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WP No.12629 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-08-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.12629 of 2010

And

MP Nos.1 and 2 of 2010

1.G.Zakir Hussain (Diseased)

2.Z.Shamshad

3.Syed Hussain

4.Syed Geyser Hussain

5.Asiya Bee

[P-2 to P-5 are substituted as LR's of the deceased first petitioner vide order of Court dated 18.08.2022 made in WMP No.29513 of 2021 in WP No.12629 of 2010]

... Petitioners

Vs.

1.The District Collector,
Thiruvannamalai District.

2.The Tahsildar,
Thiruvannamalai Taluk.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings No.A2.25803/94 dated 17.09.2007 and quash the same and consequently direct the second respondent to issue patta in favour of the deceased first petitioner for the property situate in Thiruvannamalai in T.S.No.1802/1 and 2, Acres 3.75 and Acres 4.77 respectively.

For Petitioners	: Mr.T.Raja Gopalan Senior Counsel For Mrs.P.Veena Suresh
For Respondents	: Mr.R.Ramanlaal Additional Advocate General Assited by Mr.T.Arun Kumar Additional Government Pleader

ORDER

The present writ petition has been instituted challenging the order dated 17.09.2007 passed by the first respondent-District Collector, Thiruvannamalai District.

2. The deceased first petitioner states that his father filed OS No.908 of 1929 to declare that he is entitled for declaration of title with



respect to the properties mentioned in the plaint Schedule and for the mandatory injunction and to mutate the revenue records.

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3. The suit in OS No.908 of 1929 was decreed by judgment dated 17.10.1931. The father of the deceased first petitioner again filed the suit in OS No.595 of 1994 on the file of the District Munsif Court, Thiruvannamalai for an injunction restraining the respondents therein from interfering with deceased first petitioner's peaceful possession and enjoyment of the suit properties. The said suit was also decreed on 21.04.1995.

4. Since the respondents failed to mutate the revenue records by inserting the name of the father of the deceased first petitioner, the deceased first petitioner filed WP No.694 of 1996 for a direction to issue patta for the lands situate in TS Nos.1802/1 and 1802/2 measuring 3.75 Acres and 4.77 Acres respectively. The writ petition was allowed on 03.10.2001, directing the respondents to issue patta in the name of the father of the deceased first petitioner. The Writ Appeal No.2797 of 2003 filed by the respondents therein was dismissed by this Court on 17.02.2004. Along



with the Civil Court decree and the order passed by the High Court, the deceased first petitioner approached the respondents for issuance of patta. However, the respondents have not acceded to the request of the deceased first petitioner. Thus, the deceased first petitioner again filed WP No.24247 of 2005 for a Mandamus to direct the respondents to issue patta in his favour. The said writ petition was allowed on 28.07.2005. Thereafter, the deceased first petitioner approached the respondents for issuance of patta, but not acted upon, and the deceased first petitioner filed Contempt Petition No.813 of 2007. The respondents took a stand that the Civil Court decree is unenforceable, as the father of the deceased first petitioner failed to execute the decree of declaration. Consequently, the respondents herein passed the impugned order dated 17.09.2007 stating that the subject lands are 'Government Poramboke lands' and 'Water Bodies'. Thus the deceased first petitioner is not entitled for patta.

5. The learned Senior Counsel appearing on behalf of the writ petitioners mainly contended that the Civil Court decree of the year 1929 and the decree and judgment dated 17.10.1931 is binding on the respondents. The subsequent orders passed by the High Court in Writ



Petitions and Writ Appeals, are also not implemented and the present impugned order has been passed contrary to the dictum of the Civil Court and the orders passed by this Court in Writ Petitions and Writ Appeals.

6. The learned Senior Counsel mainly contended that the Executives cannot be permitted to depart from the dictum of the Civil Court, which crystallised the rights of the parties.

7. In the present case, there is a daring violations being committed by the Executives and thus the order impugned is liable to be set aside.

