
(2009) 10 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 1309 of 2008

K. Sathar @ Irusa Gounder

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 22-10-2009

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 18, 3
Tamil Nadu Land Encroachment Act, 1905 — Section 2

Citation : (2009) 10 MAD CK 0007

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : C. Kulanthaivel, for the Appellant; T. Seenivasan, Additional Government Pleader for Respondents 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is directed against the impugned order of the second respondent dated 27.12.2007.

2.1. Under the impugned order dated 27.12.2007, the second respondent while admitting that an extent of 1130 sq. ft. of land is a natham land in

respect of which patta has been granted in favour of the petitioner and he has been in possession of the said land for over 10 years, found that out

of the 1130 sq. ft. in Survey No. 483/6 with patta No. 202, the petitioner has put up a structure in 730 sq. ft. in which he is residing and has left

the balance extent of 400 sq. ft. vacant.

2.2. It is also stated in the impugned order that the petitioner has encroached poramboke land of the extent of 290 sq. ft. comprised in Survey No.

483/7. However, the dispute in this writ petition, as also seen in the impugned order of the second respondent, is only in respect of the 400 sq. ft.

of vacant land in survey No. 483/6 in patta No. 202, for which the patta admittedly stands in the name of the petitioner in respect of the larger extent of 1130 sq. ft., the entire extent having been categorised as natham.

2.3. It is further stated in the impugned order that the second respondent has convened a peace meeting since the villagers have attempted to enter

into the above said 400 sq. ft. of vacant land for putting up a temple, which was objected to by the petitioner. Since the petitioner did not appear

for the peace meeting, the second respondent, coming to a conclusion that the petitioner has violated the conditions of HSD for grant of natham

patta by keeping 400 sq. ft. of land vacant, issued a direction cancelling the patta granted to the petitioner in patta No. 202 in respect of Survey

No. 483/6 insofar as it relates to the above said 400 sq. ft. of vacant land. It is against the said impugned order, the petitioner has approached this

Court by filing the above writ petition.

3.1. The basic contention of the petitioner, as raised by the learned Counsel for the petitioner, is that when admittedly patta has been granted in

respect of the larger extent of 1130 sq. ft. in which the petitioner has put up a house and is residing there, the natham character of the land has not

been taken away and therefore, the authorities have no right to interfere with his possession. The learned Counsel would rely upon the judgment of

the Division Bench of this Court in *The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District*

Collector and The Revenue Divisional Officer, to substantiate his contention.

3.2. Further, it is the case of the petitioner that even otherwise simply because the petitioner did not participate in the peace committee meeting

which was conducted by the second respondent at the instance of some of the village people, namely respondents 5 and 6, it does not empower

the second respondent to cancel the natham patta issued to the petitioner without following the due process of law. The impugned order has been

passed by cancelling the patta insofar as it relates to 400 sq. ft. of land which is kept vacant without notice to the petitioner and therefore, it is in

violation of the principles of natural justice.

3.3. It is also his case that the petitioner has already approached the Civil Court and obtained an order of injunction against respondents 5 and 6

and thereafter, the petitioner has filed another suit against the respondents and

the same is pending. Thus, when the Civil Court is seized of the matter, the impugned order came to be passed hurriedly because of the pressure given by the villagers in the area and therefore, the same is untenable.

4. On the other hand, Mr. T. Seenivasan, learned Additional Government Pleader appearing for respondents 1 to 4 would contend that when once the patta is issued in respect of the natham land, it is the duty of the assignee to comply with the terms and conditions of the assignment, one of such terms being that the land is assigned for the purpose of putting up a construction and not for keeping the land vacant. Therefore, when the conditions are not followed, it is always open to the Government, which has assigned the natham land, to take possession of that portion since the same has to be given to other people who are deserving, based on the concept of social justice and therefore, according to him the order does not suffer from any infirmity or illegality whatsoever.

5. A reference to the impugned order makes it clear that the original patta has been granted to the petitioner in respect of the larger extent, namely 1130 sq. ft. for survey No. 483/6 and patta was issued with patta No. 202 and the case of the petitioner that he has been in possession for more than ten years has not been controverted by the respondents. In any event, as it is seen in the records, the petitioner has already filed a civil suit against respondents 5 and 6 in O.S. No. 183 of 2007 on the file of the District Munsif Court, Sankari and the trial Court has granted an order of injunction against respondents 5 and 6, which according to the petitioner continues even as on date. It was thereafter realizing that the revenue officials are attempting to interfere with the possession of the property, the petitioner has filed another suit in O.S. No. 289 of 2007 on the file of the District Munsif Court, Sankari and the same is pending. It was during the pendency of these proceedings the impugned order came to be passed by the second respondent.

