

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.01.2019

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND

THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.27766 of 2017
and WMP No.29751 of 2017

Senguthar Kaikkolar Samuthaya Nala Sangam
A Sangam regd., under Societies Act,
represented by its President, R.V.P.Raju,
Anangur, Paramathi Velur Taluk,
Namakkal District .. Petitioner

Vs.

1. The District Collector,
Namakkal, Namakkal District
2. The Tahsildar,
Paramathi Velur Taluk,
Paramathi Velur,
Namakkal District. .. Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the records of the 2nd Respondent culminated in and by his proceedings / Impugned Notice dated 09.10.2017 and quash the same.

For Petitioner : Ms.P.Dhanalakshmi
for Mr.V.S.Kesavan

For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondents.

2. According to the Petitioner, the property in Grama Natham Survey No.56/111 situated in Anangur, Paramathi Velur Village, Namakkal District is enjoyed by the Sengunthar Kaikkolar Community from time immemorial. The persons belonging to the said community are using it for more than 100 years as 'Pavadi', a place to dye and weaving of the textile activities and processes. Apart from that, more than 100 families are living on their wages by using the said 'Pavadi' for decades.

3. The stand of the Petitioner is that the said 'Pavadi' is used by the Weaving Community and their predecessors and for starching their yarn, other activities / limited activities, the same is utilised. The streets around the Pavadi were used to have the names of Pavadi Street, which is common even now in many towns and villages.

4. The grievance of the Petitioner is that on 25.03.1996, the 2nd Respondent / Tahsildar, Paramathi Velur Taluk, Namakkal District through proceedings had ordered that since the property was used for time immemorial and no objections were raised, after getting statements from village people, the name of the property in the revenue records was altered to 'Senguntha Mudaliyar Pavadi' from that time onwards, the 'A' Register also contain the property's name as 'Senguntha Mudaliar Pavadi' and this fact was provided by the 2nd Respondent on 10.11.2014 by means of a reply to application under Right to Information Act, 2005. In as much as the 'Pavadi' was open on all sides, the starching and other connected works were disturbed by the miscreants as well as cattles, who freely enter into Pavadi and damaged the yarns placed for drying. The Petitioner-Sangam covered the Pavadi with tin sheets for safety purpose and using the same for many decades. Having an eye on the property, the land grabbers and politicians from other villages colluded with the Respondents to evict the 'Sengunthar Kaikkolar Community Persons' from the Pavadi. With that purpose and owing to influence, the Respondents are taking steps for eviction and issued the Show Cause Notice earlier, for which the Petitioner's Sangam issued suitable reply. Without considering the same, now, the 2nd Respondent / the Tahsildar, Paramathi Velur Taluk, Namakkal District had issued Impugned Notice dated 09.10.2017 for eviction.

5. The Learned Counsel for the Petitioner submits

that the 2nd Respondent had failed to apprise that the property in question is 'Grammanatham' as per his own order dated 26.03.1996 and in fact, the Petitioner's Sangam people were permitted to utilise it as 'Pavadi'. Apart from that, the Government has no authority or ownership over the Gramanatham properties.

6. The Learned Counsel for the Petitioner takes a stand that the 2nd Respondent may make a field inspection with a view to find out whether property is in illegal occupation etc., as claimed in the Impugned Notice dated 09.10.2017.

7. Per contra, it is the submission of the Learned Special Government Pleader for the Respondents that originally land in Survey No.56/111 of Anangur Village Paramathi - Velur measuring an extent 0.3579.0 Square meter is Sarkar Poramboke classified as Village Site [Grammanatham] and in the year 1995, the Anangur Village public represented to the Tahsildar, Paramathi Village Taluk to alter the name of S.No.56/111 as 'Sengunthar Mudaliyar Pavadi' and after inspection of the said land and enquiry being conducted in this regard, [the said land in S.No.56/111 measuring an extent of 0.3579.0 sq.mtr], the then Tahsildar altered the classification as 'Sengunthar Mudaliyar Pavadi' in proceedings in Na.Ka.562/1996/B7/ dated 26.03.1996.

8. Furthermore, it is represented on behalf of the Respondents that the 'Sengunthar Mudaliyar Community' people had utilised the land to dry the Pavoo Yarn in sunlight in open area of the land in S.No.56/111 of Anangur Village and for this purpose, the classification of land was converted as 'Sengunthar Mudaliyar Pavadi'. In short, the said land is being utilized by the sub caste of Sengunthar Mudaliyar Community, i.e., Kaikkolar, Issai Vellalar etc., and the President of the Petitioner-Sangam had constructed wall and erected tin sheet around the land in S.No.56/111 and resisted non-residence of the said Sangam in S.No.56/111.

