IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.23221 of 2024
and
W.M.P.No.25392 of 2024

1.R.Balan
2.R.Jhansi Rani
3.R.Ravi
4.R.Mohan ... Petitioners

Vs.

1.State Of Tamilnadu
Rep By The Secretary,
Hindu Religious And Charitable Endowments Department,
Fort St.George, Chennai- 9.

2.The Principal Secretary And Commissioner Land Administration
Ezhilagam, Chennai-05.

3.The District Collector
Namakkal District, Namakkal.

4.The District Revenue Officer
Namakkal District, Namakkal.

5.The Tahsildar
Namakkal.

6.The Idol of Sri Selva Vinayakar Temple
Rep By The Executive Officer Nallipalayam,
Namakkal District. ...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, Calling for the records of the fourth respondent, District Revenue Officer, Namakkal District in Pa.Mu. 9516/ 2024 / 01 dated 3/1/ 2024, quash the same and direct the respondents 2 to 5 to restore and enter patta No. 622 issued to the petitioners in the Nallipalayam Village Revenue records.

For Petitioner	: M/s.M/s.Hema Sampath, Senior Counsel for Mr.T.Sezhian
For Respondents	: M/s.A.Selvendran, Spl.G.P. for R.1 to R.5
	: M/s.S.Ravichandran, AGP for R6.

ORDER

The Writ Petition has been filed for the following reliefs:-

" Calling for the records of the fourth respondent, District Revenue Officer, Namakkal District in Pa.Mu. 9516/ 2024 / 01 dated 3/1/ 2024, quash the same and direct the respondents 2 to 5 to restore and enter patta No. 622 issued to the petitioners in the Nallipalayam Village Revenue records."

2. The facts set out in the affidavit filed in support of the writ petition, the counter affidavit and the reply affidavit are briefly extracted herein below:-

3. It is the case of the petitioners that the site measuring an extent of 217.5 sq.mts. in S.No.150/13 in Nallipalayam Village belong to them. Originally, prior to the Natham land survey, the survey number was 150. Thereafter, it has been sub divided into 150/1 to 150/20. Patta has been issued treating these lands as house sites. The land of the petitioners is comprised in S.No.150/13B.

4. The petitioners would trace the title to one Palani Chettiar who owned the property from the year 1920. Thereafter, it has been in their possession through various documents which has been executed within their family. The petitioners have put up huts in these extents and have been residing in them for over 70 years. The 6th respondent temple was in existence in an extent of 1 cent roughly about 400 sq.ft. The petitioners have been assessed to tax and E.B. connection. The 6th respondent temple has been shown as the south eastern boundary of the petitioners' property.

5. The Assistant Settlement Officer, Dharapuram had conducted an elaborate enquiry in the presence of the Executive Officer of the temple. The documents of the petitioners were scrutinized and the petitioner's mother was examined in person. An elaborate enquiry report dated 23.12.1991 was submitted by the Special Tahsildar, Paramathi Velur. In his report he has stated that 3 ares of land has been classified as temple and the temple was situate in a corner in the above said survey number in a separate portion in an area of less than 1 cent. He had also reported that from 1916, the petitioners have claimed the land and have dealt with it as private property. Therefore, the lands could be sub divided and patta could be issued to the petitioners. The VAO had also certified the possession of the property by the petitioners. The Assistant Settlement Officer had inspected the site and had recorded that the temple was east facing and there was a gap between the temple and the petitioners' huts.

6. Taking note of the above, the Assistant Settlement Officer had passed an order on 10.04.1992 directing alterations in the village accounts and for issuance of a patta to the petitioners. Thereafter, patta number 622 was issued to the petitioners on 05.04.1994 by the Natham Settlement, Special Tahsildar, Thiruchengode by reclassifying an extent of 217.5

Sq.mts. of lands as S.No.150/13B. Despite the fact that the patta was issued to the petitioners and petitioners' repeated representations, corresponding entries were not made in the village records, namely, the A-Register. Ultimately, by an order dated 26.06.2012, the 4th respondent held that the entire site has to be maintained as Selva Vinayakar Poromboke. He held that though patta was issued to the petitioners in the year 1994 for S.No.150/13B and the site had been sub divided into S.Nos.150/13 A, B and C, it had not been incorporated in the Chitta and Adangal. He would further state that since the land was a temple Poromboke, they had no power to reclassify the same. Therefore, he had directed the cancellation of the order of the Assistant Settlement Officer dated 10.04.1992.

