

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.NO.32253 OF 2014

AND

W.M.P.NOS.1 & 2 OF 2014

AND

W.M.P.NO.24112 OF 2017

1.M.Shanmugam (Deceased)

2.S.Prema

3.S.Appusamy

4.R.Rajeswari

5.S.Balaji

6.S.Kannan

7.S.Baradhan

... Petitioners

Vs.

1. The Revenue Divisional Officer,
Namakkal,
Namakkal District.

2. The Tahsildar,
Rasipuram,
Namakkal District.

3. L.Govindarajan

4. N.Mathialagan

... Respondents

[Petitioners 2 to 7 are substituted as LRs in the place of sole deceased petitioner Shanmugam as per order dated 09.06.2022 in W.M.P.No.10313 of 2022 in W.P.No.32253 of 2014]

[R3 impleaded as per order dated 10.12.2014 in M.P.No.3 of 2014 in W.P.No.32253 of 2014]

[R4 impleaded as per order dated 05.04.2022 in M.P.No.1 of 2015 in W.P.No.32253 of 2014]

Prayer :

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 1st respondent dated 05.09.2014 in Na.Ka.M.1-9236-2012, and quash the same.

For Petitioners : Mr.Vijay Shankar
For Respondents : Mr.T.K.Saravanan
Government Advocate for R1 & R2

M/s.K.K.Senthil Velan for R3

M/s.B.Ramesh for R4

O R D E R

This writ petition has been filed challenging the Show Cause Notice issued by the 1st respondent on 05.09.2014, directing the petitioner to appear for an enquiry based on an objection/representation made by the impleaded 4th respondent.

2.The case of the petitioner is that his grand father Venkatachalam Chettiar participated in a Court Auction Sale and the properties in S.Nos.120 and 131 of Molapalayam Village was allotted in his favour, since he was declared as the highest bidder and a Sale Certificate was also issued by the Sub Court, Salem. Thereafter, a patta was also granted in his favour through an order passed by the Deputy Collector, Namakkal in the year 1935. Necessary entries were also made in the "A" Register and as per the entries made in the relevant records, the name of the grandfather and his brothers were entered with respect to the properties situated in S.Nos.120/1, 120/2, 131/1 to 131/9.

3.The further case of the petitioner is that one Sulochana Bai, made an objection with respect to the patta that was issued in favour of the grandfather of the petitioner before the Additional Settlement Officer. The objections were considered and ultimately, an order was passed by the Additional Settlement Officer, Namakkal on 24.02.1958, reiterating the issuance of patta in respect of S.Nos.120/1 and 131/1.

4.It is further stated that one L.Govindarajan, who is the 3rd respondent in this writ petition started making a claim over

a portion of the lands in S.No.120/1 and the case of the 3rd respondent is that the portion of the lands in S.No.120/1 devolved in his favour by virtue of a Will executed in his favour by his grandfather.

5.The objection given by the 3rd respondent was considered by the Revenue Divisional Officer, Namakkal and the said authority through an order dated 30.06.2012 after going through the entire materials found that the 3rd respondent was not able to establish his right over the lands in S.No.120/1 and that those properties were infact purchased by the grandfather of the petitioner in the Court Auction Sale and they continued to be in possession and enjoyment.

6.The objections did not stop there and there was yet another complaint made before the District Revenue Officer by one Sengottaiyan and Raju apart from the 3rd respondent and once again, the matter was directed to be enquired by the Tahsildar, Namakkal. The Tahsildar, Namakkal conducted an enquiry and submitted a Report dated 09.12.2013 before the District Revenue Officer. As per this Report, the Tahsildar found that the properties in S.Nos.120/1 and 131/1 was in possession and enjoyment of the Pattadhars and there was no right established by the objectors and accordingly, the earlier orders passed in favour of the grandfather of the petitioner was reiterated and confirmed.

7.It is at this point of time, the 4th respondent had once again given a complaint/objection before the 1st respondent and based on the same, the impugned notice was issued by the 1st respondent and aggrieved by the same, the petitioner has filed this writ petition.

8.During the pendency of this writ petition, the original petitioner Shanmugam died and his legal representatives viz., his wife and children filed a petition to substitute themselves in the place of Shanmugam and the same was also allowed by this Court. Accordingly, the legal representatives of the deceased Shanmugam are prosecuting this writ petition.

9.The 1st respondent has filed a counter affidavit. In the said counter affidavit, even the 1st respondent has factually admitted the earlier orders that were passed in favour of the grandfather of the petitioner. The only reason that has been assigned by the 1st respondent for issuing the notice and calling upon the petitioner for an enquiry is that the 4th respondent had given a complaint and therefore, it was his obligation to conduct an enquiry on the complaint and redress the grievance of the 4th respondent. Therefore, according to the stand taken by the 1st respondent, he only wanted to factually ascertain the

allegations made by the 4th respondent against the petitioner and nothing prevented the petitioner to produce the relevant records and establish his right over the properties. Therefore, according to the 1st respondent, the mere issuance of a notice does not give a cause of action for the petitioner to file the present writ petition.

