

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.NO.38670 OF 2005

1.M.Subramanian
2.K.Mani
3.S.Loganthan
4.P.Valpoorappan
5.K.Saraswathi

...Petitioners

Vs.

1.The Special Commissioner and Commissioner,
of Land Administration, Chepauk,
Chennai-5.

2.The District Collector,
Coimbatore District, Coimbatore.

3.The District Revenue Officer,
Coimbatore District,
Coimbatore.

4.The Tahsildar, Palladam Taluk,
Palladam, Coimbatore District.

5.The Executive Officer,
Arulmigu Mahaliamman Temple,
Palladam, Coimbatore District.

...Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent in his Roc.No.F3/24127/2004 dated 20.10.2005 confirming the order of the second respondent in his Na.Ka.No.78055/99-A3 dated 24.05.2004 and to quash the same and consequently direct the respondents 2 to 4 to issue patta in favour of the petitioners for the land in their respective shops at Door Nos.170-D, 170-B, 170-C, 170-A and 162, N.G.R. Road, Palladam respectively in S.F.No.261/B1 and 262/3, Palladam Taluk, Coimbatore District.

For Petitioners	:	Mr.Vadivel Murugan
For Respondents	:	M/s.A.Mathu Mathi
		Special Government Pleader
		For RR1 to 4
		Mr.R.Duraisamy for R5

ORDER

The writ petition has been filed for issuing a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent in his Roc.No.F3/24127/2004 dated 20.10.2005 confirming the order of the second respondent in his Na.Ka.No.78055/99-A3 dated 24.05.2004 and to quash the same and consequently direct the respondents 2 to 4 to issue patta in favour of the petitioners for the land in their respective shops at Door Nos.170-D, 170-B, 170-C, 170-A and 162, N.G.R. Road, Palladam respectively in S.F.No.261/B1 and 262/3, Palladam Taluk, Coimbatore District.

2.The brief facts are necessary for disposal of the writ petition are as follows:

The petitioners are carrying on their business in the premises bearing Door Nos.170-D, 170-B, 170-C, 170-A and 162 located in S.F.No.261/B1, Palladam, Coimbatore District, are the lands in which, the shops are constructed and thereafter the fifth respondent approached the third respondent for reclassification of the said land from Natham Poromboke to Kovil Poromboke. The District Revenue Officer classified the land as Natham Poromboke to Kovil Poromboke in the revenue records. The property to an extent of 0.41 cents situated in S.F.No.26/B1 which is the subject matter of representation of the temple for considering the land as temple land and in short, the fifth respondent approached the respondent official for granting of patta.

3.It is the specific case of fifth respondent that the land was under the possession and enjoyment of the temple for several decades and that they have granted lease in favour of small tenants including the petitioners and were collecting rents from the tenants. In the present writ petition, the petitioner claim that they are in possession as encroachers. The fact is that the petitioners came into the possession of the lands under tenancy agreement with the temple. In earlier writ petitions filed by the temple and the petitioners herein in W.P.Nos.10320 of 1996 and 17164 of 1995, this Court while disposing the writ petitions recorded the following facts, which are extracted here under:-

"The learned counsel appearing for the respondents 3 to 7 in W.P.No.10320 of 1996. On the other hand, would submit that even though there was tenancy agreement entered into between the temple and the encroachers/respondents 3 to 7 in W.P.No.10320 of 1996, the said tenancy cannot be considered as valid in the eye of law inasmuch as the temple, namely the writ petitioner/temple in W.P.No.10320/1996 is not the owner of the land in question and is not authorized to lease the said land to the respondents 3 to 7 therein. Therefore, the tenancy agreement entered into

between the petitioner/temple and the respondents 3 to 7 in W.P.No.10320 of 1996 cannot be pressed into service for depriving the right of the respondents 3 to 7 for assignment of land on the ground that the respondents 3 to 7 are also encroachers. Learned counsel would submit that there is no question of claiming right in respect of the land in question by one encroacher over the other. Learned counsel therefore submitted that the direction given by the second respondent to the revenue authorities to consider the claim of all the encroachers for the purpose of assignment. I perfectly justified and the same cannot be interfered with, at the instance of the temple which was considered to the first encroacher. In this connection, learned counsel appearing for the respondents 3 to 7 submitted that these respondents who have filed W.P.No.17164 of 1995 are challenging the said order of the first respondent only to the extent that when the first respondent came to the conclusion that both the temple and the writ petitioners in W.P.No.17164 of 1995 are encroachers, the first respondent ought not to have found that the encroachers cannot question the occupancy right of the temple over the lands and that they cannot make any default in paying the lease amount to stipulated in the lease deed. Learned counsel submitted that the impugned order of the first respondent is liable to be set a side to that extent.

8. Coming to the next question as to whether the temple is entitled for assignment of entire extent of land in question or the encroachers, namely, the petitioners in W.P.No.17164/95 are entitled for claim of issue of patta, it is not in dispute that the temple has been in possession of the land for more than a decade and the petitioners in W.P.No.17164/95 came to be in possession of the respective portion of the land only by virtue of tenancy agreement. As rightly pointed out by the respondents 1 and 2, even though the petitioners in W.P.No.17164/95 cannot be treated as tenants under the temple, at the most, they can be treated as encroachers, they are also entitled for consideration of grant of patta not. However, as against an encroacher, the position of the temple in respect of the possession and enjoyment of the land in question, is better placed, in view of the long uninterrupted possession and enjoyment of the land. The temple has also been given the certificate as to the possession of the land by the Tansildar, Palladam, as early as 11.4.1973.

