

(2007) 03 MAD CK 0033

In the Madras High Court

Case No : Writ Petition (MD) No. 3413 of 2005

R. Muniasamy

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 18(4), 18(5)

Tamil Nadu Land Encroachment Act, 1905 — Section 2

Citation : (2007) 03 MAD CK 0033

Hon'ble Judges : K. Veeraraghavan, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : M. Jyothi Basu, for the Appellant; R. Janakiramulu, Spl. Govt. Pleader for Respondent 1 to 3, Sivakumar, for Ambujam Selvarani and G.R. Swaminathan, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The Petitioners seek to challenge the show cause notices issued by the third Respondent dated 03.12.2004, bearing No. Na. Ka.B2.H080/2003, and also seek for a direction forbearing Respondents 1 to 3 from interfering with the peaceful possession and enjoyment of the properties in Survey No. 1426/19, 22, 23 and 33 (Old No. 1204/part), bearing Door Nos. 617, 618 and 619 and Door No. 609 at Tiruthangal, Sivakasi Taluk.

2. In fact, a similar notice also dated 03.12.2004 issued to another occupant in the very same survey number was challenged in W.P. No. 4431/2004. The said writ petition was allowed by the order dated 30.12.2004. While allowing the said writ petition, the learned Single Judge held that the land having been classified as "Grama Natham", the Government had no right to deal with the said land. For the said proposition of law, the learned Single Judge relied upon an earlier Division Bench judgment of this Court reported in *The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District*

Collector and The Revenue Divisional Officer, . As against the said order of the learned Single Judge, a writ appeal came to be filed in W.A.(MD) No. 9/2007 at the instance of the newly impleaded 5th Respondent herein. In the said writ appeal, a Division Bench of this Court gave a categorical finding that the 5th Respondent herein is not the owner of the said land and that its attempt to secure a patta in the year 1992 from the Revenue Authorities also failed. The Division Bench also took note of the fact that the revenue authorities did not challenge the order of the learned Single Judge. The Division Bench, therefore, declined to interfere with the order of the learned Single Judge. It is further stated that the review petition No. 12/2007 filed by the 5th Respondent in the said writ appeal was also dismissed by this Court on 14.03.2007 and thus, the earlier order of this Court dated 30.12.2004 passed in W.P. No. 4431 of 2004 has become final and conclusive. In the light of the said order, which pertained to the very same Survey No. 1426/42 (Old No. 1204/part), the present writ Petitioners are also entitled to succeed as their claim is in respect of the other parts of the very same Survey Number, namely 1426/19,22,23 and 33.

3. However, Mr. G.R. Swaminathan, learned Counsel appearing for the 5th Respondent, contended that the earlier order of the learned Single Judge, as confirmed by the Division Bench, is distinguishable. According to the learned Counsel, the earlier writ petition came to be allowed by the learned Single Judge at the admission stage without the 5th Respondent having been added as a party to that writ petition.

It was also contended that there was no counter affidavit filed in the earlier writ petition at the instance of the Respondents while a counter has now been filed by the 4th Respondent herein, which refers to certain other new facts which require to be considered. The learned Counsel lastly contended that under the Tamil Nadu Land Encroachment Act, 1905, Section 2 specifically excludes from its coverage the lands owned by the temples while Section 18(4) of the Tamil Nadu Estates (Abolition & Conversion into Ryotwari) Act, 1948 (Act 26/1948) defines a building to include the site on which the temple stands and any adjacent premises occupied as appurtenant thereto. The learned Counsel therefore contended that the 5th Respondent temple, being the owner, the present lands in the encroachment of the Petitioners, which are closely surrounding the age old temple, would fall within the definition of "building" as defined u/s 18(5) of Act 26/1948 and therefore the right of the 5th Respondent temple has to be independently allowed to be worked out. On the above said basis, it was contended that the earlier orders of this Court by the learned Single Judge as well as by the Division Bench are to be distinguished and the rights of the 5th Respondent should at least be permitted to be worked out before the appropriate forum.

