

Subba Reddy Charities Vs. State of Tamil Nadu and ors.

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Court : Chennai

Decided On : Nov-30-2011

Judge : R.Banumathi; R.Mala, Jj.

Acts : Land Encroachment Act, 1905

Appeal No. : Writ Petition No.1040 of 2011

Appellant : Subba Reddy Charities

Respondent : State of Tamil Nadu and ors.

Advocate for Def. : Mr.M.Venugopal, Adv.

Advocate for Pet/Ap. : Mr.Yuvaraj Reddy, Adv.

Judgement :

1. Petitioner/Party-in-person has filed this Writ Petition seeking for a Writ of Mandamus to remove the illegal encroachments in R.S.No.87/B of Adyar and R.S.No.90 of Velachery [present Town Survey No.36 of Alandur] and to cancel the name of Gandhi Market and to direct the Respondents 2 to 4 to initiate appropriate steps in accordance with law for restoring the water body (Mangulam) to its original position and to recover the Trust property for charity.

2. Case of Petitioner is that his ancestor Subba Reddy has created a Trust and in this regard his ancestor Rangayya Reddiar has also left a Will dated 25.01.1922 in

which reference is made about endowment of properties. The administration of the Trust is governed by High Court Scheme decree in C.S.No.180 of 1948 and C.S.No.247 of 1962. Case of Petitioner is that his grandfather had dug a Kulam (Tank) in R.S.No.90 and the same is mentioned in the Will dated 25.01.1922 [Doc.No.3 of 1922]. According to Petitioner when he was in abroad, two Trustees had mismanaged the Trust selling the Trust properties and they did not take care about the Mangulam [Tank] dug by the founder. Petitioner has further alleged that the encroachers had encroached upon the Mangulam [tank] and the surrounding area which is a Trust property of Subba Reddy Charities. When the Petitioner had taken steps by approaching the District Collector, Kancheepuram, the encroachers have filed Writ Petition in W.P.No.19179 of 2007 in which the Court has directed the District Revenue Officer, Kancheepuram to conduct an enquiry and to give opportunity to encroachers and to pass appropriate orders. Encroachers have also filed number of Writ Petitions in W.P.Nos.11377 of 1998, 5665 of 2004 and 21479 of 2007.

3. In an elaborate counter-statement, 4th Respondent averred as follows:-

T.S.No.36 of Ward H, Block No.20 of Alandur Municipality is classified as Kulam poramboke and called as Mangulam. The entire area of Mangulam lies within Alandur village, Alandur Taluk within the jurisdiction of Alandur Municipality and the civic amenities are provided by the Alandur Municipality and taxes are also collected by them. In pursuance of directions in various Writ Petitions, The District Revenue Officer, Kancheepuram has conducted elaborate enquiry. After examining the Will, the District Revenue Officer has stated that S.No.1/6 of Adyar and S.No.90 of Velachery do not find place in the Survey Number mentioned in the Will. In the said enquiry, the District Revenue Officer has held that the land Survey Number 36 measuring 0.8252 sq.mtrs is classified as Kulam poramboke belongs to Government. In pursuance of the said Proceedings, encroachers have been served with eviction notices and it is stated that the process of eviction under Land Encroachment Act, 1905 is under progress and steps are being taken to evict the encroachments. As against the said Proceedings RC.No.12239/2004 dated 02.02.2010, Petitioner has filed Appeal/Revision before the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai and the

same is pending.

4. 3rd Respondent-Commissioner, Alandur Municipality has filed counter contending that the lands in S.No.36, Ward H, Block 20 was classified as Revenue Poramboke Kulam and the same is vested with the revenue authorities. On 19.05.2007 and 20.05.2007, the Revenue department and the Highways department together removed the various encroachments. At that time, the various persons who were in occupation have appealed to the Revenue Department and the appeals are said to be pending with the Revenue Department. Without impleading the encroachers, the Writ Petition is not maintainable. In any event, the 3rd Respondent has no connection with the said lands and prayed for dismissal of the Writ Petition.

