

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 27864 of 2012 and W.P. No. 2491 of 2013 and
W.M.P. No. 1 of 2012 and W.M.P. Nos.1, 1 and 2 of 2013

1. P.Radhakrishnan
2. R.Jeyanthi
3. P.Gunasekaran

... Petitioners in
W.P. No.27864 of 2012

P. Radhakrishnan

... Petitioner in
W.P. No.2491 of 2013

-vs-

1. The District Revenue Officer,
Cuddalore,
Cuddalore District.
 2. The Revenue Divisional Officer,
Virudhachalam,
Cuddalore District.
 3. The Executive Officer,
Arulmigu Vaidyanatha Swamy Thirukovil,
Thittakudi, Cuddalore District.
 4. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Villupuram,
Villupuram District.
- ... Respondents in
W.P. No.27864 of 2012

1. The District Revenue Officer,
Cuddalore,
Cuddalore District.
2. The Revenue Divisional Officer,
Virudhachalam,
Cuddalore District.
3. The Thasildar,
Thittakudi,
Cuddalore District.

... Respondents in
W.P. No.2491 of 2013

PRAYER in W.P. No.27864 of 2012 : Writ Petition filed under
Article 226 of the Constitution of India, praying for issuance

of Writ of Certiorarified Mandamus calling for the records of the first respondent vide Proceedings Na.Ka.V3/25088/2012 dated 24.09.2012, confirming the order of the second respondent vide Na.Ka.A4/2478/2012 dated 23.08.2012 and quash the same and directing the respondents to issue the patta to the petitioners vide Patta No.853 in Survey No.120/1.

PRAYER in W.P. No.2491 of 2013 : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the third respondent to consider the representation of the petitioner dated 30.11.2012, in view of the order vide M.P. No. 1 of 2012 in W.P. No. 27864 of 2012 pending Writ Petition.

For Petitioners
in both W.Ps : Mr.R.Kannan

For Respondents
in W.P : Mr.Richardson Wilson
27864/12 Counsel for Govt for R1,R2&R4
Ms.Vaishali
for Mr.K.V.Dhanapalan for R3

For Respondents:
WP.NO.2491/13 Mr.Richardson Wilson

COMMON ORDER

Since the issue raised in both these Writ Petitions are one and the same, with the consent of the learned counsel appearing for both sides, both the Writ Petitions have been heard together and are disposed of by this common order.

2. The short facts which are required to be noticed for the disposal of these Writ Petitions are as follows:

(i) The subject land in old S.No.64/1A2B1 in new S.No.120/1 at Thittakudi Village and Taluk, Cuddalore District claimed to be the property of one Kunjupillai and he is said to have inherited the same through a partition in the year 1955. However, at that time, i.e., in the year 1960, it seems that, the Thittakudi Panchayat Union had issued a notice to the said Kunjupillai to vacate the land, as it treated him and others as encroachers.

(ii) This action on the part of the Panchayat triggered the Kunjupillai to file a suit in O.S. No. 199 of 1960 before the District Munsif Court, Virudhachalam for a declaration and permanent injunction. However, the said Suit was dismissed. As against which, the said Kunjupillai filed an Appeal Suit in A.S. No. 264 of 1961 before the Sub-Court, Cuddalore, where, a judgment and decree was passed on 14.11.1962 in favour of the said Kunjupillai, reversing the said judgment and decree of the trial court, by allowing the appeal.

(iii) As against the said order passed by the First Appellate Court, the Thittakudi Panchayat Union filed a Second Appeal before this Court in S.A. No. 1022 of 1963. This Court after considering the case projected by the parties, by order dated 13.06.1967 has dismissed the said Second Appeal by confirming the order passed by the First Appellate Court.

(iv) Thereafter, it is the case of the petitioners that, the Thittakudi Panchayat Union passed a resolution in Resolution No.83 dated 08.03.1968 and decided not to take any further action against the said Kunjupillai.

(v) Thereafter, the said land was purchased by these petitioners by different Sale Deeds in the year 1986 and that is how, the petitioners claim to be the owners of the property or traced their title in respect of the subject property.

