

(2000) 01 MAD CK 0066

In the Madras High Court

Case No : Writ Petition 9692/92 and W.M.Ps. No. 14014/92 and 20082/9985

Shri Thiagarajaswami Devasthanam

APPELLANT

Vs

The Commissioner of Land Administration, Chepauk,
Madras-5, The Settlement Officer, Thanjavur, The Asst.
Settlement Officer, Thanjavur and N.V. Kayarocanam Chettiar
S./O. K. Veerappa Chettiar, Nayakar St, Nagapattinam,
Quaide Milleth District

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 13

Citation : (2000) 01 MAD CK 0066

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : K. Jayaraman, for the Appellant; K. Balasubramanian Government Advocate for Respondents 1 to 3. S. Raghavan for 4th Respondent., for the Respondent

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—The writ petitioner is Sri. Thiagarajaswami Devasthanam, Thiruvaur and the petitioner is the owner of a poramboke land in Survey No. 8, Nagore town. A grant was made of the said poramboke land under T.D. No. 558 as Devadhayam grant in favour of the petitioner temple as Annadhana Kattalai. The said grant was an Iruvaram Minor Inam and after coming into force of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act 30 of 1963), the Assistant Settlement Officer, Thanjavur who conducted the enquiry, by his order dt. 15.7.82, granted patta in favour of the petitioner in respect of Survey No. 8(c), but, in respect of survey Nos. 8(a) and (b), he refused to issue patta. It is stated that the land comprised in survey No.8 was subdivided into 8(a), 8(b) and 8(c). The petitioner, aggrieved by the order of the Assistant Settlement Officer, preferred an appeal before the

Settlement Officer, Thanjavur and the Appellate Authority rejected the appeal. Then, the petitioner preferred a revision before the Commissioner of Land Administration, Chepauk, Madras-5, the first respondent herein and the first respondent rejected the revision petition. The petitioner has challenged the order in the writ petition on the ground that patta should have been granted to the Inamdar of the land and not to the owner of the superstructure. It is stated that the respondents 1 to 3 should have applied the provisions of Section 13 of the Tamil Nadu Act 30 of 1963 and held that the land would continue to vest with Inamdar though there was a building which stood on the Inam land on the appointed date. It is stated that the order of the first respondent refusing to grant patta in favour of the petitioner in respect of Survey Nos.8(a) and 8(b) and also directing the fourth respondent to move the District Revenue Officer for patta outside the scope of the Tamil Nadu Act 30 of 1963 and under G.O.Ms. No. 303, Commercial Taxes and Religious Endowment, dt.24.3.1987 is not sustainable in law.

2. The respondents 1 to 3 have filed a counter affidavit stating that in respect of the land in Survey No.8, measuring 20 acres 42340 sq.ft., Iruvaram right was granted in favour of the petitioner. It is stated that it is a Minor Inam Devadhayam land, notified and taken over under the Tamil Nadu Act 30 of 1963, It is stated that under the Tamil Nadu Act 30 of 1963 the Settlement Tahsildar, in a suo motu equity, issued the patta in favour of the Temple as the land in question was used as a house and appurtenance thereto. It is stated that against the order, the owner of the building, the fourth respondent took certain proceedings before the Inams Abolition Tribunal which remanded the matter for fresh enquiry and disposal and in the remanded enquiry, it was found that u/s 13 of the Tamil Nadu Act 30 of 1963, no one would be entitled to ground rent patta with reference to the land on which the building stood; in view of the decision of a Division Bench of this Court reported in 93 L.W.707 (K. Vellappa Gounder and Sons, by partner K. Vellappa Gounder v. K.S. Thirugnanasambandam Chettiar) and in the appeal, it was found that in respect of the site on which the buildings stood on the notified date and adjacent premises occupied as the appurtenance thereto, no one would be entitled to patta. It is stated that the Revisional Authority found that the "buildings in question existed on the appointed date and admittedly, the coalescence of the ownership of the land and buildings was not proved and hence, the Revisional Authority ordered that it is for the owner of the buildings to move-the District Revenue Officer for patta outside the scope of the Inams Abolition Act and the revision petition filed by the petitioner was rejected.

3. The case of respondents 1 to 3 is that the land in question belongs to the petitioner and the building on the land belongs to the fourth respondent and since" coalescence of ownership was not proved, on the basis of the decision of this Court, in K. Vellappa Gounder's case (93 L.W. 707), the petitioner is not entitled for the ground rent patta. It is stated that in order to enable a person to get ground rent patta u/s 13 of the Tamil Nadu Act 30 of 1963, he must be the

owner of the site and the building and if the ownership of the building vests with a person other than the land holder, the land will "vest with the Government u/s 3(b) and therefore, unless a person owns both the building and the site on which the building stands, the land will not vest with him so as to enable him to get ground rent patta u/s 13.

