

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.LM., LL.M.,
PG.D.PM/IR.,**

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Friday, the 19th Day of January 2024

A.S. No. 22/2023

C.N.R. No. TNDG01-002240-2022

Paramasivam

.... Appellant/Plaintiff

/VS/

1. The State of Tamilnadu,
Rep. By District Collector, Dindigul
2. The Tahsildar,
Vedasandur Taluk.
3. The Block Development Officer,
Gujiliyamparai.

... Respondents / Defendants

On appeal from the Decree and Judgment passed in O.S. No.33/2019
on the file of the Learned Subordinate Judge, Vedasandur dated 21.01.2022.

Parties before Trial Court:

Paramasivam

Plaintiff

/VS/

1. The State of Tamilnadu,
Rep. By District Collector, Dindigul
2. The Tahsildar,
Vedasandur Taluk.
3. The Block Development Officer,
Gujiliyamparai. ... Defendants

This appeal came up before this Court for final hearing on 09.01.2024 in the presence of Tvl. K. Karthikeyan, K. Senguttuvan and P. Divya, Advocates for the appellant and of Thiru. S. Soosai Robert, Additional Govt.Pleader for the Respondents and upon hearing the arguments of both side and upon perusing the material records and the judgment of the trial court, and having stood over for consideration till date, this Court delivers the following ...

JUDGMENT

1. On appeal from the judgment and decree passed in O.S. No.33/2019 dated 21.01.2022 by the learned Subordinate Judge, Vedasanthur.
2. The plaintiff has filed the suit for declaration and consequential relief of injunction against the defendants and for cost of the suit.
3. The parties are referred to as in the suit for convenience and easy understanding.

4. **The facts necessary and relevant for disposal of the appeal are as follows :**

The suit property is classified as 'Natham House Site' and is occupied by the plaintiff and his ancestors for more than 50 years. They have put up a house and tethering cattle and storing hay stack and residing therein. No one including the Government or the defendants have any right over the property as it is an occupied Natham. This does not belong to the Government and it has no right under Sec.3 of Estate Abolition Act. While so, the 2nd defendant had issued notice u/s.5 and 7 of Land Encroachment Act on 12.6.2018 under the instigation of the 3rd defendant. The plaintiff issued reply but without considering the same, the defendants again issued notice u/s.6 of Land Encroachment Act on 26.7.2018 without conducting any enquiry. No final Orders were passed and no enquiry was conducted, but the defendants have removed the asbestos sheet, thatched house and the hay stack illegally, on 25.9.2018. The plaintiff had given a complaint to the 1st defendant who had given direction to the 2nd defendant to conduct the enquiry and send a report. But no such enquiry was conducted and no action was taken by the 2nd defendant. The defendants have issued notice admitting that the plaintiff had occupied the suit property by putting up sheds and they are now attempting to

dispossess completely from the suit property. They are also preventing him from making constructions in the said property. Therefore, the plaintiff has filed the suit for declaration that he has absolute title over the suit property and for consequential relief of injunction restraining the defendants from interfering with his possession.

5. The defendants have contended that the suit property is Natham poramboke vacant site in possession and enjoyment of the 3rd defendant. Since the plaintiff encroached the same and they received complaint from the public that the plaintiff disturbs the conduct of the temple functions, proper notices were sent under the Land Encroachment Act and the encroachment was removed under the Act. As of now, the suit property is in occupation and possession of the 3rd defendant and the plaintiff cannot file the suit for declaration and injunction. Hence, the suit is not maintainable and has to be dismissed.

6. After framing necessary issues and after full trial, the Trial Court has dismissed the suit by its Judgment and decree in O.S. No.33/2019 dated 21.1.2022. Aggrieved by the said Judgment and decree, the plaintiff has filed this appeal on the following among other grounds.

7. **Grounds of Appeal :**

The trial court has not properly considered and appreciated the oral and documentary evidence let-in in this case. It has erred in dismissing the suit even after observing that the suit property is a Grama Natham. It has failed to notice that the Government cannot exercise any right over the Grama Natham Lands and the suit is dismissed against the admission made by the defendants that the plaintiff is in possession and enjoyment over the said property. The trial court has not considered that no evidence was let in by the defendants to disprove the plaintiff's case. Therefore, the appellant prays to allow the appeal and to set aside the decree and Judgment passed by the learned Subordinate Judge, Vendasandur on 21.12.2022 and decreed the suit.

