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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.631 of 2022

The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Villupuram,
Villupuram District.

..Appellant/Petitioner

Vs

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

4.The District Revenue Officer,
Cuddalore,
Cuddalore District.

5.The Revenue Divisional Officer,
Virudhachalam,
Cuddalore.

6.The Executive Officer,
A/m Vaidyanathasamy Thirukoil,
Thittakudi,
Cuddalore District.

..Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order dated 30.06.2021 in W.P.No.27864 of 2012.

Prayer in W.P.No.27864 of 2012 : Writ Petition filed under Article 226 of Constitution of India calling for the records of the 1st respondent vide proceedings Na. Ka. V3/25088/2012 dated 24.09.2012 confirming the order of the 2nd 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.



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For the Appellant : Mr.N.R.R.Arun Natarajan
Spl. Govt. Pleader (HR & CE)

For the Respondents : Mr.S.Udayakumar
for respondent Nos.1 to 3

: Mr.P.Muthukumar
State Government Pleader
for respondent Nos.4 and 5

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

By this writ appeal, a challenge is made to the order dated 30.06.2021 passed by the learned Single Judge in W.P.No.27864 of 2012.

2. The said writ petition was filed by the writ petitioners/non appellants 1 to 3 to quash the orders 24.09.2012 and 23.08.2012 passed by the District Revenue Officer, Cuddalore and the Revenue Divisional Officer, Virudhachalam, respectively, and to issue patta in favour of the writ petitioners/non appellants 1 to 3 in respect of Survey No.120/1.

3. The learned Single Judge allowed the writ petition by passing a restraint order against the writ appellant from taking any coercive action going beyond the prayer made in the writ petition.

4.1. The case has chequered history. The brief facts of the case are as follows: The property in question was subject-matter of litigation that started in the year 1960 and ended in 1967 on the dismissal of the second appeal, i.e., S.A.No.1022 of 1963, preferred by Thittakudi Panchayat Union. The writ petitioners/non appellants 1 to 3 purchased the land subsequent to the litigation aforesaid and made a claim over the land in question. The writ petition was filed, accordingly, to seek direction for issuance of patta in respect of the land, which was the subject-matter of civil litigation earlier. A challenge is to the order dated 23.08.2012 cancelling the patta and dismissal of the appeal vide order dated 24.09.2012.

4.2. The appellant herein, however, contested the writ petition stating that the civil litigation initiated in the year 1960 and ended with the dismissal of the second appeal in the year 1967 was not inter se the writ petitioners/non appellants 1 to 3 and the appellant Government and the temple, but was with



the Thittakudi Panchayat Union. In view of the above, the decree passed in the civil suit was not binding on the appellant. It is otherwise clarified by the court in its order in the second appeal.

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4.3. The fact aforesaid was relevant to adjudicate the writ petition preferred by the writ petitioners/non-appellants 1 to 3. It was filed at the stage when the appellant/non-petitioner initiated action pursuant to the direction given by this court in W.P.No.6533 of 2021, dated 15.03.2021 for disposal of the representation made by the petitioner alleging inaction against the encroachments on the land of temple tank in question.

4.4. Pursuant to the direction of this court in W.P.No.28330 of 2019, the Revenue Tahsildar, Thittakudi passed an order dated 18.12.2019 for eviction of the encroachers. The order aforesaid was not challenged by maintaining the writ petition. Ignoring the facts given above, the learned Single Judge, passed an order even going beyond the scope and prayer of the writ petition.

5. In the light of the brief facts given above, learned Special Government Pleader (HR & CE) appearing for the writ appellant submitted that the land in question was no doubt subject-matter of civil litigation, but it was against the Executive Officer of Thittakudi Panchayat Union by Kunju Pillai and others, where the government and the temple were not parties. Therefore, while disposing of the second appeal, the second appellate court recorded a finding that the suit property forms part of Thirukkulam poramboke and decree would not be binding on the government being not party to it. Ignoring the aforesaid, despite a reference in the judgment, an order was passed mainly for the reason that the writ petitioners/non-appellants 1 to 3 have again initiated litigation by maintaining a suit. When no injunction was granted by the civil court, reducing the status of the High Court to that of a civil court, the learned Single Judge passed a restraint order till final disposal of the civil suit. That too, when there was no prayer to that effect.

