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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.Nos.6195 of 2020 & 2118 of 2017

W.P.No.6195 of 2020:

The Madras Church Development Trust (P) Ltd
represented by its Secretary, Mr.M.Ephraim Moses
C.S.I. St. Mathew's Church
8/23, Church Street, Porur
Chennai 600 116

..Petitioner

-vs-

1.The Revenue Divisional Officer
Central Chennai, Chennai

2.The District Revenue Officer
Chennai

3.The Tahsildar
Maduravoyal Taluk
Maduravoyal

4.Mrs.J.Panneerselvi

..Respondents

Petition under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari, to call for the
records on the file of the first respondent proceedings in
Na.Ka.2134/2017/A4 dated 18.09.2018 and consequential order
bearing No.Na.Ka.2134/2017/A4 dated 07.02.2020 and quash the
same as incompetent and without jurisdiction.

For Petitioner :: Mr.P.Wilson
Senior Counsel for
Mr.K.G.Raghunath

For Respondents :: Mr.A.Selvendran
Special Government Pleader
for R1 to R3
Mr.V.Raghavachari for R4



W.P.No.2118 of 2017:

J.Panneerselvi

..Petitioner

-vs-

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- 1.The Commissioner
Corporation of Chennai
Ripon Building
Sydenhams Road, Periyamet
Chennai, Tamil Nadu 600 003
 - 2.The Chennai Metropolitan Authority
represented by its Member Secretary
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008
 - 3.The Pastor
Madras Church Development Trustee
C/o C.S.I. St.Mathew's Church
No.29, C.S.I.Church Street
Jayanagar, Porur, Chennai 600 116
 - 4.The Tahsildar
Maduravoyal
(R4 impleaded vide order of Court
dt.30.01.2017 in WP No.2118 of 2017)
 - 5.The District Revenue Officer
Chennai
(R5 suo motu impleaded vide order of
Court dt.09.01.2020 in WP 2118 of 2017)
- ..Respondents

Petition under Article 226 of the Constitution of India,
praying for issuance of a Writ of Mandamus, directing the
respondents to remove encroachments on the Karambakkam Panchayat
Road located at S.No.369 in Porur Village No.98.

For Petitioner	::	Mr.V.Raghavachari
For Respondents	::	Mr.K.Raja Shrinivas Standing Counsel for R1 Mrs.P.Veena Suresh Standing Counsel for R2 Mr.P.Wilson Senior Counsel for Mr.K.G.Raghunath for R3 Mr.A.Selvendran Special Government Pleader for R4 & R5

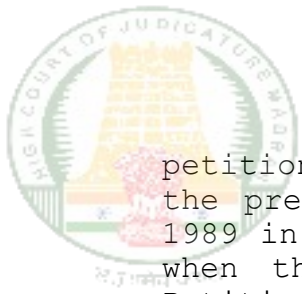


ORDER

(Order of the Court was made by T.RAJA, J.)

Two writ petitions have been filed. The Madras Church Development Trust (P) Ltd., represented by its Secretary Mr.M.Ephraim Moses has filed the Writ Petition No.6195 of 2020 challenging the correctness of the order dated 18.09.2018 bearing Na.Ka.No.2134/2017/A4 and the consequential order dated 07.02.2020 bearing Na.Ka.No.2134/2017/A4 passed by the Revenue Divisional Officer, Central Chennai, to quash the same as incompetent and without jurisdiction. Mrs.J.Panneerselvi, W/o P.Jayapalan has filed the Writ Petition No.2118 of 2017 seeking issuance of a mandamus directing the respondents therein to remove the encroachments on the Karambakkam Panchayat Road located at Survey No.369 in Porur Village No.98. As the issues raised in both the writ petitions are intertwined, they are taken up together and disposed of by this common order.

2. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner in Writ Petition No.6195 of 2020, assailing the impugned order, pleaded that originally the land in question along with large extent situated in Porur Village comprised in S.No.281 having an extent of Acre 0.14 cents, S.No.368/2 having an extent of Acre 1.24 cents, S.No.369 having an extent of Acre 0.46 cents, S.No.350 having an extent of Acre 0.31 cents and in other survey fields belonged to one Mr.Swami Narayananda Saraswathi, who was allotted the same by the Government in the year 1949 by virtue of assignment and since then, he was in continuous and uninterrupted possession over the same. Thereafter, the said Mr.Swami Narayananda Saraswathi settled the land in S.No.368/2 having an extent of Acre 1.24 cents and another piece of land in S.No.369 having an extent of Acre 0.46 cents of Porur Village along with other properties in favour of his brother's daughter Smt.Kurupati Santhamahalakshmi vide settlement deed dated 31.08.1960 registered as Document No.2211 of 1960 on the file of the Sub Registrar, Saidapet. When the said Smt.Kurupati Santhamahalakshmi became the absolute owner in respect of the aforesaid extent of land, the petitioner purchased the land to an extent of 25.1 cents comprised in S.No.368/2 and also the land measuring an extent of 9.7 cents comprised in S.No.369 of Porur village totalling to 34.8 cents from Smt.Kurupati Santhamahalakshmi for a valuable consideration of Rs.13,500/- under the sale deed dated 23.09.1972 registered as Document No.1368 of 1972 on the file of the Sub Registrar, Alandur. Thereafter, the petitioner has become the absolute owner of the land covered in S.Nos.368/2 & 369 having an extent of 34.8 cents of Porur Village. Subsequently, the revenue authorities also issued patta bearing No.245 in the year 1972 (Fasli year 1382) for the above said land and the petitioner has been paying the land tax from the date of purchase. The



