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OSA.No.334 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MRS.JUSTICE **R.KALAIMATHI**

Original Side Appeal No.334 of 2017

A/M. Marundeeswarar Thirukoil
Rep. by its Executive Officer,
Thiruvanniyur,
Chennai 600 041.

... Appellant

Versus

1. The Chief Engineer
The Highways Department,
Government of Tamil Nadu

2. The Secretary,
Department of Highways,
Government of Tamil Nadu,
St. George Fort, Chennai.

.. Respondents

R2 is suomotu impleaded as party respondent
vide Court order dated 21.11.2019 made
in OSA No.334 of 2017 (NKKJ & PVJ)

PRAYER: Original Side Appeal filed under Order XXXVI Rule 1 of the
Original Side Rules read with Clause 15 of the Letters Patent, against the
Judgment and Decree dated 28.11.2016 in C.S.No.555 of 2005.



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For Appellant : Mr.A.K.Sriram
for M/s. A.S.Kailasam & Associates

For Respondents : Mr. A.Edwin Prabakar,
Special Government Pleader
Asst. by Mr.R.Siddharth, G.A., for

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The instant Appeal is against the judgement of the Hon'ble Single Judge of this Court made in CS No.555 of 2005, a suit filed by the Appellant Temple seeking recovery of possession of an extent of 29 cents of land in Survey No.25/2 of Thiruvanmiyur Village which, according to the appellant, was encroached upon by the respondent while widening the Old Mahabalipuram Road (OMR).

2. According to the plaintiff, the land belonged to it under a patta granted by the Settlement Officer under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as 'Act



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26 of 1948'). Relying upon the relevant entries made in the 'A' Register which was marked as Exhibit P1, the Temple claimed title to the land.

3. The suit was resisted by the defendant viz., The Chief Engineer, Highways Department, Government of Tamil Nadu, contending that in the Revenue records the land was shown as Government Poramboke and therefore, there is no question of any encroachment. Reliance was placed on the Town Survey Land Register of Thiruvanmiyur Village in support of the said contention. A plea was also taken that the Secretary to Government is a necessary party and the Chief Engineer Highways is not the sole Authority.

4. On the above pleadings, this Court had framed the following issues:

- (i) Whether the claim of the plaintiff temple to be the owner of the suit property is supported by materials?*
- (ii) Whether the defendant is entitled to deny the validity of "A" Register?*
- (iii) Whether the suit property is a Government*



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poromboke land as contemplated by the defendant in the written statement?

(iv) Whether the use of 29 cents of land in S.No.25/2 Thiruvanmiyur Village by the defendant for the purpose of expansion of East Coast Road, without initiating any proceedings under any of the Land Acquisition Laws, is valid and binding?

(v) Whether the plaintiff is entitled to pay for recovery of possession?

(vi) Whether the defendant is liable to pay damages of Rs.10,000/- per month for use and occupation or to any other amount?

(vii) To what other relief, the plaintiff is entitled to?

5. At Trial, PW.1 was examined on the side of the appellant/Temple and Exhibits P1 to P3 were marked. D.W.1 was examined on the side of the respondents and Exhibits D1 to D5 were marked.

6. The Hon'ble Judge, who tried the suit, dismissed the suit on two grounds:



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(i) Non impleading of necessary party viz. the Secretary to Government, Department of Highways and Minor Ports, Government of Tamil Nadu, Fort St. George, Chennai; and

(ii) That Ex.P1 viz., the 'A' Register being a Revenue Document will not assume the character of a title document.

The Hon'ble Single Judge concluded that there being different entries in the 'A' Register and TSLR, it will be incumbent upon the Temple to seek declaration of title, on the assumption that the conflict of entries would constitute a cloud on the title of the Temple, hence this Appeal.

