

(2009) 08 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 6689 of 2008 and M.P. (MD) No's. 2 to 3 of 2008 and W.P. (MD) No. 3592 of 2009 and M.P. (MD) No's. 1 to 3 of 2009 and Contempt Petition (MD) No's. 557 and 558 of 2009

Sree Krishnaswamy Temple

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Tamil Nadu Land Encroachment Act, 1905 — Section 10

Citation : (2009) 08 MAD CK 0022

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : G.R. Swaminathan, in W.P. No. 3592/2008, M.P. Senthil, for K. Srinivasan, in W.P. No. 6689/2008 and Cont. P. Nos. 557 and 558/2008, for the Appellant; G.R. Swaminathan, for Respondents 4 to 14 in W.P. No. 6689/2008 and S. Chellapandian, for 4th Respondent in W.P. No. 3592/2009 and Pala Ramasamy, Special Government Pleader for Respondents 1-3 in both W.Ps., for the Respondent

Judgement

T.S. Sivagnanam, J.—By consent, the writ petitions are taken up for final disposal. Since the issue involved in these writ petitions and

contempt petitions relate to the same property, the matters are taken up together for disposal.

2. The writ petition in W.P. (MD) No. 6689 of 2008 has been filed by Sree Krishnaswamy Temple, Kalingarajapuram, represented by its

Manager Pushkaran to quash the order passed by the third respondent, dated 15.07.2008.

3. The Writ petition in W.P.(MD) No. 3592 of 2009 has been filed by one R. Vasantha, W/o. Raju for issue of Writ of Certiorari to quash the

order dated 17.04.2009 passed by the first respondent.

4. The contempt petition in Cont.P. No. 557 of 2008 has been filed for the disobedience of the order made in M.P. No. 2 of 2008 in W.P. No.

6689 of 2008, dated 29.07.2008.

5. The Contempt petition in Cont.P. No. 558 of 2008 has been filed for the disobedience of the order, dated 07.11.2008, made in M.P. Nos. 1

and 2 of 2008 in W.P. No. 9333 of 2008.

6. The controversy involved in these matters relate to grant of house site patta in respect of a property situated in Eludesam village, Kanyakumari

District. The survey number of the property in question is not referred to at this stage, since it is the subject matter of the controversy.

7. The dispute has arisen on account of a correction effected in the survey number of the property which is said to be allotted in favour of the

beneficiaries. The impugned order in W.P.(MD)No.6689 of 2008 is an order passed by the Tahsildar effecting the correction in the survey number

in respect of the house site pattas granted to the respondents 4 to 14 as S. No. 329/14-29 to S. No. 329/14-21 and such correction having been

made by taking into consideration the direction issued by this Court in W.P. No. 9952 of 2005, dated 14.12.2007.

8. The case of the petitioner is that the petitioner temple purchased the property comprised in S. No. 329/14/21 by sale deed dated 13.10.2003

and that the temple is a private temple and the request made by the temple for grant of patta was rejected on the ground that the land is a

Government poramboke land. Therefore, the temple filed a suit in O.S. No. 175 of 2003 on the file of the Sub Court, Kuzhithurai for a declaration

and injunction. The District Collector who was one of the defendants resisted the suit stating that one Rajammal was originally assigned a house site

patta No. 148/73 and the same was cancelled by order dated 16.12.1975 and the land was resumed by the Government. Since the condition of

assignment was violated, the patta was cancelled and the land in R.S. No. 329/14/21 was classified as "Harijan Kudiyruppu". Since the revenue

authorities were taking steps to assign the lands, the temple filed a writ petition in W.P. No. 3677 of 2003 and this Court by an order dated

20.04.2004 disposed of the writ petition by granting liberty to the respondents to take action after following due process of law and not to evict

the petitioner, if not already evicted. In the meantime, a patta was granted in favour of the respondents 4 to 14 on 06.08.2003 by mentioning

Survey number of the property as S. No. 329/14/29.

9. Since in the writ petition filed by the petitioner a direction was issued to initiate action after following due process of law, a notice u/s 10 of the

Tamil Nadu Land Encroachment Act was issued, on which orders came to be passed and when the appeal was pending, there was a threat of

demolition which necessitated the petitioner to file a writ petition in W.P. No. 5595 of 2005 and an order was passed on 28.06.2005 directing to

dispose of the appeal petition and in the meantime, not to take coercive steps to evict the petitioner. However, it is stated by the petitioner that on

the next day i.e., on 29.06.2005 demolition was carried out.