petitioner also erected a temporary shed in the year 1974 and the present structure along with gate were erected in the year 1989 in S.Nos.368/2 and 369/2 of Porur village. After sometime, when the fourth respondent Mrs.J.Panneerselvi filed the Writ Petition No.2118 of 2017 seeking issuance of a mandamus to the respondents therein to remove the encroachments on the Karambakkam Panchayat Road located in S.No.369 in Porur village No.98 alleging that the Madras Church Development Trust (P) Limited had encroached the land in S.No.369 of Porur village by erecting a gate over the same, this Court, by order dated 17.08.2017, directed the jurisdictional Revenue Divisional Officer to conduct an inquiry and to file a report before this Court in a sealed cover. Based on the said order, the first respondent also conducted an inquiry and prepared the report dated 18.09.2018 requesting the District Revenue Officer, Chennai to mutate the revenue records in the name of the Government of Tamil Nadu for the petitioner's land, which is in violation of the order dated 17.08.2017 passed by this Court in Writ Petition No.2118 of 2017, it was pleaded. This apart, the first respondent herein also prepared another report dated 20.09.2018 and submitted before this Court.

3. When the matter came up before this Court, this Court directed the Government Advocate to furnish the copy of the report submitted by the first respondent to the parties with liberty to the petitioner to file objections thereto. Accordingly, the petitioner also filed objections to the said report on 4.1.2019. Thereafter, the second respondent-District Revenue Officer, Chennai conducted an inquiry and both the parties appeared in person and filed their objections. The petitioner made an objection that the inquiry conducted by the Revenue Divisional Officer, Chennai and the District Revenue Officer, Chennai is against the order of this Court. Thereafter, this Court impleaded the District Revenue Officer suo motu as the fifth respondent in Writ Petition No.2118 of 2017 and directed him to file counter. The District Revenue Officer, Chennai also passed an order on 9.11.2019 observing that no mistakes had occurred during the UDR scheme entry and the Porur CSI Church got patta 20 years prior to the UDR scheme. Therefore, when the matter was pending for final arguments, the first respondent passed the impugned order dated 07.02.2020 directing the Tahsildar, Maduravoyal to mutate the revenue records of Survey Nos.368, 369, 370 of Porur village in favour of Ramanatha Eswara Swamy Temple. Immediately the order dated 07.02.2020 was brought to the notice of this Court and this Court directed the Revenue Divisional Officer, Central Chennai and the District Revenue Officer, Chennai to appear in person on 27.02.2020 and when they appeared before this Court on 28.02.2020, Mr.Parthasarathy, learned Government Advocate voluntarily submitted that the first respondent would withdraw



the order dated 07.02.2020. However, the order dated 07.02.2020 directing the Tahsildar, Maduravoyal to mutate the revenue records of Survey Nos.368, 369, 370 of Porur Village in favour of the Ramanatha Eswara Swami Temple was not withdrawn, therefore, the petitioner has come to this Court.

