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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR  
AND  
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

**W.A.No.2020 of 2022**  
**and**  
**C.M.P.No.15232 of 2022**

1.The Secretary to the Government,  
Land Administration,  
Secretariat, Fort St. George,  
Chennai – 600 009.

2.The District Revenue Officer,  
Ramanathapuram.

3.The Tahsildar,  
Mudukalathur,  
Ramanathapuram District.

.. Appellants

/versus/

A.Malaisamy

.. Respondent

**Prayer:** Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 01.09.2021 passed in W.P.No.36984 of 2015 and allow this Writ Appeal.

For the Appellants : Mr.A.Selvendran,  
Special Government Pleader

For the Respondent : No appearance



## **J U D G M E N T**

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*(Judgment of the Court was made by S.S.SUNDAR,J.)*

Despite notice being served on the respondent and the name of the respondent being printed in the cause list, there is no representation for the respondent.

2. This Court after hearing the learned Special Government Pleader, earlier directed him to produce the original revenue records in respect of the Survey No.248/8 in Keeranur Group and Revenue Village, Mudhukalathur Taluk, Ramanad District. Accordingly, the learned Special Government Pleader has produced the 'A' Register pertaining to No.22, Keeranur Village before this Court. As per the 'A' Register prepared after UDR the property in S.No.248/8 has been classified as Sarkar poramboke to an extent of 0.11.5 hectares. In column No.12, existence of a water channel is also referred. Similarly the FMB relating to Survey No.248 is also produced and the existence of a water channel is indicated in the map. Therefore, Column No.12 of 'A' register matches with the FMB. The settlement 'A' Register also indicate that S.No.248/8 has been classified as sarkar poramboke.



3. The respondent herein filed the writ petition challenging the order passed by the Government in G.O.Ms.No.307 dated 21.08.2015 and to direct the Government to issue ryotwari patta to the petitioner in S.No.248/8 measuring an extent of 0.11.15 hectares in Keeranur Group and Revenue Village, Mudhukalathur Taluk, Ramanad District.

4. By the order impugned in the writ petition the representation of the petitioner for grant of ryotwari patta in his favour in respect of the land measuring an extent of 11.5 ares in S.No.248/8 at Keeranur Group and Revenue Village, Mudhukalathur Taluk, Ramanad District was rejected.

5. It is seen from the order of the 1<sup>st</sup> respondent dated 21.08.2015 that the writ petitioner claimed ryotwari patta on the premise that the petitioner was shown as the registered owner prior to UDR and that during UDR, the property has been changed as Government poramboke land by referring to the water channel that runs through the land. The proceedings of Tahsildar dated 16.07.2004 was also referred to in the order. The previous proceeding of the Tahsildar indicate that the representation of the petitioner was



rejected primarily on the ground that the representation of the petitioner for grant of ryotwari patta long after completion of settlement cannot be entertained. From the communication that was addressed to the petitioner by letter dated 08.07.2005 it is also revealed that the petitioner had been informed about the previous decision of the Revenue Official that he is not entitled to seek ryotwari patta for reasons.

6. Thereafter, the petitioner challenged the order made in G.O.Ms.No.307 dated 31.08.2015 by filing a writ petition in W.P.No.36984 of 2015. The said writ petition was allowed by the learned Single Judge of this Court with a specific direction to re-classify the land in S.No.248/8 measuring an extent of 11.5 ares as ryotwari land and to grant patta in favour of the petitioner within a period of six weeks. Challenging the same the above Writ Appeal is filed.

7. This Court is unable to sustain the order of the learned Single Judge for several reasons. The writ petitioner has not produced any piece of paper to show that he was in enjoyment of the property during settlement or when the Tamil Nadu Inam Estates (Abolition and Conversion Into



Ryotwari) Act, 1963 [Act 26 of 1963] was introduced. From the 'A' register prepared immediately after settlement under the Tamil Nadu Inam Estates (Abolition and Conversion Into Ryotwari) Act, 1963, the property comprised in S.No.248/8 is classified as a Government Poramboke land. However, the petitioner approached the 1<sup>st</sup> respondent Government on the premise that he is the registered owner of the land as per the settlement 'A' register and that his name was wrongly deleted when records were prepared during UDR. Therefore, the basis of the petitioner's claim is unacceptable. Form the FMB in respect of S.No.248 this Court is able to see that the property in entirety is not a vaikal. The existence of water channel is alone indicated in the FMB.

