

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 10.08.2022

ORDER PRONOUNCED ON : 09 .09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.5708 of 2010

D.S.Rajeswar

....Petitioner

Vs

1.Principal Secretary and Commissioner
of land Administration
Chepauk, Chennai 600 005

2.The Revenue Divisional Officer
Sivagangai

3.The Tahsildar
Sivagangai Taluk
Sivagangai District

4.Tmt.D.S.K.Madurantai

5.R.Mageswaran

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in D.Dis.K4/4135/09 dated 10.02.2010 quash the same and direct the respondents to issue patta in favour of the petitioner

for the lands measuring 44.09.5 hectares comprised in S.No.63A1, Melavaniangudy Village, Sivagangai District.

For Petitioner	: Mr.V.Raghavachari For Mr.K.R.Laxman
For R1 to R3	: Mr.N.Muthuvijayan Special Government Pleader
For R4 & R5	: Mr.S.Ramu

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein and to direct the respondents to issue patta in favour of the petitioner for the lands measuring 44.09.5 hectares comprised in S.No.63A1, Melavaniangudy Village, Sivagangai District.

2.The learned counsel for the petitioner had contended that the petitioner is one of the grandsons of late.Zmindar D.Duraisinga Raja of Sivagangai Zamin. During his life time, the said Duraisinga Raja purchased vast extent of land consisting of several items of properties under the sale deed dated 20.05.1918. After his demise, the said property devolved upon his two sons namely D.S.Shanmuga Raja and D.S.Subramania Raja.

3. According to the learned counsel for the petitioner, one of the sons namely D.S. Shanmuga Raja founded an educational institution under the name and style of Raja Duraisingam Memorial College at Sivagangai. Under a said gift deed, an extent of 215.69 acres comprised in S.No.63/1, Melavaniangudy Village was gifted in favour of Management of the College. This extent forms part of the larger extent purchased by Sivagangai Zamin. The petitioner's father namely D.S. Subramania Raja did not join in the execution of the gift deed. In the said gift deed, the donor was described as an individual owner of the property and it never referred about the presence of other co-owner namely D.S. Subramania Raja. No records were produced to the effect that D.S. Subramania Raja authorised his brother D.S. Shanmuga Raja to execute such a gift deed.

4. The learned counsel for the petitioner had further submitted that as required by the Educational Department, the Secretary of the College had executed a deed of re-conveyance dated 05.05.1953 in favour of the committee of Management of Raja Duraisingam Memorial College, Sivagangai for the purpose of obtaining grant for the college. Though an extent of 215.69 acres was gifted to the College, the College was in possession and enjoyment of only 108 acres in S.No.63/1 and the balance extent was retained by the family members of the Raja Duraisingam.

5.The learned counsel had further contended that the petitioner's father had filed O.S.No.54 of 1951 on the file of the Subordinate Court, Sivagangai as against his brother D.S.Shanmuga Raja for partition and the said suit ended in a compromise decree. He further pointed out that the property gifted to the College was one of the properties covered in the said suit. However, the first defendant namely D.S.Shanmuga Raja did not act as per the compromise and hence, both the brothers continued to be in joint possession and enjoyment of the property. In other words, despite a compromise decree, the brothers continued to be in joint possession and enjoyment of the property. The learned counsel had further contended that the entire Zamin was taken over under the provisions of Tamil Nadu Act 26 of 1948 and Ryotwari settlement proceedings were initiated and a patta was issued for an extent of 178.90 acres comprised in S.No.63/1 and for 28 acres in S.No.63/10 in the name of Raja of Sivagangai taking into account that Sivagangai Zamin was in possession and enjoyment of the entire extent.

6.The learned counsel for the petitioner had further contended that during UDR proceedings, the patta was issued in the name of the Secretary of the college, the brothers did not object to the same on the ground that the College was located in an extent of 108 acres and the remaining acres were in

their possession and enjoyment. Since the committee of Management could not run the college efficiently, the Government has taken over the College under G.O.Ms.No.1045 Education Department, dated 08.06.1985 along with the assets of the College.

7.The learned counsel had further contended that after the demise of D.S.Shanmuga Raja, his grand daughter namely Madhurantagi through her guardian, applied to the Tahsildar to transfer the entries in the revenue records in respect of various extent of lands in various survey numbers including S.No.63/1 for an extent of 44.09.05 hectares. The said exercise was done by her without disclosing the fact that the legal heirs of D.S.Subramania Raja were also the co-owners of the said land. Without notice, the Tahsildar, Sivagangai ordered transfer of patta in the name of Madhurantagi by his proceedings dated 18.04.1990. Some third parties preferred as appeal before the Revenue Divisional Officer, Sivagangai and the appeal was allowed on 21.04.1997 only on the ground that Madhurantagi did not appear for the enquiry.

8.The learned counsel for the petitioner had further submitted that the said Madhurantagi had filed W.P.No.7067 of 1997 and this Court by an order dated 19.11.2001 set aside the order of the Revenue Divisional Officer and

remitted the matter for fresh disposal. The petitioner had also given a representation to the DRO on 20.07.2017 requesting him to take action to cancel the patta issued in the name of legal heirs of Shanmuga Raja and grant patta in his favour. Parallely, the Principal of R.D.M.College, had made an application to Tahsildar, Sivagangai District to transfer the patta in the name of R.D.M.College based upon the gift deed and patta was issued in the name of the College. Thereafter, the Revenue Divisional Officer cancelled the patta in the name of the College by his proceedings dated 24.07.2008 and classified the entire extent as “Government Poramboke Raja Durai Singham Government Arts College”.

