
(2010) 04 MAD CK 0137

In the Madras High Court

Case No : Writ Petition No. 5410 of 2008

Ponni @ Kamala and Others

APPELLANT

Vs

The Special Commissioner and Commissioner for Land
Administration and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 MAD CK 0137

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : N. Damodaran, for the Appellant; R. Murali, G.A. for R1 to R3, S.N. Kirubanandam, Spl. G.P. for R4, V. Bhiman, for Sampathkumar Associates for R5, R6 and R17 and N.K. Sivakumar, for R7 to R14, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—This writ petition is filed by the petitioners through their Power Agent, for the issuance of a writ of certiorarified mandamus,

to call for the records pertaining to the classification and re-settlement of Survey No. 41/1 of an extent of 3 hectare 63.0 acres equivalent to 8

acres 97 cents at No. 82, Peramanur Village, Chengalpattu Taluk, Kancheepuram District under the UDR Scheme from the file of the 3rd

respondent and quash the same and consequently to direct the 3rd respondent to issue patta to the petitioners and respondents 5 to 17 regarding

their lands.

2. The case of the petitioners is that the dry land measuring to an extent of 8 acres 97 cents in S. No. 41/1 in No. 82, Peramanur Village,

Chengalpattu Taluk, was originally owned by one late Ramasubbiah. The said property was gifted by the then British Government in the 19th

century to the said Ramasubbiah along with Grama Mirasi rights. Ramasubbiah died in the year 1915 leaving behind his three sons, viz.,

Munusamyiah, Venkatasubbiah and Venkataramaiah. After his demise, the said three sons partitioned the property among themselves as their

absolute property. Due to various circumstances, the family, which was living in Peramanur village, slowly migrated to various places due to their

own avocations and jobs and ultimately, the cultivation process in the said land came to a standstill. The petitioners herein are the descendants of

late Ramasubbiah. Since the lands were not duly cultivated and only "Velikathan" trees and shrubs were grown, no assessment was collected from

the families. While so, the Government of Tamil Nadu developed the nearby lands and converted them into forest to grow various forest trees and

the development of forest lands was carried out around the petitioners' patta land. The petitioners' ancestors in the family had already earmarked

their patta lands in Survey No. 41 positively by planting palmyrah trees and putting black survey stones to denote the borders as far as possible.

The authorized village map clearly shows the clear demarcation of the forest land and patta land of the petitioners, which they derived from their ancestors.

3. It is the further case of the petitioners that on verification, the petitioners came to know that their land measuring to an extent of 8 acres 97 cents

in S. No. 41/1, in No. 82 Peramanur Village, Chengalpattu Taluk, was wrongly described as though included into the forest land as S. No. 41, old

Survey No. 41/1 measuring 3 Hectares 63 acres in forest land. On coming to know of such wrong description, an application was submitted to the

Commissioner of Land Administration at Chepauk-the 1st respondent, to grant a patta to their land stating that the land has already been gifted to

Ramasubbiah a century back and that the nearby forest could not be put against the petitioners' patta land or be shown as forest land and

therefore, the description as "forest land" is without any basis and truth. Subsequently, the petitioners sent another representation dated

17.03.2006 to the Tahsildar, Chengalpattu, the 3rd respondent herein, praying for grant of patta. Thereafter, yet another representation dated

06.11.2006 was sent to the 4th respondent, the District Forest Officer, Kancheepuram, to issue a "no objection certificate" for grant of patta in

respect of S. No. 41/1 to an extent of 8 acres 97 cents in Peramanur Village. Though the Forest Range Officer at Chengalpattu had recommended

to issue a "no objection certificate", the 4th respondent-the District Forest Officer replied that unless the revenue department cancels their wrong

classification, the no objection certificate cannot be issued. The petitioners have no other alternative remedy except to approach this Court by

invoking the writ jurisdiction for the relief as stated above.

