



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.7628 of 2020

and

W.M.P. (MD)Nos.7117 and 7118 of 2020

E.Petchiammal

... Petitioner

Vs.

- 1.The District Collector,
Madurai District, Madurai.
- 2.The Revenue Divisional Officer,
Revenue and Disaster Management,
Usilampatti,
Madurai District.
3. The Tahsildar,
Revenue and Disaster Management,
Usilampatti Taluk, Usilampatti,
Madurai District.
4. The Block Development Officer, (Village Panchayath),
Headquarters, Usilampatti,
Madurai District.
5. The Deputy Block Development Officer, (Panchayath),
Headquarters, Usilampatti,
Madurai District.
6. The Zonal Deputy Block Development Officer,
Zone 3, Usilampatti,
Madurai District.
7. The President,
Keeripatti Panchayat,
Usilampatti, Madurai District.

8. Dr.E.Eswaran

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in Na.Ka.No.1228/2019/Thi1 dated 15.06.2020 passed by the 5th respondent and quash the same as illegal and consequently forbear the respondents No.1 to 7 from dispossessing the petitioner from Grama Natham land comprised in Natham S.No.85/1 situated at Keeripatti village, Usilampatti panchayat Union, Madurai District.

For Petitioner : Mr.P.R.Prithiviraj

For Respondents 1 to 3: Mr.VR.Shanmuganathan,
Special Government Pleader

For Respondents 4 to 6: Mr.Aayiram K.Selvakumar
Additional Government Pleader

O R D E R

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

The petitioner claims to be the pattadhar of the property situated at Keeripatti village in old S.No.67/3, new S.Nos.85/30, 85/31 and 85/1, in respect of the lands admeasuring an extent of 4369 sq.ft. and 10 cents. It is the claim of the petitioner that her forefathers were in possession and enjoyment of the said property and by way of succession she has succeeded to the estate. The petitioner on an earlier occasion, has filed a civil suit in O.S.No.107 of 2016 on the file of District Munsif Court cum Judicial Magistrate No.1, Usilampatti, against the respondents 8 and 1 to 3 herein, as defendants 1 to 4, praying for permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the said land.

2. As usual, all the defendants 2 to 4 / officials remained ex-parte. The Court of District Munsif cum Judicial Magistrate No.1, Usilampatti, vide judgment and decree dated 06.06.2017, had granted an ex-parte decree and it is the submission of the learned counsel appearing for the petitioner that no steps have been taken to set aside the ex-parte decree and it has also become final.

3. This Court has also gone through the judgment and decree passed by the learned District Munsif Court cum Judicial Magistrate No.1, Usilampatti, in O.S.No.107 of 2016 and is of the considered view that the said judgment and decree is not in consonance with the Order XX Rule 4 Sub-rule (2) and it is relevant to extract the same:-



"4.(2) Judgments of other Courts.- Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

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4. It appears that the concerned Presiding Officer was under the impression that once the defendants remain ex-parte, then the suit has to be necessarily decreed as ex-parte overlooking the fact that it is for the plaintiff to probabalise his / her case by proper and sufficient pleadings by letting in evidence and the trial Court is expected to go through the pleadings and the evidences available on record and give its findings in terms of the above cited Rule. However, unfortunately, the Presiding Officer has failed to do so. Therefore, this Court is inclined to call for explanation from the learned District Munsif Court cum Judicial Magistrate No.1, Usilampatti, who granted an ex-parte decree dated 06.06.2017 in O.S.No.107 of 2016.

5. Now reverting back to the facts of this case, the eighth respondent herein, namely, Dr.K.Easwaran, filed W.P.(MD).No.4745 of 2019, praying for issuance of Writ of Mandamus, directing the official respondents therein to remove the encroachments made in the public pathway situated at S.No.85/1, Keeripatti village, Usilampatti, Madurai. The eighth respondent therein namely, K.Mokkapillai entered appearance and filed the counter affidavit. A Division Bench of this Court vide order dated 16.04.2019, passed in the said writ petition directed the third respondent Tahsildar, Usilampatti Taluk, Usilampatti, Madurai District, to conduct a survey in the presence of the petitioner and other necessary parties and after affording them an opportunity of being heard and pass final orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of that order. The eighth respondent herein, who was the writ petitioner therein, alleging wilful disobedience and non-compliance of the said order filed Contempt Petition (MD) No.1734 of 2019, on the file of this Court and the same is still pending. The petitioner herein filed W.P.(MD) No.2187 of 2020, praying for the issuance of Writ of Mandamus, forbearing the official respondents from evicting her from the property comprised in S.No.85/1, situated at Keeripatti village. The writ petition was entertained and the learned Additional Government Pleader as well as the learned counsel appearing for the eighth respondent herein have entered appearance and the matter was adjourned by four weeks for filing counter. In the interregnum, the fourth respondent has issued the impugned notice dated 15.06.2020 and challenging the same, the petitioner came forward to file this Writ Petition.



6. The primordial submission of the learned counsel appearing for the petitioner is that even as per the order dated 16.04.2019 made in W.P.(MD).No.4745 of 2019, the land in S.No.85/1 is classified as Grama Natham and in the event of classification of the land as Grama Natham, the eviction proceedings cannot be initiated and in support of the said submission he placed strong reliance upon the decision of Division Bench judgment of this Court in **2004 (3) CTC 270, [The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri v. Swaminathan and Others]**, which says that the title to a house site in a Grama Natham is protected from transfer to Government, under the enactments of Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 and it will be ousted the purview of Madras Land Encroachment Act, 1905.

