
(2015) 10 MAD CK 0018

In the Madras High Court

Case No : W.P. (MD) No. 12625 of 2015 and M.P. Nos. 1 to 4 of 2015

R. Visalakshi

APPELLANT

Vs

President, Kambanoor Panchayat

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Citation : (2015) 10 MAD CK 0018

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : V.K. Vijayaraghavan, Senior Counsel for M.R.S. Prabhu, for the Appellant; M. Murugan, G.A., for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The writ petition has been filed praying for issuance of a writ of Certiorarified Mandamus calling for the records of the respondent-Panchayat relating to Resolution No. 38 dated 3.7.2015 in respect of S. No. 296/18 measuring 0.23.17 acres situated at Thenkarai Group and Village in Tirupattur Vattam and Taluk, Sivagangai District and to quash the same as illegal and void and consequentially to direct the respondent not to change the physical features of subject land.

2. The case of the petitioner, in brief, is as follows:-

2.1. The petitioner's father-in-law viz., one Mr. Ramanathan Chettiar had owned both the warams in Thenkarai Village in Tirupattur Taluk. The subject matter of the litigation is Grama Natham land comprised in S. No. 296/18 situated at Thenkarai Village in Tirupattur Taluk. Since the subject land is a Grama Natham, it does not vest with the Government. The said land was continuously owned and enjoyed by the said Ramanathan Chettiar and his predecessor in title during their life time. The said Ramanathan Chettiar had only one son viz., Ramasamy Chettiar, who is the husband of the petitioner herein and he predeceased his father.

2.2. When a disturbance arose in respect of the subject land during the life time of Ramanathan Chettiar, he filed a suit in O.S. No. 265 of 1952 on the file of the District Munsif Court at Sivaganga, against one Ramasamy Pillai for declaration of his right and for injunction. The said suit was subsequently transferred and renumbered as O.S. No. 189/1953 on the file of the District Munsif Court at Manamadurai. In the said suit, he had contended that the suit property was in his exclusive possession and enjoyment ancestrally and sought the relief of permanent injunction against the defendant in that suit. The said suit was decreed in favour of the petitioner's father-in-law Ramanathan Chettiar as prayed for. The subject matter of the said suit and the subject property of the present proceedings of Revenue Divisional Officer, Devakottai and District Revenue Officer, Sivagangai are one and the same property.

2.3. There was a farm house available in S. No. 296/18 and it was belonging to the family of Ramanathan Chettiar. The agricultural implements were kept in the said farm house. The said land was also used for storing straw and it was neatly compounded and was under the lock and key of the petitioner's father-in-law Ramanathan Chettiar during his life time and thereafter, the possession of the property continued to remain with the petitioner. The property was not vacant and the Government has no right or interest in the above said land at any point of time. The said Ramanathan Chettiar was owning a house available opposite to S. No. 296/18 in Thenkarai Village. The possession of the above said property was never disturbed by any person so far.

2.4. While things stood thus, during updating the revenue records, the Revenue Officials appear to have recorded the land comprised in the above survey number as vacant on ground. Before effecting any entry in the Government records, notice would be given normally to the owner and occupier of the property. But, in the instant case, no notice was given during updating of the records by the Revenue Officials to late Ramanathan Chettiar and therefore, any entry by the Government officials to the effect that the land was vacant, in the Government records, would not extinguish the right, title and interest of Ramanathan Chettiar or his legal heirs including the petitioner in the land.

2.5. The entry in respect of the subject land was not properly made in the Government records. After coming to know about the wrongful entry that it was recorded as vacant, proceedings were initiated on the request of the petitioner by the Revenue Divisional Officer, Devakottai. Subsequently, the Revenue Divisional Officer, Devakottai had inspected the property and investigated the rights and thereafter, on 04.02.1999 in R.Dis.A1/506/1998 ordered the extent of 0.23.7 hectares comprised in S. No. 296/18 situated at Thenkarai Group, Tirupattur Taluk to be recorded as "owner" in the name of the petitioner and her daughter. A perusal of the order passed by the Revenue Divisional Officer, Devakottai would certainly show the exclusive right claimed by the petitioner in the subject land.

