



W.P.No.30783 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.02.2024

Orders Pronounced on : 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.30783 of 2018

1. C.Vasumathi
2. R.Manjula
3. R.Chitra
4. R.Punitha

.. Petitioners

Vs.

1. A/m Vedaranyeswaraswami Devasthanamm,
Represented by its Executive Officer,
Vedaranyam, Nagapattinam District.
2. The Settlement Officer,
Ezhilagam, Chennai-600 005.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the second respondent in Na.Ka.U(2),Se.Ma.08/2010, dated 31.08.2018 and quash the same.

For petitioners : Mr.K.Chandrasekaran

For respondents: Mr.Wilson Topaz for R-1
Mr.A.Selvendran, Spl.G.P. for R-2



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ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the second respondent in Na.Ka.U(2),Se.Ma.08/2010, dated 31.08.2018 and quash the same.

2. It is the case of the petitioners (who are relatives to each other) that their predecessor-in-interest was one V.S.Ratinam Chettiar and the petitioners herein are his heirs. The Temple (first respondent herein) had never applied for Patta. The Assistant Settlement Officer, Padukkottai, initiated suo-motu proceedings under Section 15(4) of the Tamil Nadu Minor Inam Estates (Abolition and Conversion into Ryotwari) Act (26 of 1963). The first respondent-Temple neither raised any objection to the proceedings, nor claimed Patta under Section 8 of Section 9 of the said Act. Admittedly, the site is a house-site with a building in the main Road of Vedaranyam Taluk. The building in question has been in existence even before the Notification and it was taken over as early as on 15.06.1968. The said V.S.Ratinam Chettiar had been in possession as owner of the superstructure under document No.482/1965, dated 03.04.1965. Further, no cultivation was ever done in the property. As the first respondent/Temple had not claimed the ownership of the building, Sections 15(1) to 15(3) of the said Act will not apply, but Section 15(4) is applicable to the case on hand, which was



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applied by the Assistant Settlement Officer, Pattukottai and Patta was granted in favour of the first respondent-Temple. As against the said patta proceedings, a Revision was filed before the Special Commissioner, Chennai and the same was dismissed as time barred, against which, the said V.S.Ratinam Chettiar filed W.P.No.34355 of 2003 before this Court and the said W.P. was dismissed on 24.06.2004, against which, Writ Appeal No.2875 of 2004 was filed and a Division Bench of this Court allowed W.A.No.2875 of 2004 on 05.09.2007 directing the Assistant Settlement Officer to take up the case and pass orders on merits. It is further stated by the petitioner that the Office of the Assistant Settlement Officer, Pattukottai, merged with the Office of the Assistant Settlement Officer, Chennai North, the Assistant Settlement Officer, Chennai North passed order on 06.10.2009 in S.R.No.2/07(U2), granting Patta for New Survey No.175/308 = 2 cents and 175/309 = 1 cent, totalling 3 cents, in favour of the said V.S.Ratinam Chettiar, and as against the same, the first respondent-Temple filed an appeal before the second respondent, who passed the impugned order, against which the petitioners have filed the present Writ Petition to quash the impugned order dated 31.08.2018.

3. Learned counsel for the petitioner submitted that the Village Vedaranyam was notified and taken over under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act (Tamil Nadu Act 26 of 1963), on



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12.03.1965. Even prior to the above said date, one Ramachandra Iyer and Lakshmanan Iyer sold their property(ies) under the Registered Sale deeds, dated 10.10.1964 and 03.04.1965 and hence, the site in which the building(s) was erected, comes under the purview of Section 15(4) of the said Act. Though the first respondent {Arul-mighu Vedaranyeswara Swami Devasthanm (Temple)}, had not claimed any Patta, but, the Assistant Settlement Officer, Pattukottai initiated suo-motu proceedings, and therefore, there were proceedings between the Temple and late V.S.Rathinam Chettiar, who is the father of the writ petitioners here.

