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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.31551 of 2018

and

WMP.Nos.36767, 36771 of 2018 & 35365 of 2019

- 1.T.Prabakaran
- 2.Rani
- 3.D.Karthi
- 4.D.Bhavani

...Petitioners

Vs

1. The District Collector,
Chennai District,
Singaravelan Maligai,
Chennai 600 001
2. The Tahsildar,
Velacheri Taluk,
Taramani, Chennai 600 113
3. The Special Tahsildar,
Natham Land Taxation Scheme,
Mambalam - Guindy Taluk,
New No.1, Old No.2, Bharathidasan Salai,
K.K.Nagar, Chennai 600 078
4. Arulmigu Dhandeeswarar Thirukoil,
Rep. by its Executive Officer,
Velacheri, Chennai 600 042

5.Ravi

6.Sundaram Naicker

...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent culminating in his impugned order No.02/24860/2016 dated 07.12.2017 and quash the same.

For Petitioners : Mr.R.Gowthama Narayanan

For R1 to 3 : Mr.M.R.Gokul Krishnan,
Government Advocate



For R4

: Mr.A.K.Sriram
for M/s.A.S.Kailasam and Associates

For R6

: Mr.Veangai I.Prakash Raj

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ORDER

This writ petition is filed to issue a Writ of Certiorari calling for the records of the first respondent culminating in his impugned order No.02/24860/2016 dated 07.12.2017 and quash the same.

2. The case of the petitioners is that they owned land admeasuring 500 sq.ft. comprised in survey No.124/1 (part) situated at Velachery Village bearing door No.7(old No.9), Theradi Street, Velachery, Chennai-42. The petitioners have constructed building thereon and they are in possession and enjoyment of the said property. The third respondent conducted enquiry under the Natham Land Taxation Scheme and after being satisfied of the facts relevant for the purpose, issued a joint patta in favour of the petitioners and the fifth and sixth respondents herein in respect of the land to an extent of 1496 sq.ft. The fourth respondent did not raise any objection for the issuance of patta in favour of the petitioners. However, the sixth respondent filed writ petition before this Court in WP.No.37139 of 2016 and contended that the subject land belong to the fourth respondent temple and therefore challenged the issuance of patta in favour of the petitioners. It was disposed of and directed the first respondent to conduct enquiry and pass order in accordance with law. As directed by this Court, the first respondent directed the second respondent who is being competent authority to conduct enquiry. The second respondent conducted detailed enquiry and pass orders dated 28.04.2017 holding that the subject land comprised in survey No.124/1 part Velachery village is 'grama natham' and it never belonged to the fourth respondent and there was no ground to recommend the second respondent for cancellation of joint patta issued by him. Aggrieved over the same, the fourth respondent challenged the order passed by the second respondent in WP.No.14822 of 2017 on the ground that this Court already directed the first respondent to conduct enquiry and pass orders. Instead of first respondent, the second respondent conducted enquiry and passed order. The first respondent conducted enquiry and set aside the patta issued in favour of the petitioners and the fifth and sixth respondents and declared the title in favour of the fourth respondent.

3. The learned counsel for the petitioners would submit that the first respondent has no jurisdiction and power to decide the title when there are disputed question of facts in respect of the subject property. The first respondent concluded the title



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in favour of the fourth respondent solely based upon the documents produced by the fourth respondent, that too the lease agreements executed in favour of the fifth and sixth respondents herein. Whether subject property land belonged to the fourth respondent temple or not, was raised and the Government through HR&CE Department passed an order in GO.Ms.No.1465 dated 19.12.1981 and clarified that the lands comprised in survey No.124/1 classified as 'grama natham' in Government records and the temple had never any title over the property. Without considering the said Government order, the first respondent mechanically passed the impugned order based on the lease agreements produced by the fourth respondent. The petitioners are in possession and enjoyment of the property even till today and they produced documents such as ration card, adhar card, voters identity card, property tax demand card, metro water charges card, EB card etc. to prove their possession and enjoyment of the subject property.