10. The respondents 4 to 14 who are beneficiaries/assignees filed a writ petition in W.P. No. 9952/2005 to correct the survey number in the patta

issued to them as R.S. No. 329/14/21 instead of R.S. No. 329/14/29. The petitioner's complaint is that the temple was not impleaded as a

respondent in W.P. No. 9952 of 2005. Therefore, the petitioner filed an impleading petition which came to be ordered. Subsequently, the writ

petition was disposed of with a direction to consider the request of the respondents 4 to 14 and liberty was granted to the petitioner temple to

move the Civil Court and it was specifically stated that the order passed in the writ petition shall not constitute an embargo. In the suit which had

been already filed by the petitioner in O.S. No. 175/2003, the petitioner had filed an application for interim injunction in I.A. No. 16/2008 wherein

it is stated that the District Collector who was arrayed as one of the respondents/defendants, had filed a counter affidavit contending that the

respondents 4 to 14 are not landless poor. At this juncture, the impugned order effecting the correction in the survey number came to be passed

which is challenged in this writ petition in W.P.(MD)No.6689 of 2008. The petitioner has challenged the said order on the ground of violation of

principles of natural justice, that when a civil suit is pending, the respondents ought not to have effected the correction especially, in the light of the

counter affidavit filed by the District Collector in I.A. No. 16 of 2008 in O.S. No. 175 of 2003, wherein it has been stated that the respondents 4

to 14 are not landless poor. It is further necessitated by the petitioner that the

impugned order has been passed misconstruing the direction issued by this Court in W.P. No. 9952 of 2005 and accordingly, prayed for allowing the writ petition.

11. R. Vasantha, W/o. Raju has filed a writ petition in W.P. (MD) No. 3592 of 2009 to quash the order dated 17.04.2009 passed by the District

Revenue Officer, insofar as the petitioner is concerned. The petitioner Vasantha is the 6th respondent in W.P. No. 6689 of 2008 but her name

mentioned as Vasantha, D/o. Lakshmi. By the order dated 17.04.2009, the District Revenue Officer has directed cancellation of patta granted in

favour of the petitioner and others who are named in the impugned order on the ground that enquiry it came to light that they are not landless poor,

as such they are not eligible to the said benefit.

12. The case of the petitioner is that on 06.08.2003, patta was granted to an extent of 2.50 cents mentioning the Survey number as R.S. No.

329/14/21. The petitioner and others filed W.P. No. 3131 of 2004 when the Manager of the Temple, Mr. Pushkaran attempted to trespass into

the property. It is further stated that on 20.06.2005 the said Pushkaran was evicted. Thereafter, the petitioner and others found that the survey

number of the property has been wrongly mentioned and therefore, they were constrained to file W.P. No. 9952 of 2005 to correct the survey no

as 329/14/21 instead of 329/14/29 and a direction was issued on 14.12.2007 to consider their request. Subsequently, correction has been

effected on 15.07.2008 and this order impugned in the other writ petition in W.P. No. 6689 of 2008. It is further stated that interim stay was

granted in W.P. No. 6689 of 2008 and contempt was also filed for disobedience and petition for vacating the stay has also been filed. The

petitioner would further submit that she occupied the premises for which patta has been granted in her favour. Further, the petitioner and others

have filed O.S. No. 140 of 2009 on the file of the Principal District Munsif, Kuzhithurai against the said Pushkaran and interim injunction has also

been granted. It is further stated that one of the close friend of Pushkaran who has been impleaded as fourth respondent in W.P. No. 3592 of

2009, filed a writ petition in W.P. No. 683 of 2009 for considering the request for grant of patta in respect of the same property. On 28.01.2009,

a direction issued by this Court to consider the representation dated 04.12.2008

made by the fourth respondent, viz., N. Venu. The first respondent, thereafter, issued notice on 03.04.2009 to the petitioner and she also appeared before the first respondent and thereafter, the impugned order dated 17.04.2009 has been passed directing the second respondent to cancel the patta issued in favour of the petitioner on the ground that she and others are not landless poor. Hence, the petitioner has filed the above writ petition in W.P. No. 3592 of 2009, to quash the said order. It is further stated that the impugned order is in violation of the principles of natural justice, since no show cause notice was issued and on merits also would state that she is not the wife of any other allottee and the first respondent ought to have waited for the outcome of the W.P. No. 6689 of 2008 and ought not to have resorted to passing of the impugned order. The petitioner further made certain allegations which are not necessary to be considered at this stage.

13. Heard Mr. M.P. Senthil, learned Counsel for the petitioner in W.P. No. 6689 of 2008 and Mr. G.R. Swaminathan, learned Counsel for the petitioner in W.P. No. 3592 of 2009 and respondents 4 to 14 in W.P. No. 6689 of 2008, Mr. S. Chellapandian, learned Counsel for the fourth respondent and Mr. Pala. Ramasamy, learned Special Government Pleader, for the respondents 1 to 3 in both the writ petitions.

14. A scramble for a Government property has resulted in the present litigation. Government have evolved a scheme of granting free pattas to alleviate the grievances of landless poor. The object of the Government behind the said scheme is to alleviate such of those landless poor from the pangs of poverty and to ensure them to a decent living. This laudable object has been abused which has resulted in various disputes between the parties herein thereby defeating the very purpose of the scheme and the grant.

15. The facts which have arisen to the filing of the writ petitions and the contentions raised by either party have been set out in the preceding paragraphs and therefore, they need not be repeated once again at this stage.

16. The Writ petition in W.P. No. 9952 of 2005 which came to be filed by Dilli and 10 others for issue of Writ of Mandamus to direct the Revenue Divisional Officer to correct the patta issued in their favour by incorporating the survey No. 329/14/21 instead of S. No. 329/14/29.

