

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.28108 of 2017
and WMP Nos.30200 and 35442 of 2017

K. Murugan ... Petitioner
Vs

1. The District Collector,
Erode District, Erode

2. The Revenue Divisional Officer,
Gopichettipalayam,
Erode District

3. The Tahsildar,
Gopichettipalayam,
Erode District.

4. Thangavel Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the Respondents 1 to 3 herein to remove the encroachment made by the Fourth Respondent on the temple Land comprised in S.No.611/31 admeasuring 2.5 cents of vacant Land classified as Natham situated at Olagadam Village, Bhavani Taluk, Erode District in accordance with law.

For petitioner : Mr.N.U. Prasanna for
M/s Sai Bharath and Ilan

For R.1 to R.3 : Mr.S.N. Parthasarathy
Govt. Advocate

For R.4 : Mr.E.P. Senniyangiri

ORDER

(Order of the Court was made by M VENUGOPAL,J.,)

Heard the Learned Counsel for the Petitioner, the learned Government Advocate for the Respondents No.1 to 3 and the

Learned Counsel for the Fourth Respondent.

2. According to the Petitioner, besides being a permanent resident of Door No.338, Kottai Nagar, Sengadu, Bhavani Post and Taluk, Erode District, he is one of the devotees of Sri Angalamman Temple and hence, filed the present Writ Petition on account of his personal interest. The Land, comprising in Re-Survey No.611/21 in respect of the property comprised in S.No.186 (Natham) situated at Olagadam Village, Bhavani Taluk, Erode District, was subdivided into Re-survey Nos.611/21, 611/31 and 611/32 by Proceedings dated 09.10.2001 bearing Ref.No.TK8A/43/1411 on the file of the Third Respondent.

3. In fact, the Land in S.No.611/23 is owned by the Fourth Respondent and it is a patta Land and situated adjacent to the Land comprised in S.No.611/31 and 611/32. The Fourth Respondent had applied for patta as if he purchased part of the property from the above Survey Number.

4. The grievance of the Petitioner is that the Third Respondent /Tahsildar, Bhavani Taluk, Bhavani, Erode District, without perusing any document and also even without producing any document to point out that the Fourth Respondent is the owner of the Property has sub divided the aforesaid Land, comprised in S.No.611/21 as 611/31 and 611/32, in which, the property comprised in S.No.611/31, the patta was issued to and in favour of the Fourth Respondent and he is in possession and enjoyment of the said property.

5. The primordial plea taken on behalf of the Petitioner is that the whole property is situated in S.No.611/21 admeasuring 355 Sq.Mt, which belongs to Sri Angalaman Temple and these Lands are utilised for all festivals and other performances related to the Temple. All the devotees of the Temple are looking after the same and administering the Temple. Some portions of the said Land was allotted to the Pujari of the Temple Mr.Madhappan and he was permitted to construct a house for his residence, which is adjacent to the Temple and he constructed a house and was residing there and administering and maintaining the Temple.

6. When that be the situation, the Fourth Respondent had encroached some portions of the Land, measuring 2.5 cents as if he had purchased the said property and secured patta by subdividing the Survey Number in the aforesaid manner. It is also situated adjacent to his patta and he had put up a compound wall. Further, he is enduring to enter into the Land of Pujari Mr.Madhappan for his pathway in the Land comprised in S.No.611/32 which is in possession and enjoyment of the said Pujari and his family.

7. At this juncture, the Learned Counsel for the Petitioner proceeds to point out that the Petitioner had requested the Respondents by projecting several representations to cancel the patta issued in favour of the Fourth Respondent in respect of the Land comprised in S.No.31 and to remove the encroachment from the said property, which belongs to Temple.

8. Even the Petitioner's application filed under Right to Information Act to provide the order of issuance of patta dated 09.10.2001 bearing Ref.No.TK8A/43/14111 was not provided by the Respondents and the matter is pending before the Appellate Commission. More over, the State Commission was pleased to direct the Third Respondent to provide information sought for in the subject matter and also levied cost of Rs.25,000/- to be payable by the Third Respondent/Tahsildar, Bhavani Taluk, Erode District. Inspite of the same, the copies of the said Order were not provided to the Petitioner.

