BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.07.2024

DELIVERED ON : 23.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.12190 of 2021
and
W.M.P.(MD)Nos.9591 and 9592 of 2021

1.The President,
Uchipuli Pudhu Nagaram Muslim
Jamath Nirvaga Sabhai,
Pudhu Nagaram,
Uchipuli Post,
Ramanathapuram District.

2.The President,
Muslim Jamath Trust Pallivasa,
Enmanamkondan,
Uchipuli Post,
Ramanathapuram District. ... Petitioners

Vs.

1.The Principal Secretary /
Commissioner of Land Administration,
Chepauk,
Chennai-600 005.

2.The Settlement Officer (South),
O/o the Commissioner and Director
of Survey and Settlement,
Chepauk,
Chennai – 600 005.

3.The District Collector,
Collectorate,
Ramanathapuram District.

4.The District Revenue Officer,
District Revenue Office,
Ramanathapuram. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the first respondent herein in his proceedings in R.Dis(k1)36728/04, dated 27.04.2021 and quash the same as illegal and further direct the respondents herein to restore the lands in the Revenue records in the name of "Pudhunagaram and Enmanamkondan Muslim Jamath" to an extent of 0.61.5 Hectares in Survey No.9/1, Ramanathapuram Taluk and District, within a time stipulated by this Court.

For Petitioners : Mr.V.Meenakshi Sundaram

For Respondents : Mr.V.OM Prakash
Government Advocate

ORDER

The Writ Petition is directed against the order dated 27.04.2021 passed by the first respondent and for direction to the respondents to restore the lands in the revenue records in the name of "Pudhunagaram and Enmanamkondan Muslim Jamath" to an extent of 0.61.5 hectares in Survey No.9/1, Ramanathapuram Taluk and Ramanathapuram District.

2. The case of the petitioner is that the land to an extent of 0.61.5 Hectares in Survey No.9/1 of Ramanathapuram Taluk, originally belonged to Muslim people representing both the Muslim Jamaths, that the Muslim Jamathars are jointly in possession and enjoyment of the subject matter land for the past 300 years, that there is a Shrine or Dargah by name Nagore Shahul Hameed Andavar in memory of Muslim Saint Syed Shahul Hameed who lived and died in that place, surrounding the subject matter land, that the surrounding Shrine or Dargah lands are situated in Survey Nos.7/2, 7/3 and 8, whereas the land in Survey No.9/1 is situated on the eastern side of said Dargah, that the said Dargah is being worshiped by various communities and religious people including Hindus and Christians in that locality, that during the survey settlement,

after the Inam Abolition Act, the then Trustee of Ramanathapuram Samasthanam Chathiram by undue influence obtained the patta for the land in dispute and on the basis of the patta obtained, they filed a suit in O.S.No.367 of 1990 before the District Munsif Court, Ramanathapuram for permanent injunction as if they are in possession, that during the pendency of the civil suit, the Trustee of Ramanathapuram Samasthanam and Chathiram conducted an enquiry and agreed to transfer the patta in their favour and that on the basis of the joint memo, the suit in O.S.No. 367 of 1990 was dismissed, vide judgment and decree dated 20.11.1990.

3. It is the further case of the petitioner that they submitted a representation before the Assistant Settlement Officer, Madurai, on the basis of the decree passed in the civil suit and the Assistant Settlement Officer had taken note of the decree and also conducted a detailed enquiry and came to the conclusion that the subject matter land was classified as Ryot Poramboke – Dargah while implementing the Land Revenue Scheme, that the Assistant Settlement Officer, based on the available records, more importantly SLR register, no objection certificate from the Trustee of Ramanathapuram Samasthanam Chathiram, has

passed an order for mutation of revenue entry in the name of "Sahul Hamed Andavar Dargah and Enmanamkondan and Pudhunagaram Jamath" without changing the classification as Sarkar Poramboke, that the Tahsildar, Ramanathapuram effected the said mutation in the joint name of the Muslim Jamath of the petitioners, that the petitioners have been paying kist and electricity charges till now, that while so, as per the recommendation of the second respondent, the first respondent had taken up a case suo motu revision under Section 7(c) of the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 1963 r/w G.O.Ms.No.370, Commercial Taxes and Endowment Department, dated 03.10.1974, cancelled the order passed by the Assistant Settlement Officer, Madurai, vide order dated 27.04.2021, that the first respondent cancelled the patta mainly on the ground that the application made by the petitioners for mutating the revenue records are time barred and that the first respondent without any notice, by violating the principles of natural justice, passed the impugned order dated 27.04.2021 and as such, the same is liable to be quashed.

