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C.R.P.No.3427 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.10.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 17338 OF 2017

V.Muthukrishnan

.. Petitioner

- Vs -

1. The Principal Secretary/Land Survey
Settlement Commissioner
Office of the Land Survey and
Settlement Office, Survey House
3rd Floor, Chepauk, Chennai 600 005.
- 2.The Assistant Settlement Officer (South)
Office of the Land Survey and
Settlement Office, Survey House
3rd Floor, Chepauk, Chennai 600 005.
3. The Executive Officer
Karivaradharaja Perumal Temple
Saravanampatti Village
Coimbatore North Taluk
Coimbatore District.
4. The Tahsildar
Coimbatore North Taluk
Coimbatore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this
Court to issue a writ of certiorarified mandamus calling for the records relating to



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the impugned order of the 2nd respondent in File No.H2/6539/12 dated 10.06.2013 which was received on 15.6.2017 and quash the same and consequently directing the 2nd respondent to dispose of the petitioner's application dated 24.07.2012 on merits in accordance with law by giving adequate opportunity to the petitioner.

For Petitioners : Mr.A.Ilayaperumal

For Respondents : Mr. U.Bharanidharan, AGP

ORDER

Assailing the order passed by the 2nd respondent and seeking quashment of the same with a consequential direction to consider the petitioner's application dated 24.07.2012, the present petition has been filed by the petitioner.

2. It is the case of the petitioner that originally the property in S. No.50 to an extent of 7 acres 3 cents situate in Saravanampatty Village, Coimbatore North Taluk, Coimbatore was granted to Karia Perumal Temple represented by its Poojari-cum-Hereditary Trustees vide the proceedings of the Settlement Tahildar IV, Gobichettipalayam dated 28.6.1968 under the provisions of the Tamil Nadu Minor Inams (Abolition & Conversion into Ryotwari) Act, 1963 (for short 'the



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Act'). Since the date of grant of patta, the petitioner's ancestors have been in possession and enjoyment of the same.

3. It is the further case of the petitioner that since the lands are owned by the petitioner's ancestors and were in enjoyment of the same and were paying quit rent and, thereafter, the petitioner has been paying the quit rent, with a view to fix the exact quit rent for the above said land, the petitioner submitted application dated 24.7.2012 before the 2nd respondent. However, inspite of issuance of enquiry notices dated 8.8.2012 and 22.8.2012 by the 2nd respondent and the respondents 3 and 4 were heard, who produced the relevant records, however, no orders have come to be passed by the 2nd respondent on the application of the petitioner dated 24.7.2012 and inspite of regular follow up, no proper response being given to the petitioner, the petitioner filed W.P. No.,37074/2015 in which it was submitted on behalf of the respondents that due to the non-appearance of the petitioner, the application was heard and closed as time barred. In such circumstances, this Court, vide order dated 27.11.2015 directed the respondents to furnish a copy of the said order to the petitioner to enable the petitioner to work out his remedies. Inspite of the said direction, the



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said order having not been furnished, the petitioner filed W.P. No.9366 of 2016 and upon the direction of this Court dated 14.7.2017, the copy of the order dated 10.6.2013 was furnished to the petitioner. The said order having been passed without affording an opportunity to the petitioner and in sheer violation of principles of natural justice, the present writ petition has been filed for quashing the aforesaid order.

4. Learned counsel appearing for the petitioner submitted that though the impugned order has been passed as early as in the year 2013, however, the said fact having been not disclosed to the petitioner and the petitioner having not been provided with a copy of the said order till the year 2017 and has been provided with the same only at the intervention of this Court, there is clear violation of principles of natural justice, which requires interference at the hands of this Court.

5. Per contra, learned Addl. Government Pleader appearing for the respondents submitted that though the petitioner was called for enquiry on several occasions, he did not take any steps to appear before the 2nd respondent and resultantly, the order has been passed on 10.6.2013 holding the application



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time barred, which requires no interference and, therefore, sought for dismissal of the present petition.

