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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.07.2024	Delivered on 23.07.2024
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No. 843 of 2022
and
C.M.P.No. 5680 of 2022

1.The District Collector of Tiruvannamalai,
Collector Office, Vengikal,
Tiruvannamalai.

2.The District Revenue Officer,
Collector Office, Vengikal,
Tiruvannamalai.

3.The Revenue Divisional Officer,
Tiruvannamalai Taluk,
Tiruvannamalai District.

4.The Executive Engineer,
Public Works Department,
Tiruvannamalai.

5.The Tahsildar,
Kalasapakkam Taluk,
Tiruvannamalai District.

...Appellants

Vs.



K.Siva Shanmugam (Deceased)

1.Mathurambal

2.S.Ezhilmaran

3.S.Tamilvanan

...Respondents

(1 to 3 are legal heirs of the deceased petitioner,
K.Sivashanmugam)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P.No. 10456 of 2018 dated 25.03.2021.

For Appellants : Mr.A.Selvendran
Special Government Pleader

For Respondents : Ms.Suseela Devi

J U D G M E N T

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

Aggrieved by the order of the Writ Court dated 25.03.2021 made in W.P.No.10456 of 2018, the State is on appeal. The said Writ Petition was filed seeking a Writ of Certiorarified Mandamus to quash the order dated 10.04.2018 passed by the District Revenue Officer, Tiruvannamalai, cancelling the assignment Patta for the land situate in New Survey No.259/1 of Kalasapakkam Village on the ground that there is a violation of the



assignment condition. The Writ Petition was filed by one K.Siva Shanmugam, who died pending the Writ Petition, his wife and two children were impleaded as legal representatives and were ranked as petitioners 2 to 4 in the Writ Petition.

2. The facts that led to filing of the Writ Petition are as follows:-

The deceased / petitioner had occupied an extent of 2 cents of land classified as Grama Natham in Survey No.195/1A/1A at Kalasapakkam Village and the same has been in possession and occupation of his family from the year 1956. Recognising his occupation, the said 2 cents of land was assigned to him and he has put up construction and has been in continuous possession as Pattadhar from 1968 without any interruption. While things stood thus, summons were served by the 3rd respondent on the petitioner, requiring the petitioner to appear before him on 21.02.2017 for an enquiry relating to the cancellation of the Patta that was issued to the petitioner.

2.1.The petitioner appeared in person on 21.02.2017. Even without passing any order regarding cancellation of Patta, the Highways Department



arbitrarily demolished the construction put up by the petitioner in the said land on 15.05.2017. On 16.05.2017, he was served with an order dated 30.03.2017 informing him of the cancellation of the Patta. The petitioner preferred an appeal to the District Revenue Officer, Tiruvannamalai, the 2nd appellant herein challenging the order dated 30.03.2017. The said appeal came to be dismissed on 10.04.2018. In the meanwhile, the petitioner has also filed a Writ Petition in W.P.No.2954 of 2018 seeking a direction to the 2nd respondent to dispose of the appeal. The said Writ Petition came to be allowed by this Court on 12.02.2018. The rejection of the appeal dated 10.04.2018 was made subject matter of challenge in the instant Writ Petition namely, W.P.No.10456 of 2018.

3. It is the contention of the petitioner in the Writ Petition that the cancellation order was passed without assigning any reason. Once there is an assignment of the land to the petitioner in the year 1968 and the petitioner has been in possession of the land nearly six decades, the cancellation without assigning reasons is invalid. The Writ Court concluded that the Writ Petition ought to be allowed solely on the ground of violation of principles and natural justice. The assignment Patta was granted in the



year 1968 and the land was also classified as Grama Natham. The learned Judge also held that the Grama Natham land does not vest with the Government. The learned Judge therefore, concluded that the Writ Petition is bound to be allowed on two grounds namely,

i) Grama Natham land does not vest in the Government and the Government has no paramount title over the same. Therefore, cancellation of assignment is invalid.

ii) Principles of natural justice have not been followed and the petitioner was not made aware of the grounds on which the assignment was sought to be cancelled.

Aggrieved, this appeal is at the instance of the State / respondents in the Writ Petition.

4. We have heard Mr.A.Selvendran, learned Special Government Pleader appearing for the appellants and Ms.S.Suseela Devi, learned counsel for the respondents.

5. Mr.A.Selvendran, learned Special Government Pleader appearing for the appellants would vehemently contend that since it was found that the



petitioner was using the Grama Natham land for commercial purposes, the assignment was cancelled and therefore, according to him, the learned single Judge was not right in allowing the Writ Petition on the ground that the Grama Natham land does not vest in the Government. Referring to Section 2 of the Tamil Nadu Land and Encroachment Act, 1905, the learned Government Pleader would contend that the conclusion of the learned Judge that the Grama Natham land does not vest in the Government is against the language of Section 2 of the Act.

6. According to the learned Government Pleader, what is exempt from the vesting provided under Section 2c of the Act is only land which are classified as Temple sites or land owned as House site or backyard and therefore, if Grama Natham land is used for commercial purpose, it will not be exempt from the purview of the Tamil Nadu Land and Encroachment Act and the Government would still be the owner of it. He would also invite our attention to various judgments of this Court which dealt with the nature and scope of the vesting of lands under the Land Encroachment Act.



7. Contending contra, the learned counsel for the respondents would submit that the land was assigned in 1968 and it was shown as road Poromboke before the assignment. After the assignment, the land was converted into Grama Natham. Once the land is converted into Grama Natham and is being occupied by putting up a residential house therein, the said land will not vest in the Government. The person in occupation in whose favour it is assigned would become the owner of the land. She would also invite our attention to various decisions of this Court on vesting of the Grama Natham lands in the State. We have considered the rival contentions.