7. This was challenged by the petitioners by filing a revision before the 2nd respondent herein and on 11.01.2013 the revision was disposed of with a short non-speaking order. The 2nd respondent had not perused the documents submitted by the petitioners and had held that the land had been classified as a Government Poromboke and therefore cannot be taken as a Natham lands. He would admit that S.No.150 was Natham land but he would state that private property rights cannot be freshly granted.

8. The order was challenged by the petitioners and their mother by filing W.P.No.11053 of 2014. On 30.03.2022, this Court was pleased to dispose of the writ petition directing the petitioners to submit a fresh application to the 5th respondent Tahsildar. The 5th respondent on receipt of the same was directed to consider the petitioners application and pass appropriate orders without taking into consideration the orders already passed and challenged in the Writ Petition.

9. Thereafter, the petitioners had submitted an application before the Tahsildar, Namakkal along with the documents and had participated in the enquiry. Instead of the Tahsildar passing an order, the District Revenue Officer, Namakkal the 4th respondent had passed the impugned order rejecting the claim of the petitioners. Challenging the same, the petitioners are before this Court.

10. The 4th respondent had filed a counter affidavit interalia contending that the Assistant Settlement Officer, Dharapuram orders was set aside by the District Revenue Officer, Namakkal as the Revisionary Authority by taking into consideration the fact that the Assistant

Settlement Officer had no jurisdiction to grant patta and accordingly the patta was cancelled. Against the order of the District Revenue Officer, it was one Kamalam who had filed an appeal before the 2nd respondent who upheld the orders passed by the 4th respondent and rejected the appeal filed by the said Kamalam. The possession of the property by the petitioners was admitted and it was contended that the 6th respondent temple was also situated in the same piece of land.

11. They would further submit that since the Natham Settlement Officer, Paramathi Velur, who had dealt with the Natham Settlement work of Nallipalayam Village had been disbanded and as jurisdiction is vested with the Revenue Divisional Officer, Namakkal, the petitioners' representation as per the order passed in W.P.No.11053 of 2014 was directed to be considered by the Revenue Divisional Officer.

12. The 4th respondent would further submit that the Revenue Divisional Officer, Namakkal had submitted a reply that the subject matter had already been dealt with and an order had already been passed by the Commissioner of Land Administration, the 2nd respondent. Therefore, further orders could not be passed by the Revenue Divisional Officer, Namakkal. Therefore, the 4th respondent sought for the dismissal of the Writ Petition.

13. The 6th respondent temple had filed a counter affidavit interalia contending that the Writ Petition is a totally misconceived one and is liable to be dismissed. They had also alleged suppression on the part of the petitioners. It is the contention of the 6th respondent that the petitioners have suppressed several facts while filing the Writ Petition. The 6th respondent temple comes under the control of the HR & CE Department and is a listed temple. The temple is a sub temple of Arulmighu Palapattarai Mariamman Temple. The Executive Officer of the said temple is administering the day to day affairs of the temple. They would submit that the temple is situate in S.No.150/13 in an extent of 0.03.0 Hectares of the Government Poromboke land. The A Register also reflects the name of the temple.

14. While so, one Kamalam and 4 others had filed an application before the Assistant Settlement Officer, Dharapuram for issue of patta in respect of the land measuring 0.021.75 sq.mts which also comprised the lands belonging to the 6th respondent. The Assistant Settlement Officer, Dharapuram by is order dated 10.04.1992 had directed the issue of patta in their favour. Armed with this order, the said Kamalam and others had made an application before the 4th respondent to make alterations in the Village Revenue Records. However, the 4th respondent by proceedings dated 26.06.2012 had set aside the order passed by the Assistant Settlement Officer, Dharapuram and cancelled the sub division in S.No.150/13 and the property to an extent of 0.03.0 hectares was classified as Selva Vinayagar Temple Government Poromboke. It is against this order that the said Kamalam and 4 others had preferred an appeal before the 2nd respondent. The 2nd respondent by order dated 11.01.2013 had rejected their claim.