6. Learned Special Government Pleader (HR & CE) has raised many other contentions and would be dealt with while considering the rival submissions of the parties.

7. Learned counsel for the writ petitioners/non-appellants 1 to 3 contested the appeal. He submitted that the land in question is the subject-matter of civil litigation preferred by the writ petitioners/non-appellants 1 to 3 and pending civil suit, the appellant is trying to dispossess them. In fact, the writ petitioners/non-appellants are in possession of the land



for years together. In view of the above, the writ petition was filed to seek an appropriate relief and taking note of the pendency of the civil suit filed by the writ petitioners/non-appellants, the learned Single Judge has passed a just and proper order. Therefore, the same may not be interfered. It is more so when the writ petitioners/non-appellants 1 to 3 remain successful in the earlier civil litigation against the Thittakudi Panchayat Union, which went up to the second appeal and was decided by this High Court. Once the right was settled in favour of the writ petitioners/non-appellants 1 to 3, the action of the government or the temple was not sustainable and thereby, a just order has been passed by the learned Single Judge restraining the authorities from taking any coercive action pending civil suit. It was with the clarification that the rights of the parties would be determined in the civil suit and, accordingly, they would be governed by it. Looking to the aforesaid, a prayer is made to dismiss the writ appeal while maintaining the order passed by the learned Single Judge.

8. We have considered the rival submissions of the parties and also perused the materials available on record.

9. The brief facts referred by this court would show that a litigation in the shape of civil suit was ultimately decided in the second appeal. A decree was passed in favour of the vendor of the property in question to the writ petitioners/non-appellants 1 to 3, however, the government and the temple were not parties to the civil suit which was filed in the year 1960. It was against the Thittakudi Panchayat Union. Subsequent to the dismissal of the second appeal, it seems that the writ petitioners/non appellants 1 to 3 purchased the land through different sale deeds in the year 1986 and pursuant to the sale deeds, they claimed to be the owners of the property. The writ petitioners/non-appellants 1 to 3 seem to have raised even constructions thereon. However, the title over the land was claimed by the temple and a civil suit was filed, but the same was dismissed in default. No further action was taken therein. In the year 2001, the writ petitioners/non-appellants preferred a writ petition against the temple authorities in W.P.No.4020 of 2001 to seek a restraint order not to interfere with the land and building in the possession of the writ petitioners/non-appellants. The Writ Court, passed an order on 09.08.2001 in the following terms:

"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."

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10. After disposal of the writ petition referred to above, the revenue officials treating the writ petitioners/non-appellants to be encroachers, started taking steps to evict them. Therefore, the writ petitioners/non-appellants again preferred a writ petition being W.P.No.24422 of 2003, which was disposed of by the order dated 21.03.2013 in the following terms:

"8.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."

11. In the interregnum, on 20.01.2009, a notice was issued on the writ petitioners/non-appellants under Section 78(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [for brevity, "the Act of 1959"].

12. Subsequent to the order of this court dated 21.03.2011, the Revenue Divisional Officer issued summons to the writ petitioners/non-appellants 1 to 3 to appear for an inquiry on 13.07.2012. The writ petitioners/non-appellants 1 to 3 accordingly appeared and thereafter, on 23.08.2012, an order was passed against the writ petitioners/non-appellants cancelling the patta. An appeal was preferred by the writ petitioners/non-appellants, which was dismissed by an order dated 24.09.2012. The order aforesaid was challenged by maintaining a writ petition in the year 2021, i.e. after a lapse of nine years, because the patta issued in favour of the parties was cancelled followed by the dismissal of the appeal. Therefore, the writ petitioners/non-appellants 1 to 3 have no right to retain the land in question.

13. The learned Single Judge has not caused interference in the order dated 23.08.2012 and 24.09.2012 cancelling the patta, yet passed an injunction order pending civil suit. If the facts



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taken into consideration by the learned Single Judge are taken note of, it is going against the finding recorded by the court in the second appeal and is quoted hereunder for ready reference:

".... 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."