8. We do not see a need for burdening this judgment with all the previous pronouncements of this Court, in view of the recent judgment of this Court in ***R.A.V.Kovil Annayya Charities Vs. The District Collector, Tiruvallur*** wherein, the Hon'ble First Bench of this Court has dealt with all previous decisions of this Court and in Paragraph 14 of the said judgment observed as follows:-

"14. Thus, it can be seen that it has been held that the legal position has held the field for over a century and that the mere fact that in the re-settlement register, merely because



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the Gramanatham land is described as Poramboke, will not, by itself, establish title of the Government to the land in question."

9. Before arriving at the above conclusion, the Division Bench had referred to almost all the previous pronouncements on the subject. Reference was also made to the famous book titled ***"Land Tenures in the Madras Presidency"*** by ***Mr.S.Sundararaja Iyengar*** by the Hon'ble Division Bench. After an exhaustive analysis of the law regarding to Grama Natham, the Hon'ble First Bench in Paragraph 21 observed as follows:-

"21. It would be clear that the Gramanatham or Natham Poramboke can be classified into three types. Firstly, the Natham which are inhabited by the villagers by putting up their house or being their pilakadai or kollai etc., which is their absolute property and the Government does not have any right, title or interest in the same. The second portion of the Gramanatham or those portions which may be used for communal purposes, such as street, thrashing floors etc. Once they are used for communal purposes, by virtue of Section 2 of the Act, they become the Government lands and as such, have to be termed as the other types of Poramboke, in which, no individual can claim any title and any encroachment can be removed by invoking the provisions of the Act. The third type is the unoccupied portion of the Gramanatham land, in which



the right is vested with the Government to regulate its occupation. The Government has the right to assign the unoccupied portion by ensuring the condition of residence eligibility etc., and it is only in this context, the Revenue Standing Orders, enabling the Government to impose conditions, assign only 3 cents lies.

10. Yet another Division Bench of this Court in ***S.Anbanathan Vs. District Collector, Perambalur District*** made in W.A.Nos. 203 & 205 of 2023 again, exhaustively dealt with the nature and ownership of Grama Natham lands. This Division Bench also considered the entire case law and in Paragraph 79 held as follows:-

79. Therefore, in order to protect Grama Natham lands, the legal status of Grama Natham lands must be harmoniously interpreted in the following manner.

1. House site legitimately owned by any person and issued with Natham Patta. The Government has no right to interfere in the possession and dispute in this house site.

2. House site owned by any person to which the Natham Pattas are not issued so far. The Government for the purpose of issuing Natham Pattas may require certain documents to consider the occupier's ownership. Upon verification, if the authorities are prima facie satisfied about the ownership, then the Natham Pattas can be issued. If the occupier is unable to



prima facie establish their ownership, then such occupier are to be treated as encroacher for the purpose of following the procedures prescribed under Tamil Nadu Land Encroachment Act, 1905.

3. House site unoccupied and not owned by anyone. Government has freehold in this type of land and can deal with in the manner provided under relevant laws including Revenue Standing Orders.

4. Procedure for dealing with residual cases of claim of natham patta Commissioner of Land Administration may issue a fresh circular on the lines of the 07.08.2015 circular correcting the lacunae in the same.

5. Expeditious completion of computerisation: The public lands in each grama natham must be generated in the computerisation process and subject to social audit during the Grama Sabha informing the public that the public lands are being held in trust properly, and the disposal is also done in favour if genuine beneficiaries or public causes."

11. We see no reason to deviate from the views expressed by the above two Division Bench judgments. We find that wherever Natham patta has been issued under the Natham settlement scheme, the Government has no right to interfere with the possession of land by the Pattadhar or the allottee.



12.No doubt, a distinction has been made between commercial use of Natham land and residential use. In ***T.S.Ravi and Another Vs. The District Collector, Thiruvallur District***, another Division Bench of this Court, to which, one of us (Hon'ble Justice R.Subramanian) was a party had noted the difference between commercial use of Natham land and residential use of the same. Even in the said judgment, the precedents that were available were considered by this Court. In paragraph 29, the Division Bench had considered another judgment of this Court in ***Zonal Officer, Corporation of Chennai Vs. Nasa Reddy*** reported in ***2012 (4) MLJ 646*** noticed the difference between large scale commercial exploitation of the land classified as Grama Natham and an owner or occupier putting a small petty shop in a portion of the residential accommodation. It was held that such user will not amount to commercial exploitation of grama natham land.

13. In view of the above judicial pronouncements of this Court, we find that the cancellation of the assignment itself cannot be sustained. The cancellation of assignment was done solely on the ground that the petitioner has put up a small shop in front of his house. Such user cannot amount to commercial exploitation of the land in question. If land classified as Grama



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Natham remains unoccupied, then the Government will have a right to assign it to others or use it to any public purpose. Once Natham land is occupied and the occupation is recognized by the Government by issue of a Patta under the Natham Settlement Scheme, such land will not and cannot be held to belong to the Government. The above has been the consistent view of this Court. The said decision has been reiterated in the other judgments of this Court also. Hence, we see no merit in the appeal. This Writ Appeal fails and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

14. We make it clear that if the Government requires the land that has been in occupation of the respondents 1 to 3 for any public purpose, it will be open to the Government to acquire the said land by initiating appropriate acquisition proceedings.

(R.S.M., J.) (R.S.V., J.)
23.07.2024

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Internet: Yes

Index: Yes

Speaking

Neutral Citation : Yes

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