6. It is seen that the second respondent has been prompted to pass the impugned order due to agitation by the villagers, who for the purpose of putting up a temple for the village have entered into the vacant land allotted to the petitioner, which was objected to by the petitioner. The second respondent, in those circumstances, called on the parties for a compromise in the

form of a peace talk and in the peace meeting the petitioner has not participated. The second respondent, taking note of the fact that the said 400 sq. ft. of land has been kept vacant, has directed that the patta issued in respect of the above said vacant land has to be cancelled.

7. Even assuming that there has been public pressure on the second respondent as there was an attempt by the villagers to enter into the vacant land of the petitioner to put up a temple which was objected to by the petitioner, when it is an admitted case that the patta has been cancelled in respect of the vacant land of an extent of 400 sq. ft., such cancellation should be only after giving opportunity to the patta holder and conduct of enquiry in the manner known to law. Simply because a group of people in the village have entered into some others property that cannot give rise to any jurisdiction on the part of the public authority to abruptly cancel the patta yielding to the grievance of the public. The public authority should act as per the law and the basic principle of natural justice is to give opportunity to the petitioner to whom civil right has already accrued. On the facts and circumstances, while admittedly the land happens to be a natham land which has been assigned to the petitioner long ago, certainly a civil right has already accrued to the petitioner. When such civil right is sought to be taken away even for the purpose of violation of such terms of assignment, the authority is expected to give prior notice to the petitioner and give opportunity to him and pass appropriate orders.

8. A reference to the impugned order shows that the same has been passed behind the back of the petitioner simply because the petitioner refused to participate in the peace meeting. At this juncture, it is relevant to state that respondents 5 and 6 having received notice from this Court have not chosen to appear before this Court and that also speaks volumes of the conduct of respondents 5 and 6 against whom the petitioner has moved the civil court and obtained an order of injunction.

9. In *The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer*, the Division Bench of this Court had an occasion to decide about the definition of "Grama Natham" and held that when once grama natham land as a housing site is assigned to a recipient either by grant of patta or otherwise, such land does not stand transferred to the

Government, and that such transfer is not effected even by a statutory enactment as per the Madras Estates (Abolition and Conversion into

Ryotwari) Act, 1948 and also the Madras Land Encroachment Act, 1905. The Division Bench, after perusal of the provisions of the above said

Acts, has held that the title to a house site in a Grama Natham is protected from transfer to Government, as follows:

9. A perusal of a combined reading of Section 3(b) and Section 18 of Madras Estates (Abolition and Conversion into Ryotwari) Act viz., Madras

Act XXVI of 1948 and Section 2 of the Madras Land Encroachment Act, 1905 discloses that the title to a house site in a Grama Natham is

protected from transfer to Government.

10. The Division Bench has also defined ""Grama Natham"" as follows:

12. Further, "Grama Natham" is defined in the Law Lexicon as ""ground set apart on which the house of village may be built"". Similarly, Natham

land is described in Tamil lexicon published under the authority of University of Madras to the effect that it is a residential portion of a village; or

portion of a village inhabited by the non-Brahmins; or land reserved as house sites; etc.

13. In the light of the above and in view of the fact that the admitted classification of the land being a "Grama Natham", it is obvious that the land

was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the

lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at

the instance of the resolution passed by the Panchayat is not sustainable. Further such a summary eviction is not permissible in law when the

disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions.

14. As regards the further contention of the learned Counsel for the appellant to the effect that the impugned order came to be passed only in view

of the observation of this Court, it is seen that the said observation was made in the earlier writ petitions, permitting the authorities to take action

only in accordance with law. In the previous litigations, no finding was rendered with regard to the classification of the land as "Grama Natham"

and only liberty was reserved to the authorities, which would not enable them to

proceed in the manner as set out in the impugned order." thereby

holding that when a land has been assigned as a Grama Natham by classification, it does not vest with the Government.

11. On the facts and circumstances of the present case, as it is seen in the impugned order, the property in dispute has been categorised as Grama

Natham and in such view of the matter, it cannot be presumed to be a land vested with the Government when once it is assigned to the petitioner

and his predecessors in title.

12. In such view of the matter, even if the Government takes a decision to repossess the Grama Natham on the basis that any of the conditions of

assignment have been violated, the fundamental principles of natural justice requires that the assignee should be given an opportunity before

restoring possession to the Government. Such opportunity having not been given on the facts and circumstances of the present case, I am unable to

accept the contention of the learned Additional Government Pleader that the order has been passed in the interest of maintaining peace in the area

and therefore, it should be upheld. Maintenance of peace and law and order is a fundamental duty of the Government and the authorities governing

various areas of the State and it does not mean that for maintaining law and order the individual rights which have been conferred as per law should

be disturbed by violation of principles of natural justice. Therefore, on the application of the basic principles of natural justice the impugned order

has to be set aside.

For the foregoing reasons, the writ petition stands allowed and the impugned order of the second respondent dated 27.12.2007 is set aside.

However, it is always open to the Government to take appropriate action if there is any violation of the conditions of the assignment, if so advised,

and such action is expected to be taken only in the manner known to law. Consequently, M.P. No. 1 of 2008 is closed.