4. In support of his submissions, Mr.P.Wilson, learned Senior Counsel has placed three fold submissions. Firstly, when the petitioner had purchased the land in question covered in S.Nos.368/2 & 369 to an extent of 34.8 cents from the vendor Smt.Kurupati Santhamahalakshmi under a registered sale deed dated 23.09.1972 evidencing that the said property absolutely belonged to the said vendor, based on the same, the petitioner approached the revenue authorities who have, after satisfying with the revenue records, issued the patta bearing No.245 in the year 1972 (Fasli year 1382). When the patta has been issued by the competent revenue authority, till date, the same has not been questioned by anyone. Secondly, when the fourth respondent came to this Court with Writ Petition No.2118 of 2017, the District Revenue Officer, Chennai sworn to a solemn affidavit before this Court stating that the Survey Nos.369/1, 369/2 and 363/3 are patta lands on the basis of the entries prevailing in the village and revenue records. Again the counter affidavit also further says that neither the authorities of CMDA nor of Arulmighu Ramanatheeshwarar Temple has produced any documentary evidence to substantiate that the land in question belongs to them. Therefore, when the District Revenue Officer, Chennai filed an affidavit before this Court supporting the issuance of patta in favour of the petitioner Church making it clear that even 20 years prior to the UDR scheme, the land in question was found to be a private land, for which patta has been issued, without questioning the correctness of the same before the competent authority, the petitioner in Writ Petition No.2118 of 2017 cannot complain that the petitioner in Writ Petition No.6195 of 2020 is an encroacher. Thirdly, the learned Senior Counsel also submitted that when the legal position is well settled with regard to the controversy arising out of the patta land, the party asking for cancellation of patta should approach only the civil Court to produce oral and documentary evidence, this Court, sitting under Article 226 of the Constitution of India, cannot look into the oral and documentary evidence, as the extraordinary power under Article 226 to give quick and expeditious disposal would be prevented. Therefore, if the petitioner in Writ Petition No.2118 of 2017 is aggrieved, she has to workout her remedy in the manner known to law. Hence, the impugned order is to be interfered with, he pleaded.

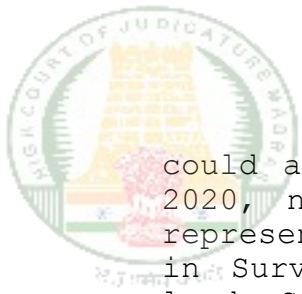
5. Mr.V.Raghavachari, learned counsel appearing for the petitioner in Writ Petition No.2118 of 2017 submitted that the arguments advanced by Mr.P.Wilson, learned Senior Counsel that



the patta issued for the Survey No.369 of Porur village was 20 years prior to the UDR scheme is wholly unbelievable, for the reason that even the 1911 survey and resettlement revenue record clearly says that the land covered in Survey No.369 is only a Karambakkam panchayat road. Unless the District Revenue Officer, Chennai, who has filed an affidavit in support of the petitioner in Writ Petition No.6195 of 2020 and the petitioner in Writ Petition No.6195 of 2020 produce before this Court any acceptable evidence to show that pattas were granted by subdividing the land covered in Survey No.369 of Porur village, issuance of patta can never be accepted. Similarly, the stand taken by the District Revenue Officer, Chennai by filing an affidavit before this Court supporting the petitioner in Writ Petition No.6195 of 2020 is unacceptable. Again Mr.V.Raghavachari, inviting our notice to the report dated 18.09.2018 of the Revenue Divisional Officer, Central Chennai, submitted that when it is the stand of the Revenue Divisional Officer, Central Chennai that although the land in Survey No.369 having an extent of 0.31 cents belongs to the Government, but the same has been classified in the adangal records as patta land without any authority, the District Revenue Officer, by his order dated 9.11.2019, has wrongly rejected the said report of the Revenue Divisional Officer. Therefore, the impugned order passed in Writ Petition No.6195 of 2020 deserves to be confirmed and the land in Survey No.369 based on the patta should be clarified that the said land does not belong to the petitioner in Writ Petition No.6195 of 2020.

6. Mr.A.Selvendran, learned Special Government Pleader appearing for the State, supporting the stand taken in the counter affidavit filed by the District Revenue Officer, Chennai, submitted that when the revenue authorities have taken pain to consider the claim of the petitioner in Writ Petition No.6195 of 2020 and finally issued the patta holding that the land in Survey No.369 of Porur village belongs to the petitioner Church and also issued a patta, till date, the said patta has not been questioned by anyone. Therefore, the Writ Petition No.2118 of 2017 filed by Mrs.J.Panneerselvi is not legally maintainable. Concluding his arguments, learned Special Government Pleader submitted that if Mrs.J.Panneerselvi, the petitioner in Writ Petition No.2118 of 2017 is aggrieved, she has to workout her remedy in the manner known to law by approaching the civil Court, wherein she can produce all the acceptable best possible evidence on the basis of which the civil Court can consider her case. Therefore, when complex question is involved, this Court cannot go into the trial and pass any decree for declaration.

