



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.1361 of 2021

and

C.M.P. [MD]Nos.5699 & 5700 of 2021

S.Jeyabalan

...Appellant/Writ Petitioner

Vs.

1.The Principal Secretary and Commissioner
of Land Administration (FAC),
Chepauk,
Chennai - 600 005.

2.The District Revenue Officer,
Sivagangai.

3.The Revenue Divisional Officer,
Devakottai.

4.The Tahsildar,
Devakottai.

... Respondents/ Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order in W.P.[MD]No.4048 of 2021 dated 05.03.2021.

Prayer in WP(MD). 4048/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the order dated 22.01.2021 in Proc.No. K4/16066/2017 and quash the same and consequently direct the respondents to reconsider the application 11.07.2017 submitted by the petitioners father by affording opportunity of personal hearing to the petitioner and to grant patta for the lands in S.No. 326/6, Chittativayal Village, Iruvinivayal Group, Devakkottai Tk, measuring about 0.16.15 Ares.



For Appellant : Mr.VR.Shanmuganathan

For Respondents : Mr.R.Baskaran,
Standing Counsel for Government

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JUDGMENT

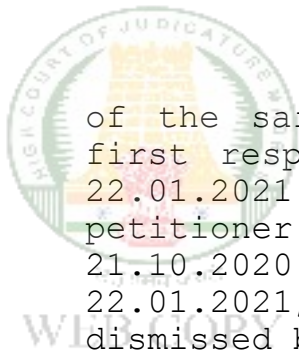
[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.VR.Shanmuganathan, learned Counsel appearing for the appellant and Mr.R.Baskaran, learned Standing Counsel for Government appearing for the respondents.

2.The appellant is the writ petitioner, who filed W.P.[MD] No.4048 of 2021 dated 05.03.2021, challenging the order passed by the first respondent dated 22.01.2021, rejecting the petitioner's application for grant of assignment in respect of the lands in Survey No.326/6, Chittativayal Village, Iruvinivayal Group, Devakottai Taluk, measuring an extent of 0.16.5 Ares. The classification of the land is Sarkar Poramboke Natham. The first respondent in the order impugned in the writ petition has rejected the claim primarily on the ground that the appellant is not in possession of the land and he has not established that he is in possession and therefore, there is no right for assignment of the land to the appellant.

3.The case had a chequered history. The litigation was first started by the appellant's father who had filed various writ petitions before this Court and an order came to be passed by the District Revenue Officer, Sivagangai dated 25.02.2009, refusing to grant patta in respect of the very same land. This order was put to challenge in W.P.[MD]No.2808 of 2009 and the writ petition was dismissed by order dated 05.04.2013, directing the appellant to file a revision petition before the first respondent herein. Accordingly, the revision petition was filed which was dismissed by order dated 03.10.2013. The first respondent held that during Natham Settlement Scheme, patta was issued to persons who were enjoying the lands in the Natham by way of construction of houses or huts and that the District Revenue Officer rightly rejected the claim of the appellant since enjoyment has not been proved by the appellant. The appellant placed much reliance on the extract of the survey field register. This aspect was considered by the first respondent and it was observed that the said document cannot finally establish the possession of the land in question by the appellant or his father.

4.The order passed by the first respondent dated 03.10.2003 was put to challenge in W.P.[MD]No.18480 of 2013. The said writ petition was disposed of, leaving it open to the appellant to approach the first respondent herein with a request for assignment



of the said land. Accordingly, a petition was filed before the first respondent on 11.07.2017. This was rejected by order dated 22.01.2021. Since by then, the appellant's father who was the petitioner in the earlier round of litigations passed away on 21.10.2020 and thereafter, the appellant challenged the order dated 22.01.2021, by filing W.P.[MD]No.4048 of 2021. This has been dismissed by the impugned order.

5.We are fully in agreement with the ultimate conclusion arrived at by the learned Single Bench that the petitioner has to establish his possession of the land in question before the learned Civil Court as there are various factual controversies. However, we wish to add that the earlier round of litigation and the proceedings before the authorities at the instance of the appellant was for grant of patta. His claim for grant of patta came to an end after the order was passed in W.P.[MD]No.18480 of 2013 dated 22.03.2017. It is in the said order, liberty was granted to the appellant to approach the first respondent seeking assignment of the land subject to payment of land value and if such application is filed, it was directed to be considered independently without being influenced by any of the observations made in any of the proceedings including the order dated 22.03.2017, in the said writ petition. The Court also protected the possession of the appellant till the application for assignment is considered. This application has been rejected.

6.The core issue is that the appellant has to prove the possession of the land, not only his possession, but also possession by his father as his claim for grant of patta dates back to the year 2005. Unless and until this fact is proved in the manner known to law, the appellant has no vested right to claim for assignment of the land which is classified as Sarkar Poramboke Natham. This aspect can be done only before the Civil Court and cannot be adjudicated before the Writ Court based on affidavit and documents. Therefore, the appellant, to establish his possession of the land with his family, has to necessarily approach the Civil Court. It goes without saying that in the relief that the appellant may seek before the Civil Court, it will be well open to the appellant to question the correctness of the order passed by the first respondent dated 22.01.2021. This liberty is granted because neither the learned Writ Court nor ourselves have gone into the merits of the matter.

7.For the above reasons, while dismissing the appeal filed by the appellant and confirming the order passed by the learned Single Bench, we grant liberty to the appellant to approach the competent Civil Court having jurisdiction for appropriate relief. If the appellant avails such a remedy on or before 31.08.2021, the *status quo* with regard to the property in question prevailing as on dated ie., 14.07.2021 shall be preserved. On the other hand, if the appellant does not do so, then the benefit of this protection will not inure to the appellant and it will be open to the respondents to proceed further in accordance with law. However, there shall be no



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W.A.[MD]No.1361 of 2021

order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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

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of Land Administration (FAC),
Chepauk,
Chennai - 600 005.

2.The District Revenue Officer,
Sivagangai.

3.The Revenue Divisional Officer,
Devakottai.

4.The Tahsildar,
Devakottai.

+1 CC to M/s.V.R.SHANMUGANATHAN, Advocate (SR-22714[F] dated 15/07/2021)

+1 CC to M/s.SPL GP (SR-22968[F] dated 16/07/2021)

W.A. [MD]No.1361 of 2021

14.07.2021

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