



W.P.(MD).No.1150 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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ORDER RESERVED ON : 08.11.2022

ORDER PRONOUNCED ON : 10 .11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.1150 of 2012
and MP(MD).Nos.2 to 4 of 2012**

1.M.Gurunathan

2.B.C.Subbulakshmi

3.M.Pitchai Rathinam

4.O.Jegadeeswari

5.C.Uma Devi (died)

....Petitioners

Vs

1.The Assistant Settlement Officer (North)
Chepauk
Chennai – 5

2.The District Collector
Tiruchirappalli District
Tiruchirappalli

3.The Revenue Divisional Officer
Tiruchirappalli

4.The Tahsildhar
Thiruverumbur Taluk
Thiruverumbur
Trichy District



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5. P.Sridharan

6.P.Jeyaraman

7.P.Ramachandran

8. Tmt.Sharli

9.Chandrasekaran

10.Sree Lakshmi

11.Kumaravel

....Respondents

(R9 to R11 are impleaded vide Court order dated 25.07.2022)

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Ceritorarified Mandamus, calling for the records of the first respondent passed in Pa.Mu.No.5550/2011 dated 12.05.2011 and quash the same and further to direct the respondents 1 to 4 herein to restore the patta No.887 in respect of S.No.126 Kumbakudi Velayuthakudi Village, Thiruverumbur Taluk, Trichy District in the name of the petitioners.

For Petitioners : Mr.V.Meenakshi Sundaram
For Mr.D.Nallathambi

For R1 to R4 : Mr.M.Lingadurai
Special Government Pleader

For R5 to R8 : Mr.G.Thalaimutharasu
For Mr.D.Selvanayagam

For R9 to R11 : No appearance



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ORDER

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The present writ petition has been filed challenging an order passed by the Assistant Settlement Officer under which patta has been granted in favour of the private respondents for several survey numbers including Survey No. 126 in Kumbakudi Velayuthakudi Village, Thiruverumbur Taluk, Trichy District.

The contentions of the learned counsel for the petitioner are as follows:

2. Old Survey No.282/2 corresponding to New Survey No.126 having a large extent of land was originally owned by one Rajammal as a Court auction purchaser in O.S.No.87 of 1920 on the file of the Srirengam District Munsif Court and she has taken possession through Court on 27.01.1936. According to the learned counsel for the petitioners, the right of the said Rajammal was upheld in A.S.No.282 of 1942 by an order dated 02.03.1944.

3.The learned counsel for the petitioners had contended that the said Rajammal has sold 10 acres to one Nochiyam Narayan Nair under a sale deed dated 26.03.1960 and another 5 acres to one Nochiyam Krishna Nair under a sale deed dated 26.03.1960. From the above said two persons, the petitioners' mother namely Sivabhagiyathammal purchased an extent of 15 acres under two separate sale deeds. The petitioners' mother had become the absolute owner and she was in possession and enjoyment of the property and she



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passed away on 04.07.1991 leaving behind her husband Mahadevan Pillai and the writ petitioners as her legal heirs.

4.The learned counsel for the petitioners had further contended that out of the above said 15 acres, an extent of 3.40 cents was acquired by the Government for laying road and an award was passed in favour of the petitioners' mother. He had further contended that the petitioners' mother namely Sivabhagiyathammal had filed O.S.No.809 of 1961 before the District Munsif Court, Trichy for declaration of title and permanent injunction as against Hazarath Nawab Fyzullah Shah Samiar Durga. In the said suit, Tamil Nadu Wakf Board was also one of the parties. The said suit was decreed on 27.12.1975. According to the learned counsel for the petitioners, the private respondents are tracing their title through the said Durga which was a defendant in the said suit. The learned counsel had further contended that during settlement proceedings, patta was rejected by the Assistant Settlement Officer and their mother had challenged the same in CMA.No.21 of 1980 before the Inam Abolition Tribunal and the same was dismissed on 19.06.1981. The said order was challenged by her in STA.No.6 of 1982 which was dismissed by the Hon'ble Division Bench of this Court by an order dated 10.08.1988. As per the order of the Division Bench, the classification relating to land in dispute was left open to be decided in a civil suit.



