

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.39957 of 2005

and

W.P.No.3522 of 2009

Order Reserved on **14.08.2014** Judgment Pronounced on **17.12.2015**

W.P.No.39957 of 2005

1.K.Sundaramurthy

2.K.Subramanian

... Petitioners

(The 2nd petitioner is represented by
Power of Attorney K.Sundaramurthy
the 1st petitioner herein.)

Vs.

1.The Settlement Officer,
Thanjavur.

2.The District Forest Officer,
Theni.

3.The Tahsildar,
Andipatti.

4.V.Andavar

5.V.Elamvazhuthi

6.V.Annamayil

7.V.Pappathi

8.N.Kannan

9.N.Murugan

10.V.Sarguna

11.V.P.Raj

12.J.Chitra

13.V.Sathisraj

14.Dr.K.Bhojarajan

15.The Special Commissioner and
Commissioner for Land Administration,
Chennai-5.

... Respondents

(R15 impleaded as per order dated
30.06.2006 by this Court in
WP.MP.1541/2006 in WP.39957/2005)

W.P.No.3522 of 2009

1.Dr.K.Bhoja rajan

2.K.Sundara moorthy

3.K.Subramaniam

... Petitioners

Vs.

1.Andavar

2.S.Soundaiya

3.S.Valavan

4.Pappammal

5.Ezhil Ravindran

6.N.Kannan

7.N.Murugan

8.V.Puvaneswari

9.Thanalakshmi

Represented by

10.V.Illavaluthi

11.Thenmozhi

12.R.Vidhya

- 13.R.Malarvizhi
 - 14.V.Sarguna
 - 15.V.P.Raj
 - 16.B.J.Chitra
 - 17.V.Sathish Raj
 - 18.District Forest Officer,
Theni, Theni District.
 - 19.The Special Commissioner and
Commissioner of Land Administration,
Chennai.
- ... Respondents

Prayer in WP.No.39957 of 2005: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the records of the proceedings of the Special Commissioner and Commissioner of Land Administration, Chennai in R.Dis.K1/R.P.2 of 2000 dated 22.03.2002 and quash the same and direct the Survey and Settlement Authorities to issue ryotwari patta to the petitioners and to the legal heirs of late Kamatchi Chettiar and Kambal alias Veeriah Chettiar in respect of the lands covered in both surveyed and unsurveyed plot No.36, Megamalai Village, Andipatty Taluk, Theni District.

Prayer in W.P.No.3522 of 2009: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the records of the proceedings of the

Special Commissioner and Commissioner of Land Administration,
Chennai in Roc.K.1/8686/2003 dated 14.09.2007 and quash the same
and direct the Survey and Settlement Authorities to issue Ryotwari
patta to the Petitioners in respect of lands covered in plot No.36,
Megamalai Village, Periyakulam Taluk, Theni District.

For Petitioners : Mr.S.Vijayakumar
(in both the writ petitions)

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader
(for R1 to R3 and R15 in WP.No.39957/2005
and for R19 in WP.No.3522/2009)

Mrs.A.Sagayaselvi
(for R4 to R9 in WP.No.39957/2005 and
for R1, R6 to R8 and R10 in
WP.No.3522/2009)

No Appearance (for R5 and R11 to R14 in
WP.No.39957/2005 and for R2 to R5, R9,
R11 to R18 in WP.No.3522/2009)

COMMON ORDER

The above matter heard together and disposed by the Common
Order because the relief and both the parties in the above two writ
petitions are identical.

2.The short facts of the cases are as follows:

The above two Writ Petitions, the petitioners are challenging the order of the respondents in not granting Ryotwari Patta to the petitioners and their heirs of Kambal alias Veeriah Chettiar in respect of the property situated in Plot No.36 in Megamalai Village, Andipatty Taluk, Theni District. Megamalai is an initially surveyed Hill village lying within the ambit of Ex-Gandamanayakanur Zamindar, Gandamanayakanur Zamin Estate was notified in G.O. Ms.No.1357, Revenue Department dated 19.12.1950 to be taken over on 03.01.1951 (Fasli 1360) under the provisions of Tamilnadu Act XXVI of 1948. But this estate came into uninterrupted possession of the Government only from 02.03.1956 (Fasli 1365). During the landholder's regime the village 'Mayiladumparai', 'Kadamalaikundu' and 'Megamali were dealt with as one village called No.11 Narasingapuram. It was only during the Survey and Settlement effected under the Abolition Act that the Old Narasingapuram was split up into three villages known as Mayiladumparai, Kadamalaikundu and Megamalai. Ryotwari settlement was introduced in Megamalai Village in fasali 1371.

3.The petitioners claiming a Patta for the Plot No.36 (formerly known as 29) situated at Megamalai Village, Periyakulam Taluk, Theni District was originally purchased by Kambal @ Veeriah Chettiar in the year 1939 through Mr.Savarimuthu Udaiyar from Zamin lease Mr.Barker after paying sale consideration (Premium Amount) of Rs.7,270/- (Rupees Seven thousand two hundred and seventy only) by way of oral sale. The above property along with other properties were granted to the Zamindar of Kanmanayakanur through the Sunnad-I-Milkeat by a Deed of Permanent Property, granted by to the Excellency, The Right Hon'ble Reilly Baron Wenlock, Governor in Council of Fort St. George on behalf of the Right the Secretary of State for India in Council to and in favour of Therumalai Ramakrishna Appa Naicker, Zamindar of Gandamanaickanur, Periyakulam Taluk, Madurai District with free liberty to transfer, without the previous consent of Government or of any other authority to whomsoever he may think proper, either by sale, gift, or otherwise his proprietary right in the whole or in any part of his estate and such transfer shall be valid and recognized by the Courts and Officers of Government, provided they shall not be repugnant to the Muhammadan or the Hindu Laws, or to the Regulations of the British Government. But unless such sale, gift, or transfer shall have been regularly registered at the office of the

Collector, and unless the public assessment shall have been previously determined and fixed on such separated portions of his estate by the Collector such sale, gift, or transfer shall be of no legal force or effect nor shall such transactions exonerate him from the payment of any part, of the public land tax assessed on his entire estate previously to such transfer, but his whole estate shall continue to be answerable for the total land tax in the same manner as if no such transaction has occurred.

4. In the event of sale of any part of his estate for liquidation of arrears of the assessment or in satisfaction of the decree of a court of judicature, or in the event of transfer of any part of estate by gift, sale, or otherwise, he shall furnish the Collector with true and correct accounts of entire estate and of the portion of the estate to be separated for a period not less than the three years preceding such sale or transfer in order that the due proportion, of the public revenue may be fixed thereon.

5. On 24.01.1893 the Kabuliya or Instrument of Assent and Agreement on the part of Thirumalai Ramakrishna Appa Naicker, Zamindar of Gandamanayakanur, Periyakulam Taluk, Madurai District

was executed to the Sunnad-I-Milkent Istimrar, or Deed of Permanent Property, granted to him by the Right Honourable the Governor in Council of Fort Saint George, on behalf of the Right Honourable the Secretary of State for India, on the following condition:

"6. ... I am of free liberty to transfer, without the previous consent of Government of any other authority, to whomsoever I may think proper, either by sale gift or otherwise, my proprietary right in the whole, or in any part of estate, such transfers of my land will be valid and recognized by the Courts and officers of Government, provided they are not repugnant to the Mohammadan or Hindu Laws or to the Regulations of the British Government, but unless such sale, gift, or transfer shall have been regularly registered at the office of the Collector and unless the public assessment shall have been previously determined will be of no legal force or effect nor will such transactions exonerate me from payment of any part of the public land-tax assessed on my entire estate previously to such transfer by my whole estate will continue to be answerable for the total land-tax in the same manner as if no transaction had occurred.'

