



W.P.(MD)No.3913 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.3913 of 2009

and

W.P.M.P.(MD)No.1 of 2009 and M.P.(MD)No.2 of 2009

Mahadanapuram Grama Samudayam,
Mahadanapuram Post,
Kanyakumari District – 629 702.
Through its Managing Trustee,
V.Gopalakrishnan,
S/o.K.Venkatachalam Iyer,
No.3/26, Lakshmi Nivas,
Mahadanapuram,
Kanyakumari District.

... Petitioner

versus

1. The Collector,
Kanyakumari District.
2. The District Revenue Officer,
Kanyakumari District.
3. The Revenue Divisional Officer,
Kanyakumari District.



W.P.(MD)No.3913 of 2009

4. The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records relating to the proceedings in M.4/48631/2008 on the file of the 2nd respondent dated 22.04.2009 and quash the same.

For Petitioner : Mr.Meenakshi Sundaram,
Senior Counsel
for Mr.M.P.Senthil

For Respondents : Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

This writ petition has been filed in the year 2009 as against the order passed by the District Revenue Officer, Kanyakumari District in M4/48631/2008, dated 22.04.2009.

2. The impugned order dated 22.04.2009 appears to have been passed by the District Revenue Officer, Kanyakumari District, pursuant



W.P.(MD)No.3913 of 2009

to the order of this Court in W.P.(MD)No.6343 of 2008, dated 22.07.2008. The said writ petition has been filed by the petitioner Trust/Mahadanapuram Grama Samuthayam, for a Mandamus, directing the Revenue officials to consider its representation dated 12.06.2008 and to implement the order passed by the Assistant Director of Settlement and Survey, Madurai, dated 28.03.1994. By the order dated 28.03.1994, the Assistant Director of Settlement and Survey, Madurai, has passed an order granting patta for the land in S.No.1531 to an extent of 27.96.5 hectares in favour of the petitioner Trust/Mahadanapuram Grama Samudayam, as per Section 9(1) read with Section 17 of the Tamilnadu Act 30 of 1964. For implementing the above order of the Assistant Director of Settlement and Survey, Madurai, the said writ petition in WP(MD) No.6343 of 2008 was filed by the petitioner Trust. This Court, by order dated 22.07.2008, directed the District Revenue Officer, Kanyakumari District, to pass orders in accordance with law within a stipulated time. Accordingly, the District Revenue Officer, Kanyakumari District, by his order dated 22.04.2009,



W.P.(MD)No.3913 of 2009

cancelled the patta granted in favour of the petitioner Trust.

Challenging the same, the present writ petition has been filed.

3. The learned Senior Counsel, by referring to the Tamilnadu Act 30/1964, submitted that this Act is a separate Act enacted to provide for the survey and ryotwari settlement lands in Kanyakumari and the Shencottah Taluk of Tirunelveli District, which were transferred from the State of Kerala to the State of Tamilnadu. However, the District Revenue Officer, Kanyakumari District, has passed the impugned order under the Tamilnadu Act 26/1948 and also by invoking the provision under Section 14A(1) of the Tamilnadu Estates (Abolition and Conversion into Ryotwari) Act, 1948.

4. The learned Senior Counsel appearing for the petitioner, by referring to the order dated 17.01.1975, submitted that the Additional Assistant Settlement Officer, Nagercoil, has conducted an enquiry under Section 9(1) of the Tamilnadu Act 30/1964 and with the powers



W.P.(MD)No.3913 of 2009

conferred to him vide G.O.Ms.No.6798 Revenue dated 12.11.1973, has passed an order, under Section 11 read with Section 17 of the Settlement Act of 1964, that the land in Survey No.1531 to be registered in the name of the Managing Trustee (Sri Akilandeswara Iyer) Mahadanapuram Grama Samudayam, Kanyakumari. As against the same, the Tahsildar, Agatheeswaram, has preferred a revision petition before the Director of Survey and Settlement in R.P.No.15 of 1988. The Director of Survey and Settlement, by his order dated 30.05.1990, set aside the order of the Additional Assistant Settlement Officer, Nagercoil, dated 17.01.1975 and remitted the matter for fresh consideration to the Assistant Settlement Officer, Madurai. Thereafter, the Assistant Settlement Officer, Madurai, has conducted an enquiry after issuing a notice to the petitioner and passed an order, in N.R3/Agatheeswaram/90, dated 30.03.1992, under Section 17 of the Tamilnadu Act 30/1964, directing the Revenue Officials to declare the land in Survey No.1531 as Tank poramboke. The petitioner was remained *ex parte* in the proceedings dated 30.03.1992 before the