8. **The following points arise for determination in this appeal.**

1. Whether the plaintiff is entitled for the relief of declaration.?
2. Whether the plaintiff has possession and enjoyment over the suit property ?
3. Whether the plaintiff is entitled for the consequential relief of injunction ?
4. Whether the judgment and decree of the Subordinate Judge, Dindigul in O.S.No.33/2019 dated 21.1.2022 is liable to be set aside and this appeal is to be allowed ?
5. To what other relief are the parties entitled ?

9. Heard both sides elaborately.

10. **Point No. 1 :**

There is no dispute regarding the nature and classification of the suit property, as it is admitted to be a 'Grama Natham' even as per the notices issued by the defendants under Ex.A1 to Ex.A3. From the perusal of the said documents, it is evident that the suit property is classified as Natham in the revenue records. Therefore, it is now to be decided, whether it is occupied by the plaintiff, and whether he has right to get declared as the owner of the property.

11. In this regard, the learned counsel for the appellant contended that once a land is classified as Natham, the Government does not have any right over the said property and it cannot evict the plaintiff under the Land Acquisition Act. Per contra, the learned additional Government pleader argued that though the land is classified as Natham, it is not in occupation of the plaintiff but it is enjoyed by the public during the temple festivals.

12. It is pertinent to note that the defendants have admitted that the suit property is classified as 'Natham'. Therefore, it is needless to state that once

a property has been classified as ‘Grama Natham’, Government cannot claim any right over the said property as held by the Hon’ble Madras High Court in ***State of Tamil nadu Vs. Madasamy (2012 (2) CTC 315)***. Similarly in yet another decision, the Division Bench of the Hon’ble Madras High Court in ***“Dharmapura Adhinam Mutt Vs. Raghavan and R.Subbiah (2012 (1) CTC 280)”*** has held that

“ Grama Natham is the village habitation where the land holders may build the house and reside. They are also known as ‘house sites’ (மனை). They are so classified as Grama Natham to differentiate from Inam land, Ryotwari lands, Pannaii Lands and waste lands, while later vested with the government, the Grama Natham never vested with the State.”

There are other decisions of the Hon’ble Madras High Court starting from ***Palaniammal Vs. Sethurama Ayyangar (1949 (1) MLJ 290)***, ***S.Rangaraja Iyyangar and another Vs. Aachi Kannu Ammal and another (1959 SCC Onl-line Madras 30)***, ***State of Madras Vs. Kasthuri Ammal (1974 (84) Law Weekly 531)*** wherein the Hon’ble Madras High Court has repeatedly and

consistently held that, ***“a house site owned by a person in what is generally known as Grama Ntham is not under the property of the Government,” more particularly, in “Executive Officer and others Vs. Swaminathan and others (2004 (SCC) On-line Madras 4112)”*** The division Bench of Hon’ble Madras High court has held that

“Panchayath cannot treat persons occupation to Grama Natham land as encroachers and seek to evict them. The title to a house site in ‘Grama Natham’ is protected from transfer to Government.”

In yet another recent decision in ***“T.S. Ravi Vs. District Collector W.P.No.26234 and 26237 of 2018 dated 11.10.2018,”*** the Division Bench of our Hon’ble Madras High Court has categorically held that,

“A Government has no paramount title to the lands classified as Grama Natham and such lands do not vest in the Government. Thus the Government has no right to evict persons who all are in occupation of lands classified as ‘Grama Natham’ in the revenue records by invoking the provisions of the Tamilnadu Land Encroachment Act 1905 or any other enactment. It is always open to the

***Government to acquire the lands by paying compensation
if they are needed to any public purpose”.***

13. Thus from the decisions rendered by Hon’ble Madras High Court referred supra, it is clear that the Government has no right over the land classified as ‘Grama Natham’ and it cannot evict the persons occupying the said lands. In the case on hand, it is admitted that the land is classified as ‘Grama Natham’ but the defendants have claimed that it belongs to the Panchayath and is used by general public. But the defendants have not filed any documents to show that the suit property was assigned or allotted to the 3rd defendant Panchayath at any point of time. It is true that the un-occupied Natham vests with the Government and the Government has every right to assign patta to the poor and needy people. This right of the Government cannot be taken away or challenged before any court of law. But at the same time, once the said ‘Grama Natham’ is occupied by any persons, he has every right to get patta from the Government and he cannot be treated as an excroacher.