10.The 4th respondent has filed a counter affidavit. The 4th respondent has alleged that the writ petitioner has grabbed Government lands measuring an extent of 510 acres situated in S.F.No.131 at Molapalayam Village and he as a public spirited person wanted to expose the encroachment of the poramboke lands belonging to the Government and that is the reason why a complaint was given before the concerned authority. In short, the 4th respondent alleges that the writ petitioner is a land grabber and he had manipulated the Government records and had grabbed large extent of lands belonging to the Government. To substantiate the allegations, the 4th respondent is relying upon certain materials. The 4th respondent has taken a further stand that as per the provisions of the Tamil Nadu Estates (Abolition & Conversion into Ryotwari) Act, 1948, the lands in S.No.120/1 will be vested to the Government. He has further stated in his counter affidavit that an extent of 28.15 acres out of 29.71 acres in S.No.120 has been sub-divided as S.No.120/1 and it has been categorized as "Chinna Karadu Poromboke Pullu". An order was also passed in this regard by the Commissioner of Land Administration on 25.05.2021 and this order has been put to challenge by the petitioner before this Court in W.P.No.15270 of 2021 and the same is pending. It is under these circumstances, the 4th respondent had given the objections before the 1st respondent and the 1st respondent had issued a notice to the petitioner and directed him to attend for an enquiry. Accordingly, the 4th respondent is seeking for the dismissal of this writ petition with a direction to the 1st respondent to proceed further with the enquiry and to pass appropriate orders.

11.Heard Mr.V.Vijay Shankar, learned counsel appearing on behalf of the petitioner, Mr.T.K.Saravanan, learned Government Advocate appearing on behalf of the 1st and 2nd respondents, M/s.K.K.Senthil Velan, learned counsel appearing on behalf of the 3rd respondent and M/s.B.Ramesh, learned counsel appearing on behalf of the 4th respondent.

12.This Court has carefully considered the submissions made on either side and also the materials available on record.

13.The subject matter in this writ petition pertains to the property in S.No.131, wherein, the 1st respondent wants to conduct an enquiry based on the complaint given by the 4th respondent to the effect that the petitioner had grabbed large

extents of Government poramboke lands.

14.It can be seen from records that there had been earlier complaint against the petitioner with respect to the very same property and it was enquired and atleast on two occasions viz., through the order passed by the Additional Settlement Officer, dated 24.02.1958 and the order passed by the Revenue Divisional Officer, dated 03.08.2012, it has been found that the petitioner and his predecessors in interest have established their right over the properties in S.Nos.120/1 and 131/1. There was yet another complaint which resulted in the Tahsildar, Rasipuram submitting a report before the DRO, Nammakkal and even in this report, the earlier orders have been reiterated and it was found that the pattadhars have established their rights over the lands in S.Nos.120/1 and 131/1. Under such circumstances, there cannot be one more enquiry conducted by the Revenue Divisional Officer based on the subsequent complaint. At some point of time, there must be an end to the enquiry conducted by the revenue authorities on the very same facts.

15.If really anyone is aggrieved by the issuance of patta in favour of the petitioner with respect to the subject property on the ground that the property includes the Government lands, the complaint has to be elevated to a higher authority or it has to be agitated before the appropriate forum. The 4th respondent who claims to be a public spirited person cannot continuously agitate his grievance before the very same revenue authorities who had already held in favour of the petitioner and the petitioner cannot be made to attend one enquiry after another endlessly.

16.Even as per the counter affidavit filed by the 4th respondent, there has already been a sub-division in S.No.120 and based on the order passed by the Commissioner of Land Administration, an extent of 28.15 acres in S.No.120/1 has been categorized as "Chinna Karadu Poromboke Pullu". This is already a subject matter of challenge before this Court. According to the 4th respondent, the same categorization will be applicable even for the lands in S.No.131, since he claims that the lands in S.Nos.131/1 is a kundru/hill. This is an issue which will be agitated in the pending writ petition in W.P.No.15270 of 2021 and it will not be appropriate for the 1st respondent to go into this issue, since the 1st respondent has already passed an order on 03.08.2012.

17.This Court is inclined to interfere with the impugned notice issued by the 1st respondent mainly on the ground that the 1st respondent cannot keep re-enquiring the same matter based on subsequent complaints and if at all some one is aggrieved by the issuance of patta, it has to be challenged only before the

appropriate forum or before a higher authority. It is only on this limited ground, this Court is inclined to interfere with the impugned notice issued by the 1st respondent on 05.09.2014. This order will not come in the way of the 4th respondent to agitate his grievance before a higher authority or before the appropriate forum, if he has the locus standi to question the patta issued in favour of the petitioner in S.No.131.

18.In view of the above discussion, the impugned notice dated 05.09.2014, issued by the 1st respondent is hereby quashed and the writ petition is allowed in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Revenue Divisional Officer,
Namakkal,
Namakkal District.
2. The Tahsildar,
Rasipuram,
Namakkal District.

+1cc to Mr.Vijay Shankar, Advocate, S.R.No.33845
+1cc to Mr.Vijayan Subramanian, Advocate, S.R.No.33652
+1cc to Mr.S.Vediappan, Advocate, S.R.No.33504
+1cc to the Government Pleader, S.R.No.34588

W.P.No.32253 of 2014
and W.M.P.Nos.1 & 2 of 2014
and W.M.P.No.24112 of 2017

GSM(CO)
PM/11/07/2022