4. The fourth respondent has not filed any counter affidavit.

5. Mr. K. Jayaraman, Learned Counsel for the petitioner submitted that on the basis of the decision of the Supreme Court in R. Manicka Naicker Ors. Vs. E. Elumalai Naicker, an Inamdar, who continues to be in constructive possession of the site even after the notified date, would be entitled to patta. Learned Counsel submitted that u/s 13 of the Tamil Nadu Act 20 of 1963", since the owner of the building was not the owner of the land on the appointed date, the owner of the building has not become the owner of the site by virtue of Section 13 of the said Act. He, therefore submitted that on the basis of the decision of this Court in Subramanyaswami Devasthanam v. Sundararajulu ILR (1975) 1 Mad. 501 the petitioner would be entitled to patta for the site in question.

6. Mr. S. Raghavan, Learned Counsel for the fourth respondent submitted that the issue raised is squarely covered against the petitioner by the judgment of a Division Bench of this Court in the case of K. Vellappa Gounder and Sons by partner K. Vellappa Gounder v. K.S. Thirugnanasambandam Chettiar [(93 L.W.707) wherein the Bench has considered the question regarding the claim of patta by the owner of the site on which the superstructure belonging to another person stood and held that unless the person was the owner of the building and the site on which the building is situate on the appointed date, it would not vest in him so as to enable him to obtain a ground rent patta u/s 13 of the Act. He submitted that the decision of the Supreme Court in R. Manicka Naicker's case, on which heavy reliance was placed by the Learned Counsel for the petitioner is not applicable to the facts of the case and ratio of the decision of the Division Bench of this Court in Vellappa Gounder's case dealing with the grant of patta to the owner of the site on which the building has been constructed would apply and there are no infirmities in the orders of respondents 1 to 3.

7. Learned Government Advocate also supported the orders of the authorities, respondents 1 to 3.

8. I am of the view that the issue raised in the writ petition is concluded by the decision of the Supreme Court in R. Manicka Naicker Ors. Vs. E. Elumalai Naicker, The Supreme Court has considered the scope, object and purpose of the Tamil Nadu Act 30 of 1963, particularly, the scope of Section 13 of the said Act and held as under.

"Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day, Section 13(2) merely provides that the site on which the building stands will also be covered by

Section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date".

(Emphasis supplied).

In the case of Sri Kumarakottai Subramanyaswami Devasthanam v. K.S. Sundararajulu Chettiar, ILR (1975), I Madras 501, a learned Single Judge of the Madras High Court considered the provision of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of Sub-Section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An Inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respectfully agree with these findings of the learned single Judge". The ratio of the decision of the Supreme Court is that the Inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from the tenant, and the site on which the building stands would vest with the person who owned it immediately before the appointed date. In view of the law laid down by the Supreme Court that the site on which the building stands would vest in the Inamdar who owned the site immediately before the appointed date, the petitioner is entitled to claim patta notwithstanding the fact that there is no coalescence of ownership of the site and the building which stands thereon. In view of the decision of the Supreme Court holding that the site vests with the land" owner, the decision of the Bench of this Court in K. Vellapa Goundar"s case (93 L.W. 707) wherein this Court held, unless a person owned both the building and the site on which the building stands on the appointed date, it will not vest in Turn so as to enable him to obtain a ground rent/patta u/s 13 of the Act 30 of 1963 is not applicable to the facts of the case. The Division Bench proceeded on the basis that the site would not vest in the Inamdar in view of the provisions of Section 13 of the Tamil Nadu Act 30 of 1963. However, the Supreme Court has held that the site also would vest with the inamdar u/s 13 of the Tamil Nadu Act 30 of 1963. Though the Supreme Court was dealing with a case of the right of a landlord and Inamdar to take proceedings of the right of a landlord and Inamdar to take proceedings for eviction against the tenant, the Supreme Court has considered the effect of Section 13 of the Tamil Nadu Act 30 of 1963 and held that the site on which the building stands would vest with the person who owned the site immediately before the appointed date. I hold that the decision of the Supreme Court cannot be confined to a case of the right of the landlord to recover possession from the tenant, but the ratio of the decision is that the site would vest with the Inamdar and it is only on that basis, the Supreme Court held that Inamder would be entitled to possession. If the orders of respondents 1 to 3 are maintained, the petitioner would not be entitled to get patta under the Tamil Nadu Act 30 of 1963, and at the same time, the respondents 1 to 3 have held that the fourth respondent would be entitled to get patta outside the provisions of the Inams Abolition Act and if such a patta is granted in favour of the fourth

respondent, the petitioner would not be able to work out its right for recovery of possession which would be against the ratio of the decision of the Supreme Court. I, therefore, hold that the decision of the Supreme Court cannot be confined only to the case of recovery of possession, but the law laid down by the Supreme Court is that the site would vest with the person who owned it immediately before the appointed date and in view of the categorical law of the Supreme Court, I hold that the view of the respondents 1 to 3 that the land would vest in the Government is not sustainable in law. Accordingly, the orders passed by respondents 1 to 3 are set aside and respondents No.3 is directed to consider the question of issue of patta under the provisions of the Tamil Nadu Act 30 of 1963 on the basis that the site on which the building stands vests with the Inamdar who owned it before the appointed date. The Writ petition is allowed. However there will be no order as to costs, Consequently in the circumstances W.M.P. Nos. 14014 of 1992 and 20082 of 1995 are closed.