Mr. T.R. Swamiyappa Naicker executed a Mortgage Deed on 24th August, 1896 at Madras, a Mortgage Deed with possession to one Arunachalam Chettiar. Subsequently on 19th January, 1897 executed second Mortgage Deed in favour of Subramaniya Chettiar.

6.The said Mr.Subramaniya Chetty filed O.S.No.65 of 1897, on the file of Sub Court, Tirunelveli for the recovery of money advanced on the mortgage deed. The said suit was dismissed. Thereafter, he filed an Appeal in A.S.No.166 of 1901, on the file of this Court and the same was decreed. The said decree was challenged by minor Zamindar Thirumalai Gantama Kondal Nagaya Ramakirishna Kadirvel Swamy Nayakar, Son of T.R.Samynatha Nayakkar in O.S.No.58 of 1905 before the Sub Court, Tirunelveli, seeking for the relief of declare that the Decree in O.S.No.65 of 1897, on the file of this Court, obtained by the defendants against the plaintiff's father the deceased zamindar T.R. Swamiappa Naicker on the strength of a mortgage deed executed by him in March, 1897 is not binding on the plaintiff and that the suit properties are not liable to be sold for the decree. The above

suit was dismissed on merits by the Sub Court, Tirunelveli on 15.11.1912, by confirming the Decree passed in O.S.No.65 of 1897. On the basis of the decree passed in A.S.No.166 of 1901, on the file of this Court, in the above E.P. proceedings, the District Court of Madurai transferred the decree in favour of the company by name M/s. Eastern Development Corporation Limited a company incorporated under the English Company Act. Thereafter the Sale Certificate was issued by the District Judge of Madurai by an order dated 08.09.1914. After the purchase of the property of Kandamanayakkanur Zamin, purchased by Eastern Development Corporation Limited, sold the above said property through a registered sale deed by an Indenture of Conveyance bearing date, the 11th day of April, 1921 and registered at Bombay, under No.448, at Pages 175 to 183, Volume 307 of Book 1, and expressed to be made between the company of the one part and the purchaser of the other part to and in favour of Pestonji Dunjibhoy Patel, son of Dhunjibhoy Cawasji Patel.

7. On 05.05.1921 a 'Deed of Confirmation' was executed in between E.F. Hunt, Esq., WCI, Eastern Development Corporation Limited, to Mr. Bestonji Dhunjibhoy Patel and the same was registered on 15.06.1921 vide Serial No.2836, which was presented at the Office

of the Sub Registrar, Bombay after receiving registration fee, etc. By this Indenture of Conveyance, the purchaser having expressed his desire to have the said sale and the said conveyance confirmed by the company under its seal and by the hand of its Directors, which the company has agreed to do and that in pursuance of the said Agreement and in consideration of the premises the Company doth by these presents confirm unto the purchaser his heirs executors, administrators or assigns the said Deed of Conveyance.

8.The properties situated at Gandamanayakanur Hills estate in Periyakulam Taluk was purchased by Pestonji Dunjibhoy Patel, son of Dhunjibhoy Cawasji Patel, who leased the same to one Mr.G.A.Barker. The said Barker received a Premium amount of Rs.7,270/- and assigned the property in the name of Mr.M.S.Savarimuthu Odayar of Royappanpatti on the following boundaries:

East by	:	Brinda Estate;
South by	:	Travancore Estate Boundary;
West by	:	Bagavathimuthu Gounder Estate;
North by	:	Pulimedu and Residence;

On 09.03.1939, the above said Mr. G.A. Barker, Lessee of Gandamanayakkanur Zamindary written a letter to

Mr.M.S.Savarimuthu Udayar, Royappanpatti, thereby confirming to cut the boundaries for all the lands suitable for his requirements in Plot No.36 (previously known as 29) and further confirms that he should take all suitable land till 15.04.1939 and he was allowed to the possession and made lands suitable for cultivation. In this connection the above said Mr.G.A.Barker has received a sum of Rs.7,250/- as a Deposit up-to-date including previous acknowledgments. In reply to that letter, Mr.M.S.Savarimuthu Udayar has also written a letter to Mr.G.A.Barker, thereby informing him to cut the boundaries in his Plot No.36 and made them suitable for cardamom cultivation. From the above letter, it is very clear that Mr.M.S. Savarimuthu Udayar was permitted to take the possession of all the lands in the above said boundaries.

9.On 13.07.1942 Mr.M.S.Savarimuthu Udayar, landlord of Rayappanpatti written a letter to Mr. Kambal @ Veeriah Chettiar confirming his oral sale for the entire land in Plot No.36 (formerly known as No.29) in Narasingapuram Village in Gandamanayakkanur Zamindary. In this connection he has given an application dated 01.05.1941 to the Zamin lessee Mr.G.A.Barker, asking him to transfer for patta for the said land in favour of Mr.Kambal @ Veeriah Chettiar.

By this letter, Mr.M.S.Savarimuthu Udayar confirming that Mr.Kambal @ Veeriah Chettiar shall hereafter take into possession and enjoyment of the land in the above mentioned plot and he shall be hereafter the rightful owner of the land, which he brought under cultivation therein, in pursuance of the order received from Mr.G.A.Barker dated 09.03.1939. He further declares that he has no right on the said land from that date and handed over all the connected records in this connection.

10.After the enactment of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act 26 of 1948) by the Government of Tamilnadu, the third parties are encroached the properties of Mr.Kambal @ Veeriah Chettiar. So, Mr.Kambal @ Veeraiah Chettiar has filed a civil suit in O.S.No.66 of 1955 before the Subordinate Court at Dindigul for (1) declaration that the plaintiff is entitled to 'B' Schedule properties; (2) for consequential relief of recovery of possession of 'B' Schedule properties, for consequential relief of injunction regarding the un-surveyed extent, i.e. 'C' schedule properties; (3) for recovery of past mesne profits of Rs.5,925/- from the defendants with further interest @ 6 per cent per annum; (4) for future mesne profits from the date of plaint till delivery of possession

of B schedule properties; and (5) for costs. As the third parties were encroached the above said properties unlawfully Mr.Kambal @ Veeriah Chettiar has filed the above suit. The above suit was decreed on 16.11.1957 as prayed for by the plaintiff, whereby the trial Court has given the below findings; (Emphasis supplied)

"... 13. Then, the plaintiff's party complained against the defendants as per Ex. A-43, and it was referred as one of a civil dispute and there was a further enquiry and Ex. A-76 is deposition of Sangiliandi Chettiar and it is as follows:- "Kambal Chettiar was taking prominent part in getting a patta transfer from Mr. Odayar. Later on, somehow, he got patta in his name. After complaint to Mr. Odayar, he sold to us the lands with we were enjoying and we sold those lands to Ramasamy Thegvar in 1950. (1st defendant)". Thus, there is a clear admission that the land which they purchased from the plaintiff was the land, which they had been enjoying. They have no title to any other land. It is admitted in Ex. A-76 that besides the land sold, the plaintiff has land in Plot No. 36. Thus, the defendants cannot now be heard to say that the plaintiff has no right in any portion of Plot No. 36, as they alleged now in the witness box. The

plaint B-Schedule is with regard to the lands which the vendees from the plaintiff have fraudulently sold to the first defendant without any title. So I have no hesitation in holding that the plaintiff has got title and possession."

As against the decree passed in the above suit, an Appeal was filed before this Court, in A.S.No.76 of 1958 and the same was dismissed on merits by the Division Bench by an order dated 01.11.1962 and passed the following order:

"The learned subordinate judge of Dindigul has submitted a finding to the effect that the agreement incorporated in Ex. B-8 had not been acted upon, and that, consequently, the defendants are not entitled to the benefits of Section 53-A of the Transfer of Property Act. The finding is fully supported by the evidence in the case, and the learned Advocate-General, who appeared for the Appellants, has not said anything useful against the correctness of it. The result is that the decree for possession passed against the Appellant will be affirmed.