4. Learned counsel for the petitioners further submitted that earlier, the said V.S.Rathinam Chettiar filed Writ Petition No.34355 of 2003, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent therein, culminating in the order passed in No.Ni.Mu(Ki)/8/2000, dated 15.02.2003 and quash the same and forbear the respondents 1 to 3 therein from proceeding any further in the matter. The said Writ Petition was disposed of by the learned Single Judge of this Court, on 24.06.2004, accepting the order passed on 23.12.1971, which had not been served on the father of the petitioners herein, i.e. V.S.Rathinam Chettiar and that the order passed by the respondent-Special Commissioner-cum-Commissioner of Land Administration, Chennai, was confirmed and instead of remanding the matter to the authority to



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whom the case was remanded by the said respondent, the learned Single Judge in the said Writ Petition, had remitted the matter back to the Tribunal constituted under the Tamil Nadu Minor Inam Estates (Abolition and Conversion of Ryotwari) Act, 1963. This order of the learned Single Judge was challenged in Writ Appeal in W.A.No.2875 of 2004, and a Division Bench of this Court in the said Writ Appeal, by judgment dated 05.09.2007, remanded the matter to the authority concerned and observed as follows:

"8. In the aforesaid background, while the Devasthanam's claim in respect of Schedule-A land was allowed and no claim of Devasthanam in respect of Schedule-B land was accepted, for the same reason, it appears that the application for grant of patta in favour of other claimants, who had a building over Schedule-B land were accepted and allowed.

9. Though the aforesaid facts have been noticed by the Assistant Settlement Officer, Pudukottai, in the last paragraph while he dealt with Schedule's lands, vis-a-vis, the claim of the appellant (R.W.2), without discussing the aforesaid claim of the appellant (R.W.2), he rejected the claim of the appellant merely on the ground that the site belongs to the Devasthanam.

The aforesaid finding in the last portion in respect of appellant vis-a-vis Schedule B lands having been passed without noticing the relevant facts as discussed earlier and not disputed by the Devasthanam that the appellant has a building, having purchased from Mariappa Pillai on 3rd April, 1965, and paying rent to Devasthanam @ Rs.200/= per annum, the last part of such order cannot be upheld and, therefore, instead of remitting the matter to the appellate or revisional authority, it is desirable



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that the claim of the appellant (R.W.2) should be decided afresh on the basis of the statement already recorded and noticed in the order dated 23rd Nov., 1971.

We may make it clear that we are not disturbing the decision as contained in order dated 23rd Nov, 1971, passed by the Assistant Settlement Officer in respect of Devasthanam or, other Devasthanam as reflected therein; they are affirmed. The last part of the order where claim of appellant (R.W.2) has merely been rejected is only set aside and the matter is remitted back to the Assistant Settlement Officer to decide the claim of appellant (R.W.2) afresh on the basis of evidence on record as shown in the order dated 23rd Nov., 1971, which has been upheld by us. Decision in this regard be taken within a period of three months from the date of appearance of the appellant.

10. The order dated 24th June, 2004, passed by the learned single Judge in W.P.No.34355 of 2003 is modified to the extent above. The writ appeal is disposed of with the aforesaid observation. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs."

5. Learned counsel for the petitioners further contended that the Division Bench of this Court had remitted the back to the Assistant Settlement Officer, for fresh disposal, which is noticed from the above extracated portion of the judgment. Since the Office of the Assistant Settlement Officer, Thanjavur, got merged with the office of the Assistant Settlement Officer, North Chennai, by order dated 06.10.2009, in S.R.No.2/2007(U2), the Patta was granted in favour



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of the petitioners. As against the said order dated 06.10.2009, the Temple had preferred an appeal before the second respondent in Na.Ka.U(2).See.Ma.08/2010 and by order dated 31.08.2018, the second respondent reversed the findings of the Assistant Settlement Officer and granted Patta in favour of the first respondent/Temple. Hence, the present Writ Petition is filed challenging the said order dated 31.08.2018.

6. Learned counsel for the petitioners further submitted that, admittedly, there is/was a building(s) on the notified date and hence, Patta cannot be granted in favour of the first respondent/Temple under Section 15(4) of the said Act of 1963, as the petitioners are the owners of the building over the site and hence, they are also the owners of the site over which the building stands and therefore, the Patta ought to have been granted in favour of the petitioners.

7. According to the learned counsel for the petitioners, even as per the said Act 26 of 1963, the building in question and the site in question, will only vest with the owners of the building as on 12.03.1965, which is the notified date as per the above-said Act.

8. Learned counsel for the petitioners also submitted that, even if the predecessor-in-title of the petitioners, was in possession of the site along with the building as on 12.03.1965 and even if they had sold the same, they are entitled to the vesting order under Section 15(4) of the said Act of 1963. Moreover, the



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second respondent has granted Patta in favour of the first respondent-Devasthanam (Temple), and this would amount to issuing the Patta without application of mind.

