



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.25440 of 2016

1. N.Mustak Sheriff
2. N.Mahaboob Sheriff
3. N.Sardar Sheriff
4. N.Ismail Sheriff
5. N.Chand Begum
6. N.Mallika Begum .. Petitioners

-vs-

1. The Commissioner of Police
Shevapet
Salem Corporation
Salem-2
2. The Assistant Commissioner of Police
(Central Crime Branch)
Salem Town Police Station complex
Salem 636 001
3. The District Collector
Office of Collectorate
Salem District
Salem Town 636 001
4. The Revenue Divisional Officer
Collectorate Office campus
Salem Town 636 001
5. K.Akbar Basha
6. A.G.Naqzar Basha
7. A.Safiullah Khan
8. A.Mohamed Rafi .. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of fourth respondent in his proceedings under notice Na.Ka.1788/2015/A3 dated 16.10.2015 and quash the same and consequently direct the



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respondents not to interfere with the possession and enjoyment of petitioners property of an extent of 0.42 cents and 0.6 cents comprised in T.S.Nos.68 and 69 respectively in Maravaneri Village within Salem Town Municipal limits and also by directing the respondent Nos.1 and 2 not to interfere in the civil dispute between petitioners and respondents 5 to 8.

For Petitioners :: Mr.K.Raja for
Mr.M.Kaviveerappan

For Respondents :: Mr.V.Shanmugasundar
Special Government Pleader
for R1 to 4
Mr.S.Kalyanaraman for R5 to 8

ORDER

Mr.N.Mustak Sheriff, S/o late M.Nawab Sheriff and five other petitioners have come to this Court challenging the impugned notice dated 16.10.2015 issued by the Revenue Divisional Officer, Salem Town, the fourth respondent herein calling upon the petitioners to come for an enquiry.

2. Learned counsel for the petitioners submitted that an extent of 0.42 cents in T.S.No.68 and another extent of 0.6 cents in T.S.No.69 at Maravaneri Village falling within the municipal limits of Salem Town, originally belonged to the petitioners' father Nawab Sheriff, since deceased. This is evident from the proceedings issued by the Director of Settlements, Madras dated 17.10.66 bearing No.4941/66-B3, in and by which the Director of Settlements, Madras had granted patta in respect of the said property in favour of the petitioners' father Mr.M.Nawab Sheriff under Section 19A of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. It was also recorded in the Town Survey and Re-Settlement Register, Salem Town. The learned counsel for the petitioners also submitted that the said proceedings were also confirmed by the revisional authority, namely, the Board of Revenue (Settlement of Estates), Chepauk, Madras by an order dated 22.2.68 holding clearly that the land in Town Survey Nos.68 and 69 had been registered in the mita accounts as Mustak Sheriff Sahib private burial ground. Therefore, when the Director of Settlements, Madras had passed the order dated 17.10.66 and again the said order, when challenged before the revisional authority, was confirmed again by the revisional authority, namely, the Board of Revenue (Settlement of



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Estates), Chepauk, Madras by its order dated 22.2.68, the Revenue Divisional Officer, Salem, the fourth respondent cannot once again hold an enquiry merely on the basis of a complaint given by the respondents 5 to 8 herein. Adding further, it is stated that after the death of the petitioners' father Mr. Nawab Sheriff on 27.11.76, the petitioners being the legal heirs obtained patta in their favour. Even the private respondents are also the close relatives of the petitioners. However, when the father of the sixth respondent as well as the eighth respondent along with their relatives attempted to trespass into the above said property on 27.3.82, the petitioners 1, 2, 4 & 6 filed a civil suit in O.S.No.383 of 1982 on the file of the District Munsif Court, Salem for a permanent injunction and the said suit was also decreed as prayed for on 6.1.83. Aggrieved thereby, the defendants in that suit also filed A.S.No.2 of 1983 before the Principal Sub Court, Salem and the same was dismissed on 31.8.94. Still aggrieved, the father of the sixth respondent as well as the eighth respondent along with others preferred a second appeal before this Court in S.A.No.756 of 1995 and the same was also dismissed by the judgment and decree dated 11.8.2000 and thus, the decree of the trial Court, which was confirmed by both the first and second appellate Courts, had become final. In spite of the clear title and ownership confirmed in favour of the petitioners, the respondents 5 to 8 along with their relatives made an illegal attempt to trespass into the property and based on the frivolous and false complaint made by the respondents 5 to 8, in spite of the order passed by the Director of Settlements, Madras dated 17.10.66, which was confirmed by the Board of Revenue (Settlement of Estates), Madras vide order dated 22.2.68, the fourth respondent ought not to have summoned the petitioners for an enquiry. Again referring to the order dated 22.2.68 passed by the Board of Revenue, the learned counsel for the petitioners stated that the Board of Revenue, considering the judgment passed by the learned Additional Subordinate Judge, Salem in I.A.Nos.1092 of 1964 and 55 of 1965 filed in O.S.No.188 of 1951, has recorded a finding that the land in question is a private property belonging to the petitioners' family. Therefore, when the petitioners' family were able to establish their title and possession before the Director of Settlements, Madras and again before the Board of Revenue (Settlement of Estates), Chepauk as well as before the civil Court, the enquiry notice issued by the fourth respondent is wholly amounting to re-litigation, which is not permissible, as that would take away the precious and



valuable time of not only the department, but also the petitioners and the respondents.

3. It is at this stage, the learned counsel for the respondents 5 to 8 requested that the matter may be adjourned by a week, as the respondents 5 to 8 have already taken away the papers from the lower Court counsel who has been instructing him.

