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W.P.No.836 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.836 of 2023 and
W.M.P.No.818 of 2023

Pookara Thuluva Velalar Naickar Sangam,
Rep. By its President B.Sathyanarayanan,
Polur Main Road,
Tiruvannamalai Town and District.

... Petitioner

Vs

1.The District Collector,
Collectorate Campus,
Vengikkal, Tiruvannamalai.

2.The Revenue Divisional Officer,
RDO Office, Tiruvannamalai.

3.The Tahsildar (Settlement),
Taluk Office, Tiruvannamalai.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent herein in Na.Ka.B4/8874/2022 dated 29.12.2022 and to quash the same as illegal and consequently directing the 3rd respondent herein to include the name of the petitioner's Sangam in the Town Survey Land Record (T.S.L.R.) for T.S.No.87 of an extent acre 3.68 cents of Tiruvannamalai Town.



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For Petitioner : Mr.Adarsh Subramanian
For Respondents : Mr.P.Sathish
Addl. Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent herein in Na.Ka.B4/8874/2022 dated 29.12.2022 and to quash the same as illegal and consequently directing the 3rd respondent herein to include the name of the petitioner's Sangam in the Town Survey Land Record (T.S.L.R.) for T.S.No.87 of an extent acre 3.68 cents of Tiruvannamalai Town.

2. In respect of property at Town Survey No.87 in Tiruvannamalai Town to an extent of 3.68 acres, it is the claim of the petitioner that the said property belongs to the petitioner Sangam. In this regard it is the further claim of the petitioner that, already Civil Court decree has been passed declaring the ownership of the petitioner which has been confirmed by the Appellate Court also.

3. It is the further case of the petitioner as projected by Mr.Adarsh Subramanian, learned counsel appearing for the petitioner that, for several



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years the petitioner Sangam had been in possession and enjoyment of the property apart from the title which they earned during the declaratory decree, hence the petitioner had made an application on 13.07.2022 to the respondents to transfer of entry order in T.S.L. Register in respect of the land in question in favour of the petitioner Sangam and when the same was not considered, the petitioner already filed a writ petition in W.P.No.27896 of 2022 where this Court has already granted an order on 19.10.2022 directing the respondents to consider the application of the petitioner dated 13.07.2022 and pass orders thereon on merits and in accordance with law within a time frame that has been fixed by the said order.

4. However the Revenue Tahsildar/the 3rd respondent herein, instead of considering the documents filed by the petitioner including the Civil Court decree, having considered certain revenue documents or records, has come to a wrong conclusion that the land belongs to the Government as a poramboke land with the Adangal entry as 'Nandavanam, Kanagambal Elementary School, Esanya Madam' and accordingly rejected the plea of the petitioner by a cryptic order dated 29.12.2022 which is impugned in this writ petition.



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5. Assailing the same, Mr.Adarsh Subramanian, learned counsel for the petitioner has brought to the notice of this Court, of the Civil Court decree made by the District Munsif Court, Tiruvannamalai in O.S.No.120 of 1954 where some third parties filed a suit in respect of the very same property against the members of the petitioner's Sangam, which was not registered at that time, that the property belongs to them, however the Court after full-fledged trial has passed the judgment and decree dated 24.11.1956 that the property belongs to the petitioner's Sangam. In this context, the learned counsel has relied upon the findings given by the Civil Court in the judgment and the relevant portion of the same reads thus:

“11. ... Strangely enough the persons who are said to be the lessees under Exs.A.4 and A.6 are not examined. The agreement Ex.B.2, the gift deed, Ex.B.9 and the rent deeds Ex.B.8 and B.7, conclusively prove that the suit property was owned and enjoyed by Pookkara thuluva vellala community and that the 1st defendant viz.1 Aurnachala Naicken was in possession thereof as a manager at any rate from 1938 onwards and that the suit property was not owned and exclusively enjoyed by the plaintiffs or their ancestors and therefore .. on issue 1 that the suit property was not owned and enjoyed by the plaintiffs or their ancestors and that the plaintiffs are not in possession within 12 years prior to suit and on issue 2 that the



suit property belongs to Pookarathuluva- vellala community and that the 1st defendant is in possession thereof as manager.”