15. This was challenged by the petitioners in W.P.No.11053 of 2014 and orders and directions were issued to the petitioners therein to file a fresh application before the Tahsildar, Namakkal seeking patta for the land and on such application being presented, the Tahsildar was directed to conduct an enquiry.

16. Thereafter, the Revenue Tahsildar, Namakkal had sent a report stating that as the 2nd respondent had already rejected the application seeking patta hence as per rules the Revenue Tahsildar was not competent to pass orders. Thereafter, the matter was referred to the District Revenue Officer who on perusing the records had rejected the claim of the petitioners. Therefore, they sought for the dismissal of the Writ Petition.

17. A reply affidavit has been filed by the petitioners to the counter of the 6th respondent. The petitioners would submit that the temple in question was built by persons belonging to the Pudhu Veedi as they were not permitted to enter the Mariamman temple. The entire construction was funded by the public. Neither the department nor the temple had spent a single penny towards the renovation and maintenance of the temple and it is the people of the Village who are maintaining the temple and carrying out the rituals.

18. The HR & CE Department are not in possession of any document except the A Register. In fact, it is the contention of the petitioners that in response to an RTI query made by the petitioners to the HR & CE Department they had provided only the A Register particulars whereas the petitioners are supported by registered documents spanning a century. The petitioners would submit that the land in question which has been classified as Gram Natham has been erroneously altered as temple land.

19. The petitioners would further submit that the impugned order has been passed on the ground that the representation is belated for raising objection under the Ryotwari Act which had expired on 20.08.1987. However, the 4th respondent had failed to appreciate that the petitioners had been granted patta and they are only challenging its cancellation subsequently. A cancellation which has done nearly 2 decades after the issue of patta. Added to that the temple has no documents to prove their case.

20. Heard the learned Senior Counsel for petitioners and the learned Spl GP for respondents 1 to 5 and learned AGP for the 6th respondent.

21. The impugned order has been passed only on the ground of delay. The 4th respondent had overlooked the fact that the petitioners have not sought an alteration or correction in the patta. They have been issued with the patta on 05.04.1994 and this has been set aside by an order of the 4th respondent on 26.06.2012. All the other proceedings are only challenges to this order. Therefore, the ground on which the impugned order has been passed is absolutely misconceived. However, the order clearly shows that the authority has not considered the issue on its merits and has been simply relied on an alleged delay. Further, in the earlier writ petition in WP.No.10053 of 2014 this Court had passed the following orders:-

> *"6. However, in view of the limited request made by the learned counsel for the petitioners, this Court, without expressing any opinion on the merits of the case, directs the petitioners to file appropriate application under the Tamil Nadu Patta Passbook Act before the fifth respondent and the fifth respondent is directed to consider the said application and pass appropriate orders without in any way influenced by any of order passed by the second and fourth respondents, after affording an opportunity of hearing to the sixth respondent and the petitioners. The petitioners are directed to file the said application within a*

period of two weeks from the date of receipt of a copy of this order and on receipt of such application, the fifth respondent is directed to pass appropriate orders, on merits and in accordance with law, within a period of twelve weeks thereafter."

22. It is on the basis of this order that the application has been filed. Therefore, the question of delay would not apply. Further, Mr.A.Selvendran learned Spl.GP. appearing for respondents 1 to 5 was also constrained to admit that the impugned order was passed without considering the issue on its merits. Therefore, the Writ Petition is allowed and the matter is remitted back to the 2nd respondent for fresh consideration who shall consider it on the merits and the documents submitted by the parties after giving notice to all the parties, without being influenced by any earlier orders. The said exercise shall be completed within a period of 4 months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.12.2024

(shr)
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

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