

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2022

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35809 of 2004

P. Jayasekar

...Petitioner

Vs

1.The District Revenue Officer,
Thiruvarur District, Thiruvarur

2.The Revenue Divisional Officer,
Thiruvarur District, Thiruvarur.

3.The Tahsildar,
Nannilam.

4.Manikannan

5.Siddarthan

6.Ramamirtham

7.Sumathy

(R5 to R7 are impleaded vide order dated
27/04/2019 made in W.M.P.No.12490/2019
in W.P.No.35809/04 by MSRJ)

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 1st respondent in Na.Ka.No.4543/2004/B1 dated 29.10.2004 and quash the same as illegal, arbitrary and unenforceable.

For Petitioner

... M/s. R. T. Shyamala

For Respondents

... Mr. G.Nanmaran,
Special Government Pleader
for R1 to R3.

... Mr. S.A.Akbar for R4.

O R D E R

The present petition has been filed seeking the relief of quashment of the impugned order dated 29.10.2004 passed by the 1st respondent.

2. It is the case of the petitioner that his father was in possession of the property in Survey No.94/8 measuring to an extent of 0.03.50 Hectares situated at Nannilam Town, Chakkrakulam Street, which has been classified as Natham. After the demise of his father, the said property devolved upon the petitioner based on the registered will executed by his father and thereafter, the patta was granted in favour of the petitioner based on the registered will. All of a sudden, the 4th respondent herein had filed an appeal before the 2nd respondent against the petitioner seeking cancellation of patta, and the said appeal was dismissed, against which, the 4th respondent had filed a revision petition before the 1st respondent which was allowed and the patta granted in favour of the petitioner has been canceled. Aggrieved by the same, the petitioner has come up with the present petition.

3. Learned counsel appearing for the petitioners submits that the impugned order is premised on the ground that the petitioner's father was in enjoyment of the land for the past 60 years, which land is classified as Natham poramboke. Further, the 1st respondent has held that in respect of Natham land, which has been in occupation for a long period of time by which the occupier gets title, on the demise of the person in possession and enjoyment of the property, the patta should be granted in favour of all the legal heirs and not in favour of a particular individual, which finding is erroneous for the reason that only based on the Registered Will executed by the petitioner's father, patta has been granted. However, the registered Will has not been appreciated in proper perspective by the 1st respondent leading to the cancellation of the patta, which is wholly erroneous and shows sheer non-application of mind. Accordingly, he prays for allowing the present petition.

4. Learned Addl. Government Pleader appearing for respondents 1 to 3 submitted that the 1st respondent has taken into consideration all the materials placed before him and has arrived at a subjective finding not to place reliance on the registered Will for the purpose of granting patta. That being the case the stand of the petitioner that he is entitled to individual patta based on the registered Will is not sustainable. Further, it is the submission of the learned Addl. Government Pleader that without putting the other legal heirs on notice, issuing the patta in favour of the petitioner is unsustainable, which has been properly appreciated by the 1st

respondent and, therefore, the impugned order does not suffer the vice of any illegality or arbitrariness and, accordingly prays for dismissal of the writ petition.

5. Learned counsel appearing for the 4th respondent submitted that without proving the registered Will in the manner known to law, placing reliance on the said Will to grant patta in favour of the petitioner is not proper, which fact has been appreciated by the 1st respondent while passing the impugned order and, therefore, no interference is called for with the said order.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. A perusal of the order impugned herein clearly reveals that the 1st respondent, for cancelling the patta issued in favour of the petitioner has relied on the fact that the land is a Natham land, which vests with the Government and only due to prolonged occupation by building a dwelling house, the land has been granted in favour of the petitioner's father. The 1st respondent has further held that the 2nd respondent, without proper appreciation of material documents has granted patta in favour of the petitioner. The 1st respondent has further held that it is improper for a Government servant to obtain patta without the permission of the employer.

8. Though the aforesaid findings have been given by the 1st respondent, the said findings only reveals the fallacies in the appreciation of the materials by the 1st respondent. The Registered Will, which has been placed before the 2nd respondent as also the 1st respondent, based on which the 2nd respondent had granted patta in favour of the petitioner has not been appreciated in proper perspective by the 1st respondent. The registered Will has not been questioned by the 4th respondent till date. Further, the Will is a registered document. That being the admitted position, the 4th respondent not having questioned the registered Will, it has to be necessarily accepted that the registered Will assumes significance. The 2nd respondent, based on the registered Will and the same not having been questioned in any manner by any of the legal heirs of the deceased, more especially by the 4th respondent at any point of time, has thought it fit to accept the said Will and granted patta in favour of the petitioner. However, while negating the patta in favour of the petitioner, the 1st respondent has not even placed any iota of finding or given any reason for not believing the registered Will submitted by the petitioner. When

the 4th respondent himself has not challenged the registered Will till date, what prompted the 1st respondent not to place reliance on the said registered Will is not evident from the order impugned.

9. Further, the basis on which the 1st respondent has recorded a finding that for obtainment of patta by a Government servant, permission of the Government is necessary. It is not the case of the 1st respondent that he had called for the permission letter from the petitioner and the same has not been placed before him. Even had he called for such a material from the petitioner, this Court is at a loss to understand the nexus between the permission granted for obtaining the patta by the petitioner vis-à-vis his service, as the petitioner has not purchased property but the property devolved on him from his father through the registered Will. Such being the case, all the findings recorded by the 1st respondent are fallacious findings, which are not supported by any materials. Therefore, the cancellation of patta on the basis of the order by the 1st respondent definitely warrants interference at the hands of this Court.

10. For the reasons aforesaid, this writ petition is allowed and the order of the 1st respondent impugned herein is set aside and the patta granted to the petitioner by the 2nd respondent stands restored.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

GLN/NHS

To

- 1.The District Revenue Officer, Thiruvarur District, Thiruvarur
- 2.The Revenue Divisional Officer, Thiruvarur District, Thiruvarur.
- 3.The Tahsildar, Nannilam.

+1cc to Ms.R.T.Shyamala, Advocate SR. No.9789
+1cc to Government Pleader SR. Nos.9909, 10773

W.P.No.35809 of 2004

GPL (CO)
PR (12/04/2022)