

(2004) 09 MAD CK 0159

In the Madras High Court

Case No : Writ Petition No's. 14351 and 14352 of 1997

New Ambadi Estates Private Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 09 MAD CK 0159

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : S. Giridharan, for the Appellant; R. Chandrasekaran, G.A., for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—W.P. No. 14351 of 1997:- This writ petition is filed praying to issue a Writ of Mandamus forbearing the respondents herein from collecting B-Memo charges in respect of the schedule of properties described in the annexure to the writ petition (for which the Court of Competent jurisdiction has held the petitioner is not liable to pay B-Memo charges).

2. W.P. No. 14352 of 1997:- This writ petition is filed praying to issue a Writ of Mandamus forbearing the respondents herein from collecting B-Memo charges in respect of the schedule of properties described in the annexure to the writ petition (for which the Court of Competent jurisdiction has declared the petitioner's title and possession).

3. W.P.No. 14351 of 1997:- The case of the petitioner is that the petitioner company is the owner of the New Ambadi Estates situate in Kaliel and Thiraparappu villages of Vilavancode and Kalkulam Taluks of Kanyakumari District, that from 1942 onwards, the petitioner has been in lawful possession and enjoyment of the properties mentioned in the schedule; that in 1985, the officials of the Revenue Department started to disturb the petitioner's possession

and levied B-Memo charges in respect of some properties without any basis; that the petitioner filed a suit in O.S.No. 16 of 1996, on the file of the Subordinate Judge, Padmanabhapuram, for declaration that it is the owner of A schedule properties therein and for consequential injunction restraining the State from collecting B-memo charges, for declaration of plaintiff's title in respect of B, C and D schedule properties and for injunction restraining the State from disturbing petitioner's possession of those properties, for a declaration of title in respect of 98 acres out of 124.70 hectares in 'E' schedule properties and for consequential injunction, declaration of plaintiff's possession of 3 acres in F schedule properties as lessee of the owners thereof and for a permanent injunction against the State not to prevent the petitioner from cutting and removing the old and uneconomical rubber trees planted by the petitioner in the said properties.

4. The further pleadings are that the learned Subordinate Judge, Padmanabhapuram by judgment dated 22.4.1996 decreed the suit, granted all the reliefs as prayed for, except the refund of Rs. 12,000/= collected towards B-memo charges for F schedule properties. The respondents despite the judgment continued to levy B-Memo charges in respect of the very same properties, namely, A to F schedule, even though they have not preferred any appeal against the decree passed by the civil court. Hence, the writ petition.

5. W.P.No. 14352 of 1997:- In this writ petition, the case of the petitioner is that the petitioner company is the owner of the New Ambadi Estates situate in Kaliel and Thiraparappu villages of Vilavancode and Kalkulam Taluks of Kanyakumari District from 1942, while so, the revenue department officials in 1991 interfering with the petitioner's peaceful possession and enjoyment of the schedule mentioned properties and issued B-memo against the petitioner, he filed O.S.No. 127 of 1992 on the file of the Sub Court, Padmanabhapuram for declaration of petitioner's title and possession over B schedule properties and for mandatory injunction restraining the State to rectify the wrong classification of the B schedule lands in the revenue records and to issue patta for B and C schedule properties in favour of the petitioner. The Learned Subordinate Judge, Padmanabhapuram by judgment dated 22.4.1996 decreed the suit granting all the reliefs prayed for. Despite the judgment, which has become final, the respondents continued to levy B memo charges for B and C schedule properties. Thereafter, the respondents filed an appeal with the delay of 175 days and sought for condonation of such delay, against which, the petitioner filed a civil revision petition in this Court. Since the petitioner is in lawful possession of the schedule properties they are not liable to pay B-memo charges and hence, he moved the present writ petition for the relief as stated above.

6. In the counter filed in W.P.No. 14351 of 1997, the second respondent has submitted that the petitioner company had unauthorisedly occupied the Government poromboke lands and are enjoying the same by planting rubber trees and various other trees under Kuthagapattam and subsequently under the

Land Encroachment Act; that the suit filed by the petitioner in O.S.No. 45/1994 on the file of the Sub Court, Kuzhithurai was transferred to Sub Court, Padmanabhapuram and re-numbered as O.S.No. 16/1996; that the petitioner company had also filed another suit in O.S.No. 127/1992 on the file of the Sub Court, Padmanabhapuram for declaration of title and possession over some other properties and to rectify the wrong classification of the B schedule properties and to issue patta for C schedule properties; that since the subject matter of both the suits were similar, the Court disposed of the two cases simultaneously by a common judgment dated 22.4.1996 and the State has preferred A.S.No. 56 of 2000 on the file of the District Court, Nagercoil and later on it was transferred to the Additional District Court, Nagercoil and re-numbered as A.S. No. 19 of 2000, that the averment made by the writ petitioner that no appeal has been preferred by the State is erroneous; that A.S. No. 19/2000 was allowed by the District Court and the matter had been remanded to the trial court and again it was disposed of by the trial court on 25.2.2002, whereupon the State preferred an appeal in A.S. No. 58/2002 on the file of the Additional District Court, Nagercoil and it was decided in favour of the State on 14.1.2003; that the petitioner company is the owner of the patta lands is denied; that there are various Government poromboke lands lying within and adjacent to patta lands owned by the petitioner; that the petitioner estate has unauthorisedly occupied the Government poromboke lands and are enjoying the same along with their patta lands. According to the respondents, Kothagapattam right cannot confirm any patta right; that during the resurvey and settlement proceedings, those lands were classified as poromboke lands; that the levy of B-memo charges is only in accordance with law and there is no disturbance as contended by the petitioner; that the plea of the petitioner that they are liable to pay only kothagapattam rent is devoid of any merit and cannot be considered; that the petitioner has to prove that it had paid kothagapattam rent till 1984; that however, that will not confer any title over the Government poromboke land; that since the civil dispute has ended in favour of the suit filed in A.S. No. 58/2002, the State is the title holder of the schedule properties and they have every right to safeguard the interests of the Government properties.