8. The first respondent-District Collector, being a Quasi Judicial Authority, ought to have conducted an enquiry and considered the case of the deceased first petitioner for grant of patta and to effect changes in the revenue records. Without conducting any such enquiry, the order impugned has been passed and thus it is in violation of the principles of natural justice.



9. The learned Special Government Pleader appearing on behalf of the respondents 1 and 2 disputed the contentions raised on behalf of the writ petitioners. The present status of the subject property has been stated through written instructions by letter dated 17.11.2022. In the said letter, the second respondent-Tahsildar, Thiruvannamalai has stated that the lands in TS No.1802/1 (3.75 Acres) and TS No.1802/2 (4.77 Acres) are continuing as 'Punjai Tharisu' and there is a pond situate in the subject land. The lands are under the control of the Revenue Department. The pond situates in Survey No.1802/1. Two Tombs are also situate in the subject lands. However, the lands are not under the possession of any person. The land has been classified as 'Government Poramboke' and as of now, there is no rules to assign the land in favour of any person. There is a 'Water Body' also situate in the subject land and such objectionable 'Water Bodies' cannot be assigned or handed over in favour of private persons. The Government also imposed complete ban to assign the objectionable lands and water bodies in favour of individuals in G.O.Ms.No.41, Revenue Department, dated 20.01.1987.



10. That apart, the subject land situate in the Headquarters of Thiruvannamalai Town and as per the Government Order in G.O.Ms.No.3166, Revenue Department, dated 05.11.1996, the Government Poramboke lands falling within the radius of 8 Kilometers from the District Headquarters, cannot be assigned in favour of any individual persons. The said lands are high value properties belonging to the Government and moreover special market values are to be fixed in such lands as the adjacent properties are high value properties.

11. The learned Special Government Pleader, appearing on behalf of the respondents, made a submission that no counter has been filed in the present writ petition. However, a detailed counter has been already filed in Contempt Petition No.813 of 2007 in WP No.24247 of 2005 and in the said counter, the first respondent-District Collector has elaborately stated the facts and therefore, the counter earlier filed is to be considered for the purpose of defending the case of the respondents with reference to the grounds raised by the petitioners in the present case.



12. The respondents have stated that originally one Inamdar Mr.Syed Hussain Sahib, Thiruvannamalai filed suit in OS No.908 of 1929 for declaration that the plaint schedule properties belonged to the plaintiff and the defendants 9 to 14 in common, for an injunction, directing the District Collector to correct the entries in the Settlement Register by registering their names. The suit decreed on 17.10.1931. However, neither the plaintiff nor the defendants 9 to 14 in OS No.908 of 1929 had filed any Execution Petition till date to execute the decree dated 17.10.1931.

13. In the meantime, the Government of Tamil Nadu passed an Act 'Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act XXX of 1963', wherein under Section 3, it has been stated very clearly that all the minor inams shall stand transferred to the Government from the date of commencement of the Act. The said Act came into force with effect from **05.02.1964**. The unexecuted decree dated 17.10.1931 in OS No.908 of 1929 stands abrogated due to commencement of the abovesaid Act. Thus no reliance can be placed upon the said decree to effect any changes as per the decree dated 17.10.1931 made in OS No.908 of 1929 on the file of the



District Munsif Court, Thiruvannamalai.

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14. One Mr.Syed Gaffar Sahib (father of the deceased first petitioner) and some others claiming to be the heirs of the decree holders viz., G.Zakir Hussain Sahib in OS No.908 of 1929 filed another suit in OS No.1165 of 1990 on the file of the District Munsif Court Thiruvannamalai, to enforce the decree dated 17.10.1931 passed in OS No.908 of 1929. Since, an exparte decree was passed by the District Munsif Court, Thiruvannamalai on 22.12.1998, an appeal had been preferred by the Government before the Sub Court, Thiruvannamalai in ASSR No.G/9261 dated 11.09.2007 along with a petition under Section 5 of the Limitation Act.