17. The rival claimant to the property who is the petitioner in W.P. No. 6689 of

2008 was not impleaded as party and it is seen that he has filed a petition in M.P. No. 1 of 2006 to implead himself in W.P. No. 9952 of 2005 and the same came to be ordered by this Court on 22.08.2006. This Court by an order dated 14.12.2007 passed final orders in the above writ petition and issued a direction to consider the request made by the said Dilli and 10 others. After issuing such a direction, this Court made it clear that the Civil Court is the competent Court to decide the title over a particular property and it was further made clear that order of this Court need not be taken as one giving any finding on the title in favour of the Government or the third respondent over the said S. No. 329/14/21 and that the Civil Court is at liberty to decide on it as per law. Ultimately, while issuing such direction to the respondents to consider the request made by the petitioners therein, for correction of the Survey Number, the third respondent therein was directed to move the Civil Court for obtaining appropriate orders and the order passed in the writ petition will not be construed as an embargo in the venture of the third respondent to get appropriate orders as per law. This order made in W.P. No. 9952 of 2005 has become final.

18. It is the case of the writ petitioner that the impugned order in W.P. No. 6689 of 2008, dated 15.07.2008 has been passed misconstruing the direction issued in W.P. No. 9952 of 2005. I am inclined to agree with the learned Counsel for the petitioner because this Court only issued a direction to consider the request in accordance with law and did not issue a positive direction to correct the survey number. It is incumbent upon the appropriate authority to examine such request on merits and in accordance with law and cannot pass an order as if there is a positive direction by this Court to effect correction of survey number. Therefore, the scope of the direction has been misconstrued by the Tahsildar, Kuzhithurai while passing the order dated 15.07.2008. However, this issue need not be further dealt with in the matter in view of the following facts:

Admittedly, a civil suit filed by the temple in O.S. No. 173 of 2003 is pending on the file of the Sub Court, Kuzhithurai and I.A. No. 16 of 2008 seeking for interim injunction is also pending and a counter affidavit has been filed in the said interim application by the District Collector, Kanyakumari District stating that the Dilli and 10 others are not landless poor to

receive the house site pattas and they are not Harizans and they are not eligible to get patta since the land classified as "Harijan Kudieruppu". It is stated across the bar that the said Dilli and 10 others have also impleaded themselves in O.S. No. 175 of 2003. Further, the Dilli and 10 others have also filed a suit in O.S. No. 140/09 on the file of the Principal District Munsif, Kuzhithurai and the temple represented by its Manager Pushkaran has also impleaded himself in the said suit and the matter is also pending. As held by this Court in the earlier writ petition, the Civil Court is the ultimate court in which the title has to be decided. The revenue officials cannot give a decision as regards the title and the decree of the Civil Court as regards the title is binding upon the revenue officials. In such circumstances, since the petitioner temple has already been relegated to approach the Civil Court to establish their right over the property that such an order cannot be varied or modified at this stage of the matter.

19. Therefore, considering the rival claims between the parties and the facts and circumstances of the case stated above, I propose to issue the following directions:

i) The impugned order in both the writ petitions shall be kept in abeyance and no right could flow pursuant to such orders until the competent civil court decides the question of title.

ii) Either party cannot create any encumbrance on the disputed property.

iii) All the parties shall abide by the decision which shall be rendered by the Civil Court in the pending suits.

iv) It is not in dispute that O.S. No. 175 of 2003 pending on the file of the Sub Court, Kuzhithurai and O.S. No. 140 of 2009 pending on the file

of the Principal District Munsif, Kuzhithurai, relate to the same property. Therefore, in the interest of justice, in order to give an early resolution to

the problem to both the suits are required to be clubbed and heard together.

20. The Hon"ble Supreme Court in Surya Dev Rai v. Ram Chander Rai and Ors. reported 2003 (3) MLJ 60, while construing the power under

Articles 226 and 227 of the Constitution of India and held that proceedings under Article 226 are in exercise of the original jurisdiction of the High

Court while proceedings under Article 227 of the Constitution of India are not original but only supervisory. Though the power is akin to that of an

ordinary Court of appeal, yet the power under Article 227 of the Constitution of India is intended to be used sparingly and only in appropriate

cases for the purpose of keeping the subordinate Courts and tribunals within the bounds of their authority and not for correcting mere errors.

21. Therefore, in exercise of such power, I deem it appropriate that both the suits in O.S. No. 175 of 2003 and O.S. No. 140 of 2009 are to be

tried together and therefore, there shall be a direction to the effect that O.S. No. 140 of 2009 which is now pending on the file of the Principal

District Munsif, Kuzhithurai shall be transferred and tried along with O.S. No. 175 of 2003 which is pending on the file of the Sub Court,

Kuzhithurai. The learned trial Judge is requested to expedite the trial of both the suits and conclude the proceedings within a period of six months

from the date of receipt of a copy of this order. It is needless to state that the parties in the present writ petitions have agreed to co-operate with

the trial of both the suits.

22. The writ petitions are disposed of to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

23. In view of the orders passed in the above writ petitions, no separate orders are necessary in the contempt petitions and accordingly, the contempt petitions are closed.