(vi) Subsequently, it seems that, on 15.09.1997, patta had been issued for the subject land in favour of the petitioners as the entire land was classified during the UDR survey in A-Registrar as Gramanatham and this might have been based on the earlier classification which could be traced from 1923, stating that, the entire land be treated as Gramanatham.

(vii) Subsequently, it seems that, after getting the plan permission from the authorities concerned, some construction has been made by the petitioners and accordingly, they claimed to be in possession and enjoyment of the property.

(viii) When that being so, the Arulmigu Vaidyanatha Swamy Temple at Thittakudi, the 3rd respondent herein, claimed title over the property in question and filed a Suit before the District Munsif-cum-Judicial Magistrate Court, Thittakudi in O.S. No. 52 of 2001 seeking for a declaration and injunction. However, the said Suit was dismissed for default in the year 2009, as against which, no further action was taken by the Temple Authorities.

(ix) In the year 2001, against the Temple Authorities, the petitioners filed a Writ Petition before this Court in W.P. No. 4020 of 2001 seeking a Mandamus against the Temple Authorities not to interfere with the land and building of the petitioners in the subject land.

(x) This Court, by order dated 09.08.2001 has passed the following order:

"Considering these factual position, prima facie, I am satisfied that the petitioner had been granted patta on the basis of his possession and title unless the respondent established his overriding right over the petitioner, he would not be justified in interfering with the possession. Hence if the respondent claims any other right over this land, it is for him to establish before the revenue or the civil Court. Without doing so, he is not entitled to disturb the possession of the petitioner. Hence the writ petition is

allowed."

(xi) Thereafter, it seems that, the Revenue Officials treating the occupation of the petitioners as an encroachment, had taken some steps to evict the petitioners from the subject land. Therefore, at that time, the petitioners were once again triggered to approach this Court by filing W.P. No. 24422 of 2003 against the District Collector and other Revenue Officials and in that Writ Petition, this Court by order dated 21.03.2011, has passed the following order:

".....the petitioners are in possession and they are also holding patta, this court is of the view that they cannot be evicted except by due process of law, and such an order can be passed only after hearing the petitioners and satisfying as to the nature of possession of the petitioners. Under such facts and circumstances of the case the respondents are directed not to disperse the petitioners except by following due process of law. If the respondents wants to evict the petitioners on the ground that the property is a Government property, they have to issue notice to the petitioners call for objections, particularly with reference to their contention regarding the title, and thereafter proceed in accordance with law."

(xii) Only at this juncture, the petitioners made various representations requesting Revenue Authorities to take steps as directed by this Court in the order referred to above dated 21.03.2011. However, in the meanwhile on 20.01.2009, the fourth respondent issued a notice under Section 78(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and initiated action against the petitioners to cancel the patta. Pursuant to the order of this Court dated 21.03.2011, the second respondent issued summons to the petitioners to appear for an enquiry on 13.07.2012. Accordingly, on 24.07.2012, the petitioners appeared before the second respondent and thereafter, the second respondent passed an order on 23.08.2012 against the interest of the petitioners, as against which, the petitioners preferred an appeal before the first respondent on 29.08.2012, which was also decided and disposed of by the first respondent, by order dated 24.09.2012.

3. The sum and substance of the said orders passed by the first and second respondents stated supra, which are impugned herein, inter alia, make it that, the petitioners' possession and enjoyment of the property, i.e., subject matter, seems to be an encroachment as it is claimed by the Temple Authorities that, the land belongs to the Temple. However, the first respondent in his order dated 24.09.2012 among many other

things has observed the following:

"தாவா புலத்தில் சுமார் 50 ஆண்டுகளுக்கு மேலாக அனுபவம் பாத்தியமும், நீதிமன்றத்தில் சாதகமான தீர்ப்புகளும் வழங்கப்பட்டுள்ளதாலும், தற்போது விருத்தாசலம் முதன்மை சார்பு, நீதிமன்றத்தில் அசல் வழக்கு ஓ.எஸ்.155/2012 நிலுவையில் உள்ளதால் அதன்மீது அரசு தரப்பில் எதிர்வாதுரை தாக்கல் செய்து விசாரணை முடிவு, பெற்று தீர்ப்பு, அளிக்கும் போது அதன் அடிப்படையில் இறுதி முடிவு, எடுக்க அறிவுரை வழங்கி ஆணையிடப்படுகிறது."