2.6. But, the respondent, who has no right or locus standi or competency, filed

an appeal before the District Revenue Officer, Sivagangai against the order passed by the Revenue Divisional Officer, Devakottai dated 04.02.1999. In the said appeal, the District Revenue Officer, Sivagangai has erroneously passed an order on 20.08.2002 setting aside the order passed by the Revenue Divisional Officer, Devakottai. Aggrieved over the same, the petitioner filed a writ petition in W.P. No. 7658 of 2004 before the Principal Seat of this Court at Madras. While the said writ petition is pending, the respondent has passed the impugned Resolution No. 38, dated 03.07.2015, to put up construction in the subject land, which is illegal and arbitrary. The respondent has no right or authority to use the land belonging to the petitioner for putting up construction. Moreover, the petitioner is in effective occupation of the land in the above survey number. The subject land has not been vested with the Panchayat under Section 134 of the Panchayat Act. Hence, the petitioner has filed the present writ petition seeking to quash the resolution passed by the respondent dated 03.07.2015.

3. Along with the writ petition, the petitioner has filed M.P. No. 2 of 2015 to stay the operation of the impugned Resolution No. 38 dated 03.07.2015 passed by the respondent. She has also filed M.P. No. 3 of 2015 seeking to grant an order of interim injunction restraining the respondent from interfering with the petitioner's possession of subject land. This Court, by order dated 22.07.2015 has passed an interim order of status quo to be maintained by both the parties.

4. On appearance, the respondent has filed a petition in M.P. No. 4 of 2015 to vacate the interim order of status quo passed by this Court. In the affidavit filed in support of the vacate interim order, the respondent has inter alia stated that the writ petitioner and her daughter had filed an appeal against the settlement order with regard to the property in S.F. No. 296/18 and 296/10 before the Revenue Divisional Officer, Devakottai. In turn, the Revenue Divisional Officer has also passed an order in his proceedings Pa.Mu.(A1) 506/98 dated 04.02.1999, stating that while he was in field inspection at Thenkarai Village, objections were raised by some persons for issuing patta to the petitioner, by quoting the pendency of the case before the Hon'ble Supreme Court. The then Village President of the respondent-Panchayat namely one Arumugam had also filed objection petitions on 01.06.1998 and 22.06.1998 against issuing patta to the writ petitioner. But, the Revenue Divisional Officer has passed an order on 04.02.1999, based on the decree passed by the District Munsif, Manamadurai, in O.S. No. 189 of 1953 which was filed by the father-in-law of the petitioner herein against one Ramasamy Pillai, stating that the subject property in the present proceedings and the plaint schedule property in the said suit are one and the same and since the said suit was decreed in favour of the petitioner's father-in-law, the petitioner herein and her daughter are entitled to get patta in their name. Against the said order passed by the Revenue Divisional Officer dated 04.02.1999, a revision was filed by the then Village Panchayat President viz., one Arumugam before the District Revenue Officer. In the revision, the District Revenue Officer, by order dated 20.08.2002, set aside the order passed by the Revenue Divisional Officer, observing that the Village Administrative Officer has

given his statement to the effect that the land at S.F. No. 296/18 is an vacant land with Karuvella trees. The District Revenue Officer has further observed in his order that the Revenue Divisional Officer has not clearly stated as to which land he has inspected; the Revenue Divisional Officer had relied upon the decree in O.S. No. 189 of 1953, but in the said decree, no survey number was mentioned; since no tax receipt has been filed by both parties to show that there is some existing building, it could be presumed that the land is a vacant land; thus, the District Revenue Officer rejected the contention of the petitioner that the land is a Grama Natham and it belongs to them, and order for reclassification of the land as vacant land. Aggrieved over the order passed by the District Revenue Officer, the petitioner has filed a writ petition in W.P. No. 7658 of 2004 before the Principal Bench of this Court at Madras; but no interim order has been granted in the said writ petition. While so, the District Collector, Sivagangai has granted his administrative sanction for the construction of community hall at Thenkarai Village vide his proceedings in Na. Ka. No. DA8/1470/14-09, dated 05.01.2015 and in continuation of the same, tender was called on 23.06.2015 and the work order was also issued by the Block Development Officer, Kallal Panchayat Union in his proceedings in Na. Ka. No. A3/0075/2015, dated 30.06.2015, in favour of one R. Rajendran. Since the work order itself has been issued by the Block Development Officer, by fixing a time limit for the completion of the work, to enable the contractor to initiate the work at the site, the impugned resolution was passed to clean the site by removing the thrown bushes and Karuvella trees standing in the site. At this juncture, the petitioner has obtained the interim order. Thus, the learned counsel for the respondent sought for vacating the interim order of status quo passed by this Court and for dismissal of the writ petition.