14. The plaintiff who has claimed to be in possession of the suit property for more than 50 years, has not been granted patta by the Government. It is

also to be noted that he has not approached the Government for grant of patta for the occupied Natham. But non grant of patta will not divest him from title. It has been admitted by the defendants that the suit property was in possession and enjoyment of the plaintiff, even as per the notices issued under Ex.A1 to Ex.A3. Therefore, it is admitted by the defendants that the plaintiff had occupied and is enjoying the suit property which is classified as 'Grama Natham' and therefore it cannot be held that the suit property was a un-occupied Natham land. Hence, as per the decisions of the Hon'ble Madras High court referred above, the suit property never vested with the defendants and they cannot treat the plaintiff as an encroacher. Therefore, it is held that the plaintiff has right to continue in occupation of the Grama Natham namely the suit property which is admittedly enjoyed by him by putting up thatched house, asbestos sheet and tethering cattle and storing his hay stack. The defendants have not filed any document to show that the suit property was assigned to the Village Panchayath or that it is enjoyed by them.

15. Hence, it is held that the plaintiff has title over the suit property and has right to enjoy the same. This point is answered accordingly.

16. **Point No.2:**

As it is held that the defendants have issued notices admitting the possession of the plaintiff, just because the defendants have removed the asbestos sheet and the hay stack, the plaintiff cannot be held to be out of possession. The dispossession of the plaintiff under the Land Encroachment Act 1905 is illegal and void ab-initio and as such the defendants cannot take advantage of their own wrong and claim that the plaintiff is not having possession over the suit property since, he is evicted. This contention of the defendants cannot be accepted, as it would amount to putting the seal of the Court on the illegality committed by the defendants. It is also found from Ex.A1 notice issued by the defendants that the plaintiff was enjoying the same by putting up the fence. Therefore, the plaintiff is admitted to be in possession of the suit property by defendants themselves and therefore, it is held that the plaintiff has possession and enjoyment over the suit property. This point is decided accordingly.

17. **Point No.3:**

The contention of the plaintiff is that the defendants are interfering with his possession and prevent him from putting up constructions in the suit property. It is already held that the suit property is the occupied 'Grama

Natham' in possession and enjoyment of the plaintiff. The defendants had illegally removed the asbestos sheet and the hay stack from the suit property and they cannot prevent the plaintiff from putting up the shed once again in the suit property. The defendants have no right over the suit property and they cannot prevent the plaintiff from enjoying the same peacefully.

18. Therefore, in view of the discussion made above, it is held that the plaintiff is entitled for the relief of injunction against the defendants from interfering with his peaceful possession. This point is decided accordingly.

19. **Point No.4:**

From the perusal of the Judgment rendered by the learned Subordinate Judge, Vendasandur, it is found that he has come to the conclusion that the suit property is a 'Grama Natham'. But he has dismissed the suit holding that the plaintiff has not established his occupation for more than 40 years. It is needless to state that even the defendants have admitted his possession and have issued notices under the Land Encroachment Act. Hence the admitted fact, namely the plaintiff's possession, need not to be proved by the plaintiff in this case and it is for the defendants to prove that the suit property is used for public purpose. Admittedly, the defendants have not issued B-Memo to

the plaintiff imposing penalty for encroaching the suit property. If the suit property was classified or even treated as public land, the defendants would have imposed penalty on the plaintiff for the alleged encroachment. But they have not done so. Similarly, as per the decision of the Hon'ble Madras High court in "***T.S. Ravi Vs. District Collector,***" it is always open to the Government to acquire the land by paying compensation if it is needed to any public purpose. Though they have claimed that the plaintiff was evicted based on the complaint received from the public, they have not filed any such documents to prove the same. Similarly the contention of the defendants that the suit property is used during the temple festival cannot be accepted because, it is admitted that the Veerathiamman temple on the east of the suit property is a private temple and not a public temple. Therefore, the contentions of the defendants that the suit property was being used by the devotees during the temple festivals cannot be accepted. As such, the trial court has erred in holding that the plaintiff is not entitled for declaration and the Judgment and decree requires to be interfered.

20. Therefore, having held that the plaintiff is entitled for the relief of declaration and consequential relief of injunction, it is held that the judgment and decree passed by the subordinate Judge, Vendasandur on 21.1.2022 is

liable to be set aside and this appeal is liable to be allowed.

21. **Point No.5:-**

Having held that the plaintiff is entitled for the relief of declaration and consequential relief of injunction and that the appeal is to be allowed, it is held that the appellant is entitled for cost of the appeal. The respondents are not entitled for any relief.

In the result, this appeal is allowed with cost and the judgment and decree of the Learned Subordinate Judge, Vendasandur in O.S. No.33/2019 dated 21.1.2022 is hereby set aside and the suit is decreed with cost and declared that the plaintiff is the absolute owner of the suit property and consequential relief of injunction is granted directing the defendants and their men not to interfere with the plaintiff's peaceful possession and enjoyment of the suit properties.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 19th day of January 2024.

**Additional District Judge,
Dindigul.**