9. The real grievance of the Petitioner is that the Fourth Respondent is endeavouring to encroach on the other properties of the Temple comprised in S.No.611/32, which is now in possession and enjoyment of the said Pujari Mr.Madhappan. The said Pujari and his family members are taking legal steps both under Civil and Criminal Law to protect the said Temple's property and to prevent the Fourth Respondent to encroach any further into the Temple's property. Under such circumstances, the Petitioner is left with no option but to file the present Writ Petition before this Court praying for passing of an Order by this Court directing the Respondents 1 to 3 to remove the encroachment made by the Fourth Respondent on the temple Land comprised in S.No.611/31 admeasuring 2.5 cents of vacant Land classified as Natham situated at Olagadam Village, Bhavani Taluk, Erode District in accordance with law.

10. On behalf of the Respondents No.1 to 3, the Learned Government Advocate submits that the Natham R.S.No.611/31 admeasuring 0.01.00 Sq.Mtr is classified as Sarkar Poramboke Vacant Side vested with the Government. Since the property is Government Poramboke, belonging to the Government, no one has a right to utilise the Land for their own purpose and if anyone, trying to encroach Government Poramboke Land in any manner, that will be treated as highly objectionable encroachment and necessary action will be taken to vacate them from the Government Poramboke Land.

11. The Learned Counsel for the Respondents 1 to 3 brings it to the notice of this Court that in the year 2001, the Fourth Respondent projected an application dated 16.06.2001 together with a copy of Registered Sale Deed bearing No.489/97 dated

10.03.1997 (on the file of Sub Registrar, Anthiyur) and sought for the sub division and separate patta for the Natham Land bearing R.S.No.611/31 of Olagadam Village, under his possession.

12. Based on the said application, the Zonal Deputy Tahsildar, Bhavani, in the proceedings Mu.Mu.MTR 1843/2001 dated 18.07.2001 had approved the sub divisions based on the sub division records submitted by Firka Surveyor, Statement of the Village Administrative Officer, Copy of the Sale Deed etc., which runs as under:

R.S.No	Extent	Assessment	Name of the Pattadar
611/21	0.00.72	-	Vacant Site
611/31	0.01.83	3.00	Thangavel, S/o Sembana Mudhali
611/32	0.01.00	-	Vacant site
Total	0.03.55	3.00	
611/23	0.02.10	4.00	Thangavel, S/o Sembana Mudhali

Moreover, in the Village Accounts (Natham Adangal), the aforesaid Natham were recorded as below:

Field No.	Old S.F.No.	Classification	Extent in Sq.Mtr	Patta No.- Name of the Pattadar	Remarks
611/21	186	Sarkar Poramboke	0.00.72	-	Vacant site
611/31	186	Sarkar Manai	0.01.83	1369-Sembana Mudhali's son Thangavel	
611/32	186	Sarkar Poramboke	0.01.00	-	Vacant site

13. The Learned Government Advocate for the Respondents 1 to 3 projects an argument that if any one produces the record of evidence in respect of proof of private Land, the patta transfer is given effect to and necessary orders be passed by the Officials concerned which is the routine procedure.

14. Significantly, the Fourth Respondent had submitted the record evidence and got the patta transfer in the Land

R.S.No.611/31 and 611/23 and is in possession of the same. Furthermore, the Petitioner had not exhibited any records as proof that the Land belongs to the Temple.

15. The Learned Government Advocate for the Respondents 1 to 3 takes an emphatic stand that as per the Village Accounts, the Natham R.S.No.611/31 was classified as Natham-Sarkar Poramboke-Vacant Site and the same is vested with the State Government. That apart, in the village records, there was no identification to point out that the suit property belongs to Sri Angalamman Temple. Besides this, there is no Temple in the Land and the Petitioner is making out a vexatious and a vague claim.

16. The Learned Government Advocate for the Respondents 1 to 3 comes out with an argument that the Petitioner, for his personal gain and to support Mr.Madhappan (who is the Petitioner in WP No.43194 of 2016), had filed the instant Writ Petition in a deliberate manner. The claim of the Petitioner in the present Writ Petition is against Law. The Government Poramboke Land is left for public purpose and not for personal use in an exclusive manner.