7. Per contra, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the official respondents would submit that admittedly, the case of the petitioner as per the averment made in O.S.No.107 of 2016 on the file of District Munsif Court cum Judicial Magistrate No.1, Usilampatti, is that the land in S.No.85/1 and 85/31 are natham land and the land in S.No.85/30 alone is the village natham and it is her further case that she is yet to obtain patta and the land is covered under the natham settlement scheme and he further added that the reference to the said land in the impugned proceedings as grama natham is only an inadvertent mistake. It is the further submission of the learned Special Government Pleader appearing for the official respondents 1 to 3, that action is being contemplated under Section 131 of the Tamil Nadu Panchayats Act, 1994 and as such, it is not open to the petitioner to make any grievance in this regard.

8. The learned counsel appearing for the petitioner in response to the said submission, reiterated the earlier submission that since the land in S.No.85/1 has been classified as grama natham land, no eviction proceedings can be initiated.

9. This Court has carefully considered the rival submissions and perused the materials placed before this Court.

10. Prima facie, it appears from the stand of the petitioner, who is the plaintiff in O.S.No.107 of 2016, on the file of the Court of District Munsif cum Judicial Magistrate No.1, Usilampatti, the lands in S.Nos.85/1 and 85/3 are the Village Natham lands, whereas, the land in S.No.85/30 is the Grama Natham (House Site). It is also to be noted at this juncture that the suit came to be decreed ex-parte on 06.06.2017 and it has also become final.



11. According to the learned counsel appearing for the petitioner, the petitioner is having tenable contentions in support of the claim and if sufficient and reasonable opportunity is given to her, she may be able to substantiate and probabalise her case.

12. In the light of the above facts and circumstances, this Court directs the fourth respondent to treat the impugned notice as show-cause notice under Section 131 of the Tamil Nadu Panchayats Act, 1994 and the petitioner is at liberty to submit her detailed explanation/response with relevant and authenticated documents within a period of six weeks from the date of receipt of a copy of this order and upon the receipt of the same, the fourth respondent is directed to afford an opportunity of personal hearing either to the petitioner or her authorised representative, as per "COVID-19 standard protocol", in the form of video conference also and conclude the proceedings as expeditiously as possible and pass final orders in accordance with law and communicate the decision taken to the petitioner and till such time, the official respondents are directed to defer the eviction proceedings. It is further made clear that the petitioner, till the conclusion of the proceedings by the fourth respondent, shall not create any third party right in respect of the land in question.

13. The defendants in O.S.No.107 of 2016, namely, the Collector of Madurai District, the Revenue Divisional Officer, Usilampatti and the Tahsildar, Usilampatti, remained ex-parte, which enabled the petitioner as the plaintiff to obtain the ex-parte decree dated 06.06.2017. As already pointed out, this Court has repeatedly coming across cases, which had been preferred or instituted against the Government Departments and they remained ex-parte and even after the ex-parte decree, they have not taken any steps either to set aside the ex-parte decree or to file appeals to set aside the said decrees and as a consequence, the valuable interest of the Government is also affected. Therefore, this Court directs the Principal Secretary to the Government of Tamil Nadu, Revenue Department, Secretariat, Chennai - 9, to look into these kind of issues, which arises often and give a workable solution in the form of an affidavit.

14. The Registry of this Court is directed to call for an explanation from the Presiding Officer, who had acted as the Principal District Munsif cum Judicial Magistrate No.1, Usilampatti, in respect of the ex-parte decree dated 06.06.2017, passed in O.S.No.102 of 2016 as to the non-adherence to the Section 80 of Code of Civil Procedure as well as the Order XX Sub-Rule (2) of Rule 4 of Code of Civil Procedure, within a period



of three weeks from the date of receipt of a copy of this order and on receipt of that explanation, it shall be placed before this Court for further proceedings.

15. The **Writ Petition is disposed of**. Call the matter on **20.08.2020**, for the submission of the affidavit of the Principal Secretary to the Government of Tamil Nadu, Revenue Department, Secretariat, Chennai-9, as well as from the Presiding Officer. The Registry is also directed to mark a copy of this order to the Principal Secretary to the Government of Tamil Nadu, Revenue Department, Secretariat, Chennai-9 and the Additional Registrar General (In-charge) / Registrar (Judicial) of Madurai Bench of this Court.

16. In the light of the present order, the Registry is directed to list the Contempt Petition (MD).No.1734 of 2019, under the caption "for orders" on 27.07.2020.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pkn/sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned

To

1. The Presiding officer, Usilampatti.
2. The Principal District Munsif Cum
Judicial Magistrate No.1,
Usilampatti.
- 3.The District Collector,
Madurai District, Madurai.
- 4.The Revenue Divisional Officer,
Revenue and Disaster Management,
Usilampatti,

Madurai District.

<https://hcservices.courts.gov.in/hcservices>



5. The Tahsildar,
Revenue and Disaster Management,
Usilampatti Taluk, Usilampatti,
Madurai District.
6. The Block Development Officer, (Village Panchayath),
Headquarters, Usilampatti,
Madurai District.
7. The Deputy Block Development Officer, (Panchayath),
Headquarters, Usilampatti,
Madurai District.
8. The Zonal Deputy Block Development Officer,
Zone 3, Usilampatti,
Madurai District.
9. The President,
Keeripatti Panchayat,
Usilampatti, Madurai District.

Copy to

- 1.The Additional Registrar General (In charge)/
The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Principal Secretary to the Government of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai-9.
3. The Section Officer,
Contempt Section (Posting),
Madurai Bench of Madras High Court,
Madurai.

W.P. (MD)No.7628 of 2020

and

W.M.P. (MD)Nos.7117 and 7118 of 2020

16.07.2020

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