
(2014) 10 MAD CK 0302

In the Madras High Court

Case No : Writ Petition No.30952 of 2007 and M.P. Nos.1 and 2 of 2007

S. Mitra Srikanth

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 MAD CK 0302

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-

The writ petitioner submits that he is the owner of the land admeasuring an extent of 9,525 sq.ft comprised in Old S.No.136, New S.No.9 (Part) in Koyambedu Village, Chennai and the said land has been classified in the revenue records as Village Natham. The said extent is a portion of the entire extent of a total of about 9 grounds and 1055 sq.ft of land that had been purchased by various persons who are family members of the petitioner. The entire extent of land was thereafter leased to M/s. Shan Holiday Inn Private Limited and a hotel was put up in the said land.

2. The petitioner additionally added that on an earlier occasion, when the petitioner's land equivalent to the land that is now claimed to be unauthorizedly occupied was sought to be taken over by the National Highways Authority of India, the petitioner approached this Court, by way of a writ petition in W.P. No.3372 of 2007, wherein this Court vide its order dated 18.04.2007 has been pleased to pass an order directing the Competent Authority / District Revenue Officer, Poonamallee to file a report on the representation to be filed by the petitioner after giving an opportunity to the petitioner. The petitioner has also filed necessary representation and the matter is pending hearing. Such being the position, the second respondent sought to circumvent the orders passed by this Court by issuing a notice dated 13.08.2007 bearing Ref.No.A2/17733/2007 on

the lessee of the petitioner's land, M/s. Shan Holiday Inn Private Limited, purportedly under Section 7 of the Tamil Nadu Land Encroachment Act 3 of 1905 (hereinafter referred to as "Land Encroachment Act"). It is pertinent to state that even under the said notice, it is specifically admitted in respect of the description of the land that it is a village site otherwise known as "Grama Natham" in respect of which this Court has repeatedly held the same not to be a Government land and therefore, the question of applicability of the Land Encroachment Act itself does not arise.

3. The petitioner further submits that he personally went to the office of the second respondent on 28.08.2007 and informed the second respondent that there cannot be any justification for initiation of any action against the petitioner since the lands are evidently village site lands and therefore, the Government cannot have any claim in respect of the said land and the same was followed up by a further communication dated 03.09.2007 from the petitioner, regarding the same. However, despite the said reply, a notice under Section 6 of the Land Encroachment Act was issued by the second respondent on 07.09.2007, without even considering any of the grounds raised by the petitioner, to which a reply dated 13.09.2007 was also submitted by the petitioner to the second respondent. However, it appears that the second respondent is arbitrarily seeking to proceed further in the matter without even considering the records and the fact that the second respondent has no jurisdiction to proceed in the matter. It is further pertinent to state that when there are certain structures in respect of the land that have been authoritatively put up, which is the subject matter of the notice of the second respondent, grave prejudice would be caused if the respondent proceeds further and seeks to demolish the same. Hence, the petitioner has filed the above writ petition.

4. The respondents have not filed any counter statement for the past 7 years. Hence, this Court is constrained to pass final orders on the basis of available records.

5. The highly competent counsel Mr. Rahul Balaji, appearing for the petitioner submits that the action of the second respondent under the provisions of the Land Encroachment Act by issuing the impugned notices are wholly without jurisdiction and have been issued without application of mind in respect of the lands which have never been subject matter of the provisions of the Land Encroachment Act and therefore, wholly arbitrary and illegal. The impugned notices of the second respondent is liable to be set-aside in as much as the lands subject matter of the notices are admittedly Grama Natham / Village Sites which have repeatedly been held by this Court not to be considered as Government land belonging to the individuals and therefore, the very initiation of the impugned notices are without jurisdiction since the Act applies only to Government lands which admittedly, the petitioner's land is not, even as per the records of the respondents.

6. The highly competent counsel appearing for the petitioner further submits that

the impugned order has been passed by the second respondent without considering the petitioner's representation and reflects a total non-application of mind. The second respondent had already directed his subordinates, viz., Firka Revenue Inspector to carry out eviction of the petitioner and take forcible possession of the land belonging to the petitioner. Further, the petitioner is having civil right, title and interest over the said property as owner of the property, since the property has been classified as Gramanatham. Further, the said land has been purchased under the registered sale deed after paying full sale consideration. Further, the petitioner had personal discussion with the second respondent and revealed that he is absolute owner of the property, for which, he has produced title deeds over the said property. Further, the entire land has been leased to M/s. Shan Holiday Inn Private Limited and the hotel has been put up in the said land after complying with all legal formalities. Therefore, it is evident that the lands does not belong to the Government and it is obvious that the petitioner is the absolute owner of the property and his occupation is a lawful occupation. Besides this, the petitioner has been paying necessary taxes to the Government statutory authorities. In support of his contentions, the highly competent counsel has cited the following judgments:-

(i) The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer,

Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 - Madras Land Encroachment Act, 1905, Section -2 - Grama Natham - Title to Grama Nathan land - Grama Natham lands never vested with Government or Town panchayat - Panchayat has no jurisdiction to pass resolution cancelling pattas with view to evict persons who are under occupation of Grama Natham Land - Panchayat cannot treat person is occupation to Grama Nathan land as encroachers and seek to evict them.

Words and Phrases - Grama Natham - Meaning of - Grama Natham is defined in Law Lexicon as "ground set apart on which house of village may be built" Grama Nathan land is residential portion of a village or portion of a village inhabited by non-Brahmins or land reserved as house sites etc.