5. The learned counsel appearing for the petitioner submitted that the petitioner is in possession of 60 cents of land in S. No. 296/18 & 296/10; in fact, the property originally belonged to the petitioner's father-in-law Ramanathan Chettiar. In the year 1953, when one Ramasamy Pillai interfered with the possession of the property, the petitioner's father-in-law Ramanathan Chettiar filed a suit in O.S. No. 189 of 1953 on the file of the District Munsif Court at Manamadurai for declaration and permanent injunction and the said suit was decreed in favour of the petitioner's father-in-law. The husband of the petitioner viz., Ramasamy Chettiar predeceased his father Ramanathan Chettiar. Hence, after the demise of the Ramanathan Chettiar, the petitioner and her daughter have been in possession of the property. While so, a wrong entry has been made in the revenue records as if the land is a vacant land. It is further submitted by the learned counsel appearing for the petitioner that the Revenue Divisional Officer, after conducting full inspection, had passed the order for issuance of patta in favour of the petitioner and her daughter. While passing the order, the Revenue Divisional Officer has taken into consideration the decree passed in the suit in O.S. No. 189 of 1953. But, as against the order passed by the Revenue Divisional Officer, the then Village Panchayat President filed a revision before the

District Revenue Officer; but the District Revenue Officer has erroneously set aside the order passed by the Revenue Divisional Officer by order dated 20.08.2002, against which a writ petition in W.P. No. 7658 of 2004 has been filed by the petitioner before the Principal Seat of this Court at Madras and the same is pending. While so, the respondent has passed the impugned resolution to put up a construction in the subject land. It is further submitted by the learned counsel for the petitioner that if the building is allowed to be constructed by the respondent in the subject land, the petitioner will be put to irreparable loss and hardship; moreover, the respondent has no authority to use the subject land by putting up construction as the land belongs to the petitioner. Thus, the learned counsel for the petitioner prayed for quashing the impugned resolution.

6. Per contra, the learned Government Advocate appearing for the respondent submitted that the subject land is not a grama natham land and it has been classified as vacant land. At any point of time, neither the petitioner nor her daughter was in possession of the subject property. Without considering these aspects, the Revenue Divisional Officer by order dated 04.02.1999 ordered for issuance of patta in favour of the petitioner and her daughter; but the same was rightly set aside by the District Revenue Officer by order dated 20.08.2002. The learned Government Advocate has further submitted that the Revenue Divisional Officer had relied upon the decree passed in O.S. No. 189 of 1953, but in the said decree the survey number of the property was not mentioned; inspite of the same, the Revenue Divisional Officer by wrongly placing reliance on the said decree in O.S. No. 189 of 1953 had ordered for issuance of patta in favour of the petitioner. Though the petitioner has filed a writ petition in W.P. No. 7658 of 2004 before the Principle Seat of this Court at Madras against the order passed by the District Revenue Officer, no interim order has been granted in the said writ petition.

7. The learned Government Advocate would further submit that the District Collector, Sivagangai has granted his administrative sanction for the construction of community hall at Thenkarai Village vide his proceedings in Na. Ka. No. DA8/1470/14-09, dated 05.01.2015 and in continuation of the same, tender has been called on 23.06.2015 and the work order was also issued by the Block Development Officer, Kallal Panchayat Union in his proceedings in Na. Ka. No. A3/0075/2015, dated 30.06.2015, in favour of one R. Rajendran. Now because of the interim order of status quo passed in the present writ petition, the respondent is not a position to construct the community hall. That apart, the learned Government Advocate by producing the judgment in Civil Appeals Nos. 129 - 130 of 1963, dated 20.10.1965, delivered by the Hon''ble Supreme Court submitted that the claim of the petitioner's father-in-law as inamdar over the entire land in the village was rejected by the Hon''ble Supreme Court. Thus, the learned Government Advocate sought for dismissal of the writ petition.