7. We also fully agree with the submissions made by the learned Special Government Pleader appearing for the State. We

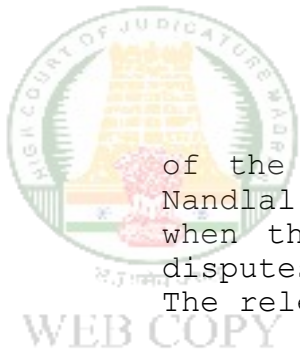


could also see that the petitioner in Writ Petition No.6195 of 2020, namely, the Madras Church Development Trust (P) Limited represented by its Secretary has claimed that the land covered in Survey Nos.368/2 and 369 totalling 34.8 cents is a patta land. Substantiating the said claim, not only the patta has been placed, but even the sale deed dated 23.09.1972 bearing Document No.1368 of 1972 registered on the file of the Sub Registrar, Alandur has been produced. In support of the same, the District Revenue Officer, Chennai, the fifth respondent in Writ Petition No.2118 of 2017, has filed a detailed counter affidavit, wherein it has been averred, in paragraphs 14 & 15, as follows:-

"14. With respect to para 3, 4 and 5 in the affidavit filed by the petitioner, it is humbly submitted that though the CMDA authorities have classified the Survey Number 369 as road at the time of preparation of second master plan, the status of the Survey Number 369/1, 369/2 and 369/3 are patta lands with reference to the entries prevailing in the Village and revenue accounts regardless the usage and ground reality of the Survey Numbers concerned. Neither the authorities of CMDA nor of Arulmigu Ramanatheeshwarar Thirukoil has produced any documentary evidence to substantiate that the land in S.No.369 belongs to them. Hence, reliance has to be placed on the registered document No.2211/1960 and 1368/1972 and entries recorded in the old fasli adangals in respect of S.No.369/1, 369/2 and 369/3.

15. In regard to the grounds raised in para 7(a) to (d), it is submitted that as the Survey Numbers 369/1, 369/2 and 369/3 of Porur village are patta lands as per the revenue records, action to evict the third respondent from S.No.369/1 and 369/2 cannot be pursued under the relevant provisions of the Tamil Nadu Land Encroachment Act, 1905."

8. A perusal of the above shows that even 20 years prior to the UDR scheme, Survey Nus.369/1, 369/2 & 369/3 were classified as patta lands on the basis of the entries prevailing in the village and revenue records. Moreover, when the CMDA or Arulmighu Ramanatheeshwarar Temple failed to produce any evidence to substantiate their claim that the land in Survey No.369 belongs to them, this Court, sitting under Article 226 of the Constitution of India, as rightly canvassed by the learned Special Government Pleader, is not inclined to go into the same. In this context, useful reference can be had from the judgment



of the Apex Court in the case of Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and others, (1974) 2 SCC 706 holding that when the writ petition raises complex questions of fact, such disputes should not appropriately be tried in a writ petition. The relevant portion is extracted hereunder:-

"10. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition. (See Gunwant Kaur v. Bhatinda Municipality, (1969) 3 SCC 769....."

Again the Apex Court in the case of State of Rajasthan v. Bhawani Singh and others, 1993 Supp (1) SCC 306, has also ruled that the disputed questions of title cannot be satisfactorily gone into or adjudicated upon in a writ petition. The relevant portion is given as under:-



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"7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition."

9. In yet another judgment in Tamil Nadu Electricity Board v. Sumathi and others, (2000) 4 SCC 543, the Apex Court, restating the legal principle that the disputed questions of fact should not be entertained in a writ petition under Article 226 of the Constitution of India, has observed as follows:-

"12. Since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of section 7 of the new Act."

In one more judgment in Dwarka Prasad Agarwal (Dead) by LRs v B.D. Agarwal and others, (2003) 6 SCC 230, the Apex Court has succinctly held that the remedy under Article 226 of the Constitution cannot be invoked for resolution of a private law dispute. The relevant portion is extracted below:-

"28. A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contradistinguished from a dispute involving public law character. It is also well settled that a writ remedy is not available for resolution of a property or a title dispute...."

10. The above mentioned judgments clearly show that the jurisdiction of the civil Court is wide and plenary and in a case of this nature, a writ proceeding cannot be a substitute for a civil suit. Therefore, by setting aside the impugned order in Writ Petition No.6195 of 2020, it is made clear that the



parties, if so advised, can approach the civil Court for redressal of their grievance as per law. With this liberty, Writ Petition No.6195 of 2020 stands allowed and the Writ Petition No.2118 of 2017 stands dismissed. In view of the above, the implead petition filed by the proposed parties in W.M.P.No.1855 of 2022 in W.P.No.6195 of 2020 is dismissed. Consequently, W.M.P.Nos.7278 & 7280 of 2020 are closed. However, there is no order as to costs.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

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To

- 1.The Revenue Divisional Officer,
Central Chennai, Chennai.
- 2.The District Revenue Officer
Chennai.
- 3.The Tahsildar,
Maduravoyal Taluk,
Maduravoyal.
- 4.The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003.
- 5.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

+1cc to Mr.K.G.Ragunath, Advocate SR. No.17500
+1cc to M/s.P.Veena Suresh, Advocate SR. No. 16875
+1cc to Government Pleader SR. No. 17018

W.P.Nos.6195 of 2020 & 2118 of 2017

NMI (CO)
PR (18/04/2022)