petitioner is using the property as "kabarsthan" for Muslim community, the Government has passed an order under Section 17 of the Act permitting the petitioner's possession in respect of lands in T.S.No.s.16 and 18. The relevant portion of the said order reads as follows :

" Consequently, under the powers vested under Section 7 read with Section 17 of the Act 26/63, the Revision Petitioner, the Muslim Jamath, Karaikudi is hereby permitted to remain in possession of the remaining area of lands in T.S.No.16 and T.S.No.18 in Block NO.2, Ward NO.6, of Kalanivasal Village, Karaikudi Taluk of Pasumpon Thevar Thirumagan District, excluding the area to be demarcated as building and appurtenant thereto in respect of which the question of issue of patta would depend upon the clarification to be issued by Government. The issue of the above direction under Section 17 of the Act 26/63 is however subject to the following conditions:-

1. that the Jamath should pay the appropriate "taram assessment" to be fixed by the Assistant Settlement Officer from the fasli which the estate was taken over by the averment under Act 26/63.

2) that the purpose of the grant should be satisfied.

3) that the Government have the revisionary rights, if the purpose of the grant is not fulfilled and satisfied. "

That order has been confirmed by the first respondent Government, and on perusal of records, I find no irregularity or illegality in the order passed by the respondents.

8. Now, the grievance of the petitioner is that, if the lands are treated as "Community Land" there is likelihood of other community people also claiming right over the property.

The apprehension of the petitioner is totally misconceived, the competent authority passed the order under Section 17 of the Act, permitting the petitioner to use the land exclusively for the purpose of Burial Ground. As long as the petitioners are using the land as "Burial Ground", there is no possibility of any third party claiming right over the property. That apart, the Town Survey Register and Adangal stands in the name of the President, Mohammed Jamath Committee, Karaikudi. In the said circumstances, as long as the petitioner/Jammath committee is obeying the conditions imposed by the authorities, only the Mohammedan Community people alone entitled to use the land for burial or doing prayer.

9. With the above observations, this Writ Petition is dismissed. No cost.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mrp

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai.
- 2.The Commissioner and Special Commissioner,
Land Administration , Chepauk, Madras 5.
- 3.The District Collector,
Sivaganga District.

+1cc to Mr.V.Raghavachari, Advocate SR.96354
+1cc to the Government Pleader SR.97100

W.P.No.32323 of 2004

CA(CO)
CB(06/02/2020)