When the possession of the temple was approved and certified by a revenue official, namely, the Tahsildar, Palladam over the natham poramboke land certainly the temple cannot be treated as the encroacher of land. However, in view of my finding that the temple cannot seek for re-classification of land, the assignment or grant of patta in respect of the land in question, has to be considered by the revenue officials, both in respect of the claim by the temple as well as the encroachers, as per the Revenue Standing Orders, namely R.S.O. Nos.15(2), 15(38) and 21, which was what exactly done by the orders of the 2nd respondent dated 24.4.1992, as confirmed by the 1st respondent in his order dated 13.11.1995. Therefore, I do not find any infirmity in the orders warranting interference by this Court.

9.Both the impugned orders are confirmed and W.P.No.10320/96 is accordingly dismissed. No costs. Consequently, W.M.P.No.13646/96 is also dismissed. However, it is made clear that while considering the status of the temple and other encroachers, the revenue authorities should give due weightage to the long uninterrupted possession of the temple as well as the possession being approved by the Tahsildar, Palladam in his certificate dated 11.4.1973 over the claim of the said encroachers, namely the petitioners in W.P.No.17164/95.

10.Coming to W.P.No.17164/95, as already observed, when once the 1st respondent came to the conclusion that the tenancy agreement entered into between the encroachers/petitioners herein and the temple authorities cannot be held to be valid, the 1st respondent ought not to have held that the encroachers cannot question the occupancy right of the temple over the land and that they cannot make any default in payment of the lease amount as stipulated in the lease deed. The lease deed entered into by the temple with the writ petitioners in W.P.No.17164/95 cannot be held to be valid in the eye of law. Therefore, there is no question of directing the petitioners in W.P.No.17164/95 to pay the lease amount to the temple in respect of the question of shops under their occupation. To that extent, the direction contained in paragraph 13 of the order of the 1st respondent dated 13.11.1995 directing the petitioners in W.P.No.17164/95 not to question the occupancy right of the temple and that, they should also not make any default in paying the lease amounts as stipulated in the lease deed is

set aside. Accordingly, W.P.No.17164/95 is allowed. No costs. Consequently, W.M.P.No.27212/95 is closed.''

4.From the reading of the above order, the petitioners came into possession and enjoyment of the land under the tenancy agreement with the temple. However, it is contented earlier by the petitioners that the tenancy agreement cannot be treated as valid and such tenancy agreement cannot deprive of the petitioner's and right to get the assignment of land. Unfortunately while disposing of the earlier writ petition this Court failed to consider the Section 116 of Indian Evidence Act, which is extracted here under:-

Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

5.By the impugned order, the first respondent has directed issuance of patta infavour of temple after rejecting the contentions of the petitioners herein on the ground that the land was under the enjoyment of the temple and that the temple had constructed the shops in the vacant place and leased out the shops in favour of the petitioners. The shops came to be constructed in the year 1975 after getting permission from the local bodies. All the petitioners or the predecessors is interest entered into an agreement of lease with the trustees of the temple. Hence, the petitioners are estopped from claiming title or independent right to get Natham Poramboke patta in their favour from the Government. If the petitioners have applied for patta in their occupations of the land as encroachers without a history of lease, things would be different. The revenues cannot treat the possession of the petitioners as independent. After entering into possession as tenants, recognizing the temple's right to hold the land and to collect the rents for the property, the tenants cannot make any independent right to get patta or assignment from the Government. Since, the property was classified as Natham Poramboke it is also suggested that the land can be assigned only for the persons who are in possession by putting up the construction. Lands classified as Natham does not vest with Government. In the instant case there is no difficulty for the official respondents to recognize the temple as persons in possession by putting up construction long back.

6.Though this Court earlier made an observation as against the temple and then passed the order in W.P.Nos.10320 of 1996 and 17164 of 1995 dated 21.01.2002, since, the direction was issued to the revenue authorities to decide the entitlement for getting assignment or grant of patta as per the revenue standing orders and to examine their claim afresh as per the revenue standing order, there is no finality attached to the order. The impugned order of first respondent is perfectly in order and there is no merit in this writ petition. Accordingly, this writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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Copy to

- 1.The Special Commissioner and Commissioner,
of Land Administration, Chepauk,
Chennai-5.
- 2.The District Collector,
Coimbatore District, Coimbatore.
- 3.The District Revenue Officer,
Coimbatore District,
Coimbatore.
- 4.The Tahsildar, Palladam Taluk,
Palladam, Coimbatore District.
- 5.The Executive Officer,
Arulmigu Mahaliamman Temple,
Palladam, Coimbatore District.

+1cc to Mr.R.G.Naranderan, Advocate SR.No.5235

+1cc to Government Pleader SR.No.5744

W.P.No.38670 of 2005

KV(CO)
KKV/05/03/2021