4. When the matter was taken up for consideration, the learned Counsel for the petitioners made elaborate arguments by producing the Re-survey

and Resettlement Register pertaining to the year 1911 that the subject land comprised in S. No. 41 originally belonged to Ramasubbiah and from

whom, the property was derived by the petitioners as the descendants of the family of Ramasubbiah and except S. No. 41, the other survey

numbers, namely, 43/A, 43/B, 43/C and 45 were described as grazing ground and forest land. Thus, by relying upon the said Re-survey and

Resettlement Register of 1911, the learned Counsel would contend that the subject land was a patta land belonged to Ramasubbiah. Further, the

learned Counsel would rely on the forest department sketch map and would contend that the subject land was shown as a patta land, whereas

other lands situated in S. Nos. 40, 42, 38 and 39 were described as reserve forest land. Thus, by relying upon these documents, the learned

Counsel for the petitioner would submit that the subject land is a patta land. But during the year 1986, under UDR Scheme, without issuing a

notice to the petitioners, the property was re-classified as a forest land. Hence, the records pertaining to the re-classification of Survey No. 41/1

has to be quashed and consequently, a direction has to be given to the 3rd respondent to issue patta in favour of the petitioners and respondents 5

to 17, who are all the descendants of Ramasubbiah.

5. Per contra, the learned Government Advocate appearing for respondents 1 to 3 would submit that it is incorrect to state that the property was

re-classified as a reserve forest land during 1986 under UDR Scheme. A perusal of the adangals relating to fasli 1375, 1378 and 1382 shows that

all are relating to the pre-UDR period and that the land has been classified as "Kattankolathur Reserve Forest". Under such circumstances, the

petitioners cannot rely upon the entries in the "A" register since the land has

been classified as "Reserve Forest" as per the revenue records and under such circumstances, the question of issue of patta does not arise in the writ proceedings.

6. The 4th respondent filed a counter stating that "Kattankulathur Reserve Forest" was declared as Reserve Forest as per G.O.Ms. No. 639

dated 11.08.1890 Chengalpattu Division Gazette Supplement dated 09.08.1890. The subject land is within the Reserve Forest as per the

Notification and the revenue records and hence "no objection certificate" could not be issued to the petitioners and the question of issuing patta to

the petitioners does not arise.

7. By way of reply, by inviting the attention of this Court to the counter filed by the 3rd respondent, in which it has been stated that it was not

known when the patta land was re-classified as forest land, the learned Counsel for the petitioners would submit that originally the said land owned

by Ramasubbiah is a patta land; but, subsequently, without issuing any notice, it was re-classified as a forest land. Therefore, the respondents are

bound to issue patta in favour of the petitioners.

8. Heard the learned Counsel for the parties and perused the materials available on record.

9. It is the case of the petitioners that the subject land measuring to an extent of 8 acres and 97 cents in S. No. 41/1 is a patta land and it belonged

to late Ramasubbiah. After his demise, the property was partitioned among his three sons. Now the petitioners, being the descendants of the family

of Ramasubbiah, are the owners of the said land and as such, the 3rd respondent has to issue patta in favour of the petitioners, whereas without the

knowledge of the petitioners, the land has been re-classified as reserve forest land even before the UDR Scheme i.e.1987. Hence, the order

pertaining to re-classification of S. No. 41/1 at No. 76, Permabur Village under the UDR scheme on the file of respondents 2 and 3 has to be

quashed.

10. It is, no doubt, by producing the Re-survey and Re-settlement register, the learned Counsel for the petitioners made a submission that the

subject land stood in the name of Ramasubbiah and except S. No. 41/1, the other survey numbers, namely, 39, 40, 52 were described as reserve

forest land. Even in the counter filed by the 3rd respondent, it has been stated

that it was not known when the patta land was reclassified as forest land. However, in that counter, it has been specifically averred that the subject land has been re-classified as forest land even before the UDR Scheme; but, in the counter filed by the 4th respondent, it has been stated that the subject land was declared as "reserve forest land" as per G.O.Ms. No. 383 dated 13.08.1898.

11. Considering the submissions of the learned Counsel appearing for the respective parties, I am of the view that in this case, there are mixed questions of facts and law. In the said circumstances, the issue cannot be decided in this writ petition filed under Article 226 of the Constitution of India since the contentions of the respective parties have to be proved by way of evidence oral and documentary. Therefore, I am of the opinion that the prayer sought for by the petitioners cannot be granted in this petition. For the reasons stated above, the writ petition fails and accordingly, it is dismissed; however, the petitioners are at liberty to file appropriate civil proceedings to redress their grievance. No costs.