4. Felt aggrieved over the said order passed by the Revenue Authorities, i.e., first and second respondents, the present Writ Petitions have been filed. In both the Writ Petitions, similar orders or the same orders have been under challenge. Therefore, the facts mentioned in the first Writ Petition, i.e., W.P. No. 27864 of 2012 as narrated above are taken into account.

5. Reiterating the aforesaid factors, Mr.R.Kannan, learned counsel appearing for the petitioners has submitted that, atleast from 1925, the petitioners are able to trace their title through their predecessors in title of the petitioners, as there has been number of proceedings, wherein, atleast one round of Civil litigation starting from the District Munsif Court ended at this Court, where favourable findings have been given both by the First Appellate Court as well as by this Court, thereby, the learned counsel appearing for the petitioners claimed title of the property which is perfected by virtue of the continuous possession and enjoyment of the property for more than thirty years, even at the time of the dismissal of the Second Appeal in the year 1967.

6. He would also submit that, after the civil battle was over between the petitioners' predecessors in title and the Thittakudi Panchayat Union, the Panchayat Union decided, by resolution, not to further precipitate the matter and thereby, the claim made by the Panchayat had been given up.

7. He would also submit that, however, insofar as the Temple Authorities as well as the Government, i.e., Revenue Department are concerned, both have made the present on slot stating that, the subject land belongs to the Temple and therefore, the Revenue Authorities also by following various Judgments issued by this Court as well as the Revenue Standing Orders and the provisions of the Tamil Nadu Patta Passbook Act, 1983 have come to the conclusion prima facie that, at this stage, the possession and enjoyment of the petitioners in the subject property cannot be construed as an encroachment and accordingly, action can be taken after the decision made by the Civil Court.

8. The learned counsel would further submit that, in the impugned order, i.e., final order passed in the Appeal filed before the first respondent, in the penultimate paragraph, i.e., at Point No.7, the first respondent has clearly stated that, for more than 50 years, the petitioners or their predecessors have been in possession and enjoyment of the property and number of orders have been passed by the Court of Law in favour of the petitioners or their predecessors and the petitioners also had filed a Suit in O.S. No. 155 of 2012 before the Sub-Court, Virudhachalam, which is pending consideration before the said Court. Therefore, taking into consideration of the totality of the situation, the first respondent has observed that, as per the decision to be taken by the Civil Court in the pending Suit triggered by the petitioners, the final decision can be taken.

9. The learned counsel appearing for the petitioners would further submit that, unmindful of the said findings and observations made in the impugned order, both the Revenue Authorities, i.e., Lower Level Officials as well as the Temple Authorities are treating these petitioners as encroaches and want to evict the petitioners without following due process of law and without even waiting for the decision to be taken by the Civil Court in the Suit filed by the petitioners and therefore, it has become necessitated to challenge the impugned order. Hence, the learned counsel appearing for the petitioners seeks indulgence of this Court against the impugned order.

10. Per contra, Mr. Richardson Wilson, learned counsel for the Government appearing for the official respondents would submit that, no doubt, there has been a Civil litigation which has started in 1960 and ended in the year 1967 and ultimately, the Second Appeal filed by the Thittakudi Town Panchayat, by its Executive Officer was rejected by this Court in S.A. No. 1022 of 1963, thereby, it may be claimed by the petitioners that, the issue has concluded. However, the findings and observations given by this Court in the said order insofar as referred to in the Second Appeal is that, the suit property forms part of Thirukkulam poramboke.

11. By relying upon these findings given by this Court, the learned counsel for the Government would submit that, there might have been a conclusion reached between the petitioners and the Thittakudi Panchayat Union or Town Panchayat concerned, but it has not been concluded between the petitioners and the Government as well as the petitioners and the Temple Authorities. This has also been specified by the learned Judge who disposed the Second Appeal in the year 1967. In order to appreciate the same, the learned counsel for the Government heavily relies upon the following findings given by this Court in the Second Appeal referred to above:

"But on appeal, this finding was reversed
and the suit was decreed. The appellate

Court pointed out that the Panchayat did not put forward a case in its written statement that the suit property formed part of any public road, but that it only stated that the suit property was part of the tank poramboke. Hence the contention that the suit property was part of a road and therefore vested in the Panchayat was rightly rejected. It is mentioned in the written statement that the suit property forms part of Thirukkulam poramboke. The appellate Court also accepted the contention of the respondents that they and their predecessors in title had perfected title to the suit property by continuous user for over 30 years.

