IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 1145 of 2020

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1. P. Murali Krishnan
2. P. Hari Krishnan
3. P. Venugopal .. Appellants

Versus

1. The Secretary to Government
Revenue Department
Fort St. George
Chennai - 600 009

2. The Additional Chief Secretary and
Commissioner for Land Administration
Land Administration, Ezhilagam
Chepauk, Chennai - 600 005

3. The Commissioner
HR & CE Department
Uthamar Gandhi Road
Nungambakkam, Chennai - 600 034

4. The District Collector
Kancheepuram District
Thaiyar Kullam
Kancheepuram - 631 501

5. The District Revenue Officer
O/o. Collectorate of Kancheepuram
Thaiyar Kullam
Kancheepuram - 631 501

6. The Sub Collector
Madurantakam
Kancheepuram District

7. The Tahsildar
GST Road, Madurantakam
Kancheepuram - 603 306



8. The Assistant Commissioner
HR & CE, Kancheepuram

9. Sri Kodanda Rama Swami Temple
No.12, Nelli Main Road
Palli Agaram, Madurantakam Taluk
Kancheepuram District .. Respondents

Appeal filed under Clause 15 of The Letters Patent against the Order dated 24.09.2018 passed in WP No. 9808 of 2018 on the file of this Court.

Prayer in WP.No.9808 of 2018:
Petition filed under Article 226 of the Constitution of India of praying to the Issuance of a writ of certiorarified Mandamus calling for the records of the 5th respondent by proceeding in Na.Ka.28419/2014/N1 dated 11.07.2017 and quash the same and consequently direct the 5th respondent to rectify the UDR patta and issue patta in the name of the petitioners with respect to the lands comprised in SF.No.18/1 18/2 & 21 to an extent of 21.73 acres situated at Paliagaram Village Madurantakam Taluk Kancheepuram District.

For Appellant : Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. S. Kumaresan

For Respondents: Mr. J. Pothiraj
Special Government Pleader
for RR1, 2, 4, 5, 6 and 7

Mr. M. Karthikeyan
Special Government Pleader HR&CE forRR3 & 8

Mr. D. Saravana Kumar for R9

JUDGMENT
(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellants have filed WP No. 9808 of 2018 before this Court to quash the proceeding dated 11.07.2017 of the fifth respondent herein and after quashing the said order, prayed to issue a consequential direction to the fifth respondent to rectify the UDR patta and issue patta in the name of the petitioners in relation to the lands comprised in SF No.18/1, 18/2 and 21 measuring an extent of 21.73 acres situated at Palliagaram Village, Maduranthagam Taluk, Kancheepuram District.

2. According to the appellants/writ petitioners, the lands in question as well as other lands were in exclusive possession and ownership of their forefathers from time immemorial. The immediate predecessors of the land in question was father of the appellants by name Parantrhaman Naidu, According to the appellants, names of the forefathers of the appellants were mutated in the revenue records even in the year 1911 itself. Further, the appellant's father also inherited certain lands from Rangabashyam Naidu, predecessors-in-title of the appellants. Recognising the possession and ownership of the land, the revenue authorities also issued Patta No.1 in

respect of the above said lands. Further, the Adangal extract reflect the name of the appellants forefathers.

3. It is further claimed by the appellants that the 9th respondent temple is a family owned temple established by the forefathers of the appellants. The temple was managed and was in exclusive control of the appellants. Further, there was no property dedicated or bestowed in favour of the temple at any point of time through any conveyance. The temple is being maintained with the funds of the family of the appellants. It is also stated that one of the predecessors in title Rangabashyam Naidu was an ardent devotee of Lord Perumal and therefore he passionately maintained the temple. It was Rangabashyam Naidu who had leased out certain lands owned by the family for the purpose of augmenting the income so as to maintain the temple as also the family expenses. Accordingly, the lands belong to the family were sought to be leased out in favour of private companies. During the execution of lease deed, it came to light that as per the revenue records, the lands in question stand in the name of the 9th respondent temple. On enquiry by Rangabashyam Naidu with the 8th respondent, it was noticed that Register Nos. 4 and 6 maintained by the HR & CE Department shows entries in the name of the 9th respondent temple in respect of the lands in question. Further, as per the register, the lands in SF No.21 reflects the name of one Manickam, who was a labour engaged by the predecessors of the appellants and the details with respect to SF No.18 could not be ascertained. According to the appellants, such an error in the register maintained by the revenue officials had crept in while updating the revenue records under UDR Survey. It is the contention of the appellants that the 9th respondent temple is not the title holder in respect of the lands in question and the name of the 9th respondent temple was erroneously entered into the revenue records during UDR survey. In such circumstances, during the life time of Rangabashyam Naidu, several representations were given for rectification of the error crept in the revenue records, but they were not of any avail. After the death of Rangabashyam Naidu, the appellants continued their attempts to get the error crept in the revenue records rectified, but they also could not succeed. Ultimately, on 20.11.2014, a representation was given to the fifth respondent to rectify the error crept in the revenue records during UDR survey. On the basis of such representation, the fifth respondent called for a report from the 7th respondent. According to the appellants, they reliably learnt that the 7th respondent, in his proceedings dated 24.06.2016, has categorically informed that there is no substantial evidence to show that the lands in question were transferred to the 9th respondent temple. Notwithstanding such recommendation made by the 7th respondent, the sixth respondent forwarded a report to the 5th respondent in favour of the 9th respondent temple with incorrect and irrelevant particulars. It is on the basis of such report given by the sixth respondent, the fifth respondent, without perusing the revenue records or without conducting any enquiry with the ninth respondent temple, mechanically passed the order