17. In this connection, the Learned Government Advocate, appearing for the Respondents 1 to 3 strenuously contends that the Fourth Respondent filed a complaint of Object Petition dated 15.10.2015 before the Third Respondent/Tahsildar, Bhavani Taluk, in which, he has stated that he has constructed a house in Patta Nos.31, 23 and the Natham poramboke patta land No.32 is situated adjacent to his Land. Added further, Patta No.18 is situated near to the Patta Land No.32. One Mr. Madhappan has constructed a house in Patta No.18 and he had encroached the Patta No.32 (Natham Poramboke) along with his Patta No.18. The encroachment was made by the said Madhappan by putting up an 'Asbestos Sheet' roofing in the Land and causing hindrance to the traffic and he had also sought for issuance of patta to the Natham Poramboke Patta No.32.

18. It comes to be known that based on the Complaint/Objection Petition of the Fourth Respondent dated 15.10.2015, a Report was obtained from the Revenue Inspector and the Village Administrative Officer and both of them have submitted a Report dated 17.12.2015 stating that the Fourth Respondent is owning an extent of 0.01.83 Acres in R.S.No.611/31 and kept in his possession. Further, he is using the pathway in R.S.No.611/32 and now one Mr.Madhappan had encroached and constructed a House on the pathway and prayed for removal of encroachment.

19. Apart from the above, in the Natham Adangal (village

accounts) R.S.No.611/32 - extent of 100 Sq.Mtr was recorded as Natham Vacant Site and one Mr.Madhappan had constructed a house and living there for four years and that the Land was not classified as 'Cart Track' as averred by the applicant and that there is no need to evict the encroachment since the above Madhappan has constructed a residential house and living there for four years.

20. The Learned Government Advocate appearing for the Respondents 1 to 3 points out that the Zonal Deputy Tahsildar, Bhavani had inspected the Land on 30.12.2015 and furnished a Report to the Tahsildar, Bhavani Taluk. Resting upon the Report of the Zonal Deputy Tahsildar, Bhavani, the Third Respondent/Tahsildar, Bhavani Taluk had passed necessary order by Proceedings in Mu.Mu.14890/2015 A7 dated 31.12.2015 by rejecting the application of the Fourth Respondent (Thangavel) and that excerpt of the Proceedings is as under:

" The filed No.611/32 is recorded as Natham Vacant Site. In this land one Thiru.Mathappan has been encroached an extent of 100 Sq.Mtr and constructed a house and living there. The residual land is left vacant. The Petitioner has informed in his application that he has been using the encroached land for the period prolonged as pathway which is situated behind his residence and request to evict the encroachment. While on the inspection it was found that there was no encroachment and there is sufficient space for using as pathway. More over, the encroacher has constructed a house with sufficient space and there is no need to encroach more portions by the encroacher and ordered to Thiru.Mathappan not to occupy more portions and it was found that there was no encroachment and so that the application of the above Thiru.S. Thangavel is hereby rejected."

21. The strenuous contention advanced on behalf of the Respondents 1 to 3 is that R.S.No.611/31 is purely patta Land, which is in private possession of the Fourth Respondent and there is no provision in law to evict the Land owner from the Land owned by him and that the sub division was effected in the year 2001 and after long gap of Fifteen years, the Petitioner had submitted an application in the year 2016 without any iota of evidence for the Lands belongs to him.

22. Lastly, it is the stand of the Respondents 1 to 3 that the Fourth Respondent has a right to utilise the Government Poramboke Land as pathway without any hindrance to the general public.

23. In response, the Learned Counsel for the Fourth Respondent, contends that the Survey Field, in question, is not actually Natham and it is Patta Land which belongs to the Fourth Respondent. In fact, the Fourth Respondent had purchased the Land from numerous owners through Registered Sale Deed bearing Document No.489 of 1997 dated 10.03.1997 on the file of Sub Registrar Office, Anthiyur.

24. Indeed, the Fourth Respondent got the Patta mutated in his name as per the Order dated 18.07.2001 on the file of the Third Respondent/Tahsildar, Bhavani Taluk and now, had constructed a compound wall in the said survey field.