4. The fourth respondent filed counter, wherein it is submitted that the GO.Ms.No.1465 dated 19.12.1981 is an order published in the Gazette and it cannot be considered as Government order declaring that the subject property is a 'grama natham'. HR&CE Department is not the competent person to declare that the subject land is classified as grama natham.

5. The learned counsel for the fourth respondent further submitted that the suit in OS.No.4788 of 2016 on the file of the City Civil Court, Chennai was filed for permanent injunction and mandatory injunction to remove the superstructure put up by the petitioners. The GO.Ms.No.1465 dated 19.12.1981 cannot have the effect of circumventing the law which specifies that 'grama natham' land never vest in the Government. He further submitted that the disputed question of facts cannot be decided in the writ petition.

6. Heard, Mr.R.Gowthama Narayanan, the learned counsel for the petitioners, Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents 1 to 3, Mr.A.K.Sriram, the learned counsel for the fourth respondent, and Mr.Veangai I.Prakash Raj, the learned counsel for the sixth respondent.

7. Admittedly, the petitioners are in possession and enjoyment of the property comprised in survey No.124/1 Part admeasuring 500 sq.ft. bearing door No.7, Theradi Street, Velachery, Chennai-42. They constructed house and assessed to the property tax. It is also seen from the records such as ration card, adhar card, voters identity card, property tax demand card, metro water charges card and electricity consumption card, etc which will prove the petitioners' possession and enjoyment of the subject property. In fact, the



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fourth respondent filed suit in OS.No.4788 of 2016 on the file of the City Civil Court, Chennai for permanent injunction and mandatory injunction to remove the construction put up by the petitioners in the subject property. GO.Ms.No.1465 dated 19.12.1981 recorded that the subject property comprised in survey No.124/1 was classified as 'grama natham'. Therefore, admittedly the petitioners and the respondents 5 & 6 are in possession and enjoyment of the entire extent of the property admeasuring 1496 sq.ft. and they were issued joint patta. Insofar as the petitioners are concerned, they are in possession and enjoyment of the property admeasuring 500 sq.ft and the remaining part are in possession and enjoyment of the respondents 5 & 6 herein. The first respondent by the impugned order dated 07.12.2017, concluded that the subject land is classified as 'natham poramboke', in which the part of the land admeasuring 1200 sq.ft. leased out to the sixth respondent herein for the monthly rent of Rs.2/- for a period of three years and as such the said land belongs to the fourth respondent temple. Admittedly, the subject land is classified as 'natham poramboke' and the petitioners are in possession and enjoyment of the part of the property admeasuring 500 sq. ft. in survey No.124/1. At the same time, the respondents 5 and 6 are also in possession and enjoyment of the remaining land out of 1496 sq.ft. Without considering these aspects, the first respondent mechanically on the strength of the lease agreements entered between the fourth respondent and the sixth respondent cancelled the joint patta issued in favour of the petitioners and the respondents 5 and 6 herein. That apart, when there are disputed question of facts, it cannot be decided by the first respondent and it has to be gone into by trial.

8. In view of the above, the impugned order dated 07.12.2017 is set aside and the writ petition is allowed. If at all, the fourth respondent claims title over the subject property, the fourth respondent can very well approach the civil court for declaration of title . If the fourth respondent succeeds before the civil court, the fourth respondent can very well approach the second respondent for issuance of patta. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The District Collector,
Chennai District,
Singaravelan Maligai,
Chennai 600 001
2. The Tahsildar,
Velacheri Taluk,
Taramani,
Chennai 600 113
3. The Special Tahsildar,
Natham Land Taxation Scheme,
Mambalam - Guindy Taluk,
New No.1, Old No.2, Bharathidasan Salai,
K.K.Nagar, Chennai 600 078
4. The Executive Officer,
Arulmigu Dhandeeswarar Thirukoil,
Velacheri,
Chennai 600 042

+1cc to the Government Pleader, S.R.No.54272

WP.No.31551 of 2018

MG (CO)
RGA (17/11/2021)