There was some controversy as to the mesne profits; but we, are satisfied that the past mesne profits have been correctly assessed by the lower court. As regards the future profits, the matter will have to be enquired into by the lower court under Order 20, Rule 12 of CPC.

The Appeal fails and is dismissed with costs."

11.The learned counsel Mr.S.Vijayakumar, appearing for the petitioners submits that the subject lands known as 'Dwaraka Estate' is situated at Megamalai Village, Periyakulam Taluk. Originally, the said property had been purchased in the year 1930 by the father of the petitioner and his brother. From the date of purchase, the petitioner and his forefathers are cultivating the said land. After independence, the father of the petitioners and his brother had taken steps for obtaining Ryotwari patta for the lands comprised in 'Dwaraka Estate'. After the death of the father of the petitioners and his brother, the first petitioner herein has been nominated to proceed in the matter further on a gentleman agreement basis among the petitioners. The Director of Survey and Settlement has passed orders in Review Petition No.8 of 1991 dated 31.03.1995 and upheld that the entire lands are Ryotwari lands. As such, the petitioners are entitled to receive patta since the

said order has become final pursuant to the order of the Director of Survey, the Assistant Settlement Officer, Madurai issued Ryotwari patta in his order dated 24.07.1996.

12.The said order has been challenged by the District Forest Officer, Theni before the Settlement Officer, Thanjavur, wherein it was declared that the lands in question as forest, ignoring the order passed by the Director of Survey and Settlement. Aggrieved by the said order, the first petitioner and others filed revision before the Director of Survey, which was dismissed on 16.09.1998. Against the said order, the revision has been filed. The same was dismissed on 22.03.2002. Against the said dismissal order, a writ petition has been filed. The same was heard along with the connected writ petition. Consequently, the earlier order dated 22.03.2002 passed by the Special Commissioner, Land Administration was set aside. Consequently, the matter was remanded to the same Commissioner for fresh disposal. Accordingly, the Special Commissioner heard the matter and passed an order dated 14.09.2007 in an erroneous appreciation of law and facts. The learned Special Commissioner has not considered that the lands situated in Megamalai Village was forming part of Kandamanayakkanur Zamin estate. The learned Commissioner wrongly concluded that the

lands are belonging to the Forest Department. Hence, the very competent counsel entreats the Court to allow the above writ petition.

13.The very competent Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondents-R1 to R3 and R15 in WP.No.39957 of 2005 and for R19 in WP.No.3522 of 2009 submits that the Megamalai Village was formed as a new village during the settlement. The Narasingapuram main village was fabricated into 3 separate villages including Megamalai village. The Narasingapuram main village formed part of the erstwhile Kandamanayakkanur Zamin estate, which was notified in G.O.Ms.No.3157 dated 09.12.1950, under the Provisions of the Tamilnadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. The property came into the possession of the Government from 02.03.1956. The Megamalai Village was initially a surveyed hill village, in which Ryotwari Settlement was introduced. During the Survey and Settlement, it was treated as forest poramboke. The entire case has been dealt with in detail by the Settlement Tahsildar, Thanjavur and order dated 30.12.1996 was passed. The very competent counsel further submits that the entire extent of 56,000 acres comprised in Survey No. 280 was classified as forest poramboke during settlement. This was reiterated by the

Settlement Officer, when the matter was remanded to him by the Board of Revenue in the year 1965. The land is only a forest land and not a Ryoti land. Further, the petitioners have not produced any evidence to prove their physical possession and cultivation during the relevant period.

14.The very competent counsel further submits that a notification was issued by the Forest Department under Section 4 of the Tamil Nadu Forest Act, including the subject matter of the lands comprised in the said Survey numbers. After notification, no claim was made by the petitioners then, since the survey numbers are already notified as a Forest under the Forest Act. The learned counsel further submits that the same issue was challenged by the petitioner before this Court in W.P.Nos.5891 to 5893 of 1992. As such, the jurisdiction of all other Courts is barred from entertaining any claim in or over the land notified under Section 4 of the Tamil Nadu Forest Act. Further, the petitioners had not produced any valid title deeds to prove their claims. Hence the very competent counsel entreats the Court to dismiss the above writ petition.

15.The very competent counsel Mrs.A.Sagayaselvi, appearing for

the Respondents 4 to 9 in W.P.No.39957 of 2005 and R1, R6 to R8 and R10 in W.P.No.3522 of 2009 submits that the 'Dwaraka Estate' was originally belonged to Kandamanayakkanur Zamin and the same was mortgaged to Swaminatha Chettiar of Devakottai. Subsequently, the above property was sold to the Company by name M/s.Eastern Development Corporation Limited, and the Sale Certificate was issued by the District Judge of Madurai by an order dated 08.09.1914 to the said company. Thereafter purchase, the above said Eastern Development Corporation Limited, sold the above said property through a registered sale deed by an Indenture of Conveyance in favour of Pestonji Dunjibhoy Patel.

16.The said Patel was appointed Mr.G.A.Barker as their Lessee to look after the property in Kandamanyakkanur Zamin with a right to give assignment of the property to any person. Subsequently, the above said property was purchased by Mr.Kambal @ Veeriah Chettiar through Mr.Savarimuthu Udayar in the year 1939. Thereafter in the year 1955, the said Kambal @ Veeriah Chettiar has filed a suit for declaration of the title and recovery of possession and for mesne profits before the Sub Court, Dindigul and the same was decreed as prayed for by the plaintiff. Against which, an Appeal was filed before

this Court and the same was dismissed by affirming the trial court judgment and decree. From the above decree, Mr.Kambal @ Veeriah Chettiar is the owner of the property and his possession was confirmed and the mesne and profits were ordered. From the above findings, Mr.Kambal @ Veeriah Chettiar was having pre-existing title over the property situated in Plot No.36 (earlier known as Plot No. 29) in Megamalai Village. So the above said Mr.Kambal @ Veeriah Chettiar is a ryot and he is entitled for 'Ryotwari Patta'. The respondents have raised the following questions of law:

1. Whether the Plot No.36 in Megamalai Village is a 'Ryoti Land' or a 'Forest' and the Petitioners' ancestors are 'ryot'?
2. Whether the petitioners are entitled for the 'Ryotwari Patta'?

17.Point No. 1:

As per Tamilnadu Act, 26 of 1963 to provide for the acquisition of the rights of landholders in inam estates in the State of Tamil Nadu and the introduction of the Ryotwari settlement in such estates. The 'Ryot' and 'Ryoti Land' was defined as follows:

As per Section 2 (16) "ryot" –

(i) in relation to an existing inam estate shall have the same meaning as in clause (15) of Section 3 of the Estates Land Act; and

(ii) in relation to a new inam estate shall mean a person who holds for the purpose of agriculture ryoti land in such estate on condition of paying to the landholder the rent which is legally due upon it.

As per Section 2 (17) "ryoti land" –

(i) in relation to an existing inam estate shall have the same meaning as in clause (16) of Section 3 of the Estates Land Act ; and

(ii) in relation to a new inam estate shall mean cultivable land in such estate other than private land, but does not includes

- (a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels;
- (b) threshing floor, cattle stands, village sites and other lands situated in any new inam estate which are set apart for the common use of the villagers;
- (c) lands granted on service – tenure either free of rent or on favourable rates of rent granted before the passing of this Act so long as the service – tenure subsists;

As per the judgment reported in ***The Madras Law Journal Reports 1941 (Page No. 314) in Madras Estates Land Act (1 of 1908)***, when a ryot has agreed to pay a premium and has been let into possession before making the payment, can the landholder recover the amount from him afterwards?

