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Writ Appeal No.720 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.720 of 2019
and C.M.P.No.5846 of 2019**

R.Mohan Raj,
S/o.Mr.Ramanathan Gounder

... Appellant

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Fort St.George, Chennai – 600 009.

2. The District Collector,
Salem District.

3. Revenue Divisional Officer,
Salem.

4. Thasildar,
Salem Taluk, Salem.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 05.12.2018 made in W.P.No.32131 of 2005.

For Appellants : Mr.S.Mohan

For Respondent : Mr.A.Selvendran
Special Government Pleader



Writ Appeal No.720 of 2019

JUDGMENT

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

This writ appeal has been directed against the order passed by the Writ Court dated 05.12.2018 made in W.P.No.32131 of 2005.

2. In respect of the land and the property at S.Nos.39/1, 39/2 and 39/3 at Reddiyur Village, Salem Taluk and District, it is the case of the writ petitioner/appellant that the property was originally belong to one Vedhavysalu, Kuppammal, Venkataraman from whom, the property was purchased jointly by the petitioner/appellant Mohan Raj along with Kulla Gounder, Dasa Gounder and Peria Thambi under a registered sale deed dated 16.09.1989, which was registered as document No.1907 of 1989 on the file of the District Registrar Office, Salem.

3. Since then the property had been in possession and enjoyment of the purchasers.

4. At one point of time, the petitioner/appellant made a request to the Revenue Department to issue a separate patta for the land purchased



Writ Appeal No.720 of 2019

by the petitioner/appellant alone, which was considered and an order to that effect was passed on 26.04.2000 by the Deputy Thasildar, Salem, whereby the name of Kulla Gounder, Dasa Gounder and Peria Thambi were removed and patta was directed to be issued in the name of the petitioner/appellant.

5. Subsequently on 18.11.2014, another proceeding was issued by the Salem South Thasildhar, whereby the land in question had been subdivided with the following Town Survey numbers viz., 25/2 and 25/4 and both these town survey numbers corresponding to S.Nos. 39/1, 39/2 and 39/3 have been given patta in the name of the petitioner/appellant, that is how according to the petitioner/appellant, the property is a self acquired property of the petitioner/appellant as he purchased the property in the year 1989 by a valid sale consideration by way of registered sale deed and the patta had been issued jointly and thereafter, separate patta was also issued and had been transferred in the name of the petitioner by various proceedings issued by the concerned Thasildhar as stated supra, since then the property had been in possession and enjoyment of the petitioner/appellant.



6. While that being so, on 09.09.2005, a notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 [hereinafter referred to as 'the 1905 Act'] was issued by the Tahsildar, Salem, whereby it has been mentioned that the said lands at S.Nos.39/1, 39/2, 39/3 and 55 are Government eri poromboke lands, therefore in that lands since there had been a encroachment including by the petitioner/appellant that encroachment shall be removed otherwise action would be taken to remove such encroachment under the provisions of the 1905 Act and accordingly, the said notice under Section 6 of the 1905 Act was issued.

7. Challenging the said notice under Section 6 of the 1905 Act, the petitioner/appellant filed the said writ petition in W.P.No.32132 of 2005. The said writ petition was heard and decided by the learned Judge through the impugned order dated 05.12.2018, whereby the prayer sought for by the petitioner was rejected and a common directions had been given to the District Collector concerned to take effective steps to identify various encroachment made in the Government poromboke lands especially the water poromboke lands and to take steps to remove such encroachment and periodical meeting must also be conducted by the District Collector, which all are the directions given by the learned Judge in the impugned order.



Writ Appeal No.720 of 2019

8. Aggrieved over the said order passed by the Writ Court, the present appeal had been directed.

9. Mr.S.Mohan, learned counsel appearing for the appellant would contend that the land though originally had been categorized as sarkar eri poromboke in S.Nos.39/1, 39/2 and 39/3 subsequently by the proceedings issued by the Assistant Settlement Officer dated 14.12.1966 it had been converted into ryotwari punjai and ryotwari patta also had been issued, which stood in the name of one Ramanarayanan S/o.Manicka Naidu .