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5. According to the learned counsel for the petitioners, in view of the judgment of the Hon'ble Division Bench, the petitioners herein had filed O.S.No.205 of 1994 before the District Munsif Court, Tiruchirappalli as against the State of Tamil Nadu, Revenue Authorities, Tamil Nadu Housing Board and a third party for the relief of declaration of title and permanent injunction. The said suit was decreed on 18.11.2002 and the said judgement has become final. Hence, according to the learned counsel for the petitioners, the title of the petitioners as against the Government has reached finality.

6. The learned counsel for the petitioners had further contended that the private respondents had filed O.S.No.1132 of 2002 on the file of the District Munsif Court, Tiruchirappalli. In the said suit, the petitioners' father has been arrayed as 39th defendant. The said suit has been filed for the relief of declaration of title and for consequential permanent injunction. The plaintiffs therein have also prayed for an alternative relief of recovery of possession, in case the Court arrives at a finding that the plaintiffs are not in possession of the property and the said suit is still pending. According to the learned counsel for the petitioners, the fifth respondent herein had approached the Assistant Settlement Officer, Chennai for grant of patta for Survey No.126 along with other survey numbers. His application was dismissed on 30.04.2008. Hence, he filed Inam C.M.A.No.3 of 2009 before the Principal



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Subordinate Court, Trichy. The said C.M.A was allowed directing the authorities to grant ryothwari patta in favour of the fifth respondent herein.

Since the petitioners or other legal heirs of Sivabhagiyathammal were not parties to the said appeal, the order passed in the said appeal is not binding upon them. The petitioners were not aware of the said order passed in C.M.A.No.3 of 2009. Based upon the said order made in C.M.A.No.3 of 2009, the fifth respondent had approached the Assistant Settlement Officer to grant ryothwari patta. The Assistant Settlement Officer has passed the impugned order granting patta in favour of the fifth respondent and his brother for many survey numbers including Survey No.126.

7.According to the learned counsel for the petitioners, a perusal of the impugned order will clearly indicate that it is not an order based upon any independent consideration of the case of the respondents herein on merits. The said order has been passed solely relying upon the order passed in C.M.A.No.3 of 2009. Hence, according to the learned counsel for the petitioners, when he was not a party to the said C.M.A.No.3 of 2009, the order impugned in the writ petition which is solely based upon the said order is liable to be set aside.

8.The learned counsel for the petitioners had further contended that challenging the order impugned in C.M.A.No.3 of 2009 dated 29.01.2011, they have filed a Special Tribunal Appeal before the Madurai Bench of



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Madras High Court in the year 2012 and the same is pending in STA.SR.No. 13096 of 2012. The appeal could not be numbered, in view of the pendency of the condone delay application. The learned counsel had further contended that as far as the other survey numbers for which private respondents were granted patta under the same impugned order is concerned, the Commissioner of Land Administration has pointed out that the said patta could not be enforced. The learned counsel had further pointed out that the petitioners have established their title through various documents and several Court decrees.

9.On the other hand, the private respondents are solely relying upon a sale deed said to have been executed by Durga in favour of Kuppusamy Iyer dated 02.08.1936 and thereafter, the sale deed executed by the said Kuppusamy Iyer in favour of the private respondents's grandfather on 28.08.1940. The learned counsel for the petitioners had further contended that the private respondents are tracing their title only to the said Durga which was the second defendant in O.S.No.809 of 1961 in which the petitioners' mother was the second plaintiff. When the title between the petitioners' ancestor in title and the respondents' ancestor in title has already reached finality in O.S.No.809 of 1961 by way of a judgement dated 29.12.1975 on the file of the District Munsif Court, Trichy, the private respondents herein cannot again claim title to the same property. Hence, he prayed for setting



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aside the order impugned in the writ petition and remit back to the first respondent herein for fresh consideration after affording due opportunity to the writ petitioners.