The question was decided by this Court, by Lordship Justice Sir Alifred Henry Lionel Leach, Chief Justice and Mr. Justice Patanjali Sastri ...

"... In our opinion the words "become liable" should be read as "be liable". The word "become" is not well chosen, but the context leaves no doubt in our minds what was meant. The ryot

may pay the premium if he chooses to do so, but he cannot be held liable to pay. If the landlord permits him to go into possession without payment he does so at his own risk, there is no liability after entry."

For obtaining a Ryotwari patta under the Section 11(a) of the Estate Abolition Act, 1948, the onus is on the claimants to prove by clear and sufficient documentary evidence. This is a statutory requirement under Section 11(a) which contemplates that for consideration of a claim, the land claimed should be ryoti land in character, properly included in the holding of a ryot or ought to have been properly included in holding of a ryoti immediately prior to the notified date. Since the legal heirs of Kambal @ Veeriah Chettiar claimed the property, which is lying in the hill-forest area, the original assignment should have been made by the landholder prior to 31.10.1939. Ryoti land is defined under Section 3(6)(a) and (b) of the Estates Land Act, 1908. According to the definition under these provisions, all lands, in an estate are Ryoti or Jeroyati until the contrary is established.

18.The Director of Survey and Settlements in his proceedings

dated 31.03.1995 has decided as follows:

"Mr.G.A.Barker, the Gandamanayakanur Zamindary landholder had received a premium amount of Rs.7,250/- and statutorily admitted Mr.Kambal @ Veeraiah Chettiar into possession of all the surveyed and un-surveyed lands and excess thereon in Plot No.36 on 14.09.1938 through a Honorable middleman Mr.Savarimuthu Udayar. Kambal @ Veeraiah Chettiar had taken possession of the entire surveyed and un-surveyed lands of Plot No.36 (defined with definite metes and bounds) by 10.03.1939, through Mr.Savarimuthu Udayar. The Ex.A19 promisingly guarantees to the completion of survey and the issue of patta at the earliest regretting for the earlier delay and failure on the part of the Zamin to complete the survey and issue of patta. The use of the expression "Kist" in Ex. A19 statutorily and lawfully confirms that Mr. Kambal @ Veeriah Chettiar is the lawful ryot entitled to patta for the entire lands covered by Ex. A19. As the term of "KIST" or "RENT" defined in the Section 3(11) as an amount which is lawfully payable in money or in kind or both to a landholder by a ryot for the use or occupation of ryoti land for

purposes of agriculture in an estate. Therefore it is abundantly clear that Mr.Kambal @ Veeriah Chettiar who liable to pay the Kist to the landholder and entitled to cultivate all the lands in Plot No. 36 is a lawful ryot entitled to Ryotwari patta to all the surveyed and un-surveyed lands of Plot No. 36, under Section 11(a)".

19.Further the property in question had already been the subject matter of O.S. No. 66/1955, on the file of Sub Court Dindigul, which ended in favour of Thiru.Kambal @ Veeriah Chettiar. It may be seen from the judgment in O.S.No.66 of 1955 that the letters and documents filed by Kambal @ Veeraiah Chettiar had been totally accepted as valid documents and they are proved beyond doubt. Therefore, the judgment was in favour of Kambal @ Veeraiah Chettiar. The court has further held all the rights of Thiru.Savarimuthu Udayar stands transferred in the name of Thiru.Kambal @ Veeriah Chettiar. On appeal against the above judgment, the Division Bench of this Court, in Appeal No.76 of 1958 has fully concurred with the findings and appreciation of evidence by the Sub Court, Dindigul. Thus the evidence relating to Kambal @

Veeriah Chettiar's title, possession, enjoyment with regard to property accepted by the trial court has also been confirmed by this Court on Appeal.

20. Taking into consideration of the factual position and records discussed above, the Director of Survey and Settlements have no other alternative except to hold that the legal heirs of Thiru. Kambal @ Veeriah Chettiar have got legal title, possession and ownership of land in Plot No. 36 as already settled by competent Civil Courts and finally by the Director of Survey and Settlements, Madras. However, regarding the quantum area of land in Plot No. 36 (i.e.) S.No. 280 part of Megamalai Village to which the legal heirs of Kambal @ Veeriah Chettiar are entitled, they have to depend upon the supplemental survey records produced by the Tahsildar, Aundipatti. According to the supplemental survey records only an extent of 2877.03 hectares are available for grant of Ryotwari Patta.

21. During the period of litigation, certain portions of the land in Plot No. 36 were surveyed and patta was granted which have to be examined in detail separately. As the High Court in W.P.No. 1129 of 1996 dated 18.04.1996 has directed to dispose of this petition in any

event within four months. They have to decide the grant of Ryotwari Patta to the petitioners based on the supplemental survey records sent by the Tahsildar, Aundipatti, are approved. According to the supplemental survey records, the petitioners can get Ryotwari patta for an extent of 2877.03 hectares in Plot No.36 (i.e.) S.No.280 part of Megamalai Village under the Section 11(a) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. The Tahsildar, Aundipatti, is, therefore, directed to grant Ryotwari patta in the names of (1) Thiru.V.Andavar, s/o. Kambal @ Veeriah Chettiar; (2) Thiru.V.Ilavaluthi, s/o. Kambal @ Veeriah Chettiar; (3) Tmt.V.Annamayil, d/o. Kambal @ Veeriah Chettiar; (4) Tmt.Pappathi, d/o. Kambal @ Veeriah Chettiar; (5) N.Kannan, s/o. late K.Nagarajan (grandson of late Kambal @ Veeriah Chettiar); (6) N.Murugan, s/o. late K.Nagarajan (grandson of late Kambal @ Veeriah Chettiar). As estimated in the supplemental survey and approved by them, the total extent for which Ryotwari patta to be granted in the names of the above mentioned six persons is 2877.03 hectares with Land Revenue assessment per hectare is Rs.4 and paise 94 only. A completion report should be sent to this office in due course.

22.The learned very competent counsel Mrs.A.Sagayaselvi,

appearing for the Respondents has cited the judgment reported in ***AIR 1986 Supreme Court 794***:

'... 5. Counsel for the appellants, in both the appeal has relied upon S. 64-C of the Act and S. 11 of the Act read with the definition of the 'ryoti land' given in S. 3 (16) S. 3 (16) (a), (b) and (c) of the Tamil Nadu Estates Land Act, 1908, for the purpose of contending that an order passed by the Settlement Officer in an enquiry under S. 11 of the Act to the effect that the land in question is not ryoti land but Poromboke property (communal land) and therefore no Ryotwari patta could be issued in respect thereof to the applicant has been given finality under S. 64-C of the Act and the same cannot be questioned in any Court of law and therefore the Civil Court's jurisdiction to adjudicate upon the nature of character of the land must be regarded as having been ousted or excluded by the Legislature. In order to appreciate this contention it will be necessary to set out the relevant provisions on which reliance has been placed by the Counsel for the appellants. Section 64-C of the Act runs thus:

64-C. Finality of orders passed under this Act. – (1) Any order passed by the Government or other authority under this Act in respect of matters to be determined for the purpose of this Act shall, subject only to any appeal or revision provided by or under this Act, be final.

(2) No such order shall be liable to be questioned in any Court of law.”

