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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.8142 of 2011
and
M.P.No.2 of 2011

Orders reserved on 17.03.2020	Orders pronounced on 05.06.2020
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1.Nataraj,
S/o.Kariyan @ Lakshmana Gounder

2.Arasakumar,
S/o.Puttan @ Chennappan

3.S.Vijaya.
W/o.N.Sekar

4.Shanmugam
S/o.Muniyappan

5.P.Devaraj,
S/o.Poonga Gounder

6.Duraisamy,
S/o.Mangundu @ Perumal

7.Saraswati,
W/o.Kannan

8.N.S.Gopal,
S/o.Chand Gounder

9.K.V.Mani,
S/o.Venkataraman

10.Ramakannu,
S/o.Munusamy

11.R.Ramachandran,
S/o.Raji Naidu



12.N.P.Raji Gounder,
S/o.Perumal Gounder

.. Petitioners

-VS-

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1.The Sub Collector,
Tirupattur Town,
Vellore District.

2.Sunnath Jamath,
Rep., by its Mutavalli,
Kandili Village,
Tirupattur Taluk,
Vellore District.

.. Respondents

Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the respondent in his proceedings Na.A3/5008/09 dated 30.01.2010 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondents: R1 - Ms.A.B.Reehana Beghum,
Government Advocate
for Mr.C.P.Sivamohan

: R2 - Mr.A.Md.Asghar Ali

ORDER

The petitioners, twelve in number, have filed this writ petition challenging an order passed by the first respondent, Sub Collector, Tirupattur, Vellore District, dated 30.01.2010, setting aside a patta granted in respect of the land which was used as a burial ground by the people belonging to Muslim Community.

2.The petitioners would contend that they are all co-owners of the property in Survey No.170/3A in Kandili Village, Tirupattur Taluk, which was a "personal inam" given to Janab Masim Sa Fakkir, which was taken over under the provisions of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter referred to as "the 1963 Act"). It is further submitted that the grantee then was given absolute



right and power of alienation under the settlement proceedings. The descendants of the said Janab Masim Sa Fakkir divided the properties among themselves and had been enjoying the same as undivided owners.

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3.It is further submitted that the Settlement Officer, Vellore District, granted settlement patta to the legal heirs of one Syed Kasim Sahib, by proceedings dated 25.06.1970. It is stated that the Tamil Nadu Wakf Board filed a suit in O.S.No.259 of 1968 on the file of the District Munsif Court, Tirupattur, for declaration that the suit schedule properties are Wakf properties. The suit was dismissed.

4.It is further submitted that the second respondent, a Jamath called Sunnath Jamath, represented by its Muthavalli, had approached the first respondent and sought mutation of the patta stating that the property in question was used as "kabaristhan" (graveyard). Further, the second respondent would state that the Makamsha Dharga Samadhi was demolished and sold to various third parties and that except the subject property, there is no other property for Muslims to be used as burial ground. The first respondent, considering the said petition filed by the second respondent, had passed the impugned order holding that the property should be utilised as "kabaristhan" for the Muslims in the locality.

5.The petitioners claim that they have purchased the property in question, measuring varying extents on various dates by investing their hard-earned money and some of them have also put up construction on the property. It is submitted that without any notice to the petitioners and without conducting any enquiry, the first respondent erroneously cancelled the ryotwari patta granted by the Settlement Tahsildar in favour of the petitioners' vendor and directed to restore the property as poramboke and there is absolutely no jurisdiction for the first respondent to do so.

6.The learned counsel for the petitioners after reiterating the above facts set out in the affidavit filed in support of the writ petition submitted that the impugned order is against the principles of natural justice, equity and fairplay. The first respondent has no power to cancel the patta granted under a special enactment. It is further submitted that pursuant to the 1963 Act, the three existing rights over the inam property stood extinguished and it had been granted in favour of the legal heir



of the original legatee and such position cannot be altered by the first respondent. It is submitted that the impugned order is wholly unsustainable and against law. In support of his contention, the learned counsel placed reliance on the decision of the Division Bench of this Court in the case of Palaniappa Pandaram and others vs. Special Commissioner and Commissioner of Land Administration, Madras and others, CDJ 1995 MHC 667 = 1996 (1) CTC 217.

