

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2004

C O R A M

THE HONOURABLE MR.B.SUBHASHAN REDDY, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE N.KANNADASAN

W.A.No.1017 of 2004
and W.A.Nos.1018 to 1029 of 2004
and
W.A.M.P.Nos.1835 to 1859 of 2004

W.A.No.1017 of 2004

The Executive Officer,
Kadathur Town Panchayat,
Harur Taluk,
Dharmapuri District. ... Appellant

-Vs-

1.V.Swaminathan

2.The State of Tamil Nadu,
rep., by its Secretary,
Revenue Department,
Fort St. George,
Chennai-600 009.

3.The District Collector,
Dharmapuri District,
Dharmapuri.

4.The Revenue Divisional Officer,
Dharmapuri District,
Dharmapuri. ... Respondents

PRAYER : Appeal against the order dated 31.1.2003 passed in W.P.No.38 2 of 2001 on the file of this Court.

!For appellants in all appeals:: Mr.G.Sankaran

^For respondents 2 to 4 in all appeals :: Mr.V.Raghupathi,
Government Pleader.

:C O M M O N J U D G M E N T

N. KANNADASAN, J.

The above writ appeals are filed as against the common order dated 31.01.2003 in Writ Petition Nos.382 to 394 of 2001, wherein the learned Judge has allowed the writ petitions.

2. The facts leading to the filing of the writ petitions are set out hereunder:-

The writ petitioners and their ancestors were in occupation of small pieces of land in Kadathur Village, Pappi Reddi Patti Taluk, Dharmapuri District for more than 40 years and the said lands are classified as 'Natham' lands or otherwise called as 'Grama Natham' lands. The petitioners have submitted necessary applications for issuance of pattas and the Tahsildar, Natham Scheme, Harur Taluk, conducted an enquiry and recommended the names of the petitioners for the grant of patta. The then District Collector, Dharmapuri District has passed an order granting pattas as early as in the year 1992 and necessary entries were also carried out in the revenue records. However, subsequently, the authorities intended to evict the petitioners on the ground that the land in question is required for the use of the fourth respondent-Town Panchayat. A claim is made by the fourth respondent-Town Panchayat that the land belongs to the Panchayat and the resolution was passed to the effect that the land required for the use of the Panchayat and necessary action to be initiated to evict the petitioners, resulting in the petitioners have approached this Court by way of writ petitions which culminated into final orders to the effect that the petitioners cannot be evicted without following due process of law, much less without cancellation of the pattas. It is also pertinent to state that some of the petitioners have approached the Civil Court to resist the forcible eviction. Subsequently, the third respondent by order dated 28.12.2000 has passed an order cancelling the pattas already granted in favour of the petitioners. Aggrieved against the said order, the petitioners have filed the writ petitions which are allowed, against which the fourth respondent viz., the Town Panchayat has filed the above appeals.

3. The learned counsel for the appellant contended that inasmuch as the appellant/fourth respondent has passed a resolution treating the petitioners as encroachers in respect of the land in question, it is open to him to evict them and as such, the third respondent has rightly passed the impugned order, cancelling the pattas and the writ petitions ought to have been dismissed. The learned counsel further contended that the impugned order was passed pursuant to the liberty given by this Court in the earlier writ petitions which is to the effect that the writ petitioners can be evicted in accordance with law, after cancelling the pattas issued in favour of them.

4. We have considered the contentions urged by the learned counsel for the appellant and the learned Special Government Pleader for the respondents 2 to 4 in the above appeals.

5. While dealing with the contentions urged by the learned counsel for the appellant, the matter has to be dealt with in the light of the nature and classification of the land which is under occupation of the

petitioners. There is no dispute that the land under occupation of the petitioners is classified as 'Natham' or otherwise called as 'Grama Natham' land and the petitioners were granted pattas as early as in the year 1992 recognising their continued occupation. For the purpose of exercising right as against the petitioners to evict them from the land in question, it has to be decided as to whether the 'Grama Natham' land actually vests either with the Government or the Town Panchayat. As regards the classification of the land as 'Grama Natham', it is not the communal property in the sense in which thrashing floor or burning grounds or other property is communal viz., the property reserved for the use of the community. The 'Grama Natham' land, if it is unoccupied, is assigned from time to time by the proprietor whether it is in zamindari area or in an inam village; and the said practice was referred to by the learned Judge WADSWORTH, J. In Chinnathambi Goundan vs. Venkatasubramania Ayyar (49 L.W. 326) as early as on 6.12.1938. The learned Judge while dealing with the vacant house sites, taken note of the recognised practice of the then Madras Presidency, excluding the areas with a special revenue law such as Malabar, the control of unoccupied village site vests in the proprietor whoever he may be. A further reference is also made therein to the effect that in Zamindari areas, that control is exercised by Zamindar and in a shrotriem village not falling under the Estates Land Act, the village site vests in the shrotriemdar. Even in respect of lands covered under the Madras Estate Land Act, it is held that the Government can exercise its powers only to the limited extent to prevent the diversion of village site poramboke from the purpose for which it has been reserved and it was held therein that the village sites did not actually vest with the Government. The above view was approved subsequently in the decision rendered in Palani Ammal vs. L.Sethurama Aiyangar reported in 1949 (1) MLJ 290.