25. The Learned Counsel for the Fourth Respondent points out that with a view to disturb the Fourth Respondent's possession, one Mr.Madhappan had instigated his sister's son to file the present Writ Petition with false allegations. In fact, resting on the complaint of the Fourth Respondent, (Petitioner's uncle), an enquiry was conducted and that the Tahsildar, on inspection, found the encroachment and directed the said person through Order dated 31.12.2015 vide Na.Ka.No.14890/2015 A7 not to encroach the said land.

26. Birds Eye view of the Patta Pass Book Act, 1983:

Undoubtedly the Tamil Nadu Patta Pass Book Act, 1983 is a self contained one. In fact, Section 3 of the Act speaks of 'Issuance of Patta Pass Book'; Section 4 of the Act deals with 'Presumption of correctness of entries in the Patta Pass Book'; Section 5 enjoins of 'Making of entries of registration of alienation or transfer in the Patta pass Book'. More importantly, the entries in the Patta Pass Book issued by Tahsildar under Section 3 of the Act, 1983 shall be prima facie evidence of title of the person, in whose name the patta pass book has been issued to the parcels of land entered in the patta pass book, free of any prior encumbrance, unless otherwise specified therein.

27. On a careful consideration of the respective contentions and also this Court keeping in mind the clear cut stand taken on behalf of the Respondents 1 to 3 that the Land comprised in S.No.611/31 was recorded as Patta Land belonging to the Fourth Respondent and that, the Fourth Respondent, as a Land owner, cannot be evicted from the said Land and also considering

the fact that the sub division was effected in the year 2001 and nearly after 15 years lapse, the Petitioner had filed an application in the year 2016 without any evidence to claim on that Land that it belongs to him, this Court is of the considered view that the Land in R.S.No.611/31 is in possession of the Fourth Respondent ever since from the date of purchase i.e., on 10.03.1997.

28. Section 10 of the Act pertains to 'Modification of entries in the Patta Pass Book.' Section 12 of the Act speaks of filing of an 'Appeal' by any person aggrieved by an order made by the Tahsildar under this Act within such period as may be prescribed and the decision of the said authority shall be subject to the ingredients of Section 13 of the Act, which is final.

29. Section 13 of the Act confers power upon any Officer of the Revenue Department not below the rank of District Revenue Officer authorised by Government either of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under the Tamil Nadu Patta Pass Book Act, 1983 and pass such orders as he may think fit.

30. Section 14 of the Act refers to 'Bar of Suits'. Section 21 of the Act points out that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, custom or usage or contract.

31. Besides above, The Tamil Nadu Patta Pass Book Rules, 1987 speaks of the "Form" meaning appended to these Rules and the Rules prescribes a Format to register Patta Pass Book Applications received and it is open to the concerned Applicant to adhere to the provisions/Rules of the Tamil Nadu Patta Pass Book Act, 1983 and Rules 1987 and to seek appropriate remedy before the concerned Authority, of course, in the manner known to Law.

32. In view of the upshot, on a careful and meticulous consideration of the rival contentions and also this Court taking note of the present facts and circumstances of the case in an Integral Manner comes to an irresistible conclusion that the Petitioner is not entitled to seek the relief of removal of encroachment of the Fourth Respondent on Temple Land in S.No.611/31 admeasuring 2.5 cents of vacant Land classified as Natham situated at Olagadam Village, Bhavani Taluk, Erode District in accordance with Law. Viewed in that perspective, the Writ Petition sans merits.

33. In fine, the Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

1. The District Collector,
Erode District,
Erode
2. The Revenue Divisional Officer,
Gopichettipalayam,
Erode District
3. The Tahsildar,
Gopichettipalayam,
Erode District.

+1cc to Mr.Sai Bharath & Ilan, Advocate, S.R.No. 2226
+1cc to Mr.E.P.Senniyangiri, Advocate, S.R.No. 1830
+1cc to the Government Pleader, S.R.No. 2725

VG I (CO)
GN (05/02/2019)

W.P.No.28108 of 2017

सत्यमेव जयते

WEB COPY