IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.11286 of 2014
and
M.P.No.2 of 2014

Arunkumar Kalingarayar ... Petitioner

Vs.

1.The District Revenue Officer,
Collector's Office Compound,
Coimbatore.

2.Sub Collector,
Sub Collector's Office Compound,
Pollachi.

3.The Executive Officer,
Arulmighu Easwari Amman Temple,
Zamin Uthukuli,
Pollachi Taluk. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the second respondent relating to the impugned order dated 14.12.2011 in Na.Ka.No. 849/2011/A-1 passed by the second respondent as confirmed in by the orders dated 07/01/2013, received on 10.09.2013 in Na.Ka.No. 10513/2012/E-1 by the first respondent and quash the same.

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For Petitioner : Mr.C.R.Prasanan

For R1 & R2 : Mrs.A.B.Reehana Begum
Government Advocate

For R3 : Mr.G.Sugumaran

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O R D E R

Heard Mr.C.R.Prasanan, learned counsel for the petitioner, Mrs.A.B.Reehana Begum, learned Government Advocate, appearing for the respondents 1 and 2, and Mr.G.Sugumaran, learned counsel appearing for the 3rd respondent.

2.The petitioner has filed this writ petition challenging the order passed by the 2nd respondent, dated 14.12.2011, as confirmed by the 1st respondent dated 07.01.2013.

3.At the very outset, this Court pointed out that the impugned orders have been passed under a thorough misconception of the factual position and the orders are vitiated by perversity in the approach.

4.The Settlement Tahsildar No.1, Gobichettipalayam, by order dated 29.09.1968, in exercise of his powers under Section 8(2)(ii) r/w. Section 11 of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, granted Ryotwari patta in respect of the land in T.D.No.399, S.Nos.92/1 (Pro), 92/2 (Pro) and 94 in the name of "Eswariamman temple at Uthukuli". In the said order, after the name of the temple, the following has been indicated : "(represented by its hereditary trustee A.M.R.Kalingarayar Zamindar of Uthukuli)". The position has continued as such and the patta continued to stand in the name of the temple represented by its hereditary trustee.

5.After about 40 years, the Executive Officer, who is stated to have been appointed by the Hindu Religious and Charitable Endowments Department, has filed an appeal to the 2nd respondent. It is not clear as to how the 2nd respondent exercised his appellate powers after 40 years, when there was no explanation given by the Executive Officer as to why no steps were taken to file an appeal earlier. The Executive Officer was under the misconception that patta has been granted in the name of an individual, namely, A.M.R.Kalingarayar Zamindar, and lost sight of the fact that the Ryotwari patta was granted in favour of the temple. In fact, the hereditary trustee cannot claim any exclusive right over the property. In fact, though notice was issued, he did not participate in the enquiry conducted by the Settlement Tahsildar No1. Thus, the Settlement Tahsildar, upon perusing the entries in the extract of Huzur Inam Register pertaining to T.D.No.309, came to the conclusion that the lands were granted as manibam to Eswariamman temple at Uthukuli Village and the grant was confirmed to the said religious institution and therefore, the kudivaram right vested in the temple. No objections were received. No portion of the land in question has been set apart for the common use of the

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villagers. Therefore, the Settlement Tahsildar allowed Ryotwari patta in respect of the said land in the name of the religious institution.

6.If such is the case, the appeal filed by the Executive Officer before the 2nd respondent was on a thorough misconception of facts. He proceeded on the basis as if the patta stood in the name of an individual. Unfortunately, the 2nd respondent did not take note of the factual aspects, which were prevalent ever since 1968, and erroneously came to a conclusion that patta stood in the name of an individual, namely, Arun Kumar Kalingarayar. Thus, the 2nd respondent misdirected himself in passing the impugned order.

7.The petitioner preferred a revision before the 1st respondent, in which, the petitioner has specifically stated that he has no document to prove ownership over the land and maintained that the land belongs to the temple and it is not disputed. This ground was raised because, the 2nd respondent, while passing the impugned order, stated that the petitioner did not produce any document to prove his ownership or right over the land in question. The question of producing documents to prove ownership would arise only if there is a claim for ownership. Thus, the 2nd respondent did not apply his mind while passing the impugned order. Though the petitioner had raised such a specific ground in the revision petition, the 1st respondent ignored the same and passed a non-speaking order as confirming the order passed by the 2nd respondent.

8.It is rather surprising to note that the 1st respondent, namely, Mrs.K.Karpagam, M.Sc., B.Ed., has termed herself as Additional District Judge, to which post, she can never aspire. Therefore, the nomenclature given to her post is not tenable. Furthermore, the order passed by the 1st respondent does not assign any reason as to why the order passed by the 2nd respondent needs to be confirmed. None of the grounds raised by the petitioner, more particularly, the ground in Para No.5 as referred above, has been considered. Thus, the approach of the 1st respondent was truly perverse.

9.In the counter affidavit filed by the 2nd respondent, it is stated that an application has been filed under Section 63(A) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the same is pending. If such is the situation now, the 2nd respondent nor the 3rd respondent had any jurisdiction to seek for any alteration in the Ryotwari patta granted by the Settlement Tahsildar No.1, Gobichettipalayam, vide order dated 29.09.1968.

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10.For all the above reasons, this writ petition is allowed and the impugned orders are quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

To

1.The District Revenue Officer,
Collector's Office Compound,
Coimbatore.

2.The Sub Collector,
Sub Collector's Office Compound,
Pollachi.

3.The Executive Officer,
Arulmighu Easwari Amman Temple,
Zamin Uthukuli,
Pollachi Taluk.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.22913
+2ccs to Government Pleader , S.R.Nos.23223,23788
+1cc to Mr.G.Sugumaran, Advocate SR.22422(CB-21/09/2020)

W.P.No.11286 of 2014

rk(CO)
jrs(27/05/2020)

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