
(2011) 01 MAD CK 0030

In the Madras High Court

Case No : Writ Petition (MD) No. 10857 of 2005

Nagamoni Sastha

APPELLANT

Vs

The Special Commissioner and Commissioner of Land
Administration

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2011) 01 MAD CK 0030

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Rajesh Kanna, for A. Sankara subramanian, for the Appellant; D. Sasikumar, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioner has filed the present writ petition seeking the relief of writ of certiorari in calling for the records of the

Respondent in R. Dis.(K1) RP 4/2002 dated 21/10/2005 and quash the same.

2. According to the learned Counsel appearing for the Petitioner, the Petitioner's father S. Nagamony has purchased 21 cents of lands in S. No.

1012 in the year 1945, 1 acre and 60 cents in S. No. 1015 and 53 cents of lands in S. No. 1013 and these lands originally form part of Thovalai

Village. At the time of resettlement, these land shave become part of Aralvaimozhi Village.

3. It is the case of the Petitioner that his father has been in possession and enjoyment of the lands referred to supra and on 3/12/1959, he has

executed a registered gift deed in favor of the Petitioner and delivered possession of the lands to him on 3/12/1959. As far as the present writ

petition is concerned, 21 cents of land in S. No. 1012 forms part of the subject matter.

4. The learned Counsel appearing for the Petitioner urges before this Court that the aforesaid lands have been originally part of Travancore

Cochin State and subsequently, Kanyakumari District has been merged with Tamil Nadu State. During that period, survey and settlement have

been introduced in that area. In the said Settlement, a portion of extent of 21 cents in S. No. 1012 has been wrongly classified as road poramboke

by the settlement authorities. Survey No. 1012 has been correlated as S. No. 263/3 and 4 of Aralvaimozhi Village. A portion of an extent in S.

No. 1012 has become part of S. No. 263/3 and other portion has become part of S. No. 263/4. The Petitioner has obtained patta in regard to S.

Nos. 263/2, 263/4 comprises of old S. Nos. 1011/2, 1009/2 and a part of 1012.

5. The case of the Petitioner is that he has come to know of the wrong classification of the land during the year 1993. Also, the Village

Administrative Officer, omitted the S. No. 1012 equivalent to S. No. 263/4 in the tax receipt issued to the Petitioner during the year 1991. The

Petitioner has filed a petition on 6/3/1999 during the Assistant Settlement Officer, Madurai for making correction of the wrong entry as regards the

S. No. 263/4. In that petition, the District Collector, Kanyakumari and the Tahsildar, Thovalai Taluk have been arrayed as Respondents. The

Petitioner also filed a petition to the Director of Survey and Settlement, Chennai for rectifying the wrong entry and for issuance of patta in his name

for the said land. The petition has been sent to the Director of Survey and Settlement, Chennai on 4/3/1994. After a detailed enquiry, including the

local inspection of the land, an order dated 27/10/1995 canceling the entry in the Settlement Register showing the above land as road poramboke

has been passed and total extent of 20 Ares, 16 Ares have been shown as Police Parade ground and 4 Ares to be shown as Petitioner's land and

a direction has been issued for issuance of patta for 4 Ares to the Petitioner.

6. Admittedly, an appeal has been projected by the Tahsildar, Thovalai before the Director of Settlement, Chennai. Because of non-appearance of

both sides, the above said appeal has been dismissed on 23/6/1999. As against the dismissal of the appeal, the Tahsildar, Thovalai filed a revision

before the Respondent. The Respondent in his order dated 21/10/2005 as among

other things observed that the proceedings of all the settlement forums below are null and void and therefore, the claims of the Respondent are hereby dismissed and all the orders of the lower Settlement authorities are set aside and further ordered to restore the registries to the original classification as "Road".

7. The learned Counsel appearing for the Petitioner challenges the impugned order of the Respondent dated 21/10/2005 on the ground that the Respondent has proceeded on the basis that he has no power or jurisdiction to correct mistakes in the settlement which is quite in contravention of the Settlement Act and indeed, the Respondent has not made any full and thorough enquiry into the matter and also he has failed to refer to the old survey records etc.

8. The learned Counsel appearing for the Petitioner contends that the Petitioner has no other effective and efficacious alternative remedy other than filing of the present writ petition before this Court.

9. In short, it is the contention of the learned Counsel appearing for the Petitioner that the Respondent has not appreciated the factual material aspects of the matter in a right perspective which has resulted in serious miscarriage of justice and therefore, prays for allowing the writ petition in furtherance of substantial cause of justice.

10. Conversely, it is the submission of the learned Government Advocate appearing for the Respondent that the Respondent has taken into account of the relevant facts into account and has passed a considered and reasonable order dated 21/10/2005 which is assailed by the Petitioner in the writ petition and the Respondent has also in the course of his order has clearly held that the proceedings of all the Settlement Forums are null and void and as such dismissed the claim of the writ Petitioner besides setting aside all the settlement of the lower settlement authorities and consequently, ordered to restore the registries to the original classification as "road", which need not be interfered with by this Court at this distance of time sitting in writ jurisdiction.

11. This Court has heard the learned Counsel appearing for the Petitioner and also the learned Government Advocate appearing for the Respondent and noticed their contentions.

12. Though on the side of the Petitioner, appeal is raised that the Petitioner has no other effective and alternative remedy but for projecting the present writ petition as against the order of the Respondent dated 21/10/2005, it is to be noted that the Respondent in the impugned order dated 21/10/2005 has clearly held that the proceedings of all the Settlement Forums are null and void and as such dismissed the claim of the writ Petitioner besides setting aside all the settlement of the lower settlement authorities and consequently, ordered to restore the registries to the original classification as "road". as against the said order, the remedy of filing the Civil Suit as per Section 9 of the CPC is very much available to the Petitioner where all complex and complicated both factual and legal aspects of the matter can be gone into by the Civil court of course, the writ Petitioner arraying necessary parties to the said Civil Suit proceedings. When that being the position and all the more when the Petitioner has an effective, viable and alternative remedy of approaching the civil forum by filing the Civil Suit as per Section 9 of the Code of Civil Procedure, then it is not open to the Petitioner to approach this Court by means of filing of a writ petition and in writ petition, the issues raised by the Petitioner being factual in nature cannot be decided or it cannot be gone into by a writ Court and in this view of the matter, the writ petition consequently fails.

13. In the result, the writ petition is dismissed, leaving the parties to bear their own costs. Liberty is granted to the writ Petitioner to approach the competent Civil Court by filing necessary Civil Suit before the competent Court jasper the CPC and to seek appropriate remedy in the manner known to law and in accordance with law. Consequently, the connected Miscellaneous Petition is also dismissed.