15. Inasmuch as the original decree holders in OS No.908 of 1929 themselves lost their rights and neither executed the decree nor utilised the decree directions and moved the State for inclusion of their names in the Re-Settlement Register and thus, in other words, waived their rights, after their death, the plaintiffs in OS No.1165 of 1990 are not entitled to seek or avail the benefits of decree dated 17.10.1931 made in OS No.908



of 1929 by filing a fresh suit.

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16. Yet another suit in OS No.594 of 1994 on the file of the District Munsif Court, Thiruvannamalai was filed by the father of the deceased first petitioner Mr.Gafffar Sahib for an injunction not to interfere with their possession. An ex parte decree was again passed on 21.04.1995. In the said suit also, the father of the deceased first petitioner has not filed any Execution Petition to execute the ex parte decree dated 21.04.1995 in OS No.594 of 1994 till date.

17. Pertinently, while the decree dated 17.10.1931 passed in OS No.908 of 1929 stands abrogated due to the commencement of the 'Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963', no reliance could be placed upon the said decree to effect any changes as per the decree dated 17.10.1931 in OS No.908 of 1929.

18. Subsequently, the deceased first petitioner Mr.G.Zakir Hussain filed WP No.24247 of 2005 to direct the Revenue Officials to issue patta to the deceased first petitioner in respect of subject lands.

**DISCUSSIONS:**

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19. The above facts commonly stated are not disputed between the parties in the present lis. The issue to be considered is, whether the deceased first petitioner is entitled for patta in respect of subject lands and consequently, the changes are to be effected in the revenue records or not.

20. The petitioners have mainly relied on the judgment and decree in OS No.908 of 1929 dated 17.10.1931 and the subsequent orders of the High Court in Writ Petitions and Writ Appeals. As far as the decree in OS No.908 of 1929 is concerned, all subsequent proceedings initiated by the father of the deceased first petitioner and by the deceased first petitioner before this Court in Writ Petitions and Writ Appeals, the scope of the decree dated 17.10.1931 passed in OS No.908 of 1929 has not been adjudicated. All along the deceased first petitioner emphasised that the decree in OS No.908 of 1929 is title decree and the plaintiff was declared as the owner of the subject property and therefore, the Authorities competent are bound by the decree of declaration of title dated 17.10.1931.



21. In this context, this Court has attempted to have close observations with reference to the decree passed in OS No.908 of 1929 dated 17.10.1931. It is useful to extract the decree, which reads as under:-

“DECREE

This suit coming on the 18th, 20th, 25th August, 2nd and 16th September and 3rd day of October, 1931 for final disposal before M.R.Ry.R.T.Krishnamachari Avl., B.A., B.L., District Munsif in the presence of Mr.T.R.Ramaswamy Iyer, pleader for plaintiff and of Mr.T.Natesa Iyer, pleader for the first defendant, Mr.K.Gopalasami Mudaliar, pleader for 2 to 5, 9, 10 and 12 to 15 defendants and the other defendants being ex parte, and having stood over for consideration till this day and that the plaintiff and defendants 2 to 5 having made an endorsement on the plaint that the plaintiff does not press this suit as regards items 1 to 23 of the plaint D schedule and as against defendants 2 to 5 and the first defendant having admitted the right of the plaintiff as regards item 1 of the B schedule and items 8, 11, 12, 13, 26, 27, 29, 30, 32, 34, 36, 37, 39, 40 and 2/3rd share in items 41, 42, 43, 48, 49, 50 and 51 of the plaint D schedule



and the right of the plaintiff and others to enjoy the produce of all the trees in and the fishery in the Kuttais and Ponds in Item 31 of the plaint D schedule, it is hereby declared as follows:-

1. That the plaintiff and defendants 9 to 14 are absolutely entitled to the plaint A schedule items 4 and 5 and item 1 of the plaint B schedule and also items 26, 27, 29, 30, 32, 34, 36, 37, 39, 40 and two-third shares in items 41, 42, 43, 48, 49, 50 and 51 of the plaint D schedule, more particularly described hereunder.