W.P.(MD)No.3913 of 2009

Assistant Settlement Officer, Madurai. Thereafter, the petitioner has preferred a Revision Petition before the Director of Survey and Settlement, Madras, in R.P.No.11/1992 under Section 14(2) of the Tamilnadu (Transferred Territory) Ryotwari Settlement Act, 1964 (Tamilnadu Act 30/1964). On 17.02.1994, the Director of Survey and Settlement, having found that even before the re-survey and settlement proceedings under the Tamilnadu Act 30/1964, patta was granted in favour of the petitioner Trust and a decision was taken by the Assistant Settlement Officer, Madurai, in the subsequent proceedings dated 30.03.1992 without providing an opportunity to the petitioner Trust and by his order dated 17.02.1994, set aside the order of the Assistant Settlement Officer dated 30.03.1992 and remitted the matter for fresh enquiry and also directed the Assistant Settlement Officer, Madurai, to take a decision based on the general order of the erstwhile Board of Revenue (SE) in B.P.383 dated 15.09.1973.



W.P.(MD)No.3913 of 2009

5. Thereafter, the Assistant Settlement Officer, Madurai, has conducted an enquiry under Section 9(1) of the Tamil Nadu Act 30/1964 and passed an order on 28.03.1994 and the relevant portion of the order is extracted as under:

“3. 2.3.94-ந் தேதி என்னால் நரிக்குளத்தையும், பாசன வசதி பெறும் நஞ்சை நிலங்கள் மற்றும் குளக்கரை வாய்க்கால் கிராம நிர்வாக அலுவலருடன் புலத்தணிக்கை செய்யப்பட்டது. கிழக்கு பக்கம் பாசனம் பெறும் நஞ்சை நிலங்கள் உள்ளன. கிழக்கு குளக்கரையில் இந்த கண்மாய்கள் உள்ளது. குளத்தில் பராமரிப்பு வாய்க்கால் பராமரிப்பு குளக்கரை பராமரிப்பு, கிழக்கு கரையில் கல் கட்டிடம் பராமரித்து மகாதானபுரம் பிராமண கிராம சமுதாயம் செய்து வருகிறது. நரிக்குளம் காலணிக்குப் போக கிழக்குக் கரை வழியாகவும் போக வசதி உள்ளது. நரிக்குளம் பாசன நஞ்சை பூமிகள் நடுவிலும் பாதை அமைக்கப்பட்டுள்ளது. கன்னியாகுமரி கிராமம் புல எண்.1531 27.96.05 திருவாங்கூர் மகாராஜாவால் மகாதானபுரம் கிராம பிராமண சமுதயாத்திற்கும் ராயல் இனாமாக வேதவிருத்திற்காக



W.P.(MD)No.3913 of 2009

வழங்கப்பட்டுள்ளதாலும், அன்று முதல் இன்று
வரை தொடர்ந்து மகாதானபுரம் கிராம பிராமண
சமுதாயத்தினரின் அனுபவத்திலும்,
பராமரிப்பிலும், இருப்பதாலும், கன்னியாகுமரி
கிராமம் புல எண்.1531 27.96.05 மகாதானபுரம்
பிராமண கிராம சமுதாயம் பெயரில் சட்டம் 30/64
பிரிவு 9(1)-ன்படியும், பிரிவு 17 சட்டம் 30/64-
ன்படியும் பட்டா வழங்க உத்திரவிடுகிறேன்.”

6. The learned Senior Counsel has also pointed out that during the course of proceedings, additional documents were also produced before the Assistant Settlement Officer, Madurai. Though there was no discussion with regard to the same, a decision was taken by the Assistant Settlement Officer, Madurai, by considering the materials placed by the petitioner before him.

7. The learned Senior Counsel has also pointed out that as against the order of the Assistant Settlement Officer, Madurai, the respondents are having a right of appeal before the Director of Survey and



W.P.(MD)No.3913 of 2009

Settlement, Chennai, within a period of 30 days. However, the respondents have not invoked the same and when the petitioner Trust has approached the authorities for implementing the order 28.03.1994 passed by the Assistant Settlement Officer, Madurai, the subsequent order has been passed by the District Revenue Officer, Kanyakumari.