9. Further, it is submitted by the learned counsel for the petitioners that the second respondent has not followed the three-Judge Bench decision of the Supreme Court, reported in 1996 (1) LW 19 (SC) (K.S.Thirugnanasambandam Chettiar (dead) by LRs., etc., etc., Vs. The Settlement Thasildar, Coimbatore-18 and others, etc., etc.).

10. While bringing the attention of this Court to the observations made in the above-said decision of the Supreme Court, learned counsel for the petitioners submitted that, though the Ryotwari Patta may not be admissible for the building, per-se, but it may be admissible for the sites standing thereon. He further submitted that Section 13 of the said Act of 1963 is a special provision which confers rights on the building-owners also, though in the strict sense, that right may not be a Ryotwari right conferable in the form of a Patta.

11. Thus, according to the learned counsel for the petitioners, as per the dictum laid down in the above-said decision of the Supreme Court, the petitioners are entitled to Patta under Section 15(4) of the said Act of 1963. Hence, the impugned order dated 31.08.2018 passed by the second respondent may be quashed.



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12. Learned counsel appearing for the first

respondent/Devasthanam/Temple, submitted that though the land(s)/site in question belongs to the Devasthanam, even though the village was taken-over by the Government under the said Act of 1963, however, the Devasthanam/Temple's right was recognised and the Patta was granted in favour of the Temple. The Government has not claimed any title and has also not issued the Patta either in the name of the predecessors-in-title of the petitioners, or the petitioners. The learned counsel for the Devasthanam further submitted that earlier, a Division Bench of this Court in W.A.No2875 of 2004, by judgment dated 05.09.2007, while issuing directions (stated supra), remitted the matter to the original authority being the Assistant Settlement Officer, Pattuukottai, found that the Settlement Officer, without discussing the claim of the petitioners herein, rejected the claim of the father of the petitioners, on the ground that the land/site in question belongs to the Temple/Devasthanam, and therefore, while remitting the matter back to the Settlement Officer, the Division Bench was of the view that the matter has to be dealt afresh only based on the evidence that was already given by the father of the petitioners in the proceedings. Therefore, the matter may be remitted back to the Assistant Settlement Officer, even though subsequently the same got merged with the respective area, and therefore, the Assistant Settlement Officer merged with the office of the



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Assistant Settlement Office, North, Chennai, who, vide order dated 06.10.2009, granted the Patta in favour of the petitioners. Challenging the same, the first respondent/Temple preferred appeal before the second respondent/Settlement Officer, Ezhilagam, Chennai, who had rightly held that the Assistant Settlement Officer, North Chennai, had not dealt with the evidence given by the father of the writ petitioners and the evidence of the father of the writ petitioners clearly shows that he himself admitted/accepted the title of the Temple by paying a sum of RS.200/- per annum as the rent and therefore, the second respondent had rightly considered the statement given before the Assistant Settlement Officer defending with the substance in 1971, as the proceedings and rightly held that the Temple/Devasthanam is entitled to get the Patta for the site.

13. Learned Special Government Pleader appearing for the second respondent submitted that the Supreme Court, in the decision referred to by the learned counsel for the petitioners, in 1996 (1) LW 19 (supra) held that Section 15(4) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act is an exception, even though the Ryotwari Patta can be granted only to the Ryotwari lands, however, the building is there and the dual ownership is not barred under the said Act, and therefore, the second respondent applied the mind and gave a finding in the impugned order based on the statement given by the father of the writ petitioners way-back in the year 1971 itself.



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14. Further, the Division Bench of this Court, in the decision reported in 2003 (1) LW 663 (SC) (Vedaranyeswaraswami Devasthanam Vs. A.C.Dharma Devi and others), as stated above also, while remanding the matter back to the Assistant Settlement Officer, gave a clear direction that only the finding has to be given based only on the evidence given by the father of the writ petitioners, and therefore, there is no perversity in the findings given by the second respondent in the impugned order and therefore, the Writ Petition is liable to be dismissed.

