
(2004) 03 MAD CK 0140

Madras High Court

Case No: Writ Petition No. 13009 of 1997

P. Rajaram and Kumar
Chidambram

APPELLANT

Vs

The State of Tamil
Nadu

RESPONDENT

Date of Decision: March 25, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 03 MAD CK 0140

Hon'ble Judges: Prabha Sridevan, J

Bench: Single Bench

Advocate: No appearance, for the Appellant; S.P. Prabhakaran A.G.P. for R1 and R2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This Writ Petition has been filed by the trustees of Marundeeswarar Temple, Thiruvannamiyur challenging G.O.Ms.No.828 dated 25.8.1995. The matter was posted for final hearing. No one appeared for the petitioners. The 2nd petitioner is no more. However, in the Writ Petition, the 4th respondent was the Executive Officer of Marundeeswarar Devasthanam. The learned counsel for the 4th respondent would submit that since the interest of the Temple was directly affected by the impugned order notwithstanding the fact that the petitioners are not present, he may be permitted to state the case of the Temple and show how the impugned order prejudiced the interest of the Temple. Bearing in mind that the Courts exercise a parens patriae control over religious and charitable institutions & trusts, the matter was heard.

2. The impugned order relates to issuance of patta in respect of survey number 126/10 to one Thiru N. Kumar at the instance of one Dr. Hari Ramesh. Mr. N. Kumar has been made as the third respondent in this Writ Petition. No one has appeared on behalf of N. Kumar today. The property bearing survey number 126/10 was originally included in survey No.126/2. A lease was granted in respect of the property in favour of one Sabapathi Chettiar in 1958 who in turn sub leased the property to seven others. There were several proceedings before the Settlement Authorities and on 14.2.1983 three revisions were disposed of by a common order. One revision was filed by one Kadirvelu Chettiar, who claimed he was entitled to the property by virtue of a document No.2173/43 dated 22.10.1943. The other revision was filed by the seven sub tenants inducted by Sabapathi Chettiar. The third revision was filed by the 4th respondent herein. All the revisions were dismissed but some of the findings are relevant. The Settlement Officer, Thanjavur, observed from the records that ground rent patta had been granted to the 4th respondent for survey No.126/10. He rejected the claim of Kadirvelu Chettiar on the ground that the land belong to the 4th respondent as it is a private land even before 1941. Therefore, Kadirvelu Chettiar cannot derive any right from the document of the year 1943. The Officer also found that there was enough evidence to show that survey No.126/10 continued to be the 4th respondent's property even after 1943. It was observed that the title of the Devasthanam to this survey number was admitted by Sabapathi Chettiar from whom Kadirvelu Chettiar traced his title. It is seen from the records that a suit was filed by the wife of Sabapathi Chettiar in respect of a path way through survey No.126/10. The trial Court viz., the Second Additional District Munsif, Poonamallee decreed the suit. Against that, appeals were filed, which will be dealt with later.

3. In any event, the revisions were dismissed leaving it open to the persons who own houses to apply to the Government for grant of ground rent patta. According to the Officer, the land had vested in the Government as per Act 26 of 1948. Against this, the parties went before the Director of Survey and Settlement, who confirmed the above order. Two appeals were filed against the decree of the Second Additional District Munsif, Poonamallee; one by the sub lessee and other by the plaintiff herself. In both these appeals, the 4th respondent was a party. It is important to note that the learned Subordinate Judge, Poonamallee has referred to the 4th respondent as owner of the property. However, the appeals were allowed in part declaring an easementary right in the path way. These appeals were disposed of in the year 1976. On 11.2.1994, the Collector of Chennai addressed a letter to the 4th respondent herein referring to G.O. Ms. No.837/Revenue dated 2.12.1993, and the request of one, Dr. Hari Ramesh for grant of patta. The 4th respondent called for an enquiry with the required documents. On 22.2.1994, the 4th respondent had sent a reply stating that this land belongs to the Temple and the interest of the Temple should be safeguarded. Again on 11.3.1994, the Collector issues a letter seeking clarification from the Temple whether any Temple building has been put up in survey No.126/10. To this, a reply is given on 22.3.1994 stating that the Temple's right must be protected and that the Collector will "desist from issuing patta to the third parties". In August 1994, the 4th respondent filed C.S. No.1028

of 1994 in which the first respondent herein is the defendant, the second respondent is the 4th defendant and Dr. Hari Ramesh, at whose instance the impugned order was passed issuing the patta to the third respondent herein, was shown as the 13th defendant. The Commissioner of Land Reforms, The Director of Survey and Settlement and the sub tenants are all parties in this suit. It appears that initially only notice was ordered and ex parte interim injunction was not granted. But the respondents 1 & 2 cannot plead that they had no knowledge of the proceedings. Two interim applications were sought for; one was to prevent alienation and the other was to prevent grant of patta. Subsequently, This Court passed an order of "Status quo". On 21.11.1995, the Collector of Madras pursuant to G.O.Ms.No.828 dated 25.8.1995, which is impugned herein assigned the land to Thiru. N. Kumar, having come to the conclusion that the Temple "cannot be able to sustain their claim for declaration in their favour and for injunction". On 7.1.1998, an order was passed in WMP Nos.20053, 20054 and 4036 of 1995 in W.P. No.17786 of 1995 which had been filed for quashing the above order. The above writ miscellaneous petitions filed by the petitioners herein and the original applications filed in C.S. No.1028 of 1994 were heard together. The learned Judge came to the conclusion that prima facie a case has been made out by the Temple. This order is dated 7.1.1998 and reads this:

"This court also makes the interim order passed in OA No.771 of 1994 absolute pending disposal of the suit. The order of interim injunction granted on 13.12.1995 in OA No.1318 of 1995 is made absolute. In OA No.770 of 1994, this Court directs that there shall be no further proceedings by the Collector such as grant of patta, mutation of patta in permanent land Register and all further action pursuant to the impugned proceedings dated 21.11.1995 of the Collector of Madras in No.J2/53651/95 dated 21.11.1995 pending disposal of the Writ Petition".

Considering the nature of the rival claims, learned Judge also directed that the suit has to be disposed of at an early date.

4. The question may arise as to whether when the petitioners are not present, the 4th respondent shall be heard. But, it is the 4th respondent's interest which is prejudiced by the impugned order and I cannot see why this Court cannot issue a writ of Certiorari if the order is illegal. The Writ petition was filed only to safeguard the 4th respondent, whose interest has clearly been jeopardised by the hasty actions of the respondents. The impugned order, cannot be sustained and the approach of the authorities merits some explanation. No counter is filed. Even if one ignores the prior proceedings before the Settlement Authorities where the 4th respondent's right has been referred, it is indisputable, the Collector of Madras, who has issued the Order dated 21.11.1995, had called upon the 4th respondent to produce their title deeds and to be present at the enquiry by a letter dated 11.2.1993. The 4th respondent had produced materials to show that they have right in Survey No.126/10. Even if one assumes that the 4th respondent's right has not been clearly established, the 4th respondent had produced enough materials to show that no patta can be granted without hearing the 4th

respondent. In this letter dated 11.2.1993, the Collector specifically mentioned G.O.Ms.No.837 Revenue dated 2.12.1993. After the exchange of letters, the impugned G.O. is issued referring to the same G.O.Ms. No.837 Revenue dated 2.12.1993 but ignoring the claim of the Temple. It is difficult to accept the statement in impugned order that the Government has carefully perused the records and had come to the conclusion that the petition of Dr. Hari Ramesh for issuance of patta to N. Kumar should be granted. If the records had been really perused, the first respondent would have clearly seen that for nearly 30 years, the 4th respondent has been agitating its right over Survey No.126/10. This order is clearly arbitrary, there is no application of mind and it violates all principles of natural justice. It is clearly illegal and passes comprehension. When the authorities are parties to C.S. No.1028 of 1994, one cannot understand the unseemly haste to issue patta at the instance of one Dr. Hari Ramesh. The 4th respondent filed the suit for declaration of title to Survey No.126/10 and for injunction and this Court is seized of the matter. Even assuming that no injunction was granted, the first respondent cannot plead ignorance of the pendency of the suit.

5. It is even more difficult to comprehend the approach of the second respondent, the Collector, Madras who by order dated 21.11.1995 has pre-concluded what would be the decision of this Court in the suit No.1028 of 1994.

6. The very reading of the order dated 21.11.1995 would show that the respondents cannot plead ignorance of the suit. If so, the act of the respondents indirectly scuttles the due process initiated by the 4th respondent for establishing its right. Of course, the order dated 21.11.1995 is consequent to the impugned order. The learned counsel for the 4th respondent brings to the notice of this Court that the challenge to the Order dated 21.11.1995 made in the Writ Petition No.17786 of 1995 does not survive since the Writ Petition was dismissed for default because the petitioners herein had not prosecuted the matter. The petitioners had been superseded by a Government Order and therefore, there was no one to agitate the matter on behalf of the Temple. However, the order passed by E. PADMANABHAN, J (as he then was) which is dated 7.1.1998 and extracted above categorically states that the authorities are restrained from giving effect to any order consequent to G.O.Ms.No.828 dated 25.8.1995. The dismissal of W.P. No.17786 of 1995 will not affect the result of the

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W.P., since it is only pursuant to the order impugned herein that the order was passed.

7. In the absence of any materials on the side of the 1st and 2nd respondent to justify its action and in the face of the substantial materials available on record and since it is clearly shown that the petitioners and the 4th respondent have been agitating their right to Survey No.126/10 from 1979, the impugned order must necessarily be quashed. The respondents are parties to the suit. If the suit filed by the 4th respondent is dismissed, it is open to the Government to deal with the matter in accordance with law. The Writ Petition

is allowed. No costs. It is also open to the 4th respondent to take such steps as are available to them to protect their interest against any subsequent alienees.