4. The third respondent has filed a counter affidavit stating that Enmanamkondan Village in Ramanathapuram Taluk and District is 1/2 portion Jamin and 1/2 portion Inam Village, that the said village as per "A" Register was notified in G.O.Ms.No.2093 of Revenue Department dated 11.08.1949, under the provision of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act and G.O.Ms.No.1119, dated 30.03.1965 under the provisions of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1963 and the settlement was taken up by the Government on 01.05.1965, that during the settlement process, the subject property in Survey No.9/1, measuring to an extent of 0.61.5 hectares was settled and classified as "Sarkar Poramboke – Chatram", that the Assistant Settlement Officer had sent a proposal to the second respondent to cancel the patta granted, vide letter dated 29.12.2003 and 01.09.2004 on the grounds that the then Assistant Settlement Officer, Madurai had no locus standi to change the classification of the land, that the said Assistant Settlement Officer, Madurai has misinterpreted the provision and pass orders by changing the classification from "Sarkar Pormboke" in the names of "Sahul Hameed Aandavar Tharga and Enmanamkondan, Pudhunagaram Jamath", that no claim should have

been entertained after the notification date, i.e., 31.03.1977, that the first respondent has passed the impugned order that the report of the Settlement Officer / District Revenue Officer in S.R.No.38, dated 02.02.1996 is irregular and illegal in nature and any action taken based on the erroneous order shall automatically become null and void, that there is absolutely no illegality found place in the impugned order and that therefore, the petition is liable to be dismissed.

5. The learned Counsel for the petitioner would mainly contend that the first respondent without issuing any notice, without conducting any enquiry and without giving any opportunity of being heard, has passed the impugned order in total violation of the principles of natural justice, that the first respondent failed to consider the judgment and decree passed in O.S.No.367 of 1990, on the file of the District Munsif Court, Ramanathapuram, wherein the petitioners' right came to be crystallised, that though the Statute does not prescribe any time limit for exercise of suo motu revisional power, it does not mean that such power can be exercised at any point of time and that therefore, the impugned order passed in the suo motu revision cannot legally be sustained.

6. As already pointed out, the petitioners have been claiming that the property in dispute, i.e., the land in S.No.9/1 is situated on the eastern side of the Dargah and its lands. It is not in dispute that Ramanathapuram Samasthanam Chathiram represented by its hereditary trustee Rani Indira Devi Nachiyar has filed a suit against the petitioners Jamath in O.S.No.367 of 1990, on the file of the District Munsif Court, Ramanathapuram, claiming permanent injunction, restraining the defendants and their men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the property and during the pendency of the suit, a joint memo came to be filed by both parties, wherein the plaintiff – Ramanathapuram Samasthanam Chathiram has stated that the property in dispute ie., the property in Survey o.9/1 belongs to the defendants' Jamaths and they have no objection to issue patta in favour of the defendants and that the learned District Munsif, recording the joint memo filed by both parties, has passed the judgment and decree dated 20.11.1990, dismissing the suit.

7. As rightly contended by the learned Counsel for the petitioner, the first respondent in the impugned order, has not considered the filing of the suit by the Ramanathapuram Samasthanam Chathiram and the joint memo filed by the parties therein and the dismissal of the suit recording the compromise between the parties. It is not in dispute that after the dismissal of the suit in O.S.No.367 of 1990, the petitioners have submitted an application to the Assistant Settlement Officer to grant patta in favour of the petitioners' Jamath and the Assistant Settlement Oficer, Madurai, after scrutinizing the proceedings of the third respondent and the SLR Register, has come to a conclusion that the subject matter land was classified as “Ryot Poramboke – Dargah”, but subsequently wrongly classified as “Sarkar Poramboke – Chathiram” during the Land Revenue Scheme. It is not in dispute that the second respondent has sent a proposal to cancel the patta issued in favour of the petitioners Jamath, as the then Assistant Settlement Oficer has no power or jurisdiction to change the classification of the land. On the basis of the said representation, the first respondent has taken a suo motu revision and in the said representation, he has passed the impugned order dated

27.04.2021 by holding that the order passed by the Assistant Settlement Officer, dated 02.02.1996 is illegal and irregular and any action taken based on the erroneous order shall automatically become null and void.