5. Petitioner-Yuvaraj Reddy appeared as Party-in-person. We have heard the Petitioner-Yuvaraj Reddy.

6. Petitioner/Party-in-person has submitted that R.S.No.90 was earmarked for Mangulam [tank] and in the Will dated 25.01.1922, it is clearly stated that Subba Reddy had dug Mangulam [tank] in R.S.No.90 of Velachery and that the revenue officials and also the Alandur Municipality are trying to protect the encroachers by allowing the encroachers to be in occupation.

7. Drawing our attention to the Proceedings of the District Revenue Officer dated 02.02.2010, Mr.M.Venugopal, learned Additional Government Pleader has submitted that in his orders, the District Revenue Officer, Kancheepuram had clearly stated that S.No.1/6 of Adyar and S.No.90 of Velachery do not find place in the Survey Number mentioned in the Will dated 25.01.1922. There was no mention in 'C' schedule of the Will that Subba Reddy dug the Kulam in S.No.90 and no document was produced by the Petitioner and in the final conclusion the District Revenue Officer has ordered that the Town Survey Number 36 in Block No.20 measuring 0.8252 sq.mtrs. Is the Kulam poramboke belonging to the Government. It was further argued that Petitioner had already filed Appeal/Revision before the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai in T1/5994/2010 and when the matter is pending before the Appellate Authority, the Writ Petition is not maintainable.

8. We have heard Mr.P.Srinivas, learned counsel appearing for 3rd Respondent. Learned counsel for 3rd Respondent has submitted that as per revenue records, T.S.No.36, Ward H, Block 20 vested with the Revenue department and the 3rd Respondent-Alandur Municipality has no connection with the said land.

9. Drawing our attention to the Will dated 25.01.1922, Petitioner has forcibly contended that the Will and the other documents would clearly show that his ancestor Subba Reddy had dug the Kulam in R.S.No.90 and the Kulam and surrounding area belongs to Subba Reddy Charities and in collusion with the revenue officials and the 3rd Respondent-Alandur Municipality, the encroachers have illegally encroached upon the Kulam [Tank] and the surrounding area.

10. We have perused the copy of Will and also the original Will dated 25.01.1922 produced by the Petitioner. The Will [25.1.1922] has been executed by Rangaiah Reddiar, son of Desu Reddiar about the dedication of "A" and "B" schedule properties for Charities. In the said Will, dedication of properties to the Charities is stated as under:-

VERNACULAR (TAMIL) PORTION DELETED

Original Survey No.86 Revision Survey No.86 A.1 S.16

-do- 87/A -do- 87/A A.7 - S.78

-do- 87/B -do- 87/B A.3 S.18

-do- 87/B -do- 711 A.1 S.31

Total Area A.13 S.43

VERNACULAR (TAMIL) PORTION DELETED

11. Even though, Petitioner claims that the properties in the above Survey Numbers were meant for Charities, Petitioner had not produced any title deeds of his predecessor. Like wise, Petitioner had not produced any document to show that Subba Reddy Charities continued to be in possession of the Kulam [tank] and the surrounding area in R.S.No.90. Excepting the Will and the Scheme decree in

C.S.No.180 of 1948, Petitioner had not produced any documents to show continuous possession of the properties by the Trust.

12. In pursuance to the direction in W.P.No.19179 of 2007 dated 25.09.2008 and other Writ Petitions [W.P.No.21479 of 2007 dated 12.03.2008 and W.P.No.10542 of 2008 dated 22.08.2008], the District Revenue Officer, Kancheepuram has conducted enquiry and in his Proceedings R.C.No.12239/2004 dated 02.02.2010, the District Revenue Officer has held that even though there was a mention in 'C' schedule of the Will that Subba Reddy dug a Kulam [tank], no document was produced to show that R.S.No.90 was purchased by Subba Reddy and that the said property belongs to Subba Reddy Charities. Pointing out that excepting the Will, Petitioner had not produced any document, in his Proceedings, the District Revenue Officer has observed as under:-