7. Ms. A. B. Reehana Begham, learned Government Advocate appearing for the first respondent submitted that the writ petition is not maintainable and the petitioners have approached this Court with unclean hands and suppressed material facts thereby dis-entitling them for any relief in this writ petition. It is submitted that the second respondent had given a representation to the first respondent seeking cancellation of the patta granted in respect of the disputed property comprised in S.No.170/3A of Kandili Village and retained the same as "Sudugadu" in the "A" Register, as it stood before the commencement of UDR proceedings. The first respondent after receiving the representation, conducted enquiry and after verification, found that after the UDR process, the property in question, viz., S.No.170/3 was subdivided as S.Nos.170/3A and 170/3B and the subdivided properties stood in the name of Kandili Makkan Dharmakatha and Nijadevi respectively. Further, on enquiry as well as on perusal of the "A" Register, it revealed that prior to the implementation of the UDR process, the property in question was classified as "Sarkar poramboke" and fell under the category "Sudugadu" and was used as a grave yard by the Muslim people in the locality. Thus, on enquiry, it was clearly established that the property in question was wrongly classified as "Ryotwari Punjai" and the subsequent changes made during the UDR process were incorrect and the first respondent ordered directing to retain the property in question as "Sarkar poramboke - Sudugadu", as it stood in the "A" Register before implementation of the UDR process.

8. Further, it is submitted that the petitioners have made a false statement stating that the property in question was given as personal inam to the ancestors of their vendor and even as per the wrong classification, after UDR process, the patta stood in the name of Kandili Dharmakatha and Nijadevi. On the above grounds, the learned Government Advocate sought to sustain the impugned order.



9. Mr. V.P. Paul Mohan, learned counsel appearing for Mr. A. Mohammed Asghar Ali, learned counsel for the second respondent submitted that the petitioners, who claimed to be owners of the subject land, have not filed any documents, much less title deed to substantiate their ownership over the property. Further, the writ petitioners' case rests upon an alleged proceeding of the Settlement Tahsildar dated 25.06.1970 and the copy of the same has been filed in the typed set of papers without furnishing the original or at least a photostat copy of the original. The petitioners in this writ petition claim that their predecessors in title, viz., Syed Kasim Sahib and his legal heirs were issued ryotwari patta in respect of the land in S.No.170/3, Kandili Village, by the Settlement Tahsildar by proceedings dated 25.06.1970 whereas, the said proceeding shows that it is an order passed in respect of several other survey numbers and not in respect of S.No.170/3. It is submitted that even assuming proceedings dated 25.06.1970 is a genuine document, it does not relate to S.No.170/3 of Kandili Village. Further, it is submitted that the suit in O.S.No.259 of 1968 filed by Tamil Nadu Wakf Board was in respect of S.Nos.180/1, 188/1, 188/2, 239/1 and 44/5 and does not in any manner relate to the property in question, which is classified as "Sarkar poramboke - Sudugadu".

10. It is further submitted that the land has been used as burial ground by the people belonging to the Muslim community for time immemorial and while so, one Mr. Anwar Basha, S/o. Syed Kasim Sahib, claimed ownership of the said land on the strength of a patta alleged to have been issued in his name.

11. The second respondent Jamath approached the competent authority, viz., the first respondent for classification of entry in its name and restoring the entry as "Sarkar poramboke". The first respondent conducted enquiry with all interest parties including the said Anwar Basha and passed the impugned order dated 30.01.2010. Therefore, it is submitted that there is no violation of principles of natural justice and the impugned order is just and proper.

12. Heard the learned counsels for the parties and carefully perused the materials placed on record.

13. The first and foremost issue to be considered is whether the petitioners have locus standi to file this writ petition.