**8.** As per the survey manual it is necessary for the revenue officials to detail the existence of any water body or a temple or a mosque or railway track or a car track which is been enjoyed by the public. Such permanent feature which are required to be detailed in FMB are normally indicated in column No.12 of the 'A' register.



9. Though the case of the petitioner that the entire property in S.No.248/8 is not a water body and that only a channel runs across the survey field is acceptable, the contention of the petitioner that he is the absolute owner of the property in S.No.248/8 is not supported by any document. Even in the representation of the petitioner he has stated that he is in possession of the property for about 30 years. The petitioner has not produced any document to show that he is in enjoyment of the property for more than 30 years. The fact that the entire property is classified as government poramboke land is not in dispute. The Tahsildar, Mudhukulathur has sent a detailed report dated 24.11.2009, which reads as follows:-

மனுதாரரை விசாரணை செய்ததிலும், ஆவர் சமர்பித்துள்ள SLR ஒளி நகலினை பரிசோனை செய்ததில் “அனுபவதாரர் திரு.மலைச்சாமி என்றும் SR12/26/63/1357/MDU/70, நாள் 15.12.70-ன் படி வாய்க்கால் என திருத்தம் செய்யப்பட்டுள்ளது. மேலும், முனதாரர் தனது வாக்குமூலத்தில், நான்கு வருடத்திற்கு முன்பு வரை, மேற்படி நிலம் தன்னுடைய அனுபவத்தில் சாகுபடி செய்து வந்ததாகவும், கிராம பஞ்சாயத்து முடிவின்படி அரசு புறம்போக்கு நிலங்களை யாரும் அனுபவம் செய்யக் கூடாது என முடிவு எடுத்துள்ளதால் தன்னால் மேற்படி நிலத்தை அனுபவம் செய்ய இயலவில்லை என்று தெரிவித்துள்ளார்.

சம்பந்தப்பட்ட கிராம நிர்வாக அலுவலர் விசாரணை செய்ததில் புல



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எண்.248-8 நிலம் கடந்த 30 ஆண்டுகளாக மனுதாரரால் அனுபவம் செய்யப்பட்டு வந்துள்ளதாகவும், தற்போது தரிசாக உள்ளது என தெரிவித்துள்ளார். மனுதாரர் விசாரணையின்போது தன்னிடமிருந்த SLR ஒளி நகல் மட்டும் சமர்ப்பித்துள்ளார். அனுபவம் செய்ததற்கான ஆவணங்கள் ஏதும் சமர்ப்பிக்கவில்லை. கிராம மக்களிடம் நேரடியாக விசாரணை செய்யப்பட்டதில் புல எண்.248-8 விஸ்தீரணம் 0.11.5 ஷெட்க்டேர் நிலம் மனுதாரரால் அனுபவம் செய்யப்பட்டுள்ளது தெரிய வருகிறது.

புல எண்.248-8 விஸ்தீரணம் 0.11.5 ஷெட்க்டேர் நிலம் நஞ்செய் நிலங்களுக்கு நடுவே உள்ளதால், மேற்படி நிலத்திற்கு தண்ணீர் பெறுவதற்கு முதுகுளத்துர் வட்டார வளர்ச்சி துறை மூலம் தடையில்லாச் சான்று பெற்று, மனுதாரருக்கு மேற்படி புல எண்.248-8 விஸ்தீரணம் 0.11.5 ஷெட்க்டேர் நிலத்தை நஞ்செய் நிலமாக தரமாற்றம் செய்து பட்டா வழங்க இயலும் என்ற விபரத்தை பணிவுடன் தெரிவித்துக் கொள்கிறேன். இத்துடன் மனுதாரர் வாக்குமூலம், கிராம நிர்வாக அலுவலர் அறிக்கை, கிராம கணக்குகள் தலா மூன்று பிரதிகள் இணைத்துள்ளேன்.