9. The stand of the Respondents is that by constructing a wall and erecting tin sheets, the President of the Petitioner/ Sangam had encroached the land in Survey No.56/111 of Anangur Village and the said encroachment is an 'Objectionable Encroachment' and accordingly, a notice under Section 6 of the Tamilnadu Land Encroachment Act, 3 of 1905 dated 09.10.2017 was issued by the Tahsildar, Paramathi-Velur Taluk.

10. The Learned Counsel for the Respondents proceeds to point out that no notice or any representation was received from weavers about the disturbances of miscreants. Apart from that, while the weavers doing their work in the open area in S.No.56/111, there is no scope for the cattle to enter into the open area. In fact, 'Pavadi land' is to be used by one and all the weavers of Sengunthar Mudaliyar Community. If the land is transferred to Petitioner's Sangam, then, the non members of the Mudaliyar Community will be affected. In fact, the Sengunthar Mudaliyar Pavadi' land is only a 'Poramboke land' and in short, S.No.56/111 is not a patta land. In reality, Pavadi Lands must be used only for the work pertaining to weaving. Also that, no politician or villagers had recommended for evicting the encroachers / encroachment and only with an ambition to get the land in favour of the Petitioner / Sangam, the Petitioner had blamed the villagers and the politicians.

11. The Learned Special Government Pleader for the Respondents comes out with a plea that if the Petitioner / Sangam is really an affected / aggrieved person in respect of the notice dated 09.10.2017 of the 2nd Respondent, then, it has to prefer an Appeal, as per Section 10 of the Tamilnadu Land Encroachment Act, 1905 before the 1st Respondent / Appellate Authority. After passing of an order by the Appellate Authority in an Appeal, if the Petitioner / Sangam is dis-satisfied, then, it has to prefer 'Revision' under Section 10-A before the Commissioner of Land Administration.

12. Admittedly, in the instant case, the Petitioner has not filed any appeal before the 1st Respondent / Appellate Authority, as envisaged under Section 10 of the Act. More importantly, even against the order of an Appellate Authority, the Petitioner has a viable, effective and efficacious alternative remedy under the Act, 1905 by filing 'Revision' before the Commissioner of Land Administration.

13. It is to be pointed out that as per Section 11 of the Act, for 'Filing of an Appeal and Revision,' 30 days time limit is specified under the Act, 1905. Since the Petitioner has an effective and efficacious remedy before the 1st Respondent / District Collector, Namakkal District, this Court directs the Petitioner to prefer an 'Appeal' as against the Impugned Notice dated 09.10.2017 within a period of two weeks from the date of receipt of

a copy of this order. If the Petitioner prefers an Appeal within the time adumbrated by this Court, then, the plea of 'Limitation' cannot be put against the Petitioner / Sangam. In fact, the 1st Respondent / District Collector, Namakkal is directed to take on file the Appeal to be preferred by the Petitioner within the time limit prescribed by this Court [if it is otherwise in order in all respects] and to dispose of the same within a period of six weeks thereafter by following the due procedure, especially adhering to the principles of natural justice. It is open to the Petitioner / Sangam, as an Appellant, to raise all factual and legal pleas before the 1st Respondent / District Collector, Namakkal, who is directed to meet out all the said points raised by the Petitioner and to pass a reasoned speaking order in a qualitative and quantitative fashion. If the Petitioner / Sangam seeks personal appearance to project / hear their views at the time of enquiring the appeal, the 1st Respondent / the District Collector, Namakkal shall provide the same and that the Petitioner/Sangam shall utilise the said opportunity in a diligent fashion. The Petitioner / Sangam is directed to lend its assistance and co-operation to the 1st Respondent / District Collector, Namakkal in disposing of the Appeal in a complete and comprehensive manner within the time determined by this Court.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently connected Miscellaneous Petition is closed. No costs.

Sd/-/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
Namakkal, Namakkal District

2. The Tahsildar,
Paramathi Velur Taluk,
Paramathi Velur, Namakkal District.

+1cc to Mr.V.S.Kesavan , Advocate SR.No. 3663

+1 CC TO GOVERNMENT PLEADER SR.NO. 40051

W.P.No.27766 of 2017
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A.SK(21/02/2019)