(emphasis supplied)

14. A perusal of the judgment passed in the second appeal shows that the decree was not against the government. In view of the above, the decree in the second appeal was not binding on the government and, accordingly, the government was within its rights to initiate action as per the provisions of the Act of 1959 to cancel the patta and passed orders followed by the dismissal of the appeal. The order aforesaid was challenged after a period of nine years without explaining the delay. However, we have to ignore the aforesaid because the learned Single Judge has not taken note of the aforesaid. The learned Single Judge seems to have been persuaded only by the factum of possession of the writ petitioners/non-appellants without considering the subsequent events, which includes a writ petition to seek a direction for removal of the encroachment on the land in question. The order passed in W.P.No.6553 of 2021, dated 15.03.2021 is quoted hereunder for ready reference:

"The petitioner complains of encroachment of the temple tank area by the adjacent shop owners.



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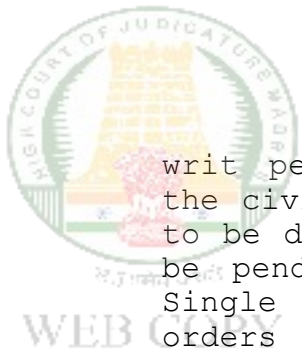
2. Mr.R.Venkatesh, learned standing counsel for the Hindu Religious and Charitable Endowments Department accepts notice on behalf of the fourth respondent and states that encroachments were, indeed, identified in the temple tank area and action was initiated for the removal thereof. The said task has been partly completed and that further action would be taken in coordination with the Thasildar.

3. Accordingly, the fourth respondent is directed to consider the representation dated 15.09.2020 of the writ petitioner and dispose of the same by a speaking order after providing a reasonable opportunity to all affected parties. Such speaking order shall be issued within a period of eight weeks from the date of receipt of a copy of this order. W.P.No.6533 of 2021 is disposed of on the above terms. There will be no order as to costs."

15. Pursuant to the direction of this court, the Revenue Tahsildar, Thittakudi, sent a communication to the Executive Officer of the Hindu Religious and Charitable Endowments Department, Thittakudi, on 18.12.2019. The aforesaid letter is also quoted for ready reference:

"As per the order passed by the High Court, Madras in W.P.No.28330/2019, in terms of G.O.540 it is ordered that the encroachments in and around the Temple Tank of Arulmighu Vaidyanathaswamy Temple is directed to be removed as per the communication referred to in the reference 1 above. On conducting field audit, and enquiry, it is found that 16 persons have encroached on the said land and have constructed buildings and house. Therefore, the lit of details of the encroachers is enclosed herein in Form 1. Therefore, I assure that in the event of announcing date for evicting the encroachers I would give full co-operation for evicting the encroachers."

16. The official respondents were to take action pursuant to the direction of the High Court as also the order passed by the Revenue Tahsildar to remove the encroachments. While filing the writ petition in the year 2021, the writ petitioners/non-appellants 1 to 3 did not challenge the order/communication passed by the Revenue Tahsildar, dated 18.12.2019 to remove the encroachments. It is quite surprising that the learned Single Judge ignoring the aforesaid facts passed the impugned order going against the direction given by the Co-ordinate Bench of this Court earlier in time, when there was an opportunity to the



writ petitioners/ non-appellants to seek an injunction before the civil court in the pending civil suit. In any case, it has to be determined by the civil court where the suit is stated to be pending. Accordingly, the impugned order of the learned Single Judge is set aside. It is more so without quashing the orders regarding cancellation of patta and the dismissal of the appeal filed by the petitioners/non-appellants 1 to 3.

For the reasons given above, the writ appeal succeeds and is accordingly allowed. The impugned order of the learned Single Judge is quashed. There will be no order as to costs. Consequently, C.M.P.No.4450 of 2022 is closed.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

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To

1. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Villupuram, Villupuram District.
2. The District Revenue Officer,
Cuddalore,
Cuddalore District.
3. The Revenue Divisional Officer,
Virudhachalam,
Cuddalore.
4. The Executive Officer,
A/m Vaidyanathasamy Thirukoil,
Thittakudi,
Cuddalore District.

+4ccs to Mr.S.Udayakumar, Advocate SR. No.19417, 20290, 20121
+1cc to Government Pleader, SR. No.20071

W.A.No.631 of 2022

MG (CO)

PR (01/04/2022)