Section 11 so far as is material runs thus

“11. Lands in which ryot is entitled to Ryotwari patta, - Every ryot in an estate shall, with effect on and from the notified date, be entitled to a Ryotwari patta in respect of

(a) all ryoti lands which, immediately before the notified date, were properly included or ought to have been properly, included in his holding and which are not either lanka lands or lands in respect of which a landholder or some other person is entitled to a Ryotwari patta under any other provisions of this Act; and

(b) XXXX ”

It is thus clear that before a Ryotwari patta. Can be had under S. 11 (a) two conditions must be satisfied (a) the applicant must be a "ryot" in an estate and (b) the land in respect of which the patta is sought must be "ryoti land". The expression 'estate' has been defined in S. 2 (3) of the Act to mean – a 'Zamindari' or an under-tenure or an inam estate. But the expression 'ryoti' and 'ryot land' have not been defined in the Act, but their definitions given in S. 3 of the Tamil Nadu Estates Land Act, 1908, have been adopted for the purpose of the Act. Section 3 (15) of the T.N. Estate Lands Act, 1908, defines 'ryot' thus:

'Ryot' means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

Section 3 (16) defines 'Ryoti land' thus:

'Ryoti land' means cultivable land in an estate other than private land but does not include

(a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels;

(b) threshing-floor, cattle-stands, village sites, and other lands situated in any estate which are set apart for the common use of the villages;

(c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists.

23. The definition of ryoti land given above clearly shows that it means cultivable land in an estate other than private land but it also excludes Porombokes or village communal lands under Cl. (b). It is thus clear that any cultivable land in an estate will not be 'ryoti land' if it falls under Cl.(b). Taking into consideration of the facts of the above case and materials available on record, the trial court in O.S.No.66 of 1955 has rightly observed that Mr.Kambal @ Veeriah Chettiar has got a legal title, possession and ownership of the land in Plot No.36 of

Megamalai Village and it further ordered for recovery of mesne and profits and the same was also confirmed by the Division Bench of this Court in A.S.No.76 of 1958. From the above findings and relying upon the above reported judgments, this Court safely concluded that the above land is a cultivable land in Plot No.36 in Megamalai Village is a 'ryoti land' under Section 2(17) and further even the above said Mr. Kambal @ Veeriah Chettiar is a 'ryot' under Section 2(16) of Tamilnadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Tamil Nadu Act, 26 of 1963).

24. In the initial stages of settlement operations the Assistant Settlement Officer, Madurai initiated 'suo-motu' proceedings under Section 63 of the Abolition Act by his order in S.R.63/1/PKM/57 dated 17.01.1958 the Assistant Settlement Officer, Madurai declared that the entire village of Narasingapuram except the lands which have been cleared and made cultivable with valid title and without violating the provisions of the Tamil Nadu Forest Act, XXVIII of 1949 will be forest and excepted the lands will be classified as lands lying within the forest. This order was challenged by way of an Appeal under Section 63 of the Act before the Director of Survey and Settlements. The Director of Survey and Settlements in his order made in R.P.2 of 1958

dated 02.07.1958 upheld the order of Assistant Settlement Officer, Madurai. A further Appeal was filed before the erstwhile Board of Revenue (Settlement of Estates) Madras. The Board of Revenue in its order in S.R.(B1) 5168 of 58 dated 14.08.1959 set aside the orders of Director of Survey and Settlements and the Assistant Settlement Officer Madurai holding that the claims for the alleged occupied lands if any in the village must be decided on merits with reference to the statutory provisions available. The Board also gave a direction to the effect that the precise orders can and should be passed under Section 63 in respect of the hills and forest which are still intact and also in respect of the lands unlawfully cleared which should be retained as Forest poramboke. In the year, 1971 the erstwhile Board of revenue (Settlement of Estates) had an occasion to notice that its earlier orders dated 14.08.1959 were not properly implemented by the Lower Settlement authorities. Therefore the Board by a general order B.P.400 of 1971 dated 31.07.1971 set aside the registry of lands in Gandamanayakkanur Zamin Estates as forest poramboke in cases where a detailed enquiry has not been made.

25.The District Forest Officer, Theni, did not file any revision petition before the Commissioner and Land Administration, Madras

against the order of the Director of Survey and Settlements Madras dated 31.03.1995. The Director has held in the said proceedings as follows:

"It is to be noted that the landholder Mr.G.A.Barker has confirmed by Ex. A19 that he had converted Plot No. 36 which was a forest land into ryoti land on 14.09.1938 itself in accordance to Section 6(2) read with Section 181 by admitting Mr.Savarimuthu Udayar into possession of Plot No.36 which is one year and one and half month before 31.10.1939, the crucial date of Section 3(1)(a) and 4(1) provisions of Madras Forest Act, XIV of 1947, a scrutiny of Ex.A1 to A4, A6 and A19 shows that the original assignment within the specified four boundaries and excess thereon where assigned prior to 31.10.1939 and that therefore a character of the same should be ryoti only.

In Survey numbers 263 to 266, 268/2, 268/3, 269/1, 270/1, 272/2 and 271 which were found to be developed were surveyed and assigned with separate survey numbers. S.No.280 measuring about 56,955 acres was registered as forest porambokes in settlement. The classification of the same as "Forest Poramboke" was not based by any

other order under Section 63 of the Abolition Act. The claims of the predecessors-in-title of the petitioners which started in the year 1957 have not yet been settled, despite the fact that they not only moved the executive authorities right from Assistant Settlement Officer Madurai to the Director of Survey and Settlements, Madras, but also the judicial Courts from Sub Court, Dindigul and subsequently upto the High Court, Madras. Finally this case was dealt with in detail by the Director of Survey and Settlements in his proceedings dated 31.03.1995. He has discussed the claims of petitioners deeply based on documentary evidence, relevant statutes and decisions of the sub court, Dindigul and subsequently by the High Court. He has remanded the case to the Assistant Settlement Officer Madurai with clear cut decisions which are the basic guide lines for proceeding with the case by the Assistant Settlement Officer Madurai.

26.The Government of Tamilnadu issued two G.Os. in respect of granting the patta under Tamilnadu Estate (Abolition and Conversion into Ryotwari) Act, 1948, which read as follows:

GOVERNMENT OF TAMIL NADU

ABSTRACT

LANDS – Land in estates taken over under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 18\948 – Grant of patta to persons in continuous possession and enjoyment – Orders – Issued.

REVENUE DEPARTMENT

G.O.Ms. No. 1300

Dated 30.04.1971

1. G.O. Ms. No. 2502, Revenue, dated 08.07.1958
2. Govt. Memo No. 68348-J1/6-3-3, Revenue, dated 19.09.1963
3. G.O. Ms. No. 1312, Revenue, dated 26.07.1967
4. G.O. Ms. No. 1925, Revenue, dated 03.11.1967
5. Govt. Memo No. 41399-J1, Revenue, dated 16.07.1968
6. G.O. Ms. No. 641, Revenue, dated 28.02.1970

ORDER:

In the G.O. first read above, the Government passed orders that landholders who could not apply for Ryotwari Patta in time under the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act XXVI of 1948) (hereinafter referred to as the Act), but who would have got patta if they had applied in time,

might be granted patta outside the scope of the Act, if they apply to the Collector of the District concerned. In the memorandum second read above, the Government ordered that the vendees from the landholders. Subsequently, in 1967, the Government passed orders in the G.O. third read above, that the concession allowed in the landholders should be extended to the ryot also and that they should be granted patta outside the scope of the Act on the same basis as laid down in the G.O. first read above. Thus, the existing orders provided for cases for the grant of patta to the landholders and ryots outside the scope of the Act in cases –

(i) Where the landholders or the ryot or the vendors might have got patta if he had applied in time under the Abolition Act, but failed to make the application in time;

(ii) Where the parties come into possession of better documentary evidence showing better title to grant of patta which were not available at the time when the applicants were heard by the appropriate authorities under the act;

(2). It has been brought to the notice of the Government that even

after the implementation of the orders referred to above there are yet a larger number of persons who have been in continuous possession and enjoyment of the lands for years together in estates taken over under the Act. Such persons have not been granted patta either because they did not come under the Act or under the orders of the Government referred to above. It has been represented that it will be a hardship if such persons who have been in continuous possession and enjoyment of their lands for years together are not granted pattas.