The appellate Court has rejected the contention that Government is a necessary party, as without force. When the Government has not been impleaded as a party, any judgment rendered by this Court will not be binding on them.

I see no reason to differ from the findings arrived at by the appellate Court. The second appeal is accordingly dismissed, but there will be no order as to costs. No leave."

12. Therefore, the learned counsel for the Government would submit that, if at all, now the petitioners have approached the Civil Court, where, they filed a Civil Suit seeking for a declaratory decree declaring the title over the property in question to and in favour of the petitioners that itself shows that, the title has not been so far declared in favour of the petitioners in respect of the subject land.

13. He would further submit that, in the observations made in Point No.7 in the impugned order it has been stated by the first respondent that, once the Civil Court has come to a conclusion by giving a judgment and decree in the Suit in O.S. No. 155 of 2012 filed by the petitioners before the Sub-Court, Virudhachalam, depending upon the decision to be made by the Civil Court, a final decision can be taken by the Revenue Authorities.

14. Therefore, the issue has not been concluded and it has been kept pending. Therefore, the petitioners cannot take any advantage of the said findings at Point No.7 of the impugned order and in this regard, it is for the petitioners to establish their rights before the Civil Court and get a declaration with regard to the title of the property. Unless and until, such a declaration by way of declaratory decree to be made by the Civil Court is obtained in the Suit already been filed by the petitioners, the petitioners cannot have

shelter by citing the earlier proceedings concluded with the Second Appeal proceedings in the year 1967 as well as any other proceedings including the resolution passed by the Panchayat Union of Thittakudi. Therefore, the learned counsel for the Government would submit that, the said findings given by the first and second respondents in the impugned order are sustainable and justifiable. Hence, both the orders do not require any interference from this Court, he contended.

15. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. There is no much dispute with regard to the factors that has been narrated in the aforesaid paragraphs. All these factors have been taken out or culled out from various proceedings that are filed before this Court for perusal.

17. As of now, it is an admitted fact that, the petitioners or their predecessors have been in continuous possession and enjoyment of the property in question for several decades. If the possessory rights are traced from 1925 or 1932, it closely comes near about 8 to 9 decades.

18. Be that as it may, one round of litigation up to Second Appeal was over in the year 1967. As has been rightly pointed out by the learned counsel for the Government, this Court has observed in the said order dated 20.07.1967 that, the stand of the Panchayat Union before this Court was that, the suit property forms part of Thirukkulam poramboke.

19. If it is a Thirukkulam poramboke, from 1925 whether the Thirukkulam poramboke had been given for any possessory rights to any of the predecessors of the petitioners and in that case, all these decades, whether the land in question, even though initially claimed to be the Thirukkulam poramboke, has been continuously in that status or the said status has been changed by the Revenue Authorities at any point of time can be gone into only by the Civil Court after appreciating the evidences in this regard.

20. However, the fact remains that, the petitioners are in possession and enjoyment of the property for several decades and wherein, after the resolution passed by the Panchayat Union concerned, subsequently, the petitioners seem to have obtained planning permission from the concerned authorities and constructed the building. Therefore, at this juncture, without getting a finality in Civil Suit in O.S. No. 155 of 2012, no coercive or persuasive action can be taken either by the Revenue Authorities, i.e., Government or by the Temple Authorities. The reason being that, in the Suit in O.S. No. 155 of 2012 filed by the petitioners, both the Government represented by the District Collector concerned as well as the Temple Authorities have been arrayed as parties. Therefore, in the Suit, both the Government as well as the Temple Authorities can let in their evidences in support of their cases with regard to the property in question and ultimately,

it is for the Civil Court, i.e., Court, where, the said Suit is pending, to take a decision and to give a judgment and decree.

21. Once the judgment and decree is passed in the suit filed by the petitioners, as rightly observed by the first respondent in paragraph No.7 of the impugned order, the final decision can be taken as to the nature of the land and further action can be taken against the petitioners if any need arise in future.