6. In the early days, as regards public roads, the Government has divested itself of its rights over them by directing them under Section 49 of the Local Boards Act (V of 1884) to be vested in the District Board which is a statutory body constituted for the maintenance of the roads and for other objects of public utility. As regards irrigation channels, rivers and tanks, the beds, would ordinarily remain vested in the Government under Act VII of 1865.

7. We draw inference for the above view from the decision by the Division Bench of this Court in Papala Narayanaswamy Naidu vs. The Secretary of State for India (24 MLJ 36) (BENSON AND BAKEWELL, J.J.), while interpreting the term 'Besides Poramboke' which was incorporated in the inam title deed. The learned Judges have held that the term 'poramboke' indicates the poramboke land such as unassessed waste and all kinds of communal property such as burying grounds, temple sites, threshing floors and public roads viz., road porambokes and river porambokes but it does not include all porambokes.

8. As regards the sites of 'pagodas', burning grounds, cattlestands and unassigned house sites and backyards, Government is the custodian of the above. The above view is expressed by the Division Bench of this Court in its decision rendered in Venkatarama Sivan vs. M. Sambasiva Aiyar dated 25.9.1918 reported in 9 L.W. 381.

9. A perusal of a combined reading of Section 3(b) and Section 18 of Madras Estates (Abolition and Conversion into Ryotwari) Act viz., Madras Act XXVI of 1948 and Section 2 of the Madras Land Encroachment Act, 1905 disclose that the title to a house site in a Grama Natham is protected from transfer to Government.

10. We draw inference for the above view from the decision rendered by this Court in S.Rangaraja Iyengar vs. Achi Kannu Ammal dated 3.3.1959 reported in 1959 (2) MLJ 513 = 72 L.W. 767. A similar view is expressed by the Apex Court in its decision rendered in C.V.Subbaya vs. P.Anjappa reported in AIR 1972 SC 1421, while referring to Section 3(b) of the Madras Act XXVI of 1948, it is held therein that the communal lands, poramboke, other ryotwari lands, waste lands, forests, mines and minerals, quarries, rivers and streams tanks and irrigation works etc., vest with the Government other than the land classified as 'Grama Natham'. This Court in its decision rendered in N.S. Kuppaswamy Odayar vs. Narthangudi Panchayat reported in 1971 MLJ REPORTS 190 has held that the classification of 'Natham Poramboke' and the description of 'Poramboke' in the settlement register will not by itself establish title of the Government to the land in question.

11. Similarly, this Court in Thillaivanam, A.K. And Another vs. District Collector, Chengai Anna District and 3 Others (1998 (3) L.W. 603) and in Krishnamurthy Gounder vs. Government of Tamil Nadu (2002 (3) CTC 221) held that the house sites classified as 'Grama Natham' cannot be construed as vesting with the Government.

12. Further, 'Grama Natham' is defined in the Law Lexicon as "ground set apart on which the house of village may be built". Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that it is a residential portion of a village; or portion of a village inhabited by the nonBrahmins; or land reserved as house sites; etc.

13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further such a summarily eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions.

14. As regards the further contention of the learned counsel for the appellant to the effect that the impugned order came to be passed only in view of the observation of this Court, it is seen that the said observation was made in the earlier writ petitions, permitting the authorities to take action only in accordance with law. In the previous litigations, no finding was rendered with regard to the classification of the land as 'Grama Natham' and only liberty was reserved to the authorities, which would not enable them

to proceed in the manner as set out in the impugned order.

15. For the foregoing reasons, we do not see any merit in the above appeals and accordingly, they are dismissed, however, there will be no order as to costs. Consequently, connected WAMPs are also dismissed.

Index : Yes.

Internet: Yes.

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To

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Dharmapuri District.

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