6. As against the said judgment and decree passed by the trial Court, the plaintiffs in the suit who are the aggrieved parties filed first appeal in A.S.No.261 of 1957 on the file of the Subordinate Judge, Vellore and that appeal suit also was dismissed by judgment and decree dated 19.03.1958, where, the following orders have been passed:

“(1) That the Decree of the lower Court (O.S.No.120 of 1954 on the file of the District Munsif, Tiruvannamalai) be and is hereby, confirmed, and the appeal be, and hereby is dismissed.”

7. Relying upon these Civil Court decrees and judgments, the learned counsel for the petitioner would contend that, though these documents had been produced before the 3rd respondent Tahsildar, without considering the same, he has passed the order which is impugned herein by relying upon some revenue documents which are not related to the property in question and such kind of approach on the part of the 3rd respondent Tahsildar in not considering the Civil Court decree having been confirmed by the Appellate Court is totally unlawful and against the settled principles of law, hence the



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impugned order is liable to be set aside, he contended.

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8. On the other hand, Mr.P.Sathish, learned Additional Government Pleader appearing for the respondents has relied upon the written instructions given by the 3rd respondent Tahsildar dated 11.01.2023 wherein *inter alia* the following has been stated by the 3rd respondent Tahsildar.

“It is a fact that the above sangam filed suit before the Additional District Munsif Court, Tiruvannamalai in O.S.No. 120/1954 praying for declaration of title over the same suit property. But the Hon'ble Court dismissed the suit with cost.

9. There after the sangam have not represented to grant patta till 12.7.2022 and on 13.7.2022 the sangam represented to grant patta. As already stated the land is required for Govt. for future purpose and not available for assignment to anybody including the petitioner sangam.”

9. By relying upon these instructions, the learned Additional Government Pleader fairly clarified the position that, the 3rd respondent Tahsildar has completely misconstrued the suit O.S.No.120/1954 filed as if by the petitioner's Sangam and they lost in the suit without properly appreciating the judgment and decree made in O.S.No.120 of 1954 as it was filed by some third parties against the members of the petitioner's Sangam as at the time since it was not registered the individual members of the Sangam



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alone were arrayed as defendants in the suit and the suit was dismissed by declaring the title of the property concerned in favour of the members of the petitioner's Sangam, which has been confirmed by the Appellate Court also. Therefore the reasons whatever given in the impugned order as well as the instruction now given may not be justifiable, hence the matter can be remitted back to the 3rd respondent for reconsideration, he contended.

10. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. As has been rightly pointed out by the learned counsel appearing for the petitioner that, there has been a clear Civil Court decree in the year 1956 in favour of the members of the petitioner, where, it has been declared in unequivocal terms by the Civil Court that, the property in question belongs to the petitioner viz., Pookara Thuluva Vellala community who was the 1st defendant who acted as a Manager of the community, who had been in possession of the suit property, without appreciating the Civil Court decree which has been confirmed by the Appellate Court since the order



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impugned has been passed by the 3rd respondent by considering the appeal filed by the third parties against the petitioner's members as if that it was filed by the petitioner's members or petitioner Sangam and lost the suit as stated in the very instructions given by the 3rd respondent dated 11.01.2023 since the order impugned has been passed by the 3rd respondent, the said order cannot stand in the legal scrutiny for the reasons stated therein itself, hence this Court has no hesitation to hold that the impugned order would not be sustainable. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That the impugned order is set aside and the matter is remitted back to the 3rd respondent for reconsideration. While reconsidering the same, the Civil Court decree both by the trial Court as well as the Appellate Court as referred to above shall be considered by the 3rd respondent, which, in fact, were filed by third parties against the members of the petitioner and the 1st defendant was acting as a Manager of the community concerned in whose name the petitioner Sangam has subsequently been registered, therefore based on the declaratory decree made by the Civil Court confirmed by the



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Appellate Court, the title of the petitioner in respect of the property in question can very well be traced and accordingly the case of the petitioner to that effect as prayed for by the petitioner through his representation dated 13.07.2022 shall be accepted and necessary orders to that effect shall be passed. The needful as indicated above shall be undertaken by the 3rd respondent Tahsildar within a period of six weeks from the date of receipt of a copy of this order.

12. With this direction, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2023

Index : Yes / No

Speaking Order : Yes / No

Sgl

To

- 1.The District Collector,
Collectorate Campus,
Vengikkal, Tiruvannamalai.
- 2.The Revenue Divisional Officer,
RDO Office, Tiruvannamalai.
- 3.The Tahsildar (Settlement),
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