IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No. 6850 of 2024
and
W.M.P.Nos.7641 and 7642 of 2024

1.C.D.Padmakumari
2.C.S.Rajeswari
3.C.M.Sugunabai
4.C.B.Malliraju ... Petitioners

versus

1.The Secretary to Government Revenue
and Disaster Management,
State of Tamil Nadu,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.

3.The District Revenue Officer,
Nagapattinam,
Nagapattinam District – 611 001.

4.The Tahsildar,
Vedharanyam Taluk,
Vedharanyam,
Nagapattinam District – 614 810.

5.The Executive Office,
A/m.Vedharanyaswamy Devasthanam,
Vedharanyam,
Nagapattinam District – 614 810. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the proceedings of the second respondent made in K1/42111/2004, 23.09.2023 and quash the same.

For Petitioner	:	Mr.M.Muthappan
For Respondents	:	Mr.T.Arun Kumar Additional Government Pleader for R1 to R4 Mr.R.Bharanidharan for R5

O R D E R

Mr.T.Arun Kumar, learned Additional Government Pleader accepts notice for respondents 1 to 4 and Mr.R.Bharanidharan, learned counsel accepts notice for the fifth respondent. With the consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

2.This writ petition has been filed seeking for issuance of a writ of certiorari to call for the records relating to the proceedings of the second respondent in K1/42111/2004, dated 23.09.2023 and quash the same.

3. According to the petitioners, the petitioners are the legal heirs of A.C.Dharmadevi, who had obtained Patta with respect to S.Nos.21/1, 21/2, 21/3, 21/8, 21/10, 21/11 and 21/12 of Agasthiampalli Village and in S.No.117/4 in Vedharanyam Part Village for a total extent of 3.76.0 Hectres by Patta proceedings dated 08.01.2005 issued by the District Revenue Officer. Aggrieved by the same, the Devasthanam of Vedharanyaswamy Temple, Vedharanyam has filed a revision before the Commissioner of Land Administration, Chepauk, Chennai, who in turn, by order dated 23.09.2023,

restored the Patta, as it was then before passing the impugned order of the District Revenue Officer, Nagapattinam and also directed the petitioners and the fifth respondent-Temple to approach the appropriate Court for their remedy. Challenging the said order, the petitioners are before this Court.

4. Learned counsel for the petitioners submitted that on the basis of the Government Order in G.O.Ms.No.303, Commercial Tax and Hindu Religious and Charitable Endowment Department, dated 24.03.1987, the District Revenue Officer, Nagapattinam has conducted a detailed enquiry and held that the petitioners' predecessors-in-title, namely A.C.Dharmadevi and her father Anantharajayyan Mudaliar and her mother A.Jeliniammal had purchased various agricultural lands as well as the land with buildings of Kudivaram right from the Court auction as well as from the individual persons and they have paid Kudivaram Kist to the Temple and hence, they are entitled to get Patta as per Section 13(1) of the Act 30 of Tamil Nadu

Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 [hereinafter referred to as 'Act 30, 1963']. On that basis, the District Revenue Officer, Nagapattinam in his proceedings dated 08.01.2005 has granted Patta with respect to the land and building comprised in S.Nos.21/1, 21/2, 21/3, 21/8, 21/10, 21/11 and 21/12 of Agasthiampalli Village and for S.No.117/4 in Vedharanyam Part Village, total extent of 3.76.0 hectares. As against the said order, the Vedharanyam Devasthanam has filed a revision before the Commissioner of Land Administration, who had issued a notice, after the period of 18 years and conducted an enquiry and held that though they were not inclined to interfere in the question of law, whether the petitioners' predecessor-in-title is entitled for Patta with respect to the land with building in question or the fifth respondent-temple is entitled for Patta with respect to the land in question. Thus, the Commissioner of Land Administration passed an order restoring "A" Register to original account anterior to the order of the District Revenue Officer, Nagapattinam.

5. Learned counsel for the petitioners further submitted that as per Section 13(1) of the Act 30 of 1963, every building situated within the limits of an Inam land shall, with effect on and from the appointed day, vest in the person, who owned it immediately before that day, subject to the appropriate assessment of the land. He further submitted that after obtaining Patta, the petitioners and their predecessors-in-title had sold the lands to various persons and all of them have been purchased and obtained building approval and reconstructed the buildings in various sites of the above said survey numbers. At this stage, the Commissioner of Land Administration passed an order restoring the 'A' Register and Revenue Records to the original position after the period of 18 years, wherein the 'A' Register contains both the petitioners' predecessors-in- title as well as the Temple.

6. Learned counsel for the petitioners further submitted that the Commissioner of Land Administration had failed to consider the judgment

of this Court as well as the judgment of the Hon'ble Supreme Court that the petitioners' predecessor-in-title had got Kudivaram right of the said lands, where they had constructed the buildings and hence, they are entitled for Patta. Besides that, the Government had also issued G.O.Ms.No.303, Commercial Tax and Hindu Religious and Charitable Endowment Department, dated 24.03.1987, wherein, it is clearly stated as to how to grant Patta with respect to the land and building situated in the Inam land as per the provisions of Sections 18(4), 15(4) and 13 of the Act 26 of 1948, 26 of 1963 and 30 of 1963, respectively. He further submitted that however, the second respondent has failed to consider that G.O.Ms.No.303, Commercial Tax and Religious Endowment Department, dated 24.03.1987 to grant Patta under the above provisions and restored the 'A' register to the original position anterior to the order of the District Revenue Officer. Once the fifth respondent – Temple itself admitted the Kudivaram right, which was given to the petitioners' predecessor-in-title under Section 13 of the Act 30 of

1963, the petitioners are entitled for Patta, therefore, the impugned order passed by the Commissioner of Land Administration, Chennai dated 23.09.2023 is liable to be quashed.