10. It is surprising to note that the Tahsildar who is the head of revenue in a Taluk has given a report just to help the writ petitioner to get patta merely because the petitioner is in enjoyment. It is to be noted that the petitioner has produced a xerox copy of SLR indicating that there is a correction on 15.12.1970 classifying the land as channel. First of all, the corrections referred to in the order does not indicate the property being



registered in the name of the petitioner even earlier. Secondly, the Tahsildar has referred to the statement of the petitioner to the effect that he is in enjoyment of the property just 4 years prior to the order of the Tahsildar.

Even in the statement the writ petitioner admit that the property has been classified as government poramboke and therefore he was unable to enjoy the land. It is surprising to note that the concerned Village Administrative Officer on enquiry has stated that the petitioner was in enjoyment of the property for about 30 years, quite contrary to the admission of the petitioner by way of statement before the Tahsildar. The fact that the land is kept as 'tharisu' is also admitted by the Village Administrative Officer, who has referred to the xerox copy of the SLR which is supposed to be with the Village Administrative Officer.

**11.** The learned Single Judge ultimately held in favour of the petitioner by referring to the proceedings of the Tahsildar, where the Tahsildar has opined that patta can be granted in favour of the petitioner after classifying the land as nanja land. The proceedings of the Tahsildar dated 24.11.2009 clearly shows that the revenue officials were hand in glove with the writ petitioner to help the writ petitioner to maintain the false claim



to issue ryotwari patta. When the village was taken over under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 [Act 26 of 1963], every communal land which is also known as poramboke land vest with the Government only. If a person is in possession of the property as on the date of enactment his pre-existing right to get ryotwari patta under the Act is protected by proviso to Section 3(d). Admittedly, the writ petitioner never applied for ryotwari patta under Act 26 of 1963. The land was never assessed to land revenue and hence the classification of the land as Government poramboke land. Even though the petitioner seeks declaration of his title based on his right to be in possession before civil Court, he cannot seek grant of ryotwari patta or Revenue patta.

**12.** In the present case, the petitioner, who admit that he came into possession of the property about 30 years back, has not produced any record to show his possession. Hence, he cannot claim ryotwari patta under the Tamil Nadu Act 26 of 1963. The learned Single Judge without any discussion as to the entitlement of the petitioner who seeks ryotwari patta under Act 26 of 1963 was thoroughly mislead by the proceedings of the Tahsildar. This Court find that every sentence of the proceedings of the



Tahsildar shows his ignorance and the observations was made with a purpose and determination to help the writ petitioner to take away the Government poramboke land.

**13.** The learned Single Judge has now directed the revenue officials to re-classify the land after deleting the entry as water channel to enable the revenue officials to grant ryotwary patta in favour of the petitioner. This portion of the order again disturbs this Court, in view of the settled position of law as regards water bodies. Under any of the enactments, like the Tamil Nadu Act 26 of 1948, Tamil Nadu Act 26 of 1963 and Tamil Nadu Act 30 of 1963 the property which is classified as a water body should remain as communal land and there is no enabling provision to issue ryotwari patta in respect of water bodies.

**14.** In other words any water body is a communal land which vests in the Government. Even the Government does not get any absolute right to regularize the encroachment in the water body. In other words, there cannot be a ryotwari patta in respect of a water body under any of the three enactments. As a matter of fact the Government has introduced an



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amendment even to deny ryotwari patta in respect of land which was earlier form part of private pond or private tank. The law is also settled by the Full Bench of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu and others*** reported in ***(2015) 5 LW 397 (FB)*** and by us subsequently to the effect that possession or encroachment in respect of water bodies cannot be regularized by the Government as the Government has no authority or ownership over water bodies and they hold in trust for the benefit of public.

**15.** The order of the learned Single Judge is therefore liable to be set aside and it is accordingly set aside. This Writ Appeal is allowed and the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

**(S.S.S.R., J.)      (K.R.S., J.)**  
20.08.2024

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Index : Yes/No

Neutral Citation : Yes/No



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To

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