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

It is the admitted case of the petitioner that originally the lands were granted to the temple for the purpose of upkeep of the temple way back in the year 1861, which is evident from the recordings made by the Settlement Tahsildar, Gobichettipalayam in the order dated 28.8.1968. A careful perusal of the said order reveals that the subject lands were granted and confirmed permanently in 1861 for the upkeep of the Kariakaliamman & Vinayagar Temple for the upkeep of the above temple so long as they are well kept up. It is further evidenced from the said order that grant of inam lands is of both waram for the benefit of the temple and not to any individuals.

7. A further perusal of the said order reveals that P.W.s 1, 2 and one other person mentioned in the schedule thereunder are the heirs of the original



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service holder, whose names finds place in the Inam Fair Register extract and who are performing service in the temple, which effect means it is a service tenure inam. From the above, it is clearly evident that from the income derived out of the said inam lands, the maintenance of the temple is taken care of.

8. Further, it is evident from the said order that the institution rendering service was entitled for grant of ryotwari patta and, accordingly, the subject lands were allowed to the temple represented by its poojaris and ryotwari patta was granted in the name of the service holders. For better appreciation, the order of the Settlement Tahsildar is quoted hereunder :-

“2. Sinnammal W/o Muthusami Pandaram of Saravanampatti Village was examined as P.W.1. She deposed that she is one of the 3 present hereditary poojaris deriving right as heirs of the original service holders to perform pooja in the temple of Vinayagar & Kariakaliamman situated at Saravanampatti Village and that she is rendering service to the temple along with Kuttiandi S/o Palaniandi and Kalliandi S/o Kuttiandi of of Saravanampatti in turn, she also deposed that S. No.382 granted & confirmed for the upkeep of the temple is under her enjoyment by personal cultivation while S.No.246 is under the joint enjoyment of Kuttiandi and Kaliandi by their personal cultivation and that the income derived from the lands is being utilized for the rendering of services and, there is being utilized for the rendering of services and the upkeep of the temple.

3. The land in question are unenfranchised devadayam inam. The entries in Column 16 to 22 in the Inam Fair Register (Ex.C-2) shows that the lands were granted and confirmed



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permanently in 1861 for the upkeep of the above temple so long as they are well kept up. It is therefore evident in this case that the grant of inam lands is of both waram for the benefit of the temple but not to any individuals. Evidence shows that P.W.1 and P.W.2 and the other one person mentioned in the schedule hereunder are the heirs of the original services holder described in column 10 of the Inam Fair Register extract (Ex.C-2); now continuing the performance of 1 services in the temple from out of income derived from the inam lands. No representation or claims have been received in this regard. No portion of land set apart for communal purpose. This case falls under section 8 (2)(ii) of the above said Act which provides that the institutions rendering services shall be entitled to ryotwari patta in respect of such land with effect on and from the appointed day (viz) 15.2.1965. I therefore direct that the ryotwari patta in respect of the land specified in the schedule below be allowed to the temple represented by the service holders specified therein under section 8 (2) (ii) of the Madras Minor Inam (Abolition and Conversion into Ryotwari) Act, 1969 herewith Section 11 of the Act.

(Emphasis Supplied)

9. It is therefore clear that the patta was granted to the temple and not to the individuals, which is also very clear from the said order. Therefore, the claim of the petitioner that the petitioner's ancestors were in possession and enjoyment of the land and patta stood in their name in their individual capacity is wholly misconceived, as the said possession and enjoyment of the land by the petitioner's ancestors, as alleged by the petitioner, is only for the purpose of rendering service to the temple and the patta was granted for the upkeep of the



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temple.

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10. The petitioner claims his right to patta and for fixation of quit rent based on the ryotwari patta, alleged to have been granted to his ancestors. However, no material whatsoever is placed before this Court to show that his ancestors, who are alleged to be the predecessors in title had been granted any ryotwari patta. Further, the order of the Settlement Tahsildar granting ryotwari patta clearly spells out that ryotwari patta was granted in favour of the temple and not in the name of individuals.