7. Pending this Appeal, a Division Bench had suo motu impleaded the Secretary to Government, Department of Highways, on 21.11.2019. Thereafter, it appears from the record that there was an attempt to withdraw the appeal which was repelled by the Bench. Thereafter a Meeting was convened by the Additional Chief Secretary to Government, High ways and Minor Ports Department on 26.07.2023 at 3.00 p.m. with the Additional Chief Secretary to Government, Revenue and Disaster



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Management Department; Principal Secretary, Tourism, Culture and Religious Endowments Department; Commissioner of Land Administration; Director of Survey and Settlement and Commissioner, HR & CE, to discuss about the issue relating to the title to these lands. The Minutes of the said Meeting have been placed before us today. The above Officers after examining the records relating to the land in question concluded that the land in question belongs to the Temple. The Minutes that has been produced before us reads as follows:

“When the A-Register prior to Town Survey was perused, it was found that the Survey Number 25/2 was recorded as ‘Ryotwari Dri (punjai) with an extent of 0.29 cents in Patta No.1 with Pattadar as “தாமாகர்த்தா தற்கால தேவஸ்தானம் கோவில் சுவாமி மருந்தீஸ்வரர் ”.

As per the A-register, the Survey Number 25/2 is registered in the name of “தாமாகர்த்தா தற்கால தேவஸ்தானம் கோவில் சுவாமி மருந்தீஸ்வரர் ”.

At the time of doing Town Survey, the ownership was changed as “பொதுப்பணித்துறை” and the usage as



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“சாலை” and it is recorded accordingly in present Town Survey number 9 in Block No.8. There is no record to show as to why land recorded in the name of Maruntheeswarar temple is changed as Public Works Department- Road.

Hence, after careful examination of the above records in the meeting, it is concluded that SF No.25/2 belongs to Maruntheeswarar Temple.”

8. From the above, it is clear that the entries in Ex.P1 were made on the basis of the patta granted under Act 26 of 1948. Ex.P1 itself shows that the Village consisted of Inam lands which were taken over under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act 26 of 1948). Once an Estate or an Inam is taken over, under any of the Abolition Acts, the entire estate or the Inam vest with the Government and the Government issues Patta to the ryots or the occupants as the case may be subject to the conditions prescribed under different Abolition Laws. Once such patta is issued that by itself would be an evidence of title, since the title in the lands stood abolished and on the Settlement



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Officer concluding that the ryot or the occupant is entitled to patta under the provisions of the Act, the ryot or the occupant becomes the owner of the property. Any other interpretation would negate the very object of the Abolition Laws. It is common knowledge that the Abolition Laws were brought in, only to abolish the intermediaries and to vest the land in the ryot or the occupant. The issue relating to the scope of the patta that is granted under the Abolition Act is not *res integra*.

9. The next question relating to the finality of title on the grant of patta has been subject matter of several decisions of Hon'ble Supreme Court as well as this Court. While it is held that the Patta granted under the Abolition Act will not be proof of conclusive title as against a rival claimant before a civil Court, it has also been reiterated that the patta granted under the Act vis-a-vis the Government or a person without title, will be in proof of title of the grantee. In ***Subramania Gurukkal and others v. Arulmighu Thirumaleswaraswamy Deity, rep. by the Executive Officer and anr.***, reported in **97 L.W. 243**, a Division Bench of this Court had an occasion to consider the question, as to whether, a



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patta granted under the Abolition Acts would constitute evidence of title and concluded that it will.

10. After referring to the another Division Bench Judgment in SA Nos.904 and 1250 of 1978 dated 22.10.1982, the Division Bench in ***Subramania Gurukkal's case***, concluded that the said judgment cannot be held to be good law, in view of the fact that the Hon'ble Supreme Court has in subsequent decisions upheld the view that the grant of patta under the Abolition Act would be conclusive on the question of title unless there is a rival claim. The Division Bench after analysing almost all the judgments on the point concluded as follows:

“28. In fact, as observed in Sanjeevi Naicker v. Shanmuga Udayar the decisions of this Court had taken the view that both before and after the repeal of Section 56, the issue of patta would not take away the jurisdiction of a Civil Court to adjudicate upon competing titles to lands. Different reasonings have been given in different decisions and it is not necessary for us to trace all those judgments, as, in our view, the decisions of Varadarajan, J. (as he then was) in P.A. Shukur v. K.S. Sundara Mudaliar and another, and



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Chinnappa Gounder and others V. Seshadri Iyengar and another, the decision of Ismail, J. (as he then was) in Narayanaswami v. Rangaswami, and the decision in Arunlandu Udayar v. Palaniappa Ambalam, have referred to all the decisions and held that the decisions as to the nature of the land and the person entitled to patta under Section 11 or a similar finding that it is a ryoti land and not a private land are final and not liable to be questioned in a Civil Court and those judgments, in our view, are consistent with the ratio of the two decisions of the Supreme Court above referred to. Since we are of the view that the Supreme Court decisions clearly cover, this question, we are unable to agree with the reasoning and the judgment of the learned Judges of the Division Bench.”

11. It was also pointed out that a similar view expressed in ***Arulandu Udayar v. Palaniappa Ambalam***, reported in **1982 (1) MLJ 257**, was affirmed by the Hon’ble Supreme Court in SLP No.7871 of 1981 by order dated 14.02.1983. Therefore, if the question is only as to the effect of grant of patta under the Abolition Act, the answer has to be that it will be evidence of title. We hastened to add that such grant will



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by itself will not preclude any other person claiming a rival title from establishing such title before the Civil Court.

12. Adverting to the case on hand, we find that Ex.P1 itself shows that vast extent of land in Thiruvannamiyur were Inam lands and they were taken over under Act 26 of 1948 and Pattas were issued to various persons including the plaintiff Temple. The entry relating to Survey No.25/2 in EX.P1 is to the effect that it is Ryotwari Punjai standing in the name of “தாமகார்த்தா தற்கால தேவஸ்தானம் கோவில் சுவாமி மருந்திஸ்வரா” and a Patta Number is also given as “1”. It is clear that this entry emanated out of the proceedings under Act 26 of 1948. Once it is concluded that the Temple has been granted Patta under Act 26 of 1948, its title is good against the whole world except a person who could show the better title.

13. On the evidence available, we have the ‘A’ Register prepared pursuant to the grant of pattas under Act 26 of 1948 which depicts the temple as the owner and TSLR which records the land as Government Promboke without any basis. Fortunately the officers at the level of Additional Chief Secretaries to the Government, the Land Commissioner



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and the Commissioner, HR & CE have examined the position and concluded that the land belongs to the Temple. This has made our job easier. Once the title of the temple is concluded, the dismissal of the suit has to be set aside. The issue relating to non-joinder is also cured by the fact that the Secretary to the Government has been impleaded suo motu in the Appeal and they have conceded to the title of the Temple.

14. In view of the above, the judgment and decree of the learned Single Judge will have to be necessarily set aside and they are accordingly set aside. The suit will stand decreed for possession alone as prayed for, since the property has been put to use for a public purpose we do not want to burden the Government with damages for use and occupation.

15. Considering the fact that there is a road in existence in the land in question, the Government is directed to acquire the land by initiating the process of acquisition under the Tamil Nadu Highways Act within a period of six months from today. The acquisition process shall be



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completed six months there from. The compensation so determined shall be paid over to the temple and the same shall be invested in a Nationalised Bank in an interest earning fixed deposit so that the Temple will get some revenue out of the same. It will be open to the temple to prefer appeal for enhancement of the compensation so awarded if it is less, in its opinion.

16. The Original Side Appeal will stand allowed to the extent indicated. There shall be no order as to costs.

(R.SUBRAMANIAN, J.) (R.KALAIMATHI, J.)
14.08.2023

jv

Index : No
Internet : Yes
Neutral Citation : No
Speaking order

Note: Issue order copy on **18.08.2023**

To
The Section Officer,
Original Side,
High Court of Madras



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and

R.KALAIMATHI, J.

jv

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