8. The learned Senior Counsel further submits that the District Revenue Officer, Kanyakumari District, is not a competent authority to pass the impugned order under the Tamilnadu Act 30/1964. However, the District Revenue Officer, by considering the order passed under Tamilnadu Act 30/1964 and also by invoking the provision under Section 14A of the Tamilnadu Act 26/1948, has passed the impugned order.

9. The learned Senior Counsel further submits that the proceedings under the Tamilnadu Act 26/1948 and the Tamilnadu Act 30/1964 are different. The provision under Section 14A of the



W.P.(MD)No.3913 of 2009

Tamilnadu Act 26/1948 cannot be invoked for reversing the order passed under the Tamilnadu Act 30/1964.

10. The learned Additional Advocate General submits that the land comprised in R.S.No.351 of Kanniyakumari Village was correlated to R.S.No.1531. The erstwhile combined Kanniyakumari Azhagappapuram Village, having an extent of 69.10 acres, was originally classified as tank by the erstwhile Travancore Cochin Government. The land was subsequently treated as patta on an appeal preferred by the petitioner. During the Settlement Operations, the land was classified as tank poramboke, considering the public utility of the tank. The Tank has been under public usage continuously since the regime of Travancore Cochin State and 30.50.5 hecets. of wet lands are under its ayacut area and 300 families hailing from all community are depending on the tank for their livelihood. The tank is under the control and maintenance of PWD (WRO) and registered as poramboke. The Narikulam tank in R.S.No.351 of Kanniyakumari Village is under the



W.P.(MD)No.3913 of 2009

continuous possession and control of PWD (WRO). The tank is first class irrigation source and receives water from Kodayar Project through the Nanjil Puthenar Channel, more than 500 families hailing from different communities depend on the tank for their livelihood. The members of the petitioner Trust, who claim right over the land, are not the owners of the entire ayacut area under the Tank and they own only a portion of the ayacut area. The Government of Tamil Nadu enacted the Tamil Nadu (transferred territory) Ryotwari Settlements Act 1964. During Settlement – Operations, the tank was found to be tank on ground and it was classified as tank poramboke and the petitioner Trust claimed title right over the tank.

11. According to the learned Additional Advocate General, the petitioner trust preferred a petition before the Assistant Settlement Officer, Nagercoil. The Assistant Settlement Officer, Nagercoil, by his order in S.R.5850/AGS/74 dated 17.01.1975 ordered to treat the Suit land as patta land. The Tahsildar, Agateeswaram, preferred an appeal to



W.P.(MD)No.3913 of 2009

the Director of Survey and Settlement, Madras, contending that the grant of patta for the tank will be prejudicial to the public interest. The Director of Survey and Settlement, by his order dated 30.05.1990 set aside the order of the Assistant Settlement Officer and remanded the matter to the Assistant Settlement Officer, Madurai. The Assistant Settlement Officer, Madurai, conducted enquiries after serving notices to the parties and by his order in SR 3/AGS/1990 dated 13.03.1992, held that the land is tank on ground and granting of patta to the tank will be prejudicial to public interest and ordered to treat it as tank poramboke. The petitioner Trust preferred an appeal before the Director of Survey and Settlement, Chennai, who remanded the matter back to the Assistant Settlement Officer, Madurai for fresh enquiry and disposal.

12. The learned Additional Advocate General further submitted that the petitioner Trust along with another trust, by name, Conservation of Nature Trust, Kanyakumari District Boomi



W.P.(MD)No.3913 of 2009

Pathukappu Sanga Koottamaipu and Regulator Channel Water User's

Association have filed two writ petitions in WP(MD)Nos.11850 of 2009 and 4406 of 2009 as against the decision taken by the National Highways in laying a road in this water tank in S.No.1531(New Survey No.351, Mahadanapuram. On 20.05.2010, this Court has passed an order and the relevant portion is extracted as under:-

“the NHAI to proceed with its plan of laying the road as per its original decision but we only direct that at the point of Narikulam Tank (Water Body) for an extent of 530 m it shall construct a full length over bridge and thereby continue to maintain the water body in its original form except the provision of pillars to be laid inside the water body for the construction of the over bridge.”