2. This Court doth further order and declare that the plaintiff and defendants 9 to 14 be entitled to enjoy the usufruct of all the trees in and also the fishery in all the kuttais and ponds in item 31 of D schedule.

3. That the plaintiff and defendants 9 to 14 be entitled to have the entries in the Re-Settlement Register amended as indicated above.

4. That in other respects that the plaintiff's suit be and the same hereby is dismissed.

5. And that the plaintiff do pay first defendant Rs.46-2-8 being the two-third of his costs with interest thereon at 6 per cent per annum from this date till payment and do bear this costs



Rs.98-9-0 himself.

And the other defendants do bear their costs themselves.”

22. The suit was instituted by Inamdar Mr.Syed Hussain Sahib and not by the father of the deceased first petitioner Mr.Syed Gaffar. In the writ affidavit, the deceased first petitioner has wrongly stated that his father filed OS No.908 of 1929. Mr.Syed Hussain Sahib, S/o.Syed Abdul Kadhira Sahib was an Inamdar. Even the cause title in the suit explicitly states that “Inamdar Syed Hussain Sahib”. Therefore, the said Mr.Syed Hussain Sahib was an Inamdar.

23. Let us now look into analysis the decree passed by the Civil Court on 17.10.1931 in OS No.908 of 1929. The first para of the decree unambiguously indicates that **“the plaintiff and defendants 2 to 5 having made an endorsement on the plaint that the plaintiff does not press this suit as regards items 1 to 23 of the plaint D schedule and as against defendants 2 to 5 and the first defendant having admitted the right of the plaintiff as regards item 1 of the B schedule and items 8, 11, 12, 13,**



26, 27, 29, 30, 32, 34, 36, 37, 39, 40 and 2/3rd share in items 41, 42, 43, 48, 49, 50 and 51 of the plaint D schedule and the right of the plaintiff and others to enjoy the produce of all the trees in and the fishery in the Kuttais and Ponds in Item 31 of the plaint D schedule”.

24. The above portion of the preamble of the decree denotes that the plaintiff does not press the suit as regards items 1 to 23 plaint D schedule as against the defendants 2 to 5. The first defendant in the suit was the Secretary of State for India in Council represented by the Collector of North Arcot. **The first respondent admitted the rights of the plaintiff as regards items mentioned above in B schedule and plaint D schedule to enjoy the produce of all trees and in and the fishery in the kuttais and ponds in item 31 of the plaint D schedule.**

25. Therefore, the first respondent-District Collector has admitted the right of the Indamdar Mr.Syed Hussain Sahib only to the limited extent of enjoying produce of all trees and fishery in the kuttais and ponds. The first respondent-Government in the suit has admitted the rights of the Inamdar only to enjoy the produce of the trees and the fishery in the



kuttais and ponds. Subsequent portion of the decree do not confer any absolute title or ownership on the plaintiff, Inamdar of Mr.Syed Hussain Sahib. Even para 2 of the decree stipulates that **“the plaintiff and the defendants 9 to 14 be entitled to enjoy all the trees and also the fishery in all the kuttais and ponds in item 31 of the D schedule”**. The third para of the decree states that the plaintiffs and the defendants 9 to 14 be entitled to have entries in the Re-Settlement Register.

26. The holistic reading and understanding of the decree passed in OS No.908 of 1929 would reveal that the plaintiff was an Inamdar Mr.Syed Hussain Sahib and the Collector, who is the first defendant in the suit, admitted the right of the Inamdar to enjoy the produce of the trees and the fishery in the kuttais and ponds. Therefore, it was not a decree of declaration of title or ownership. It is only a declaration to make entries in the Re-Settlement Register and to enjoy the usufruct of the trees and the fishery in the kuttais and ponds. Thus the case projected by the deceased first petitioner is absolutely running counter to the decree and judgment dated 17.10.1931 in OS No.908 of 1929.