10. The legal heirs of the Manicka Naidu viz., TM.Vedavysalu, TM.Govarthanan, Kuppayiammal W/o.Mani and Venkat S/o.Mani had enjoyed the property, from whom the property had been purchased jointly by the petitioner/appellant and other three persons by the sale deed of the year 1989 as referred to above. Thereafter, from the joint patta it has been converted into separate patta and the town survey has been conducted and it has been sub-divided, after sub-division had been made as 25/1, 25/2 and 25/4, which are equivalent to survey Nos.39/1, 39/2 as well as 39/3 pattas had been issued in the name of the



Writ Appeal No.720 of 2019

petitioner/appellant and uninterruptedly since the petitioner purchased the property from the year 1989, the property in question had been in possession and absolute enjoyment of the petitioner/appellant.

11. Therefore, at no stretch of imagination it can be stated that it is a Government poromboke land, where there has been a encroachment by the petitioner/appellant. Hence, the very issuance of notification under Section 6 of the 1905 Act does not arise in this case.

12. Though this aspect has been projected before the learned single Judge in the Writ Court, that aspect has not been considered in proper perspective by the learned Judge and ultimately, since he has rejected the plea raised by the petitioner/appellant to set aside the notice issued under Section 6 of the 1905 Act, having no other option, aggrieved over the said order passed by the Writ Court, the appellant has preferred the present appeal, therefore, he seeks indulgence of this Court.

13. On the other hand, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents would contend that, it was admittedly a sarkar poromboke land that too mentioned as an eri



Writ Appeal No.720 of 2019

promoboke as all the three survey numbers viz., 39/1, 39/2 and 39/3 have been clearly stated in the reports submitted by the Tahsildar dated 10.09.2011 addressed to the District Collector. Thereafter, if at all any change had been made by the Settlement Officer in the year 1966 that would not alter the nature of the land as the eri land cannot be converted into ryotwari punjai, therefore, if any order had been passed by the Settlement Officer that would not bind the Revenue Authorities from protecting the water bodies.

14. Therefore, before 14.12.1966 since the land had been shown as sarkar poromboke no one could have sought for patta for the said land, much less the vendors of the petitioner/appellant. When that being so, the possession claimed by the petitioner/appellant only be treated as an encroachment, hence, in order to protect the water body, the Tahsildar has rightly issued the notice under Section 6 of the 1905 Act, which was impugned before the Writ Court. This position having been considered in proper perspective by the learned Judge, the Writ Court had rejected the plea raised by the petitioner/appellant, therefore that order is to be sustained, the learned Special Government Pleader would contend.



15. We have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

16. No doubt, as per the report of the Tahsildar, Salem dated 10.09.2011, which in fact was a report in response to a complaint given against a member of legislative assembly as if that he had encroached upon the eri poromboke land, the District Collector instructed the Tahsildar to submit a detail report about the land.

17. Accordingly, the Tahsildar after having gone through the records has given a detailed report, whereby he has stated that the land at S.Nos.39/1, 39/2 and 39/3 were originally categorized as sarkar poromboke and has further recorded as Eri that means 'Lake'.

18. The Tahsildar has further stated that as per the proceedings of the Assistant Settlement Officer dated 14.12.1966, the land in question had been converted into ryotwari punjai and the said land had been issued patta as ryotwari punjai in the name of Ma.Ramanarayanan S/o.Manicka Naidu.



19. As per the records, which were available at the office of the Salem, Tahsildar, in the Reddiyur Village account, in 1382 Adangal book, the Survey Nos.39/1, 39/2 and 39/3 were issued patta in the name of Ramanarayanan. Thereafter, in 1984, under the UDR, the patta had been issued in patta No.976 in the name of TM.Vedavysalu, TM.Govarthanan, Kuppaiyammal W/o. Mani and Venkat S/o. Mani, who all are the legal heirs of Manicka Naidu and Ramanarayanan.