8. As rightly pointed out by the learned Counsel for the petitioner, it is not the case of the official respondents that after taking the suo motu revision, notice was sent to the petitioners, enquiry was conducted and the petitioners were given reasonable opportunities of being heard and that thereafter, the impugned order came to be passed. Even in the impugned order, the first respondent has nowhere whispered that the petitioners were heard before ever passing the impugned order. It is fundamental that before passing any adverse order against a person, he must be heard and that is the basic concept of principles of the natural justice.

9. In the present case, the first respondent, after taking suo motu revision has neither sent any notice nor conduct any sought of enquiry, nor reasonable opportunity of being heard was given to the persons against whom the impugned order came to be passed. Considering the

above, this Court has no hesitation to hold that the impugned order came to be passed in total violation of the principles of natural justice.

10. The learned Counsel for the petitioner would contend that though the Assistant Settlement Officer has passed an order dated 02.02.1996, suo motu revision was taken up after a lapse of 25 years and the impugned order came to be passed and that though the Statute does not prescribe any time limit for exercise of suo motu revisional power, that does not mean that such power can be exercised at any point of time.

11. No doubt, as rightly contended by the learned Government Advocate appearing for the respondents, as per Section 7(c) of the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 1963, the first respondent is having power and jurisdiction to revise / cancel any orders passed under the said Act. Section 7(c) of the said Act contemplats that the Board of Revenue shall have power to cancel or revise any of the orders, acts or proceedings of the Director or of any District Collector, including those passed, done or taken in the exercise of revisional powers. But admittedly the said Act dos not contemplate

any period of limitation for exercising the revisional power under Section 7(c) of the said Act.

12. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of ***Joint Collector Ranga Reddy Vs. D.Narsing Rao*** reported in ***AIR 2015 SC 1021***, relied on by the learned Counsel for the petitioner, wherein the Hon'ble Apex Court, after referring to various decisions, while summing up, has held as follows:

> “To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule

of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority. "

13. The Hon'ble Apex Court has also reiterated the settled legal position that if a Statute does not prescribe any time limit for exercise of revisional power, it does not mean that such power can be exercised at any point of time, rather it should be exercised within a reasonable time. The Hon'ble Apex Court, taking note of some decisions, has observed that ordinarily, the reasonable period within which the power of revision may be exercised would be three years and even in the case of fraud, the revisional power must be exercised within a reasonable time from the date of detection of or discovery of fraud.

14. In the case on hand, according to the official respondents, the second respondent – Settlement Officer / District Revenue Officer, Chennai has sent a proposal to the second respondent to cancel the patta vide proceedings dated 29.12.2003 and 01.09.2004. Considering the above, it can easily be inferred that even according to the official respondents, they have come to know that patta came to be issued fraudulently in the name of the petitioners even in the year 2003 itself. But the suo motu revision was taken up in the year 2021 after the lapse of 18 years.

15. As already pointed out, the impugned order came to be passed after the lapse of more than 25 years from 30.01.1996, the date on which the Assistant Settlement Officer has passed orders in favour of the petitioners Jamath. Considering the legal dictum laid down by the Hon'ble Supreme Court above referred, this Court has no other option but to hold that the impugned order which is legally unsustainable is liable to be quashed.

16. In the result, the Writ Petition is allowed and the impugned order passed by the first respondent, in his proceedings in R.Dis(k1)36728/04, dated 27.04.2021, is hereby quashed. The respondents are directed to restore the lands in the name of the petitioner Jamath. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

23.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

SSL
To
1.The Principal Secretary /
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2.The Settlement Officer (South),
O/o the Commissioner and Director
of Survey and Settlement,
Chepauk, Chennai – 600 005.

3.The District Collector,
Collectorate,
Ramanathapuram District.

4.The District Revenue Officer,
District Revenue Office,
Ramanathapuram.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY ORDER MADE IN

W.P.(MD)No.12190 of 2021

23.08.2024