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

16. Admittedly, the land(s) in question originally belonged to the Temple/Devasthanam, being the first respondent herein, and as admitted, there is a building on the subject land(s) and even prior to 1963, the father (V.S.Rathinam Chettiar) of the writ petitioners, purchased the building from the owner of the building in question, in 1965 itself and the Tamil Nadu Act 26 of 1963 (i.e. Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act), was notified only on 15.06.1968 and the building was existing even before the Notification came into force and the father of the writ petitioners, was in possession, as the owner of the superstructure. Though Sections 15(1) to 15(3) of the said Act will not be applicable to the present case in respect of the land(s) in question, however, Section 15(4) of the said Act would apply.

17. Further, the Division Bench of this Court, in Writ Appeal No.2875 of



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2004, by judgment dated 05.09.2007 (V.S.Rathinam Chettiar Vs. Arulmighu Vedaranyeswara Swami Temple, rep. by its Executive Officer, Vedaranyanm, Nagapattinam and 3 others), remitted the matter back to the original authority being the Assistant Settlement Officer, Thanjavur, since the Assistant Settlement Officer, Thanjavur, got merged with the Assistant Settlement Officer, North Chennai and after enquiry, they have also given the Patta to the petitioners and since earlier, the Division Bench of this Court has taken note of these aspects of the matter, but however, the Assistant Settlement Officer, Thanjavur did not consider the statement given by the father of the writ petitioners and the Court proceeded with the matter based on the proceedings of the year 1971 and remitted the matter back to the Assistant Commissioner for fresh consideration based only on the statement, for the limited purpose of considering the statement given by the father of the writ petitioners, being the original proceedings.

18. On a perusal of the statement and records, it is seen that even the Assistant Settlement Officer, in his order, had discussed about the statements, however, he failed to note the said facts, but they have admitted the payment of rent to the first respondent-Devasthanam (Temple) and even the Patta was also granted to the Temple. Though the site in question belonged to the Temple/Devasthanam, the predecessors-in-title of the present writ petitioners,

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had constructed the building in question and the father of the writ petitioners purchased the said building in 1965 after the above said Act 26 of 1963 was notified and the Government took the land(s) in question, but however, the title of the Temple/Devasthanam was recognized by the Government and also the father of the writ petitioners and even his predecessors-in-title had paid the rent to the Temple and they did not apply for Patta, and therefore, in the above said circumstances, the second respondent, based on the admission in the statement given by the father of the writ petitioners that they have paid the rent at Rs.200/- in respect of the site in question being vacant and the Temple also issued receipt to the predecessors-in-title of the writ petitioners and the father of the writ petitioners.

19. Though it is contended by the learned counsel for the petitioners that the property(ies) in question does not belong to the first respondent/Temple (Devasthanam), however, there is clear evidence that the title of the Temple is admitted by payment of rent to the Temple. Hence, this Court is of the view that there is no perversity in the impugned order passed by the second respondent.

20. Further, there is no quarrel over the proposition of law laid down by the Supreme Court in the decision reported in 1996 (1) LW 19 (SC) (cited supra) and also the decision of a Division Bench of this Court, reported in 2003 (1) LW 663 (cited supra) and both these decisions are distinguishable on facts and



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therefore, they are not applicable to the facts of the present case.

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21. Moreover, in the case on hand, since the writ petitioners have admitted the title and also paid the rent and that the title of the property in question, continued to vest with the Temple and they have also given Patta only to the building alone and not to the site in question.

22. But however, considering the facts and circumstances of the case on hand, when once the owner of the building, even after coming into force of the Tamil Nadu Act 26 of 1963 (supra) recognized and accepted the title of the Temple and paid the rent for the land(s) in question and admitted that they have put up superstructure over the property in question and only claimed the ownership of the superstructure and even as per the evidence, they have never claimed the ownership of the land(s) on the earlier occasion. Hence, in the above circumstances, this Writ Petition is liable to be dismissed.

23. Accordingly, the Writ Petition is dismissed. However, there shall be no order as to costs.

04.06.2024

Index: Yes/no

Speaking Order: Yes/no

Neutral Case Citation: Yes/no

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To
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1. Arulmighu Vedaranyeswaraswami Devasthanamm,
Represented by its Executive Officer,
Vedaranyam, Nagapattinam District.
2. The Settlement Officer,
Ezhilagam, Chennai-600 005.



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P.VELMURUGAN, J

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Pre-delivery Order
in W.P.No.30783 of 2018

Judgment Pronounced
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