

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2011

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

V. P. (MD) NO. 8259 of 2010 and M. P. (MD) NO. 3 of 2010

1. B. Ravi
2. Zamin A. Thangasami Raja

Petitioners

Vs.

1. The Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai - 600 005.

2. The District Revenue Officer, Tuticorin.

3. Revenue Divisional Officer, Kovilpatti.

4. The Superintendent of Police, Tuticorin.

Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records relating to the impugned order of the first respondent in D.DS. K4/RP17/08, dated 28.5.2010 and to quash the same.

For Petitioner : Mr. S. Natarajan
For Respondents : Mr. S. C. Herold Singh, GA

The petitioner has come forward to challenge an order dated 28.5.2010 passed by the first respondent Principal Secretary cum Commissioner of Land Administration, Chennai in setting aside the order of the District Revenue Officer, Thoothukudi, dated 27.7.2007 and allowing the revision petition filed by the fourth respondent Superintendent of Police, Thoothukudi. The writ petition was admitted on 2.7.2010. Pending the writ petition, notice was ordered in the application for stay. On notice from this court, the contesting fourth respondent has filed a counter affidavit, dated 9.8.2010.

2. The facts leading to the case are as follows:
The matter relates to a petition filed by the fourth respondent seeking for removal of encroachment in respect of S.No.428/3 in Vilatikulam village and taluk from the father of the first petitioner the fourth respondent in his application, dated 18.5.2001 sent to the District Collector, Thoothukudi claimed that in Vilatikulam village, S.No.428/3 is a 'Grama Nathan'. During the year 1875, quarters were built for a Head Constable and three constables. The said quarters were in use till the year 1969. Since new quarters were built in S.No.437/1 at Vilatikulam, the old quarters were abandoned. But, however the department was levying tax to the Panchayat till 1993. Even in the land records relating to the land tax,



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No.42B/3 was shown to be in possession of the police department. In 1983, in the village Adangal, the land was shown as Natham. During the year 1991 in the Statewide survey, the land was sub divided and resurvey numbers were given as S.Nos.612/1 to 612/8. The land in S.No.42B/3 where earlier police quarters was located was given resurvey number as S.No.612/4 to the extent of 0.0307 sq.mtrs. It was transferred in the name of one Thangasamy Pandian, the then Ettayapuram Jamindar. The petitioner's father had purchased the said land from Thangasamy Pandian on 9.7.1993. They also built a shopping complex.

3. Since the petitioner's father had allegedly encroached the land, the fourth respondent made an appeal, which was forwarded by the District Collector, Thoothukudi for an appropriate enquiry by the third respondent. The third respondent called for remarks from the Tahsildar, Vilathikulam. It was found that upto 1910, the land was shown as Natham and described as police line. But subsequently it was sold by the then Ettayapuram Jamindar in the year 1961 to one Karuppusamy by a registered sale deed. It was found that the land purchased by the said Karuppusamy was on the western side as per the gift deed given by Karuppusamy to one Subbulakshmi Ammal. In respect of S.No.42B/3 to an extent of 0.02 acres, the land was given in favour of John, S/o. Michael Fernando after collecting the market price. S.No.42B/3 was allotted to one S.K.Arumuga Nadar after getting B-Memo assessment on 6.2.1985. Upto 1991, it was shown as Sernatham in the village account. On that basis, natham survey was conducted and documents were prepared. The land in S.No.42B/3 was renumbered as 612 and sub divided into eight parts. S.No.612/4 was to an extent of 0.0307 sq.mtr. was shown that it belonged to Ettayapuram Jamindar.

4. Based on the report, notice was given to the first petitioner's father and the then Ettayapuram Jamindar, Thangasamy Pandian. They were represented by their counsels. They had also denied the ownership claimed by the fourth respondent. On the basis of the counter statement filed by the first petitioner's father and Thangasamy Pandian, the fourth respondent filed a reply. The petitioner also filed a written argument, to which a further counter and additional counter were also filed. The third respondent held that the statement of the fourth respondent that the land belonged to the police department cannot be accepted. Since in respect of S.No.42B/3, the matter was pending before the Supreme Court in SLP No.23/2005, it cannot be accepted as private natham. Therefore, the claim made by the fourth respondent cannot be accepted.

5. As against the said order of the third respondent, the fourth respondent had filed a revision before the second respondent. In the revision petition, after notice to the petitioner and his brother as well as to the Ettayapuram Jamindar, it was dismissed vide his order, dated 27.7.2007. The Revisional authority found that the land in S.No.42B/3 (resurvey No.612/4) was shown as ryotwari house site since no document was filed by the police department and a portion of the disputed land was sold by Thangasamy Pandian's forefathers and the land being in the enjoyment of the petitioner, no interference was called for and the order of the third respondent was confirmed. Thereafter, an amendment was made to the Revenue Standing Order No.31.8(A). The fourth respondent had filed a further revision to the first respondent. The revision was taken up after notice to the petitioner and his brother as well as to the Ettayapuram Jamindar.

hangasamy Pandian. The first respondent by his order, dated 28.5.2010 allowed the revision and set aside the order of the second respondent District Revenue Officer, Thoothukudi. Liberty was given to the petitioner to approach the competent civil court. In paragraphs 9 and 10 of the impugned order, the first respondent recorded the following findings, which reads as follows:

"9. Nathan pattas were issued to the individual to an eligible extent if they produce documents to prove their title continuous possession and enjoyment, over the land. While rejecting the revision filed by the Revision Petitioner, the District Revenue Officer has stated that the Police Department has not produced any document to prove their claim. Similarly, the Respondent has also failed to produce any documentary evidence to prove his title. Since, the Respondent by himself has admitted that in respect of suit land no documents were with him and this was subsequently confirmed by the purchaser Babu Reddier, father of second and third Respondent, which has not been considered by District Revenue Officer. The Revision petitioner has also furnished the copies of inspection notes starting from the year 1984 wherein it was specifically mentioned that houses allotted for Police constables were in dilapidated condition and needs demolition. Further, it was conveyed by the Ranchayat that House Tax has been collected from the 4 houses of Police area till 1992-93. These facts proves that the land in S.No.49/3 vested with Police Department. The Revision petitioner has also brought to the notice that the pending SLD in Supreme Court relates to the S.No.612/2 filed by one Tmt. Subbulekshmi Amma and not to the suit land and the Revision Petitioner is neither a petitioner nor the Respondent.

