

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.9594 of 2019
and WMP.No.10199 of 2019

S.Naheep Khan
Petitioner

...

Vs

1.The State of Tamil Nadu
Rep. by its Secretary
Panchayat & Rural Department
St.George Fort
Chennai-600 009

2.The District Collector
Kancheepuram District
Kancheepuram

3.The Commissioner
Pallavaram Municipality
Chrompet, Chennai-600 044
Tambaram Taluk,
Kanchipuram District
... Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondents, particularly, the 3rd respondent's impugned order dated 04.02.2019, vide Ref.Na.Ka.No.6895/2015/F1 and quash the same and consequently direct the 3rd respondent to handover vacant possession of the subject property, situated at Jamin Pallavaram Village, Lakshmi Nagar, Tambaram Taluk, Kancheepuram District, Patta No.559, comprised in Survey No.431/1 measuring to an extent of 4900 sq.ft. after removing the park.

For Petitioner : Mr.Thanjan.R.

For Respondents : Mr.B.Anand, Government
Advocate for R1 and R2.

Mr.P.Srinivas, for R3.

ORDER

This Writ Petition is filed praying to quash the order the 3rd respondent dated 04.02.2019, vide Ref.Na.Ka.No.6895/2015/F1 and consequently to direct the 3rd respondent to handover vacant possession of the subject property, situated at Jamin Pallavaram Village, Lakshmi Nagar, Tambaram Taluk, Kancheepuram District, Patta No.559, comprised in Survey No.431/1 measuring to an extent of 4900 sq.ft. after removing the park.

2. The Writ Petitioner is state to be the absolute owner of the property in Survey No.431/1 measuring to an extent of 4900 sq.ft and assigned patta No.559 for the aforementioned property.

3. Originally, the aforesaid property was owned by one S.A.N.Kuppiah Rowther and after his death, his legal heirs partitioned themselves their family properties, including the subject property on 16.10.1947 vide Registered Partition Deed Doc.No.2697/1947, in SRO, Ilayankudi. Thereafter, the said K.Sultan and his brothers made a family arrangement, by way of Koor Chit in the year 1965 and thereby the said said K.Sultan has got his share, including the subject property, who possessed and enjoyed by paying all Government Taxes and other charges and also obtained Patta No.559 in his name. During his lifetime, K.Sultan sold the Plots after making lay-out and retained some properties. Subsequently, K.Sultan has settled the said subject property to and in favour of his son, S.Naheeb Khan on 03.04.2006 vide Settlement deed document No.1941/2006, SRO, Pallavaram and also handed over possession to Naheeb Khan.

4. According to the Petitioner, the Petitioner's Principal is in possession and enjoyment of the property by virtue of the documents and subsequent to the partition, the petitioner is managing the same for and on behalf of his Principal, without any interference.

5. While so, the 3rd respondent had put a display board by mentioning that the subject property to an extent of 4900 sq.ft., situated at Jamin Pallavaram, Patta No559, in S.No.431/1, belonged to the 3rd respondent and no one can claim or interfere over the subject property. Hence, the petitioner filed W.P.No.671 of 2015 before this court and this court, by order dated 10.07.2018, directed the 4th respondent to consider the representation of the Petitioner on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of the order, after providing an opportunity of hearing to the necessary parties.

6. Thereafter, the petitioner appeared before the 3rd respondent and submitted all the relevant documents. The 3rd respondent passed the impugned order dated 04.02.2019, against which the present writ petition is filed.

7. The 3rd respondent Municipality filed their counter affidavit. In paragraph 5 of the counter, it is averred that K.Sultan who has developed the entire area as a Layout and has obtained the sanction for the same, by showing the particular place of 15500 sq.ft., as a park as required under the statute for sanctioned layout. Having done so and having sold the various plots in the layout with the present lands as part of the park, it is not open to the petitioner to now claim that the author of the layout has settled the lands in his favour.

8. It is further submitted in the counter affidavit that the requirement to reserve the lands as park lands in a layout is to provide for the much needed lung space in a growingly congested urban area. Further as per the requirement of the Tamil Nadu District Municipalities Act and the Tamil Nadu Town and Country Planning Act, the lands of 10% in a layout have be reserved for the use of the public as a park or other play spaces and be left to the custody of the concerned Local Body. Accordingly the land has been shown as a park and the same is under the custody and care of the respondent Municipality which holds it as the trustee and custodian of the beneficiaries.

9. The learned counsel for the 3rd respondent also reiterated his submissions as stated in the counter affidavit that at the expense of the public revenue to the extent of Rs.25 lakhs the park has been developed with the various facilities and it is in use as a Park by the Public. The patta relied upon by the Petitioner relates to the area of the land that was in existence prior to the sanctioning of the layout in No.52/1970. The land that is now a park is in fact entered in the Town Survey Land Register as the Municipal Lands and not private patta lands.

10. Taking into consideration the entire facts and circumstances of the case, this court is of the considered view that the 3rd respondent after hearing the Power holder of the Petitioner and after issuing notice of hearing, passed the impugned order. The 3rd respondent has taken the said stand in the impugned order after going through the entire records and with a view to maintain the part for public benefit. In such

circumstances, the arguments raised by the Petitioner counsel seeking to quash the impugned order dated 04.02.2019, do not have any force. Therefore, the petitioner has no legal semblance to seek the relief. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Secretary, State of Tamil Nadu
Panchayat & Rural Department
St.George Fort
Chennai-600 009

2.The District Collector
Kancheepuram District
Kancheepuram

3.The Commissioner
Pallavaram Municipality
Chrompet, Chennai-600 044
Tambaram Taluk, Kanchipuram District

+1 cc to Mr.R.Thanjan, Advocate, Sr.No. 39513
+1 cc to Mr.P.Srinivas, Advocate, Sr.No. 39761
+1 cc to The Government Pleader, Sr.No. 39902

CSL/04.07.2019

WP.9594 of 2019

सत्यमेव जयते

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