(3). The lands in respect of which these persons have been in continuous possession and enjoyment have vested in the Government absolutely under Act. The Government after careful consideration, have decided that patta should be granted to such persons on the basis of such continuous possession and enjoyment of the land. The government therefore direct that such persons may be granted patta in accordance with the instructions given below:

1. any person who has been in continuous possession and enjoyment of any land the estates taken over under the Act, may apply for the

grant of patta in respect of such land;

(a) to the Revenue Divisional Officer in cases where the extent of such land does not exceed 5 acres of wet or irrigable dry or 10 acres of dry land; and

(b) to the District Revenue Officer / Collector in all other cases.

2. The Revenue Divisional Officer / District Revenue Officer / Collector may grant patta on such application after the usual enquiry and after satisfying himself that the applicant has been in continuous possession and enjoyment of the land.

3. The extent of the land for which patta is to be granted either by itself or together with the lands already held by the applicant shall not exceed the ceiling limit fixed under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as modified by the Tamil Nadu Land Reforms (Reduction of Ceiling of Land) Act, 1970.

4. In cases where there are rival claims for the grant of patta in

respect of the same land, the authority concerned, may, in appropriate cases, direct the parties to obtain a declaration from the Civil Court that they have been in continuous possession and enjoyment of the land.

5. In respect of cases where the land has been classified during settlement as communal poramboke but on ground, it has been converted as dry or wet field and the applicant has been continuous possession and enjoyment of the land, the appropriate authority may grant patta in respect of such land after following the prescribed procedure for changing the classification of the land.

6. Consultation with the Settlement authorities before the grant of patta will not be necessary unless the Revenue Divisional Officer / District Revenue Officer / Collector is of the view that the matter as such requires scrutiny from the settlement point of view.

7. No market value of the land shall be collected for the grant of patta under these orders.

8. Adequate publicity in the village and its neighbourhoods shall be

given by the appropriate authority about the proposal to grant patta under these orders.

9. The orders of the Revenue Divisional Officer / District Revenue Officer / Collector as the case may be granting or refusing to grant patta are subject to revision by the Board of Revenue (SE), Madras either *suo motu* or on application to be filed within sixty days of service of the orders.

(4). The Board of Revenue (Settlement of Estates) Madras is requested to issue suitable instructions for the proper implementary of these orders to their subordinate authorities.

(BY ORDER OF THE GOVERNOR)

R. PASUPATHI
Secretary to Government
(Emphasis Supplied)

27. The above notification pertains to estates in the entire State of Tamil Nadu. There is another notification pertaining to the very area in which the subject land is situate, dated 13.09.1971, and the

same read as follows:

GOVERNMENT OF TAMIL NADU

ABSTRACT

FORESTS – Madurai District – Periakulam Taluk – Gandamanaickanur
Ex. Estate Forests – Encroachments – Regularization of and
assignment to landless poor persons.

REVENUE DEPARTMENT

G.O.Ms. No.2612

Dated the 13th September '71

Read: -

1. G.O. Ms. No. 2723, Agriculture, dated 14.09.1967.
2. Government Memo No. 104961/DII/66-32 dt: 05.02.1968.
3. G.O. Ms. No. 1333, Agriculture, dated 13.04.1970.
4. G.O. Ms. No. 1818, Agriculture, dated 17.06.1970.
5. From the Collector of Madurai, Letter J3.53989/G, dt. 17.06.1970.
6. From the Collector of Madurai, Letter J3.53989/G/68, dated
30.06.1970.
7. Government Memo No. 79546/DII/70-1, dt. 09.07.1970.
8. From the Chief Conservator of Forests, No. 10600/70-G1, dated
25.07.1970.

9. From the Board of Revenue, Ref. S.E./B.1, 3425/70 dated 03.08.1970.
10. From the Board of Revenue (Land Revenue) B.P. (Perm), 1738 (Q) dt. 14.12.190.
11. From the Board of Revenue (Settlement of Estates), Ref. S.E.(B.1) 3428/71, dt. 29.09.1971.

ORDER:

The Gandamanaickanur ex-zamin Forest extending over 150 sq. miles in Periakulam Taluk, Madurai District, were taken over the Forest Department for interim administration on 02.03.1956. They were later declared as Reserved lands under Section 26 of the Tamil Nadu Forest Act on 10.09.1957. It has not been possible since then the complete the settlement operation and issue notification under Section 4 of the Tamil Nadu Forest Act, declaring the Government's intention to constitute the lands into a Reserve Forest, as there have been unauthorized cultivations in the above areas. With a view to regularize these encroachments, directions were issued in the Government Order first read above that a contour line at an elevation of 2,400 feet should be drawn throughout the area and that the encroachments lying below this contour line might be

regularized by leasing out the encroached lands for cultivation to bonafide landless encroachers and that, in respect of lands lying above this contour line, no further encroachments should be allowed. Orders were also issued constituting a committee of officials and non-officials for considering the applications of landless poor encroachers and regularizing their occupations.

2. The Collector of Madurai has reported that no application for lease have been received so far since the encroachers want the lands to be assigned to them outright. He has reported that upto the elevation of 2,400 feet, there are 7964 cases of encroachments covering an extent of 18,342.17 acres. The encroachers have represented to the Collector that they have been in occupation of these lands for more than 20 years and that they have labored hard and spent a good deal of money to bring these lands under cultivation. The Collector has, therefore, recommended that the encroachments below the elevation of 2,400 feet may be assigned to the landless poor encroachers.

3. The Government have examined the report of the Collector in consultation with the Chief Conservator of Forests, the Board of

Revenue (Land Revenue) and the Board of Revenue (Settlement of Estates).

4. The Board of Revenue (Settlement of Estates) in B.P. (Prem) 400/71, dated 31.07.1971 has appointed out that the orders of the Assistant Settlement Officer, Madurai in his S.R. 1/57, dated 17.01.1958, confirmed by the Director of Settlements, declaring the entire Gandamanaickanur ex-zamin area (except those cultivated with valid title) as forest had been set aside by the Board of Revenue (Settlement of Estates) in its Ref. (B1) 5168/58, dated 14.08.1959. The Board of Revenue (Settlement of Estates) has, therefore, held that lands which have been treated as forest without proper enquiry on the merit of the individual case and on the basis of the general orders passed by the Assistant Settlement Officer in 1958 will have to be taken up for a *de nova* enquiry and the claim for patta settled. The Board has also held that where such a specific enquiry was already held, the case need not be reopened. Government agree that this procedure has to be gone through in the first instance and the extent and location of lands *prima facie* available for assignment determined after the Settlement proceedings before the original, appellate and revisionary

authorities have run their full course and the orders passed have become final.

5. Out of the lands in the Gandamanaickanur ex-zamin area that thus become *prima facie* available for assignment determined after the procedures under the Estate Abolition Act are gone through, there will be cases eligible for assignment "outside the scope of the Abolition Act with reference to the provisions in G.O. 2502, Revenue, dt. 08.07.1958, G.O. 1300, Revenue, dated 30.04.1971. These cases should be disposed of after the statutory claims under the Estates Abolition Act are settled.

6. Government direct that the remaining extent of lands in the Gandamanaickanur ex-zamin are lying below the elevation of 2400 feet that become available with Government after the disposal of the statutory claims and claims "outside the scope of the Abolition Act referred to in para 4 above shall be assigned to the encroachers subject to the following conditions:-

- (i) The assignment shall be only to eligible landless poor persons;

(ii) The assignment in each case shall be subject to ceiling of 3 acres of dry land or 1½ acres of wet land. In computing the extent for the purpose of the ceiling, the entire lands, owned by the individual shall be taken into account;

(iii) All other conditions of assignment under the Darkhest rules shall apply.

(iv) Any other special conditions that may be considered necessary shall be prescribed the Government, Board of Revenue and the Collector.