20. Thereafter, according to the Tahsildar's report necessary corrections had been made in the register of the Reddiyur Village, where the patta had been given in the name of Kulla Goundar and other three persons by proceedings dated 04.11.1989.

21. Thereafter, during 1992 town re-survey was taken place, where S.Nos.39/1, 39/2 and 39/3 was converted into Ward C Block 4 of Town S.Nos.25/1, 25/2 and 25/4 of Salem and patta stood in the name of Mohanraj S/o.Ramanathan i.e., the petitioner/appellant.

22. Therefore, ultimately the Tahsildar has concluded that the land in question since had been categorized as patta land and updated town re-



Writ Appeal No.720 of 2019

survey has been conducted and it has now been in Ward C, Block 4, T.S.Nos.25/1, 25/2 and 25/4 and the patta stood in the name of Mohanraj S/o.Ramanathan.

23. On perusal of this detailed report submitted by the Tahsildar by verifying all the documents right from beginning it could be easily found that, by proceedings dated 14.12.1966 of the Assistant Settlement Officer, the land in question has been converted as ryotwari punjai and patta had been issued in the individual names from whose legal heirs the property was purchased by the petitioner/appellant along with three others by a registered sale deed dated 16.09.1989, which was registered as document No.1907 of 1989.

24. Though initially the land was given patta jointly in the name of the petitioner/appellant and three others, subsequently, at the request of the petitioner/appellant separate patta had been issued in the name of the petitioner/appellant, which has become evidenced in the report that has been submitted by the Tahsildar as stated supra.



25. When that being so, it cannot be stated that the petitioner/appellant has been in encroachment of the Government land or eri poromboke land as has been claimed by the Tahsildar, through his Section 6 notice dated 09.09.2005.

26. These aspects since have not been considered by the learned Judge in proper perspective and the Court has viewed the matter as if that it has become a menace nowadays to encroach upon the Government land, therefore such menace to be curbed at any cost, hence, the learned Judge has given general directions to the District Administration to take steps to remove such encroachment and while giving such directions, the plea of the petitioner also was rejected through the impugned order.

27. In view of the said factual matrix, where the petitioner/appellant since *prima facie* established before this Court that he has purchased the property in question for a valid sale consideration through a registered sale deed and subsequently patta also has been transferred in his name, all along from 1989 he has been in possession and enjoyment of the property, therefore, it cannot be easily stated that he is an encroacher within the meaning under the provisions of the 1905 Act



and therefore, the invocation of Section 6 to issue a notice as if treating the petitioner/appellant as an encroacher is outside the scope of the Act, therefore such a proceedings issued under Section 6 of the 1905 Act, would not stand in the legal scrutiny.

28. In the result, the following orders are passed in this writ appeal:

- ◆ That the impugned order passed by the learned Judge insofar as the rejection that has been made on the plea raised by the petitioner against the order impugned i.e., notice under Section 6 of the 1905 Act, dated 09.09.2005 is hereby set aside. As a sequel, notice dated 09.09.2005 issued by the Tahsildar under Section 6 of the Act, 1905 also is set aside.
- ◆ However, it is open to the Revenue Department to establish their right and title over the property in the manner known to law. But as an encroacher no action had been taken against the petitioner/appellant in respect of the land in question in view of these documents, which have been produced before this Court to have a *prima facie* satisfaction of this Court.



Writ Appeal No.720 of 2019

WEB COPY With these orders, this Writ Appeal is allowed. No costs.

Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

22.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
mp

To

1. The Secretary,
Revenue Department,
Fort St.George, Chennai – 600 009.
2. The District Collector,
Salem District.
3. Revenue Divisional Officer,
Salem.
4. Thasildar,
Salem Taluk, Salem.



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Writ Appeal No.720 of 2019

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Writ Appeal No.720 of 2019

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