22. However, at this juncture, till a final decision comes from the Civil Court as referred to above, no further coercive or persuasive action can be taken either by the Revenue Authorities or by the Temple Authorities and therefore, this Court feels that, a direction can be given at this stage to the respondents not to take any coercive action or persuasive action or follow up action pursuant to the impugned proceedings issued by the first and second respondents till a final decision is taken in the Suit in O.S. No. 155 of 2012 filed by the petitioners pending before the Sub-Court, Virudhachalam.

23. Accordingly, there shall be a direction to the respondents not to take any coercive or persuasive or follow up action pursuant to the impugned orders of respondents 1 and 2 till a judgment and decree is passed by the Civil Court in O.S.No.155 of 2012 on the file of the Sub Court, Virudhachalam.

24. It is made clear that, once the Sub-Court takes a view and passes judgment and decree, it is natural that, both the parties would abide by the said decision to be made by the Civil Court. Accordingly, the remedies available for both parties can be worked out in the manner known to law.

25. With these observations and directions, these Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vji

To

1. The District Revenue Officer,
Cuddalore,
Cuddalore District.
2. The Revenue Divisional Officer,
Virudhachalam,
Cuddalore District.
3. The Executive Officer,
Arulmigu Vaidyanatha Swamy Thirukovil,
Thittakudi, Cuddalore District.
4. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Villupuram, Villupuram District.
5. The Thasildar,
Thittakudi,
Cuddalore District.
6. The Sub Court,
Virudhachalam.

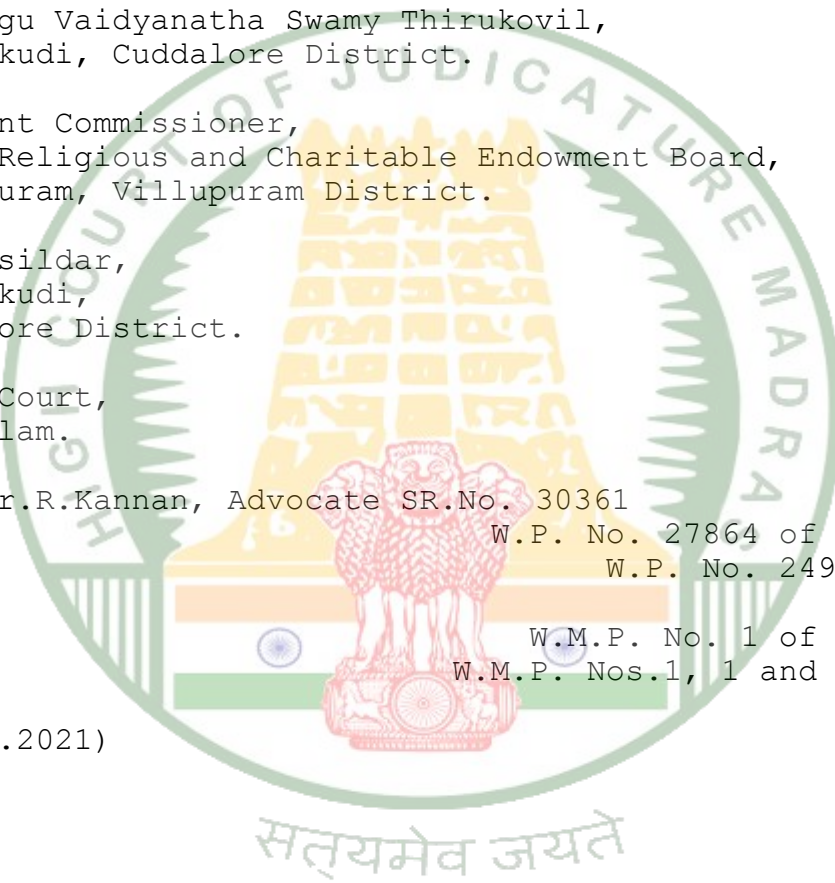
+2ccs to Mr.R.Kannan, Advocate SR.No. 30361

W.P. No. 27864 of 2012 and
W.P. No. 2491 of 2013
and

W.M.P. No. 1 of 2012 and
W.M.P. Nos.1, 1 and 2 of 2013

(CO)

A.SK(12.07.2021)



WEB COPY