1. The Collector should take special care to see that no assignment is made in the case of benami encroachments where right persons are really behind the occupation.

2. Estates) is informed that in view of the above orders the instructions in the last sentence of B.P. Perm (S.E.) 400/71, dated 31.07.1971 that the area left after exhausting the statutory claims

could be handed over to the Forest Department shall stand cancelled.

3. The Board of Revenue (Settlement of Estates) is requested to submit immediate proposals for the special stall, if any necessary, for completing the settlement operations in this area. The Board of Revenue (Land Revenue) is requested to submit immediate proposals for the special staff, if any necessary, for completing the assignments in this area within the shortest time possible.

4. This order issues with the concurrence of the Finance Department – vide its U.O. No. 117398 Finance (R) dated 13.09.1971.

(BY ORDER OF THE GOVERNOR)

R. PASUPATHI

Secretary to Government.

(Emphasis and Undertaking Supplied)

28. From the above two G.Os. and the landholder Mr.G.A.Barker has confirmed that he had assigned the Plot No.36 to Mr.Savamimuthu Udaiyar, which was suitable for cardamom cultivation and even assuming the same is a forest land into ryoti land, the same was

assigned on 14.09.1938 itself, which is one year and one and half month before 31.10.1939, the crucial date of Section 3 (1) (a) and 4(1) provisions of Madras Forest Act XIV of 1947. Therefore the character of the land in Plot No. 36 is a 'ryoti land' and not a forest land. Hence this court comes to a conclusion that the subject land of this Writ Petition is a "Ryotwari Land" and not a "Forest".

29.It is at this stage relevant to note that the contention of the respondents has been brushed aside, by the Settlement Officer Thanjavur, in his Order dated 30.12.1996, on the ground that the Assistant Settlement Officer SR 11(a)/PKN/64 dated 26.08.1965, had already treated the area in which the subject land is situate as "Forest". This finding of the Settlement Officer, Thanjavur, has unfortunately received the seal of approval in the impugned order, despite the fact that the land in Megamalai Village is a 'Ryoti Land'. Thus, the so called Order of the Assistant Settlement Officer treating the area in which the subject land is situate as "Forest" vide his Order dated 26.08.1965 is not only superseded but rendered otiose. The consequence thereof would be, that when the subject land has been recognized as "Ryotwari Land" by the Governor of Tamilnadu, if the Petitioners satisfy the pre-requisites contained in Section 11(a) of the

Act, the proviso to subsection 3(d) of the Act, would ensure to the benefit of the petitioners, as a result of which the petitioners are entitled for "Patta" in respect of the subject land. However, the impugned order reveals that this aspect of the matter has not been gone into at all, thereby rendering the impugned order erroneous despite the records being available on the file.

30. Point No. 2: For obtaining a Ryotwari patta under the Section 11(a) of the Estate Abolition Act, 1948, the onus is on the claimants to prove by clear and sufficient documentary evidence. This is a statutory requirement under Section 11(a) which contemplates that for consideration of a claim, the land claimed should be ryoti land in character, properly included in the holding of a ryot or ought to have been properly included in holding of a ryoti immediately prior to the notified date. Since the legal heirs of Kambal @ Veeriah Chettiar claimed the property, which is lying in the hill area, the original assignment should have been made by the landholder prior to 31.10.1939. Ryoti land is defined under Section 3(6)(a) and (b) of the Estates Land Act, 1908. According to the definition under these provisions, all lands, in an estate are Ryoti or Jeroyati until the contrary is established.

31.The Director of Survey and Settlements in his proceedings dated 31.03.1995 has decided as follows:

Mr.G.A.Barker, the Gandamanayakanur Zamindary landholder had received a premium amount of Rs.7,250/- and statutorily admitted Mr.Kambal @ Veeraiah Chettiar into possession of all the surveyed and un-surveyed lands and excess thereon in Plot No.36 on 14.09.1938 through a Honorable middleman Mr.Savarimuthu Udayar. Kambal @ Veeraiah Chettiar had taken possession of the entire surveyed and un-surveyed lands of Plot No.36 (defined with definite metes and bounds) by 10.03.1939, through Mr.Savarimuthu Udayar. The Ex.A19 promisingly guarantees to the completion of survey and the issue of patta at the earliest regretting for the earlier delay and failure on the part of the Zamin to complete the survey and issue of patta. The use of the expression "Kist" in Ex.A19 statutorily and lawfully confirms that Mr.Kambal @ Veeriaiah Chettiar is the lawful ryot entitled to patta for the entire lands covered by Ex.A19. As the term of "KIST" or "RENT" defined in the Section 3(11) as an amount which is lawfully payable in money or in kind or both to a

landholder by a ryot for the use or occupation of ryoti land for purposes of agriculture in an estate. Therefore it is abundantly clear that Mr.Kambal @ Veeriah Chettiar who liable to pay the Kist to the landholder and entitled to cultivate all the lands in Plot No.36 is a lawful ryot entitled to Ryotwari patta to all the surveyed and un-surveyed lands of Plot No.36, under Section 11(a)".

Further the property in question had already been the subject matter of O.S.No.66 of 1955, on the file of Sub Court Dindigul, which ended in favour of Thiru Kambal @ Veeriah Chettiar. It may be seen from the judgment in O.S.No.66 of 1955 that the letters and documents filed by Kambal @ Veeraiah Chettiar had been totally accepted as valid documents and they are proved beyond doubt. Therefore, the judgment was in favour of Kambal @ Veeraiah Chettiar. The court has further held all the rights of Thiru.Savarimuthu Udayar stands transferred in the name of Thiru.Kambal @ Veeriah Chettiar. On appeal against the above judgment, the Division Bench of the Hon'ble High Court, Madras in Appeal No.76 of 1958 has fully concurred with the findings and appreciation of evidence by the Sub Court, Dindigul. Thus

the evidence relating to Kambal @ Veeriah Chettiar's title, possession, enjoyment with regard to property accepted by the trial court has also been confirmed by the Hon'ble High Court, Madras on Appeal.

Taking into consideration of the factual position and records discussed above, the Director of Survey and Settlements have no other alternative except to hold that the legal heirs of Thiru.Kambal @ Veeriah Chettiar have got legal title, possession and ownership of land in Plot No.36 as already settled by competent Civil Courts and finally by the Director of Survey and Settlements, Madras. However, regarding the quantum area of land in Plot No.36 (i.e.) S.No.280 part of Megamalai Village to which the legal heirs of Kambal @ Veeriah Chettiar are entitled, they have to depend upon the supplemental survey records produced by the Tahsildar, Aundipatti. According to the supplemental survey records only an extent of 2877.03 hectares are available for grant of Ryotwari Patta.

32.During the period of litigation, certain portions of the land in Plot No.36 were surveyed and patta was granted which have to be

examined in detail separately. As the High Court in W.P.No.1129 of 1996 dated 18.04.1996 has directed to dispose of this petition in any event within four months. They have to decide the grant of Ryotwari Patta to the petitioners based on the supplemental survey records sent by the Tahsildar, Aundipatti, are approved. According to the supplemental survey records, the petitioners can get Ryotwari patta for an extent of 2877.03 hectares in Plot No.36 (i.e.) S.No.280 part of Megamalai Village under the Section 11(a) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. The Tahsildar, Aundipatti, is, therefore, directed to grant Ryotwari patta in the names of (1) Thiru.V.Andavar, s/o. Kambal @ Veeriah Chettiar; (2) Thiru.V.Ilavaluthi, s/o. Kambal @ Veeriah Chettiar; (3) Tmt.V.Annamayil, d/o. Kambal @ Veeriah Chettiar; (4) Tmt.Pappathi, d/o. Kambal @ Veeriah Chettiar; (5) N.Kannan, s/o. late K.Nagarajan (grandson of late Kambal @ Veeriah Chettiar); (6) N.Murugan, s/o. late K.Nagarajan (grandson of late Kambal @ Veeriah Chettiar). As estimated in the supplemental survey and approved by them, the total extent for which Ryotwari patta to be granted in the names of the above mentioned six persons is 2877.03 hectares with Land Revenue assessment per hectare is Rs.4 and paise 94 only. A completion report should be sent to this office in due course.

