

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27/04/2019

DATED : 30.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.22684 of 2012

N.Natarajan

.. Petitioner

Versus

1. The Thasildar
Namakkal Taluk
Namakkal.

2. The District Revenue Officer
Namakkal

3. The District Collector
Namakkal

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in proceedings No. Na.Ka.470/12/B3 dated 25.5.2012, quash the same and direct the first respondent to issue patta in the name of the petitioner in Survey No. 512/1 measuring 4.83 acres of land in Lathivadi Village, Namakkal Taluk.

For Petitioner :: Mr. K.S.Karthik Raja

For Respondents :: Mr. P.S.Sivashanmuga Sundaram
Special Government Pleader

ORDER

The writ petitioner claimed to be the owner of 4.83 acres of land in S.No. 512/1, Lathivadi Village, Namakkal Taluk. He claimed that he got the said lands by virtue of a registered partition deed dated 24.12.1973. He claimed that the lands are in his possession and enjoyment.

2. In the affidavit filed in support of the Writ Petition, the petitioner had stated that the Government

Officials have classified the lands as "Kuttai Pormaboke" in UDR A-Register. He thereafter approached the Commissioner of Survey and Settlement, Chennai, by filing an application on 02.09.2011. The petitioner claims that the Commissioner for Survey and Land Records passed an order on 29.09.2011 directing the Revenue authorities to record his name as the owner, who has derived title of enjoyment. It has further stated that the second respondent, District Revenue Officer, Namakkal, by proceedings dated 30.04.2012, directed the first respondent, Tahsildar, Namakkal Taluk, to make necessary changes in the revenue records and to issue patta in the name of the writ petitioner.

3. The petitioner further stated that the first respondent passed an order on 25.03.2012 subdividing S.No. 512/1 as 512/1 (part) measuring 1.95.5 hectares of land as communal land and S.No. 512/3 measuring 0.10.0 hectares as Kuttai. The petitioner claimed that the entries made by the first respondent are against the orders passed by the Commissioner of Land Reforms Chennai. The petitioner claimed that the first respondent should have transferred his name in the revenue records and should have issued patta in his name. Challenging the order of the first respondent, the Writ Petition has been filed for a Writ of Certiorarified Mandamus to call for the records of the Order of the first respondent and to set aside the same and direct the first respondent to issue patta in the name of the petitioner in S.No. 512/1 measuring 4.83 acres in Lathivadi Village, Namakkal Taluk.

4. A counter has been filed by the respondents stating that Lathivadi Village in Namakkal Taluk, was an estate village taken over by the Government under the provisions of the Tamilnadu Estates Abolition and Conversion of Ryotwari Act 1948. Survey and Settlement operations were conducted and the records were handed over for maintenance in the year 1957. During the Survey and Settlement operations, the lands in S.No. 512/1, to an extent of 5.08 acres were classified as Kuttai Poromboke. The land owners filed an Appeal before the Board of Revenue. The Board of Revenue concluded that it was not a case for grant of patta under Section 11 of the Tamilnadu Estates Abolition and Conversion of Ryotwari Act 1948 but only a right to enjoy the Government land under Section 19(A), can be granted and instructed the Settlement Officer to grant right under Section 19(A) of the Act. Pursuant to the above Orders, the Director of Settlement has also recorded continuous right under Section 19 (A) of the Act to the land owners by Order dated 31.12.1965 with respect to 4.83 acres in S.No. 512/1. Subsequently, an amendment to Section 14 of the Act was issued under Act 49/74 to the effect that all tanks and ooranies belonging to private persons are to be transferred as Government poromboke. Consequently, the lands in S.No. 512/1 was treated as Kuttai

Poromboke and necessary changes were carried out in the village accounts. The petitioner filed an appeal to the Commissioner of Settlement, Chennai and the Appeal was disposed of by order dated 31.12.1965 with the observation that once it has been decided to grant permission under Section 19(A) of the Act, it was not necessary to pass any order under the Amendment. The decision of the Director of Settlement was upheld.

5. The District Revenue Officer, Namakkal, the second respondent had also passed an Order dated 30.04.2012 with respect to the extent of 4.83 acres in the name of the individuals who were in possession and a direction was also issued to the Tahsildhar, Namakkal, to effect the changes in the village accounts. The Tahsildhar, Namakkal, the first respondent, by Order dated 16.05.2012, treated S.No. 512/1 to an extent of 1.95.5 hectares as communal poromboke and another extent of 0.10.0 hectares as Kuttai. It was stated that none of the authorities have directed grant of patta. It was stated that the petitioner can only enjoy the lands and they can only possess the land but cannot be granted title or ownership to the lands. It was therefore stated in the counter affidavit that the Writ Petition has to be dismissed.

