

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.9393 of 2018
and W.M.P.Nos.11200 & 11201 of 2018

1.Syed Rahiman

2.Syed Gaffer .. Petitioners

/versus/

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The District Revenue Officer,
Kancheepuram District,
Kancheepuram.

3. The Tahsildar,
Uthiramerur Taluk,
Kancheepuram District.

4. Nathar Avuliya Darga,
Rep.by its Jamathar,
No.290, Salavakkam Village and Post,
Uthiramerur Taluk.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorari, calling for the entire proceedings of the 2nd respondent in Na.Ka.No.10102/2015/No.3 dated 29.02.2016 and quash the same being illegal and contrary to the dictum laid down by this Court.

For Petitioners : Mr.S.N.Kriubanandam
For Respondents : Mr.S.Ravikumar
Addl.Govt.Pleader for R1 to R3
No appearance for R4

O R D E R

The case of the petitioners is that they are the absolute owner of the property comprising Survey Nos.473/1, 473/2 and 473/3 measuring 2.62 acres in Salavakkam Village, Utheramerur Taluk, Kancheepuram District.

2. The said land was granted as Inam to their forefathers for performing certain charities and they had been doing the said charities. After their life time, the petitioners and their brothers carried on the charities for several decades without any hindrance. While so, the representatives of the 4th respondent/Darga filed a suit in O.S.No.281 of 1979, on the file of the District Munsif Court, Chengalpattu claiming ownership of the properties, which was contested by the petitioner and the Trial Court found the claim of the plaintiff/4th respondent was baseless and dismissed their suit. Appeal preferred by the plaintiff was also dismissed by the Sub Court, Chengalpattu in A.S.No.99 of 1984, confirming the judgment of the Appellate Court.

3. Pursuant to that, the 4th respondent/Darga preferred a Second Appeal before the High Court, which was also dismissed. The High Court in the Second Appeal has reaffirmed the findings of the Courts below and has categorically observed that the defendant's forefathers (Writ petitioners) had been given the properties for performing certain charities they were carrying on the charity. Their names find place in the original grant and it has not been established the grant in favour of the Darga. The 4th respondent has miserably failed to establish the claim made on behalf of the Darga. The first appellate Court on appreciating the documents relied by the parties has also observed that the Gazette notification of Tamil Nadu A-3/17-12-1958 does not disclose the subject property is the property of the Wakf.

4. In the said circumstances, when the petitioners herein has sought for patta vide application dated 12.04.2005, the 2nd respondent herein has issued proceedings dated 29.02.2016, rejecting the request for grant of patta stating that the patta has been issued in favour of “தைக்கா தோப்பு, நத்தர்வலி அல்லியா மபிரா தற்கால தர்மகர்த்தா” as per the Tamil Nadu Inams Abolition and Riotwari Act, 1963, but on perusing the revenue records, Chitta and Adangal the land being covered under the Inam Abolition Act. The request has been considered under the said Act by the Special Tahsildar.

5. Aggrieved by the said order, the present writ petition is filed on the ground that the 2nd respondent has virtually overruled the well considered judgment of the High Court passed in

S.A.No.54 of 1990 dated 21.09.2001. It is nothing but abuse of power. When the competent civil Court after due trial has ascertained the title of the petitioner, the 2nd respondent ought to have abide by the judgment and decree of the civil Court, which has reached finality and ought not to have revisited the issue for extraneous consideration.

6. In the counter filed in response to the writ petition, the respondents 1 to 3 have stated as follows:

"7. As per the entries in the village accounts the property in question is under in the name of "Thaikka Thoppu Nathar vali avuliya, as per patta No.11. The legal dispute over the rights and title of the property between the petitioners and 4th respondent and the consequential orders said to have passed by the Hon'ble Court is S.A.No.54/1990 dated 21.09.2001 cannot be treated as valid to mutate the patta in favour of the petitioners unless the petitioners obtain appropriate order under the provisions of the Tamilnadu Minor Inam (Abolition and Conversion into Ryothwari) Act 1963 and as such their claim do not attract the provision of the Tamil Nadu Patta Pass Book Act, 1983 and accordingly this respondent rejected their claim"

7. It is unfortunate to observe that the title of the property has been agitated before the competent civil Court and after perusing the records filed by the contesting parties, Court has declared title. The civil Court has categorically held that any entry in the revenue records made in favour of the Darga/4th respondent pursuant to the settlement of the Tahsildar proceedings are non est in law and the petitioners herein being legal heirs of the grantees of Inam, entitled to hold the property and title vested with them. While so, the 2nd respondent has though in his wisdom that the order passed by the Hon'ble High Court in S.A.No.54 of 1990 dated 21.09.2001 cannot be treated as valid to mutate the patta in favour of the petitioner, unless the petitioner obtained order under the provisions of the Tamilnadu Minor Inam (Abolition and Conversion into Ryothwari) Act 1963. When the competent civil Court has already held that any entry made pursuant to the said Act is non est in law, there is no necessity for the petitioner to approach the authorities once again under the said Act to cancel the entries.

8. The 2nd respondent unaware of the legal position has given predominant to the revenue records in spite of civil dispute reached finality up to second appeal after rejecting the entries in the said revenue record.

9. Hence the order passed by the 2nd respondent is liable to be quashed. Proceedings of the 2nd respondent dated 29.02.2016 is hereby quashed as illegal, improper and without authority. The 2nd respondent is directed to consider the representation of the petitioner dated 12.04.2005 taking note of the judgment passed by the civil Courts referred above and pass appropriate orders within a period of eight weeks from the date of receipt of copy of this order. If necessary, the petitioner herein shall furnish copy of his application dated 12.04.2005 to the 2nd respondent along with other documents afresh.

10. Accordingly, the writ petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rpl

To

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The District Revenue Officer,
Kancheepuram District,
Kancheepuram.
3. The Tahsildar,
Uthiramerur Taluk,
Kancheepuram District.

+1 CC to Mr.S.N.Kriubanandam, Advocate sr 83111.

+1 CC to Govt. Pleader sr 83657.

W.P.No.9393 of 2018

and W.M.P.Nos.11200 & 11201 of 2018

PVS(CO)
SP(04/11/2019)

WEB COPY