of rejection, which the appellants have challenged before the learned single Judge.

4. The learned single Judge, on hearing the counsel for both sides, dismissed the writ petition by the order dated 24.09.2018 on the ground that when there is a dispute relating to title of the property, the revenue officials are incompetent to adjudicate it and therefore, the fifth respondent rightly directed the appellants/writ petitioners to approach the Civil Court for redressal of their grievance.

5. Mr. Ar.L. Sundaresan, learned Senior counsel appearing for the appellants/writ petitioners would contend that the fifth respondent refused to rectify the errors in the revenue records on the ground that Rangabashyam Naidu executed a lease deed in the name of the temple and therefore, the temple is conferred with title to the property. According to the learned Senior counsel, the lease deed was not executed voluntarily rather, under compulsion to mobilise fund for the temple, it was executed by the predecessors in title. Even otherwise, merely because a lease deed was executed in favour of the temple, it will not confer any title in favour of the 9th respondent temple in respect of the lands in question. On the other hand, the lease deed only indicates that the predecessors in title of the appellants are the lawful owners of the lands covered in the lease deed. The fifth respondent, without considering the above facts, has erroneously passed the order of rejection.

6. The learned Senior counsel for the appellants invited the attention of this Court to Mortgage deeds executed by Rangabashyam Naidu in favour of Santha Maria Sagaya Social Welfare Society which was registered as a document in the office of the Sub-Registrar, Salavakkam, Kancheepuram District under Document No. 2285 of 1969. According to the learned Senior counsel, after discharge of the loan, Rangabashyam Naidu once again executed another mortgage deed with the same society by means of a registered document No. 2249 of 1976. According to the learned Senior counsel, these documents clearly indicate that it was the predecessors in title who are the lawful owners of the lands in question and the 9th respondent cannot assert any vested right in the land. Further, the fifth respondent did not notice that what is sought to be rectified is the entries erroneously crept in the revenue records and the appellants are not raising any dispute with respect to the title of the properties in question. In such view of the matter, driving the appellants to approach the Civil Court for getting a declaratory decree is not warranted. Even the 9th respondent temple is not disputing the title of the appellants/ writ petitioners, while so, the appellants/writ petitioners need not approach the Civil Court for a decree of declaration. It is the definite case of the appellants/ writ petitioners that there is an error crept in the revenue records during the UDR updation scheme and such error has to be rectified only by the respondents. In such circumstances, the writ petition filed by the writ petitioners/appellants is very well

maintainable before this Court, but it was not properly considered by the learned single Judge. The learned Senior counsel for the appellants therefore prayed for allowing this writ appeal.

7. On the above contention, we have heard the learned Special Government Pleader appearing for the respondents 1, 2, 4, 5, 6 and 7 and the learned Special Government Pleader (HR & CE) for the respondents 3 and 8 and the learned counsel for the 9th respondent.

8. The learned counsel appearing for the 9th respondent, by placing reliance on the counter affidavit of the 9th respondent, would submit that the lands comprised in SF Nos. 18/1, 18/2 and 21 measuring 21.73 acres at Palliagaram Village, Madurantagam Taluk was not under the control of the 9th respondent temple at all at any point of time. It is further stated that the fifth respondent, without conducting any enquiry with the 9th respondent, had erroneously included the name of the ninth respondent temple in the revenue records and also in the Register Nos. 4 and 6 maintained by HR & CE Department. It is also stated that the lands in question is in no way connected with the 9th respondent temple. Therefore, the learned counsel for the 9th respondent prayed for issuing appropriate direction to the revenue authorities.