10.Per contra, the learned counsel appearing for the private respondents had contended that the order impugned in the writ petition is based upon the order passed by the Inam Abolition Tribunal in C.M.A.No.3 of 2009 on the file of the Principal Subordinate Court, Trichy. When the said order is still in force and not yet set aside by a competent Court, the first respondent is duty bound to implement the order of the Inam Abolition Tribunal. The petitioners have not taken any steps to number the Special Tribunal Appeal which is said to be pending for more than 10 years. The respondents had further contended that in the previous round of litigation, the mother of the writ petitioners namely Sivabhagiyathammal had claimed patta to the same survey number before the Assistant Settlement Officer and she was unsuccessful. Hence, she had filed C.M.A.21 of 1980 on the file of the Inam Abolition Tribunal, Trichy and the same was also dismissed on 19.06.1981. The order of the Inam Abolition Tribunal was confirmed by this Court in S.T.A.No.6 of 1982 by an order dated 10.08.1988. When the petitioners' mother was unsuccessful in getting an order relating to patta during settlement proceedings, the legal heirs cannot resurrect the same issue and claim patta in the settlement proceedings. Unless the order passed in



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C.M.A.No.3 of 2009 is reversed in the manner known to law, the petitioners cannot challenge the order impugned in the writ petition which is based upon an order in C.M.A.No.3 of 2009. Hence, he prayed for dismissal of the writ petition.

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

12.The petitioners are tracing title through one Rajammal for an extent of 15 acres under two separate sale deeds. The petitioners' mother had filed O.S.No.809 of 1961 as against the Hazarath Nawab Fyzullah Shah Samiar Durga, Tamil Nadu Wakf Board and others before the District Munsif Court, Trichy for the relief of declaration of title and permanent injunction. The suit has been decreed as prayed for on 27.12.1975.On the other hand, the private respondents are claiming title under a registered Cowle deed said to have been executed by the said Durga in favour of one Kuppusamy Iyer on 02.08.1963 who in turn sold the same in favour of the grandfather of the private respondents on 28.08.1940. The petitioners though were unsuccessful in getting patta during the settlement proceedings, had filed O.S.No.205 of 1994 for declaration of title and permanent injunction on the file of the District Munsif Court, Trichy as against the State of Tamil Nadu. The petitioners were successful and a decree, as prayed for, was granted in their favour on 18.11.2002. The private respondents though were unsuccessful in



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getting patta from the Assistant Settlement Officer, their prayer was granted in C.M.A.No.3 of 2009 by an order dated 29.01.2011 on the file of the Principal Subordinate Court, Trichy. The said order in C.M.A.No.3 of 2009 is the sole basis on which the present impugned order has been passed by the Assistant Settlement Officer granting settlement patta in favour of the private respondents. The writ petitioners were admittedly not parties to C.M.A.No.3 of 2009 and they have challenged the said order by way of Special Tribunal Appeal which is pending before this Court in SR stage.

13.A perusal of the order impugned in the writ petition will clearly reveal the order impugned in the writ petition is not based on any independent consideration, but it is solely based upon the order passed in C.M.A.No.3 of 2009. Hence, it is clear that the impugned order is subject to the result of the order to be passed by the Hon'ble Division Bench of this Court in the Special Tribunal Appeal. As long as the order in C.M.A.No.3 of 2009 is set aside/ modified by this Court, the order impugned in the writ petition cannot be found fault with. The Assistant Settlement Officer has to necessarily follow and comply with the order passed by the Appellate Authority namely the Inam Abolition Tribunal. Hence, any grievance of the writ petitioners has to be addressed only in the Special Tribunal Appeal before the Hon'ble Division Bench.



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14.In view of the above said discussion, there is no illegality or infirmity in the impugned order passed by the first respondent herein.

However, the order impugned in the writ petition is always subject to the result of the Special Tribunal Appeal in S.T.A.SR.No.13096 of 2012.

15.With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Internet : Yes/No
Index : Yes/No
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Pre-delivery order made in

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