Words and Phrases - "Poramboke Land" - "Pagodas" - Poramboke indicates poramboke land such as un-assessed waste and all kinds of communal property such as burying grounds, temple sites, threshing floors, public roads etc. Sites of Pagodas" indicates burning grounds, cattle stands and unassigned house sites and backyards and Government is custodian of above lands.

Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, Sections 3(b) and 18 - Madras Land Encroachment Act, 1905 - Section 2 - Title to Grama Nathan Lands - Title to house sites under Grama Natham lands does not stand transferred to Government under above enactments.

(ii) Thillaivanam, A.K. & another v. District Collector, Chengai Anna District & 3 others reported in 1998-3-L.W.603

Tamil Nadu Land Encroachment Act (3 of 1905), S.2 Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), Constitution of India, Art. 226, and Words and Phrases /Grama Natham - Possession of Grama Natham land by writ petitioner by purchase since 1954 and conversion of same into agricultural land after obtaining electricity connection and installing mother pump set - Attempt of sale of petitioner's property into plots, objected by Tahsildar's reporting to the Police and the latter registering a crime under S.420, I.P.C on the ground that the petitioner sold a portion of Government property - Writ petition for mandamus forbearing respondents proceeding against the petitioner, allowed. Gramanatham, held vested with the respondents and no action could be taken under Land Encroachment Act or any other enactment - It is not community property - Land Encroachment or Estate Abolition Act (26 of 1948) cannot be invoked - As the land never vested with the respondent, being Gramanatham, and as petitioners had exclusive right, title and possession, respondents had no right to interfere or give complaint under S.420. Dispute of title to or possession of property - Interference in writ petition - Scope.

7. Mr. M.S. Ramesh, learned Additional Government Pleader appearing for the respondents submits that the land has been described as Village site as per the second respondent's records and as such, the lands do not belong to any private individual, more so, to the petitioner. So far patta has not been issued to and in favour of the petitioner. Therefore, it is obvious that the land is belonging to the Government. The occupation of Government lands by any person without patta or assignment can only be classified as unauthorized encroachment. Therefore, the second respondent had issued an eviction notice under Tamil Nadu Encroachment Act, which is fit to be proceeded with further for evicting the petitioner from the said lands. The eviction proceeding have been issued after scrutinizing the petitioner's titles and also after carefully verifying the revenue records and connected records. Therefore, the impugned order is suitable for execution. Further, the second respondent had given an opportunity to the petitioner at the time of personal hearing and discussion and as such, the impugned eviction notice is a well considered one. Hence, the learned Additional Government Pleader entreats the Court to dismiss the above writ petition.

8. On a careful scrutiny of the petition and the counter filed

by the respondents, this Court is of the view that:-

(i) The respondents describe the land in Survey No. 9 (part) Koyambedu Village, as a Village Site / Grama Natham. Grama Natham means that the said lands are suitable for residential purpose. As per the affidavit of the petitioner, a hotel in the name and style of M/s. Shan Holiday Inn Private Limited is being run at the said land. For construction of the said hotel and running the hotel, the petitioner has complied with all legal formalities, viz., (i) plan approval, (ii) water and drainage connection, (iii) electricity service connection, (iv) licence as per Establishment Act. All the statutory authorities have not objected in providing the

infrastructure and attending to legal formalities. As such, the petitioner's occupation can be treated as a lawful occupation. Hence, the impugned eviction proceedings issued against the petitioner under Tamil Nadu Land Encroachment Act, 1905 (Act 3 of 1905), is not appropriate.

(ii) The highly competent counsel appearing for the petitioner has cited a judgment of this Court, viz., Thillaivanam, A.K. & another v. District Collector, Chengai Anna District & 3 others reported in 1998-3-L.W.603, in which, the learned Judge has rightly pointed out that as the land had been described as Grama Natham, the Revenue Authorities cannot take any action for evicting the petitioners under the Land Acquisition Act. This Court is of the view that the case cited above is squarely applicable in the instant case also.

(iii) The highly competent counsel appearing for the petitioner has cited another judgment of this Court, viz., The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer, , wherein, the Hon''ble Division Bench observed that Grama Natham Lands are never vested with Government or any panchayat. As such, the Government Authorities have no jurisdiction to issue eviction proceedings under the Land Encroachment Act. The Hon''ble Bench further observed that title to house sites under Grama Natham lands does not stand transferred to Government under the Land Encroachment Act. This Court considers that the above Judgment is also squarely applicable in the instant case. As such, the writ petitioner is entitled to receive relief before this Court.

(iv) As per the affidavit filed by the petitioner stating that over the said land, a hotel has been constructed in the name and style of M/s. Shan Holiday Inn Private Limited. It is evident that the cost of construction of the said Holiday Inn is of more value than the cost of land and as such, if the petitioner is evicted or disturbed from his possession, prejudice would be caused to the interest of the petitioner. This is also a point which goes in favour of the petitioner.

9. On considering the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned proceedings of the second respondent / The Tahsildar, Egmore-Nungambakkam Taluk and this Court's views listed as (i) to (iv) above, this Court is perforce constrained to allow the above writ petition. Consequently, the notice of the second respondent dated 13.08.2007 bearing Ref.A2/17733/2007 and the consequent notice dated 07.09.2007 bearing Ref.B4/17733/2007 are quashed. Consequently, the respondents are restrained from interfering with the peaceful possession and enjoyment of the land of the petitioner admeasuring 217 sq.mts classified as Village site and comprised in S.No.9 (part) in Koyambedu Village, Egmore-Nungambakkam Taluk, Chennai including the buildings thereon. Considering the factual position of the case and current prevailing conditions, the petitioner is entitled to receive patta from the second respondent herein.

10. In the result, the above writ petition is allowed. There is no order as to costs.

Consequently, connected miscellaneous petitions are closed.