27. As far as the father of the deceased first petitioner Mr.G.Zakir Hussain is concerned, he filed WP No.694 of 1996 for a direction to issue patta. This Court passed an order on 03.10.2001 stating that the property in question should be recorded in the name of the deceased first petitioner. I therefore, direct that steps shall be taken to record the disputed property in the name of the deceased first petitioner. However, if the decree is relied upon by the deceased first petitioner had been reversed, this order will not be operative to that extent. The above direction may be carried within a period of three months from the date of communication of this order. Even in WP No.694 of 1996, there was an adjudication of the scope of the original decree passed in OS No.908 of 1929 dated 17.10.1931. Even in the Writ Appeal No.2797 of 2003, there was no adjudication since the writ order itself was a conditional order.

28. Again the petitioner filed WP No.24247 of 2005 and this Court passed an order on 28.07.2005 directing the Authorities to pass appropriate orders on merits and in accordance with law and subject to the finality in civil proceedings, otherwise, the deceased first petitioner is not entitled to any benefit. Even in the said order, this Court has not given a



positive direction to grant patta by conferring the title or ownership regarding the subject property. The orders passed in the Writ Petitions and the Writ Appeals are not positive directions, but directing the respondents to consider the case of the deceased first petitioner on merits and no doubt the decree has been referred. Mere reference of the decree of the year 1931 would be of no avail to the deceased first petitioner for claiming title or ownership in respect of 'Government Poramboke' land and the 'Water Bodies' situate therein.

29. In the impugned order, the District Collector, Thiruvannamalai has categorically considered the classification of the subject property, which reveals that it is 'Government Poramboke' and 'Water Bodies', including kuttais and ponds situate in the subject properties. The respondents have further stated that the 'Government Poramboke' lands, which is 'Punjai Tharisu', is under the control of the Revenue Department and there is a pond situates in Survey No.1802/1. The Authorities have stated that neither the deceased first petitioner nor his relatives are in possession and enjoyment of the subject lands as of now.



30. As far as the plaintiff in OS No.908 of 1929, the Inamdar Mr.Syed Hussain Sahib is concerned, he had not filed any Execution Petition to execute the decree dated 17.10.1931. Meanwhile, the Government of Tamil Nadu passed an Act 'Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act XXX of 1963', wherein under Section 3, it has been stated very clearly that all the minor inams shall stand transferred to the Government from the date of commencement of the Act. The said Act came into force with effect from **05.02.1964**. Thus the unexecuted decree dated 17.10.1931 in OS No.908 of 1929 stands abrogated due to commencement of the abovesaid Act. Therefore, all subsequent proceedings initiated by the family members of the original plaintiff Inamdar Mr.Syed Hussain Sahib cannot be a ground to claim title or ownership or patta. There was no adjudication before the Settlement Officer pursuant to the Act nor an application seeking patta has been filed before the cut off date stipulated by the Government in G.O.Ms.No.714 of the year 1987.

31. In the absence of any ryotwari patta, the deceased first petitioner or his family members cannot subsequently institute legal



proceedings for the purpose of grant of patta. The subject lands were vested with the Government pursuant to abolition of 'Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act XXX of 1963' and thereafter the decree passed in the year 17.10.1931, cannot be executed. Thus the decree became an unexecutable one.

32. That apart, the scope of the decree itself has been misconstrued by the deceased first petitioner and his family members. The decree dated 17.10.1931 confers rights to the Inamdar Mr.Syed Hussain Sahib-plaintiff in OS No.908 of 1929, the right to enjoy the produce of the trees in and fishery in the kuttais and ponds. Such right declared by the Civil Court would not confer any title or ownership in respect of the subject lands. Neither the Civil Court decree nor the subsequent proceedings initiated by the deceased first petitioner and his family members are of no avail for the purpose of claiming title over the Government lands. The lands vest with the Government are classified as 'Government Poramboke' and 'Water Bodies' situate in the subject property.



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33. This being the factum established, this Court has to arrive an inevitable conclusion that the petitioners are not entitled for the relief.

34. Accordingly, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

29-08-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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Thiruvannamalai District.
- 2.The Tahsildar,
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