10. Further, the Respondent has claimed that during Nathan Settlement, his name was registered in respect of 0.00307 sq.ft. in S.No.612/4. However, the Zonal Deputy Tehsildar and Village Administrative Officer who have attended the enquiry have deposed that in A-Register of the GDR Scheme, an extent of 0.19.0 hectares in S.No.42B/3 was registered as Government Poramboke Nathan. Subsequently, in Nathan Settlement Scheme during the year 1991, the above S.No. has been assigned as 612 and sub-divided into 612/1 to 612/4. Though the name of Respondent has been registered in respect of S.No.612/4 for 0.00307 sq.mt., in Nathan Settlement Adangal Register there was no entry for issuance of Ground Ratta to any persons. Further, they have deposed that the suit land of S.No.612/4 (Old S.No.42B/3) has been under the encroachment of 11 persons. It is evidence that the S.No.42B/3 (Nathan S.No.612/1 to 612/4) is a Government Poramboke-Nathan and not a private Nathan as stated by the Respondent. Without considering the above facts and verifying the revenue records, the District Revenue Officer has rejected the Revision petition for the reasons that the Revision Petitioner has not produced documentary evidences is not correct and is liable to be set aside.

6. In the counter affidavit in justification of the order it was contended that it is the petitioner who did not produce any registered sale

deed, agreement, patta and tax receipts, etc. The land has been registered as Government poramboke natham in the A-register. As per the report of the Tehsildar, Vilathikulam to the District Collector, the petitioner's name has been wrongly registered and tax was also collected by the panchayat till the year 1992-93. Thangasamy Pandian was urged to get his name recorded in the register. Therefore, they gave a petition to the District Collector to evict the encroachers.

7. On the other hand, the writ petitioner in his affidavit had stated that the land was classified as Natham. It is intended for human habitation and the occupier of the natham land is the owner. It was settled law that natham land does not vest with the Government. The order of the D.P.O. as well as D.R.O. had gone into the entire issue and found against the fourth respondent. The fourth respondent had not submitted any records to show their ownership. The petitioners are in possession of the land after its purchase. The superstructures have been put in the land and they are running shops for the last 17 years. Therefore, there is no question of the first respondent reversing the order of D.P.O. and that too in the second revision.

8. The short question that has to be decided in this writ petition is whether the order of the first respondent impugned in the writ petition is legally valid?

9. It must be noted that in the fourth respondent who went before the Collector for evicting the person from the alleged encroachment of the land in S.No.612/4 (Old S.No.42B/8). Unless it is established that the land was a poramboke land, the question of exercising power under the Revenue Standing Order will not arise. In the present case, both second and third respondents have found against the fourth respondent. The fourth respondent had not produced any worthwhile documents to show their nature of land. Assuming that there was police quarters in that land, subsequent to the survey the lands were classified and further divided into 8 parts under the main S.No.612. There is no dispute about the ownership of others. It is only in the new S.No.612/4, there is a dispute. Even as per the admission of the fourth respondent, it was in the name of Ettayapuram Jamiadar, from whom the petitioner had purchased the land and had built shops and they are also in possession for the last 17 years. Therefore, in the second revision, the first respondent cannot convert his power into one of Civil Court and grant any declaratory relief in favour of the fourth respondent. On the other hand, having found that both sides have not produced any records relating to title, he should have driven the party, which came on revision, to go before the civil court and not rewrite the law the other way around by this order. He had virtually given right to the fourth respondent to enter into the land, thereby driving the person in possession to go before the civil court. The fourth respondent having lost his original application and further revision, cannot in the name of the second revision seek to dispossess the writ petitioner. On the other hand, the writ petitioner had produced certain prima facie materials to show that he had purchased the land and he is in possession of the land and also that there is shopping complex in the said land.

10. In the light of these facts, the first respondent ought to have dismissed the second revision and directed the fourth respondent to

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institute an appropriate suit to claim title over the property. Therefore, this court has no hesitation to set aside the order passed by the first respondent, dated 28.5.2010. However, it is open to the fourth respondent to institute a suit if so advised to establish their title over the property in question. Till such time, the petitioners are entitled to be in possession and enjoyment of the property in S.No.612/4 (old S.No.42B/3).

11. In the light of the above, the writ petition will stand allowed. No costs. Consequently, connected miscellaneous petition stands closed.

Deputy Registrar (Legal)

[Signature]
Assistant Registrar

- To
1. The Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai-600 005.
 2. The District Revenue Officer, Tuticorin.
 3. Revenue Divisional Officer, Kovilpatti.
 4. The Superintendent of Police, Tuticorin District, Tuticorin.

Copy to:
The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr. S. Nataraajan, Advocate SR.No.2844



ORDER IN
C.P. (M) No. 4259 of 2010
22-01-2011

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