7. The further pleadings of the counter affidavit are that the petitioner filed another writ petition in W.P. No. 14352 of 1997 in this Court and even though the petitioner had developed those lands as contended, it had derived huge income from those Government lands; that the petitioner did not file any objection or appeal against the classification made during re-survey and settlement proceedings as prescribed by rules; that the 98 acres of E schedule properties are also Government lands and the petitioner is liable to pay B-memo charges. On such averments, the respondents have prayed for the dismissal of the writ petitions. The respondents have filed a separate counter in W.P. No. 14352 of 1997 and the averments putforth therein are similar to the averments raised in the counter in W.P. No. 14351 of 1997 and therefore tracing the same would only be a repetition and time consuming affair.

8. Learned counsel appearing on behalf of the petitioner reiterated the same contentions as raised in the affidavit filed in support of the writ petitions.

9. Learned Government Advocate also submitted the same contentions as raised in the counter affidavit filed in both the writ petitions.

10. It is seen on a perusal of the records that the petitioner filed O.S. No. 157/1992 and O.S. No. 45/1994, and the second suit was later on transferred and renumbered as O.S. No. 16/1996 and both these suits were decided after remand by the trial court and the common judgment passed by the trial court having been appealed against as per the decision in A.S. No. 58 of 2002 dated 14.1.2003, petitioner's prayer in the suits were negatived and thereby the respondents submit that the said lands are Government poromboke lands and they are entitled to levy B-memo charges which has been upheld by the appellate civil forum and that the above decision has become final and the petitioner had not preferred any appeal therefrom and therefore, the issue has reached the finality and the petitioner is bound by the said decision of the civil court; that for such matters decided by the civil court the petitioner cannot seek an extraordinary remedy by way of writ before this Court after a long lapse of time.

11. It is an admitted fact that the petitioner company owns lands in the disputed villages. According to the petitioner, it is in lawful possession and enjoyment of the properties described in the schedule to the respective two petitions. According to the petitioner, the respondents have been collecting B-memo charges from the petitioner in respect of the very same properties, but subsequently, attempted to interfere with the petitioner's possession and tried to dispossess the petitioner. Hence, the petitioner has filed these writ petitions.

12. However, the respondents would submit that the lands in question are not patta lands, but Assessed Waste Dry and the petitioner, who is a rich pattadar has encroached upon the Government assessed waste dry lands and therefore, it is liable to be evicted. According to the respondents, even at the time of re-survey during the year 1972, the Survey Settlement authorities had measured the disputed lands as Government lands on the basis of the necessary documents and the petitioner did not question such classification at that point of time. According to the respondents, there is no rule in force to regularise any encroachment to rich pattadars. Admittedly, the writ petitioner did not file any appeal against such classification during re-survey proceedings and, hence, such classification has become final. According to the respondents, the 'A' register is a permanent valid documentary evidence to prove that the 'B' schedule properties in W.P. No. 14352/1997 are Government poromboke lands and the petitioner cannot take advantage of any omission in the Field Measurement Book. According to the respondents, after remand of the suit in O.S. No. 127 of 1992, which was decided against the State had been reversed in A.S. No. 57 of 2002 on the file of the Additional District Court, Nagercoil by judgment dated 14.1.2003 and that has become final. Therefore, the petitioner cannot seek to

get any relief in these writ petitions.

13. On going through the records, this Court finds that there is force in the statement made by the learned counsel for the respondents. Admittedly, re-survey proceedings were adopted in the year 1972 and against the classification of the disputed lands as Government poromboke or Assessed waste dry, the petitioner had not preferred any appeal. Further, the petitioner's claim in respect of the very same lands has been negated in A.S. Nos. 57 & 58 of 2002 by judgment dated 14.1.2003 and when the Civil Court has finally decided the matter against the petitioner, the petitioner cannot be permitted to raise the very same issue by way of these writ petitions before this Court seeking to exercise its jurisdiction under Article 226 of the Constitution of India. On those grounds, this Court has to hold that the petitioner is not entitled to any relief in these writ petitions and, hence, the following order.

In result,

- i) All the above writ petitions do not merit acceptance and they are dismissed as such;
- ii) The petitioner is not at all entitled to any relief sought for in these writ petitions.
- iii) The respondents are at liberty to initiate such measures either to collect the arrears of the 'B' Memo charges or even to evict the petitioner from the lands in question, since they have absolutely no right of any kind, to the sources known to law.

No costs.