7. Learned counsel for the fifth respondent-Temple submitted that the lands in question was granted in favour of the Temple and hence, both Melvaram and Kudivaram rights are vested with the Temple. Therefore, no one can claim right over the property against the Temple. The District Revenue Officer, Nagapattinam, failed to look into the right and title of the Temple and issued Patta in favour of the petitioners predecessor-in-title. In this case, the petitioners' predecessor-in-title, namely A.C.Dharmadevi had claimed the right and title under the settlement deed executed by her father, however, she failed to prove her right, and as to how her father got the property, which was an Inam granted in favour of Devasthanam, which goes to the root of the matter. The subject property was owned and granted in

favour of the Temple, and several persons have claimed right on the basis of the documents, which on the face of it, is a "nullity". The interest of the Temple has to be safeguarded and the Temple has got every right to invoke Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 [hereinafter referred to as 'HR & CE' Act] for evicting any persons from the Temple land. Amendment of Section 109 of the Limitation Act is not applicable. If at all any person is aggrieved, they could file a suit before the Civil Court under Section 79(2) of HR & CE Act. The records clearly indicated that the fifth respondent/Temple had conferred "Kudivaram right" in favour of the petitioners predecessor-in-title and that what was collected from them only is "Kist (Revenue)" and it is not by way of a rent from them in exercise of the Kudivaram right of the fifth respondent/Temple. Once the grant was in favour of the religious institution or the individual rendering service to the religious institution, the respondent/Temple and the individual have both the "Melvaram and Kudivaram" interest therein, and the presumption is a rebuttable presumption, and no evidence other than the entries in the IFR, is adduced. Therefore, the petitioners are not entitled to get any Patta in favour of them.

8. Learned counsel for the fifth respondent-Temple submitted that though A.C.Dharmadevi and others have purchased the lands from various parties through registered sale deeds and have been owing and enjoying the properties for a very long time and the petitioners' predecessor got Patta in the year 2005 and she lived till 2019. During her lifetime, she sold some of the properties to the third parties. Even G.O.(Ms).No.303 Commercial Taxes and Religious Endowment Department, dated 24.03.1987, has not given any right to the writ petitioners and the said order was passed only to grant the relief to the building owners from the concept of 'dual estate'. Therefore, the petitioners are not entitled any exclusive right over the property. Even the documents produced by the petitioners have also not created any right and

title and they only paid "Kist" to the respondent/Temple and therefore, the Temple is the owner of the property. Therefore, the writ petition is liable to be dismissed.

9. Heard both sides and perused the materials available on record.

10. Admittedly, the District Revenue Officer was granted Patta in favour of the petitioners, and challenging the said order, the fifth respondent/Temple has filed an appeal before the Commissioner of Land Administration, who in turn, set aside the order of the District Revenue Officer, and allowed the appeal. Aggrieved by the same, the petitioners are before this Court.

11. On a perusal of the records, it is seen that the petitioners have not proved the title of their predecessors. Admittedly, the property in question

was granted/settled in favour of the fifth respondent/Temple and both "Melvaram and Kudivaram interest" vested with the Temple. As per the documents, once the property is settled in favour of the Temple, the Temple is the owner of the property and the Temple got "two varams". However, the petitioners' predecessor-in-title constructed the building and on a perusal of the documents, it is seen that no document has been produced by the petitioners to show that their predecessor-in-title have got property originally. Though the petitioners have stated that the petitioners' predecessor-in-title purchased the property through Court auction and also from the individuals, even from the documents produced by the petitioners, it is seen that it is an ancestral property, but no materials have been produced to prove the same. However, the petitioners admitted that they paid "Kist" for the land in which the building was constructed. Therefore, the predecessor-in-title admitted the title of the Temple and therefore, no one can claim any right against the Temple and Deity. Even the Trustees have no authority to create any encumbrance or sale of the property. Even assuming that whatever the rights have been given by the authorities and the Trustees, that will not bind the Temple/Deity. As pointed out by the learned Additional Government Pleader appearing for respondents 1 to 4, if the title itself is in dispute it is for the petitioners to work out their remedy before the Civil Court by establishing that the ownership of the property and subsequent transactions of right and title in favour of the petitioners.

12. Under these circumstances, this Court finds that the property in question was originally granted to the Temple and both "Kudivaram and Melvaram" rights are vested with the Temple and just because some one had encroached the land and constructed a building and the Temple collected "Kist" for enjoyment of the land it does not mean that the petitioners are entitled for right and title to get Patta. Therefore, the writ petition is liable to be dismissed. However, the petitioners are at liberty to work out their

remedy in the manner known to law before the Civil Court, if they are so advised.

13. For the forgoing reasons, this writ petition is dismissed. Consequently, connected W.M.P.No7642 of 2024 is closed.

14. W.M.P.No.7641 of 2024, is ordered on payment of separate Court fees, by each of the petitioners.

15. There shall be no order as to costs.

18.03.2024

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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P.VELMURUGAN, J.

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