9. We have perused the proceeding dated 11.07.2017 of the fifth respondent, which was impugned in the writ petition filed by the writ petitioners/appellants herein before the learned single Judge. In the proceeding dated 11.07.2017, the fifth respondent referred to the various lease deeds executed by the predecessors in title of the appellant. Even in the proceeding dated 11.07.2017, the fifth respondent has observed that there is no document produced to show as to how the temple had acquired title to the land. The relevant portion of the order reads as follows:-

> "எனவே மதுராந்தகம் வட்டம், பள்ளியகரம் கிராமம் புல எண். 18ல் மொத்த விஸ்தீரணம் 8.27 ஏக்கர் மற்றும் 21ல் 11.68 ஏக்கர் நிலம் கிராமக்கணக்கில் பட்டா எண் 58ல் ஸ்ரீ கோதண்டராமசாமி கோயில் தற்கால தர்மகர்த்தா என தாக்கலாகி வருகிறது. மேற்படி புலங்கள் எதன் அடிப்படையில் கோயிலுக்கு கிடைக்கப் பெற்றது என்பதற்கான ஆதார ஆவணங்கள் ஏதும் இல்லை."

10. In the proceeding dated 11.07.2017, the fifth respondent also referred to the lease deeds executed in favour of the temple by the predecessors in title. On careful reading of the observations made by the fifth respondent in the proceeding dated 11.07.2017, it is evident that the fifth respondent was fully carried away by the fact that there is a registered lease deed executed in favour of the temple and therefore, the 9th respondent temple is the lawful owner of the temple. By arriving at such a conclusion, the fifth respondent refused to rectify the defects and/or errors crept in the revenue records, as has been pleaded by the writ petitioners/appellants. Such a reasoning assigned by the fifth

respondent is not in accordance with law and therefore, the order passed by the fifth respondent is liable to be set aside.

11. Further, the 9th respondent temple has filed a counter affidavit before this Court wherein it was categorically stated that the 9th respondent temple has nothing to do with the lands in question and the name of the 9th respondent temple has been erroneously entered into the revenue records.

12. Above all, the learned Senior counsel for the writ petitioners/ appellants submitted that the writ petitioners/appellants are in possession of several documentary evidence to prove the title in their favour and to show that the name of the 9th respondent temple has been erroneously invaded into the revenue records during the UDR Updation. The learned Senior counsel for the appellants therefore prayed for setting aside the order of the learned single Judge and to remand the matter back to the fifth respondent to pass an order afresh after affording opportunity of hearing to the appellants as well as the 9th respondent temple.

13. In the light of the above, particularly in view of the counter affidavit filed by the 9th respondent in this appeal and the fact that the 9th respondent was not heard by the fifth respondent before passing the order dated 11.07.2017, we are of the view that the writ petitioners/appellants as well as the 9th respondent temple must be heard by the fifth respondent before passing an order.

14. Accordingly, we set aside the Order dated 24.09.2018 passed by the learned single Judge in WP No. 9808 of 2018 on the file of this Court. Consequently, the proceeding dated 11.07.2017 of the fifth respondent is also set aside. The Writ Appeal is allowed. No costs. The matter is remanded back to the fifth respondent for fresh consideration. The fifth respondent is directed to issue notice of hearing to the appellants as well as the ninth respondent, and afford an opportunity of hearing to them. It is needless to mention that the appellants as well as the 9th respondent shall produce all the documentary evidence in their favour for consideration of the fifth respondent during the enquiry. Thereafter, the fifth respondent is directed to consider the documents that may be produced by the appellant and 9th respondent and pass a detailed order on merits and in accordance with law and by discussing the material evidence. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



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To

1. The Secretary to Government
   Revenue Department
   Fort St. George
   Chennai - 600 009

2. The Additional Chief Secretary and
   Commissioner for Land Administration
   Land Administration, Ezhilagam
   Chepauk, Chennai - 600 005

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   GST Road, Madurantakam
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8. The Assistant Commissioner
   HR & CE, Kancheepuram

+1cc to the Government Pleader SR.43143



WA No. 1145 of 2020

RR(CO)
CB(25/02/2021)