6. I have carefully considered the arguments advanced by Mr.K.S.Karthik Raja, learned counsel for the writ petitioner and Mr. P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing for the respondents.

7. The lands in question, namely, in S.No. 512/1, Lathivadi Village, Namakkal Taluk, measuring 4.83 acres has been classified as Kuttai Poromboke in the revenue records. It is seen that the entire Lathivadi Village in Namakkal District was an estate village and the Government had taken over the lands under the provisions of Tamilnadu Estates Abolition and Conversion of Ryotwari Act 1948 (Act 26/1948). During Survey and Settlement operations, the lands in S.No. 152/1 were classified as Kuttai Poromboke. The erstwhile land owners filed an Appeal before the Board of Revenue, which, by Order dated 16.10.1963 concluded that patta cannot be granted under Section 11 of the Act but only a right to enjoy can be granted under Section 19(A) of the Act. Thereafter, the Director of Settlement had also passed necessary entries by Order dated 31.12.1965. In the meanwhile, an amendment to Section 14 of the Act 26/1948 was issued under Act 49/74. By this amendment all Tanks and ooranies were transferred as Government Poromboke. Consequently, the lands in S.No. 512/1 was treated as Kuttai Poromboke and necessary charges were carried out in the village accounts. The writ petitioner filed an Appeal before the Commissioner of Settlement, Chennai. The Appeal was also disposed of stating that it was not necessary to issue separate

orders since a direction had already been given to grant permission under Section 19(A) of the Act. Accordingly, directions were also issued to the first respondent by the second respondent. The first respondent, Namakkal, in the impugned order has treated S.No. 512/1 measuring 1.95.5 hectares as communal poromboke and registered them in the names of the person / enjoyers and treated an extent of 0.10.0 hectares as Kuttai. The learned counsel for the writ petitioner stated that this endorsement by the Tahsildhar is contrary to the directions of the Commissioner of Survey and Settlement, Chennai.

8. I do not agree with the said contention.

9. The lands had been taken over by the Government under the provisions of the Tamilnadu Estates Abolition and Conversion of Ryotwari Act 1948. During the Survey and Settlement operations, the lands in S.No. 512/1 were classified as Kuttai Poromboke. The Board of Revenue also held that it was not a case for grant of patta but only a right to enjoy under Section 19(A) can be granted. Accordingly, the said right was conferred. This has been the consistent stand of all the authorities including the Commissioner of Settlement, Chennai and also of the District Revenue Officer and also of the Tahsildhar, Namakkal.

10. A perusal of the records show that even in the impugned order, the names of the writ petitioner Natarajan, son of late Ninapa Udayar and others have been shown as having possessory rights. This was the right granted to the Commissioner of Land Reforms. This was the right granted by the erstwhile Board of Revenue. This was the right granted during the Survey and Settlement. This was the right also directed to be granted by the District Revenue Officer, Namakkal. This was the right granted by the Tahsildhar.

11. Admittedly, the lands are Government Poromboke lands, in which there is a Kuttai or lake. By an amendment to Section 14 of the Tamilnadu Estates Abolition and Conversion of Ryotwari Act 1948, all Tanks and ooranies belonging to private persons have been transferred as Government Poroboke. Consequently, the petitioner can exercise only a right to enjoy the lands. He, or anybody acting under him cannot claim title or ownership. He cannot claim a right to deal with the lands or to convey the lands or to create encumbrance over the lands. The lands are Government lands. They are not the private lands of the writ petitioner. It is not correct on the part of the writ petitioner to claim that he is the owner of the land. A partition deed entered into between two persons, who enjoy the lands cannot confer title. It is a self serving document. The

petitioner's rights are limited to enjoyment over the lands. That right can be protected but that right cannot enlarge into ownership. The petitioner can only seek a right not to be dispossessed without due process of law.

12. This right is also subject to the further and larger rights of Government. But however if the Government is to take action to evict the petitioner, they can do so only according to procedure established by law and by due process. That is the only relief which this Court can give. The court cannot grant title to the petitioner. The Court cannot grant direction to grant patta in the names of the petitioner. The possession of the petitioner alone can be protected. I find no irregularity in the impugned Order. Consequently, I hold that the petitioners are not entitled to any relief.

13. With the observations made above, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vsg

To

1. The Thasildar
Namakkal Taluk
Namakkal.

2. The District Revenue Officer
Namakkal

3. The District Collector, Namakkal

+1cc to Mr.KS.Karthikraja, Advocate SR.No.42320

W.P.No.22684 of 2012

AK(CO)

GMV(02/05/2019)