The order impugned is dated 30.01.2010, passed by the first respondent. Perusal of the impugned order shows that the other aggrieved person, viz., one Mr. Anwar Basha, S/o. Late Syed Kasim Sahib of Kandili Village got inquired into. The said Anwar Basha claimed ownership over the said property on the strength of patta alleged to have been issued in his favour. The grounds canvassed in this writ petition by the petitioners were canvassed by Thiru Anwar Basha before the first respondent. The first respondent after taking into consideration all the aspects, after conducting an enquiry, after affording sufficient opportunity to the said Anwar Basha, passed the impugned order rejecting his claim, restoring the entry in the revenue record as "Sarkar-kabaristhan". The petitioners claimed to have purchased the property in question.

14. As rightly pointed out by the learned counsel for the second respondent, the petitioners have not filed any document to establish ownership over the property. There is no averment as to when the petitioners, who are 12 in number, had purchased the property; what is the extent of the property purchased; whether it was by a registered or unregistered document, etc. In any event, the petitioners cannot claim any better right or title over and above the claim made by Mr. Anwar Basha, which was rejected.

15. Thus, this Court has no hesitation to hold that the petitioner has no locus standi to challenge the impugned order. This is sufficient to dismiss the writ petition. The petitioners' case rests upon an order passed by Tahsildar II, Chengalpet, dated 25.06.1970. The authenticity and genuinity of the first respondent is called in question by the second respondent. Assuming it is a genuine document, it does not relate to the property in S.No.170/3, which is the subject property for which the writ petition has been filed. The schedule order dated 25.06.1970 shows the property which was subject matter of the said order, comprised in S.Nos.180/1, 188/1, 188/2, 235/1 and 239/3. Therefore, the said order dated 25.06.1970 can in no manner improve the case of the petitioners.

16. Assuming the petitioners entered possession of the property in question, they are to be termed as "wrongful trespassers" and are to be summarily evicted because a person who has not conducted himself in equity, cannot plead equity. The alleged persons in whose favour patta was granted have not agitated their claim and the petitioners cannot claim a superior



right than those persons, who agitated the matter before the first respondent.

17. From the counter affidavit filed by the first respondent, it is clear that in the "A" Register, the property in question was shown to be classified as "Sarkar poramboke - Sudugadu". A mistake appears to have occurred when updation of revenue records took place and even at that juncture, the property stood subdivided in the names of Kandili Makkan Dharmakatha and Nijadevi and not in the names of the persons under whom the petitioners claim a right.

18. Further, the Gazette notification of Wakf property in North Arcot District dated 11.02.1959 shows existence of Mosque and burial ground and Masoom Shah Tomb, Kandili village. The correctness of the notification cannot be questioned by the petitioners and it is a statutory notification issued under Section 5(2) of the Muslim Wakfs Act, 1954 and there is a presumption attached to its validity.

19. In the impugned order, the first respondent rightly noted that under the updation of revenue record, as per the scheme, there is only power to alter the extent of the property and there is no jurisdiction to alter the entry in the 'A' Register, which is the basic document. Therefore, the first respondent was right in restoring the entry in the 'A' Register as it stood prior to the UDR by restoring the classification of the property as "Sarkar poramboke - Sudugadu".

20. As already pointed out, the petitioners have no locus standi to challenge the impugned proceedings and there is no right vested with them to claim to be in possession and enjoyment of the property and any purchases effected by them are wholly illegal and will not bind the Government and based on such illegal transaction, the petitioners cannot squat on the property, if they claim to be in possession.

21. Thus, for all the above reasons, this Court finds that no grounds have been made out by the petitioners to interfere with the impugned order.



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22. Accordingly, the writ petition fails and the same is dismissed and the order of interim stay, which was granted, is vacated. No cost. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

abr

To

The Sub Collector,
Tirupattur Town,
Vellore District.

Writ Petition No.8142 of 2011

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