14. This Court considered the rival submissions and perused the materials available on record.



W.P.(MD)No.3913 of 2009

15. The District Revenue Officer, Kanyakumari, has passed the impugned order that the land in Survey No.351 is a water body and therefore, patta cannot be granted in view of the provisions under Section 14A(1) of the Tamilnadu Act of 26 of 1948. The respondents have taken a specific stand that this issue would fall under the provisions of Act 30 of 1964 and not under the Act 26 of 1948. This land is situated in Kanyakumari District. A separate Act has been enacted to provide for the survey and ryotwari settlement lands in Kanyakumari and the Shencottah Taluk of Tirunelveli District, which were transferred from the State of Kerala to the State of Tamilnadu, under the Tamilnadu Act 30/1964. Accordingly, the Assistant Settlement Officer, Madurai, has conducted an enquiry in the year 1992 under Section 17 of the Tmilnadu Act 30/1964 and passed an order on 30.03.1992 that the land in Survey No.1531 as “Tank poramboke”. In that proceedings, the petitioner Trust was not a party and therefore, he has filed a revision petition before the Director of Survey and Settlement, Madras in R.P.No.11 of 1992 under Section 14(2) of the



W.P.(MD)No.3913 of 2009

Tamilnadu Act 30 of 1964.

WEB COPY

16. The Director of Survey and Settlement, Madras, has considered that even before the re-survey and settlement proceedings under the Tamilnadu Act 30/1964, patta stands in the name of the petitioner Trust and by his order dated 17.02.1994, set aside the order dated 30.03.1992 passed by the Assistant Settlement Officer, Madurai, under Section 17 of the Act 30/1964 and remanded the matter back for fresh consideration to the Assistant Settlement Officer, Madurai. Thereafter, the Assistant Settlement Officer, Madurai, has conducted an enquiry under Section 9(1) of the Tamilnadu Act 30/1964 and passed an order on 28.03.1994 that the land has been used as Samudhayam land and patta can be granted to the petitioner as per Sections 9(1) and 17 of the Tamilnadu Act 30/1964. As against that order dated 28.03.1994, the Department has not preferred any appeal before the Director of Survey and Settlement, Madras, as per the Act 30/1964 within the stipulated time and therefore, it becomes final. Based on the



W.P.(MD)No.3913 of 2009

proceedings of Assistant Settlement Officer, when this petitioner has sought for a patta for the land in Survey No.351, the District Revenue Officer, Kanyakumari, who is an incompetent authority, has passed the impugned order rejecting the request of the petitioner Trust to grant patta in their favour. Once an order has been passed by the Assistant Settlement Officer, Madurai, under the Tamilnadu Act 30/1964, pursuant to the direction of the Director of Survey and Settlement, Madurai, the District Revenue Officer is not having any authority to pass an order.

17. At this juncture, the learned Additional Advocate General, by referring the order dated 22.07.2008, passed by this Court in W.P. (MD)No.6343 of 2008, submits that on the writ petition filed by the petitioner Trust in W.P.(MD)No.6343 of 2008, this Court, by order dated 22.07.2008, disposed of the writ petition, directing the District Revenue Officer, Kanyakumari, to consider the representation of the petitioner Trust dated 12.06.2008 and pass orders on the same in



W.P.(MD)No.3913 of 2009

accordance with law after providing reasonable opportunity to all the parties concerned and also after following the procedure contemplated under the relevant rules within a period of six weeks. Therefore, the District Revenue Officer, Kanyakumari, has passed the impugned order.

18. The learned Additional Advocate General further submits that Section 14A(1) of the Tamilnadu Act 49 of 1974 was introduced only in the year 1974 after the State Reorganization Act 1956. This Act has been brought in, with a specific object to maintain the water bodies only with the Government and therefore, even if a water body is situated in a private patta land, patta cannot be issued for the water body.

19. The learned Additional Advocate General has also referred to the representation dated 12.06.2008 filed by the petitioner Trust to grant patta for the Tank and submits that the water from this Tank has



W.P.(MD)No.3913 of 2009

been utilized by the entire Kanyakumari upto their tail end. The relevant portion is also extracted as under:

“The tank area in question has been specifically mentioned as Melakulam and Narikulam. Old Survey No.1409/369/460 measuring 70 A.08 Cents, R.S.No. 1531 measuring 27.96.5 hectares, Thundaper No.8597. The samuthayam has developed this tank to the present level and constructed a long granite wall on the eastern employment and constructed sluices and meticulously maintained the tank and distributing uninterrupted water to the royats in the tail end of Kanyakumari District. This is a model irrigation tank having two rows of coconut trees on the Western and Eastern boundaries planted by the samuthayam and is the only model tank in the whole of Tamilnadu under private patta and the character of the tank is maintain very well storing water for one Calendar year and is the only ground water source to this peninsular tip.”