9.The learned counsel for the petitioner had further submitted that he had filed W.P.No.11916 of 2008 for a direction to the respondents to consider his representation and by an order dated 28.01.2009, this Court directed the first respondent to dispose of the representation of the petitioner. As per direction, all the parties were issued with a notice and ultimately, the first respondent has rejected the request of patta of both Madhurantagi and the writ petitioner under the impugned order. Hence, the present writ petition.

10.The learned counsel for the petitioner had further submitted that the property originally belonged to Sivagangai Zamin and after his death, it

devolved upon his two sons jointly. Hence, one of the sons namely Shanmuga Raja would not have any right whatsoever to execute a gift deed in favour of the College without the consent of another brother namely D.S.Subramania Raja. He had further contended that though a compromise decree was passed in O.S.No.54 of 1951, the same was not acted upon by the parties to the suit. Hence, the brothers continued their joint possession and enjoyment over the property. When the gift in favour of the College will only bind the share of shanmuga Raja, as far as the share of petitioner's father namely Subramania Raja, patta should have been issued in favour of the writ petitioner. The first respondent herein had erred in refusing to grant patta in favour of the writ petitioner and declaring the same as a Government poramboke/Mannar Duraisingam Government Arts College. The patta land belonging to the writ petitioner's family cannot be classified as Government poramboke when the gift deed executed by D.S.Shanmuga Raja will be binding only to the extent of his share of the property. Hence, he prayed for allowing the writ petition.

11.Per contra, the learned Special Government Pleader appearing for the respondents had contended that the petitioner's father namely Subramania Raja had filed O.S.No.54 of 1951 as against his brother and others seeking partition of his share on the file of the Subordinate Court, Sivagangai. The said suit had ended in a compromise decree and as per the said compromise

decree, a sum of Rs.4,50,000/- was paid to father of the writ petitioner in order to relinquish all its rights over the Zamin property. After the said compromise decree, the said Subramanian or his son would not have any right over the properties of the Zamin. Hence, the petitioner has no right whatsoever to question the gift made in favour of the College or transfer of management in favour of the Government. The entire extent of the land in dispute belongs to the Government and hence, the classification of the said land as Government poramboke cannot be disputed by the writ petitioner. Hence, he prayed for dismissal of the writ petition.

12.I have considered the submissions made on either side and perused the materials available on record.

13.There is no dispute that Survey No.63A1 originally belonged to Raja of Sivagangai and after his life time, it devolved upon his two sons namely Shanmuga Raja and Subramania Raja. It is also not in dispute that the writ petitioner is the son of Subramania Raja.

14.A perusal of the suit register in O.S.No.54 of 1951 on the file of the Subordinate Court, Sivagangai filed on the side of the Special Government Pleader will clearly indicate that the suit for partition filed by the Subramania

Raja as against his brother and others has ended in compromise. It is the specific case of the fourth respondent herein that based upon the said compromise, a sum of Rs.4,50,000/- was paid to the writ petitioner's father for relinquishing all his share in the Zamin property. The petitioner has strongly disputed the said fact and contended that though a compromise has been entered into, the same was not acted upon and the brothers continue to have joined possession and enjoyment of the property. If really, the compromise was not acted upon and a sum of Rs.4,50,000/- was not paid to the writ petitioner's father, the remedy of the petitioner lies otherwise and not in the patta proceedings.

15.The petitioner's brother has executed a register gift deed in favour of the College Secretary of Raja Duraisingam Memorial College on 04.11.1950. The said document has not been challenged in a manner known to law. It is also not in dispute that even as per Para 4 of the writ affidavit, the property gifted on 04.11.1950 was also a subject matter of the said partition suit. When the private respondents have specifically contended that the petitioner's father relinquished all his share after receiving a sum of Rs. 4,50,000/-, the petitioner is not in a position to establish that the compromise was not acted upon and the said amount was not paid to the writ petitioner's father.

16.The learned counsel for the petitioner had further pointed out that only an extent of 215.69 acres was gifted in favour of the College in the year 1950 which was later taken over by the Government in the year 1981.

17.The learned counsel had further contended that only an extent of 42.38.80 hectare was registered in the name of R.D.M. College and the balance extent of 44.01.05 hectare was continued only in the name of Sivangai Raja. Hence, the authorities are not right in converting the balance extent also as Government poramboke. I cannot concur with the submission. The petitioner having filed a partition suit and relinquished all his shares in the Zamin properties after receiving a sum of Rs.4,50,000/-, the question of making claim over any portion of the property on the alleged ground that the property belongs to Raja of Sivangai is not maintainable.

18.It is pertinent to note that the legal heirs of D.S.Shanmuga Raja have not challenged the order passed by the first respondent and they have accepted the said order. The petitioner alone challenged the said order on the ground that he was not a party to the gift deed. Though he was not a party to the gift deed, the gift deed was never put to challenge by the petitioner or his father. There is no proof to the effect that the compromise decree passed in O.S.No.54 of 1951 was not acted upon. Except the pleading on the side of the

writ petitioner, no further records have been placed on before this Court to the effect that the brothers have been in joint possession and enjoyment of the same.

19.In view of the above said findings, I do not find any illegality or infirmity in the order passed by the first respondent herein. Hence, the writ petition is devoid of any merits and the same is dismissed. No costs.

09.09.2022

Internet : Yes/No
Index : Yes/No
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To

1.Principal Secretary and Commissioner
of land Administration
Chepauk, Chennai 600 005

2.The Revenue Divisional Officer
Sivagangai

3.The Tahsildar
Sivagangai Taluk
Sivagangai District

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No.5708 of 2010

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