4. On the above aspects, the learned Counsel for the Petitioners contended that the 4th Respondent's counter affidavit in W.P.(MD) No. 3413/2005 cannot be permitted to be relied upon inasmuch as the 4th Respondent is only the local

body and it has no locus standi to state about the character of the land either as to its original classification or any alleged reclassification. As far as the right claimed by the 5th Respondent, the learned Counsel for the Petitioners would submit that the Division Bench having considered the said claim and rejected the same in the earlier order, the 5th Respondent cannot be permitted to agitate the same once over the again. As far as the submission that the writ petition came to be allowed at the admission stage, the learned Counsel for the Petitioners would contend that it came to be allowed at the admission stage only after hearing the learned Additional Government Pleader and therefore the order of the learned Single Judge cannot be found fault with.

5. As regards the above submissions of the learned Counsel, we do agree with the submissions of the learned Counsel for the Petitioners. Even though the earlier writ petition came to be allowed at the admission stage, the learned Single Judge had only stated the legal position as regards the character of a land classified as "Grama Natham". The learned Single Judge while dealing with the said issue heard the Additional Government Pleader on the said question. Moreover, the learned Single Judge had chosen to follow the earlier Division Bench judgment, which in turn had relied upon the decision of the Hon"ble Supreme Court reported in Chigurupati Venkata Subbayya and Others Vs. Paladuga Anjayya and Others, . Above all, the said order of the learned Single Judge was confirmed by the earlier Division Bench in an appeal which was preferred by the 5th Respondent herein. Therefore, the grievance of the 5th Respondent on that score cannot be countenanced. Whatever grievance which the 5th Respondent had as against the order of the learned Single Judge, namely that he was not impleaded as a party, did not survive when once the 5th Respondent had chosen to challenge the said order by filing a writ appeal in which the contentions of the 5th Respondent were considered and ultimately rejected. Therefore, on that score, we do not find any scope to take a different view.

6. As far as the contention based on the counter affidavit now filed by the 4th Respondent is concerned, as rightly contended by the learned Counsel for the Petitioners, the 4th Respondent has no say as regards the classification or reclassification of "Grama Natham". If at all any one has got any right in that area, it can only be expected from Respondents 1 to 3, namely the revenue authorities. The revenue authorities have in fact chosen not to challenge the earlier order of the learned Single Judge and have not come forward with any counter affidavit in these writ petitions. Therefore, there is no question of any stand by any one to state that the earlier classification of the land in question as "Grama Natham" has been reclassified as "Arasu Poramboke". Moreover, since the counter affidavit of the 4th Respondent merely states that the land in question was subsequently classified as "Arasu Poramboke", without reference to any proceedings and the said stand of the 4th Respondent not having been supported by any of the Respondents 1 to 3, it will be wholly unsafe to take a different view than what has already been held by this Court in the earlier writ

petition which was confirmed by the Division Bench in Writ Appeal No. 9/2007. Above all, when it is the settled legal position by numerous decisions of the Hon"ble Surpeme Court which were also applied and followed by this Court in the earlier Division Bench judgment reported in The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer, to the effect that the Government has no right to interfere with "Grama Natham", it will have to be held that such a lack of authority for the Government will also encompass even any attempt to make reclassification of a "Grama Natham". Therefore, there is no question of any reclassification being made even at the instance of the Government. In such circumstances, the said submission cannot also be considered for taking a different view in these writ petitions.

7. As far as the contention made based on Section 2 of the Tamil Nadu Land Encroachment Act read with Section 18(5) of Act 26/1948, we have to state that when once a Division Bench had considered the claim of the 5th Respondent and held in uncontroverted terms that it is not the owner and even its claim for patta was already rejected by the Revenue Authorities as early as in the year 1992, we do not find any basis for the 5th Respondent to make any submission based on the above provisions contained in the Land Encroachment Act and Act 26 of 1948.

8. Bound as we are by the earlier Division Bench decision of this Court in W.A. (MD) No. 9/2007, which has confirmed the order of the learned Single Judge dated 30.12.2001 passed in W.P.(MD) No. 4431/2004, which has become final and conclusive and which relate to the very same survey number, these writ petitions deserve to be allowed. Accordingly, the same are allowed and the impugned proceedings are quashed holding that the Respondents 1 to 4 have no right to interfere with the peaceful possession and enjoyment of the properties covered by the impugned notices. No costs. Connected WPMP(MD)Nos.3548 and 3852 of 2005 are closed and WPVMP Nos. 346 and 348 of 2005 are dismissed.