VERNACULAR (TAMIL) PORTION DELETED

13. As is seen from the typed set of papers produced by the Respondents, survey was conducted on 06.8.2003. From the report of the surveyor dated 12.09.2003, it is seen that Adyar S.No.1/6 and Velachery S.No.90 (Part) have been clubbed and now the Town Survey Number is T.S.No.36 of Alandur town. Upon Enquiry, the District Revenue Officer, Kancheepuram has observed that Adyar S.No.1/6 0.86 acres and Velachery S.No.90 (Part) 1.02 acres are clubbed and now the Town Survey Number is T.S.No.36 of Alandur town. Observing that Town Survey No.36 is only Government Kulam poramboke, the District Revenue Officer held as under:-

VERNACULAR (TAMIL) PORTION DELETED

14. Learned Additional Government Pleader has submitted that as against the order of the District Revenue Officer, Kancheepuram [02.02.2010], the Petitioner had preferred Appeal/Revision before the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai in T1/5994/2010 and the same is stated to be pending.

15. During the course of arguments, learned Additional Government Pleader had also produced the File [R.C.11155/98/B2] containing 755 pages which we have perused. In the Writ Petitions filed before the First Bench, Petitioner has averred that when he was in abroad, two trustees have sold lot of Trust properties viz., 60 plots in S.No.87/A, 25 plots in S.No.87/B, Choultry 89/50 built by the founder and in another Choultry 91/51 trespasser was allowed to run a factory. By the order dated 28.08.2010, the First Bench of this Court observed that the questions raised by the Petitioner cannot be adjudicated by this Court in exercise of Writ jurisdiction and that the appropriate remedy available to the Petitioner is only to move the Civil Court of competent jurisdiction for adjudication of his right in respect of the trust properties and also for declaration that such transactions are illegal, void and fraudulent.

16. Before us also Petitioner has produced the original Will [25.01.1922] which we perused. The petitioner had also produced the order of the Revenue Divisional Officer in Na.Ka.No.12258/04/N1 dated 13.07.2004, which refers to the enquiry proceedings of the Revenue Divisional Officer. In the proceedings before the Revenue Divisional Officer, the encroachers are said to have made a statement that Survey No.1/6 is not a kulam porampoke and that it is the property belonging to one Rengiah reddy. The said proceedings is of no help to the writ petitioner since the statement is made by the encroachers during enquiry proceedings. In view of the subsequent order passed by the District Revenue Officer in R.C.No.12239/2004 dated 02.02.2010, the above proceedings is of no significance. As against the order of the District Revenue Officer, Kancheepuram, Petitioner has already preferred Appeal/Revision before the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai in T1/5994/2010. When the Petitioner has challenged the order of the District Revenue Officer before the Appellate Authority, simultaneously he cannot invoke the Writ jurisdiction. More so, when there are disputed questions of fact which are to be resolved based upon the documents as well as the revenue records.

17. Placing reliance upon 2005 (4) CTC 9 [M.E.A.Mohamed Ali and others v. The District Revenue Officer, Ramnad Collectorate, Ramanathapuram and others], Petitioner has contended that inspite of the above said decision, the revenue

officials and the Municipality had not taken steps to restore the Kulam [tank] to its original position. The present Writ Petition is not filed as Public Interest Litigation, but the Petitioner seeks for restoration of the Kulam [tank] claiming the property as the property of Subba Reddy Charities. Therefore, we find that in this Writ Petition, the Petitioner cannot seek assistance of the above said decision.

18. In the result, the Writ Petition is disposed of directing the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai to take up the Appeal/Revision filed by the Petitioner at an early date. The Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai shall give sufficient opportunity to the Petitioner for producing the documents and other materials and dispose of the Appeal/Revision preferably within a period of six months from the date of receipt of copy of this order. Consequently, connected M.P. is closed. No costs.

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