11. The Settlement Tahsildar has recorded a categorical finding that it is a service tenure grant, granted to the hereditary poojaris considering the puja service rendered to Vinayagar & Karikaliamman temple. Further the Settlement Tahsildar has recorded a finding that the nature of grant is *'in favour of the temple of both warams and not to any individual'*.

12. In this backdrop, it is to be pointed out that pre-existing right on the ancestors of the petitioners has been claimed by the respective parties. However, to establish such a claim, first of all the continuous possession and



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enjoyment of the property by the predecessors-in-title of the petitioner requires to be established. It is even the admitted case of the petitioner that the land belongs to the temple, as is seen from the affidavit filed in support of the petition. That being the case, the mere issuance of patta in the name of an individual would not cloth any right on the individual and, their successors-in-interest to claim any right over the said lands, as the lands are inalienable and has been given only to the individuals for the purpose of the upkeep of the temple, which stands proved by the materials available on record. No material whatsoever has been placed before this Court to show the establishment of such a right on any individual.

13. Be that as it may. It is even the case of the petitioner that representation was submitted by him for fixation of quit rent for which notices were sent by the respondents. Though the petitioner claims that notices were issued to respondents 3 and 4, yet there is no whisper about the service of notice on the petitioner, nor had the petitioner disputed the receipt of notice. When the petitioner is oblivious of the receipt of notice by respondent 3 and 4, the necessary inference that is to be drawn is that the petitioner has also been served with a notice. However, it is the case of the respondents that the petitioner did



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not turn up for the enquiry pursuant to the notice and resultantly, the impugned order was passed.

14. True it is that the order was not served on the petitioner and the petitioner had to knock the doors of this Court to receive the said order. But mere non-furnishing of the impugned order would not be a violation of principles of natural justice. To hold that principles of natural justice have been violated, the petitioner must be denied of an opportunity of hearing. The petitioner was not heard in the present case, but it is not due to the fault of the respondents, as the respondents had given notice to the petitioner on two occasions and, thereafter proceeded with the enquiry and passed orders. If the petitioner had not partaken in the enquiry, the petitioner cannot claim that it is a violation of principles of natural justice. Therefore, the claim of violation of principles of natural justice by the petitioner is wholly misconceived and deserves to be negative.

15. Coming to the impugned order proper, it is to be pointed out that upon the enactment of the Act, the lands notified stood vest with the Government. Thereafter, ryotwari patta was granted in favour of the temple by



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the Settlement Tahsildar, vide proceedings dated 28.8.1968. That being the undisputed position, the present application of the petitioner for fixation of quit rent before the 2nd respondent is wholly impermissible, as patta has been granted to the petitioner in his representative capacity and the patta to the lands really belongs to the temple. Further, the petitioner having not taken part in the enquiry proceedings inspite of receipt of notice, the contention of the petitioner that the impugned order deserves to be set aside for violation of principles of natural justice cannot be sustained.

16. Except for canvassing the plea of violation of principles of natural justice, the petitioner has not in any manner attacked the vitiating nature of the impugned order. The impugned order has been passed premising that the application is time barred. The Settlement Tahsildar has passed the order granting ryotwari patta on 28.8.1968 in favour of the temple and the patta in the name of S.V.Rangayyar. But no material is available on record to show that the said Rangayyar is the predecessor-in-title of the petitioner. Such being the case, after a lapse of more than four decades, the claim of the petitioner for fixation of quit rent claiming his right from his predecessor-in-title is not only time barred, but he has no legal right to claim the relief and rightly the application of the



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petitioner has been dismissed.

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17. For all the reasons aforesaid, this Court is of the considered view that the prayer sought for by the petitioner cannot be acceded to and, accordingly, the writ petition fails and the same is dismissed. There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

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M.DHANDAPANI, J.

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