Therefore, according to the learned Additional Advocate General, the irrigation as well as the drinking water facility are provided to Kanyakumari District through this tank and this tank is the main source



W.P.(MD)No.3913 of 2009

of irrigation for certain lands and it is under the control of P.W.D. If this tank is allowed to be maintained by a private individual, there cannot be any rational distribution of water for irrigation and for the users of this tank.

20. In reply to the submission of the learned Additional Advocate General, the learned Senior Counsel appearing for the petitioner submits that this tank is meant for tail end of Kanyakumari District. From the petitioner's representation, it could be seen that the petitioner Trust, with an intention to provide irrigation to the adjacent lands, has established this tank on its own patta land and therefore, by its nature as a tank, it cannot be treated to be vested with the Government. The petitioner Trust has established this tank only for the purpose of providing some irrigation facility to the adjacent lands and therefore, it would be maintained by the petitioner Trust. When the National Highways Authority has intended to lay a road in this water tank by acquisition, the petitioner Trust agitated this issue up to the Hon'ble



W.P.(MD)No.3913 of 2009

Supreme Court and only thereafter, the road has now been laid without disturbing the tank by constructing a over bridge.

22. The learned Additional Advocate General further submits that they undertake that this tank would be maintained and utilized only for the public purpose and not for any other purpose.

23. It appears that this land was a ryotwari land assigned by the then King of Travancore and it has been transferred from the territory of Kerala to the State of Tamilnadu. The grant of ryotwari patta was issued under the Tamilnadu Act 30/1964. Therefore, there was an order of Assistant Settlement Officer, Madurai, with regard to this survey No.1531 on 30.03.1992, which was challenged by way of a revision petition before the Director of Survey and Settlement, Madurai, under Section 14(2) of the Tamilnadu Act 30/1964. The Director of Survey and Settlement, by his order dated 17.02.1994, upheld the right of the petitioner and remanded the matter for fresh



W.P.(MD)No.3913 of 2009

consideration by the Assistant Settlement Officer, Madurai. Thereafter, the Assistant Settlement Officer, Madurai, again conducted the proceedings under Section 9(1) of the Tamilnadu Act 30/1964 and passed an order on 28.03.1994, granting patta in favour of the petitioner Trust, which becomes final. While so, the District Revenue Officer, Kanyakumari, by referring to the provisions under the Tamilnadu Act 26 of 1948, has passed the impugned order rejecting request of the petitioner Trust to grant patta stating that they are not entitled to patta, is not correct. If the District Revenue Officer is under the impression that patta cannot be granted to the water body, he ought to have referred this matter to the Board of Revenue or to the Commissioner of Land Administration and he ought not to have come to the conclusion to reject the request of the petitioner Trust, which has already been granted by the competent authority, namely, Assistant Settlement Officer, Madurai, under the Tamilnadu Act 30/1964. Therefore, this Court is inclined to allow this writ petition to set aside the order.



W.P.(MD)No.3913 of 2009

WEB COPY 24. Accordingly, this writ petition is allowed and the order passed by the second respondent in his proceedings No. M.4/48631/2008 dated 22.04.2009 is set aside and the matter is remanded to the District Administration for fresh consideration. In the event, the District Administration thought it fit that patta cannot be granted to the subject Tank, the matter can be referred to Commissioner of Land Administration, Chennai and the same shall be decided by the Commissioner of Land Administration, Chennai, in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

20.12.2023

ogy

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



W.P.(MD)No.3913 of 2009

To
WEB COPY

1. The Collector,
Kanyakumari District.
2. The District Revenue Officer,
Kanyakumari District.
3. The Revenue Divisional Officer,
Kanyakumari District.
4. The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.



WEB COPY



W.P.(MD)No.3913 of 2009

B.PUGALENDHI, J.

ogy

W.P.(MD)No.3913 of 2009

20.12.2023