4. This Court finds it difficult to accept the request for adjournment, as the matter was listed on 18.11.2019 and again today as a part heard matter. Moreover, when the proceedings issued by the Director of Settlements, Madras dated 17.10.66 and the proceedings issued by the Board of Revenue (Settlement of Estates), Chepauk dated 22.2.68 referring to the judgment passed by the learned Additional Subordinate Judge, Salem in I.A.Nos.1092 of 1964 and 55 of 1965 filed in O.S.No.188 of 1951 crystal clearly show that the notice issued by the fourth respondent is per se untenable and not maintainable, the writ petition requires to be disposed of.

5. The learned Special Government Pleader for the respondents 1 to 4 submitted that since a notice has been issued by the Revenue Divisional Officer, Salem, the fourth respondent herein, as explained before this Court by the learned counsel for the petitioners that the land in question is a private land supported with all the documents, no prejudice would be caused to them for their appearance before the fourth respondent as, if they produce all the documents, the fourth respondent can pass appropriate orders.

6. But this Court finds that no need has arisen for the petitioners to appear for enquiry in view of the documentary evidence confirming repeatedly the ownership and title of the petitioners' family in respect of the land covered in T.S.Nos.68 and 69 respectively situate at Maravaneri Village, Salem Town municipal limits. In this context, it is useful to refer to the proceedings issued by the Director of Settlements, Madras dated 17.10.66 bearing Rc.No.4941/66-B3 holding as follows:-

"7. The Thasildhar, Salem has stated that there is no objection to the assignment of the lands in favour of the petitioner. The Manager, Salem has



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stated that the portions of leads built upon may be assigned and that there are number of burials several years old in the vacant portions of the field in T.S.No.68.

8. The Commissioner, Salem Municipality was also not present at the time of hearing on 14.9.1966 and he has not raised any objection to the grant of patta.

9. In the circumstances, I consider that this is a fit case for issue of a direction under Section 19-A of the Act in favour of the claimant for an extent of 0.42 acre in T.S.No.68 and 0.06 acre in T.S.No.69. By virtue of the powers delegated in the G.O. first cited I hereby direct that Sri Nawab Sheriff son of Mohideen Sheriff be permitted to remain in possession of the lands measuring 0.42 acre in T.S.No.68 and 0.06 acre in T.S.No.69 of Maravaneri Village in Salem Municipal limit of Salem district subject to the payment of the assessment to Government to be fixed by the Assistant Settlement Officer, Salem from the fasli year in which the estate was taken by the Government."

7. A perusal of the above paragraphs would clearly show that even the Tahsildar, Salem had stated that there was no objection to the assignment of land in favour of the father of the petitioners. In view of the no objection given by the Tahsildar, Salem, the Director of Settlements, Madras, taking into account that the land in O.T.S.No.826 corresponding to N.T.S.Nos.68 and 69 was given tax free to one Mustaksha Makkan by the land holder, that the father of the petitioners derived title to the land by succession, that the lands were private burial ground of his family, that the lands ceased to be used as such long back and that similar lands in the vicinity have been granted patta, came to the conclusion that it is a fit case for issuance of a direction under Section 19-A of the Madras Estates (Abolition and Conversion into Ryotwari) Act in favour of



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the father of the petitioners for an extent of 0.42 acre in T.S.No.68 and 0.06 acre in T.S.No.69. When this order was also taken up before the Board of Revenue (Settlement of Estates), Chepauk, Madras, by an order dated 22.2.68, the Board of Revenue, after hearing both sides, has held as follows:-

"10. While summing up the case with reference to the observations of the High Court in W.A.132 to 134/62 a declaration under sec.6(2) of the Wakf Act does not seem to take, it entirely out of the jurisdiction of the settlement authorities for deciding in u/s 19A of the Act. Again, while acquiring a portion of the land (O.T.S.No.826) for the P.W.D.drainage scheme, the Land Acquisition Officer in his Award proceedings dated 5.3.1936 held that T.S.No.826 is a closed Mohammadan Burial Ground with vacant lands and that in the Town Survey register it is registered as private burial ground and in the mitta accounts as Mustak Sheriff Sahib private burial ground. This stand has been upheld by the Additional Subordinate Judge, Salem in his judgment in I.A.Nos.1092/64 and 55/65 filed in O.S.No.188/51. The Director of Settlement while issuing a direction under section 19A in favour of the first respondent has taken into consideration the recitals in the above proceeding which cannot be easily brushed aside...."

8. A careful perusal of the above finding clearly shows that the Board of Revenue, relying upon the judgment passed by the learned Additional Subordinate Judge, Salem in I.A.Nos.1092/64 and 55/65 in O.S.No.188/51, has made it clear that the land in T.S.Nos.68 and 69 has been registered in the mitta accounts as Mustak Sheriff Sahib private burial ground. Therefore, when the issue became final long time ago, it is not open to the fourth respondent to entertain any complaint. Hence, this Court finds that the impugned notice issued by the fourth respondent is per se wrong. Accordingly, the impugned



notice is quashed and the writ petition stands allowed as prayed for. Consequently, W.M.P.No.21766 of 2016 is closed. No costs.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

SS
To

1. The Commissioner of Police
Shevapet
Salem Corporation
Salem-2
2. The Assistant Commissioner of Police
(Central Crime Branch)
Salem Town Police Station complex
Salem 636 001
3. The District Collector
Office of Collectorate
Salem District
Salem Town 636 001
4. The Revenue Divisional Officer
Collectorate Office campus
Salem Town 636 001

+1cc to Mr.S.Kalyanaraman , Advocate SR.No. 96408
+1cc to Mr.M.Kaviveerappan , Advocate SR.No. 96380
+1 cc to Government Pleader Sr.No. 97635

W.P.No.25440 of 2016

A.SK(25/11/2019)