33.The learned counsel Mrs.A.Sagayaselvi, appearing for the Respondents has cited the following judgment of this Court in ***Sathyakumar Estate (P) Ltd., Versus The Assistant Settlement Officer, dated 12.07.1989, reported in (1989) 2 MLJ 295:***

"... 25 Before we part with this case, we have got to give vent to our feelings. Here is a case where large extent of nearly 12,000 acres of land is involved. The order of the first respondent dated 04.02.1982 in a cavalier fashion treats a part of the same viz., 725-36 hectares as though they are preexisting Ryotwari land. We do not expect revenue authorities to treat a matter of this kind in such a manner. After all, the very object of introducing Ryotwari Settlement is to confer rights for the purpose of collecting revenue. Then again, it is settled law as from the inception of Tamil Nadu Act, 26 of 1948 till this date that patta granted under anyone of the abolition Acts is not a document of title but merely to enable the collection of revenue. The hierarchy of authorities constituted under the Act is ordained to determine the character of the land. That determination is warranted as we said above only by way of fixation of the

tenure to enable the collection of land revenue. All these elaborate procedures are not contemplated in vain or to suit the convenience of the revenue officials. That is why we are more than surprised to see the confidential document which we have extracted above written by the Commissioner for Land Administration, Madras directing that Patta be issued outside the Act as pre-existing Ryotwari land. What sort of an enquiry was made, we have already noticed in detail. We only wish that the authorities entrusted with specific duties under the Act follow the procedure properly and act within the four corners of the Act and Rules without thinking that they are granting bounties as they please.

26. For all these reasons, we have not the slightest hesitation in dismissing the Writ Appeal with costs.”

34.As per the judgment of this Court ***reported in 1988 MLJ 284 Kannammal Versus G. Panchakshara Chetty and others, dated 30.10.1987:***

“... 19. Now, granting that there is no limitation and the

landholder need not make a claim before the Settlement Officer, can be straightway go to the Civil Court and obtain a decree for declaration of title and injunction even though a patta has been granted to another person? As stated above, under the provisions of the Act on and from the date of notification the title of the land stands transferred to and vested in the Government. Therefore, without any fresh conferment of title by the Government no title subsists in the landholder. Hence no question of declaration of title arises. But if he is the person lawfully entitled to patta, for declaration of that entitlement he may file a suit. This is because there is no clear provision in the Act to decide a question who is entitled to patta as between rival contenders and therefore the Civil Court's jurisdiction to decide such an issue is not ousted. In paragraphs 13 and 14 of the Supreme Court judgment STATE OF TAMIL NADU VS. RAMALINGA SWAMIGAL MADAM, A.I.R. 1989 S.C. 794 two propositions enunciated in DHULABHAI CASE, A.I.R. 1969 S.C. 78. HAVE BEEN REFERRED to, and as to the first proposition it is stated that:

"The statute, when it creates a special right or liability and

provides for its determination, should also lay down that all questions about the said right or liability shall be determined by the Tribunal or authority constituted by it, suggesting thereby that if there is no such provision it will be difficult to inter ouster of the Civil Court's jurisdiction to adjudicate all other questions pertaining to such right or liability."

And as to the second proposition it is state that

"even where the statute has given finality to the orders of the special tribunal the Civil Courts jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or inter exclusion of Civil Court's jurisdiction".

Applying these propositions to Secs. 11 and 64(c) of the Act, the

Supreme Court in STATE OF TAMIL NADU VS. RAMALINGA SWAMINGAL MADAM, A.I.R. 1986 S.C. 794 has stated that Civil Court's jurisdiction is not ousted to decide as to the nature of land. In my view, the said principles enunciated in DHULABHAIS case, A.I.R. 1969 S.C. 78 will also apply to the dispute between the rival claimants under Section 11. In Section 15 whereunder a landholder's claim has to be considered there is no clear provision as to the enquiry and decision as regards the rival claims. I find therefore that under Section 15 the Civil Court's jurisdiction is not ousted as regards the dispute between the two rival claimants. But one for declaration of entitlement for patta. Therefore the present suit as it stands framed is misconceived. Here Chandra Iyer J. (as he then was) has ruled with reference to Section 11 of the Act in KRISHNASWAMI THEVAR VS. PERUMAL KONAR, 1961, M.W.N. 225.

"... As Sec. 11 declares that the lawful ryot would alone be entitled to the patta it must be held that it would be open to the aggrieved party to get the matter adjudicated in a Civil Court notwithstanding the fact that Ryotwari patta has been granted under the provisions of Sec. 11 of the Civil Court in such a suit given a declaration as to who is the party that will be entitled to

the rights created under Sec. 11, it will be the duty of the Government to cancel the previous patta issued to the trespasser and grant it to the real ryot”.

35.The learned counsel appearing for the petitioners states that the property was purchased jointly by Kamatchi Chettiar and his brother Kambal @ Veeriah Chettiar. So the patta should be issued jointly I the name of the petitioners along with the legal heirs of Kambal @ Veeriah Chettiar. The above arguments is not sustainable, since all the documents in respect of oral sale stands in the name of Kambal @ Veeriah Chettiar alone and further the suit was filed by Kambal @ Veeriah Chettiar alone in the year 1955 and his title was confirmed by the trial court by an order dated 16.11.1957 made in O.S.No.66 of 1955. Therefore the above said arguments by the learned counsel for the petitioners is not sustainable in the eye of law.

36.The learned competent counsel Mr.M.S.Ramesh, appearing for the Government states that the petitioners have not produced any evidence to prove their physical possession and cultivation during the relevant period. The above argument is not sustainable because as per the findings given in judgment in O.S.No.66 of 1955 in paragraph

No.13 (Emphasis supplied)

'... So I have no hesitation in holding that the plaintiff has got title and possession ...'.

37.From the above findings, it is clearly shows that the arguments of the learned Additional Government Pleader appearing for the respondents R1 to R3 and R15 in WP.No.39957 of 2005 and for R19 in WP.No.3522 of 2009 is not sustainable in the eye of law.

38.On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, it is seen that from the above discussions, the order passed by the Assistant Settlement Officer, Madurai made in S.R.No.11(a) 3/95, dated 24.07.1996, after considering the relevant documents and directed to issue Ryotwari joint patta in the name of six legal heirs of Kambal @ Veeriah Chettiar to the extent of 2287.03.00 hectares is valid on the basis of the direction given by the Director of Survey and Settlement, Chepauk, Madras-5 made in R.P.No.8 of 1991, dated 31.03.1995 is sustainable and the 'Ryotwari Patta' issued by the Tahsildar, Andipatty is valid and the order passed by the Settlement Officer, Thanjavur made in

R.P.No.14 of 96, dated 30.12.1996 and the Special Commissioner and Director of Survey and Settlement in his proceedings made in R.P.Nos.4 and 5 of 1997, dated 15.09.1998 and the Special Commissioner and Commissioner of Land Administration in her proceedings made in K.RP.2/2000, dated 22.03.2002 and the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai made in Roc. K.1/8686/2003, dated 14.09.2007 are quashed.

39.In the result, the above writ petitions are partly allowed. No costs.

17.12.2015

vs

Index: Yes/No
Internet: Yes/No

To

- 1.The Settlement Officer,
Thanjavur.
- 2.The District Forest Officer,
Theni.