8. By way of reply, the learned counsel appearing for the petitioner, by relying upon number of judgments, submitted that the order of the District Revenue

Officer rectifying the subject land as vacant land is without jurisdiction and the reclassification cannot be done by the District Revenue Officer. Therefore, the order passed by the District Revenue Officer is not legally sustainable. Further, the learned counsel for the petitioner would submit that it is incorrect to state that there is no construction in the subject land and in fact, the subject land is also used for storing straw and agricultural implements and it has been neatly compounded and is under the lock and key of the petitioner. By relying upon the judgment delivered by this Court in the case of *S. Rengaraja Iyengar and Another Vs. Achikannu Ammal and Another*, the learned counsel for the petitioner submitted that it is not necessary that there should be a residential building actually constructed and standing in the grama natham land. Therefore, even if there is no construction in the land, it cannot be a ground for reclassification of the land as vacant land. When that being so, if the impugned resolution is allowed to be implemented by the respondent by putting up construction in the subject land, it will cause irreparable loss and hardship to the petitioner.

9. The learned counsel appearing for the petitioner has also relied upon Section 134(2) of the Tamil Nadu Panchayat Act and submitted that the panchayat has power to control and use the poramboke lands namely grazing grounds, threshing floors, burning and burial-grounds, cattle-stands, cart-stands. But, Section 134(2) does not contain grama natham land; therefore, according to the petitioner, the respondent cannot be allowed to construct the building in the petitioner's land.

10. Further, the learned counsel for the petitioner submitted that the Revenue Divisional Officer while relying upon the judgment passed in O.S. No. 189 of 1953, had co-related the present survey number with the property described in the said decree and though survey number was not mentioned in the decree in the said suit, the boundaries of the said property were given in the decree in the said suit. The Revenue Divisional Officer has correctly co-related the survey number in the present proceedings with the said suit property and ordered for issuance of patta in the name of the petitioner and her daughter. Therefore, it is incorrect to state that the Revenue Divisional Officer is wrong in placing reliance on the judgment passed in O.S. No. 189 of 1953.

11. Heard the submissions made on either side and perused the materials available on record.

12. Though very many contentions have been raised on both sides in the present writ petition with regard to the nature of classification of the subject land, I find that on as date, there is no order in favour of the petitioner. Though the petitioner has stated that the subject land is a grama natham land, the respondent is denying the same. According to the respondent, the subject land is not grama natham land and it is only a vacant land. Further, I find that though the petitioner has claimed that the subject land is grama natham land, she has not produced any document before this Court to show that she is paying tax in

respect of the subject land and the land is in her possession. In fact, the earlier writ petition filed by the petitioner herein viz., W.P. No. 7658 of 2004 is pending before the Principal Seat of this Court at Madras, in which the petitioner has to agitate all the issues.

13. So far as the present writ petition is concerned, the only question that has to be decided is as to whether the impugned resolution passed by the respondent-Panchayat is liable to be quashed or not. In the absence of any document to show that the petitioner is in enjoyment and possession of the subject property and the land is grama natham, this Court does not find any valid reason to set aside the impugned resolution passed by the respondent. No rowing enquiry could be conducted in the present writ petition as to whether the subject land is a grama natham land or vacant land. Though the learned counsel for the petitioner submitted that the Revenue Divisional Officer had ordered for issuance of patta in favour of the petitioner only after co-relating the present survey number with the description of the subject property in O.S. No. 189 of 1953, I do not find any detailed discussion about the same in the order passed by the Revenue Divisional Officer. Therefore, I am not inclined to accept the submissions made by the learned counsel for the petitioner. Since as on date, there is no patta in favour of the petitioner and there is no document in favour of the petitioner, it is not possible for this Court to set aside the resolution passed by the respondent. Therefore, the writ petition liable to be dismissed.

In fine, the writ petition fails and the same is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.