

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:22.12.2014

DATED:08.06.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.39935 of 2002

and

W.P.M.P.No.1462 of 2007 and 384 of 2009

T.Giriraj

...Petitioner

Vs.

1.The Special Commissioner and
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai - 5.

2.The Settlement Officer,
Officer of the Commissioner and
Director of Survey and Settlement,
Ezhilagam, Chepauk,
Chennai - 5.

3.The Assistant Settlement Officer (North),
Tiruvannamalai - 2,
Tiruvannamalai Town and District.

4.The Tahsildar,
Tirukazhukundram Taluk, सत्यमेव जयते
Kancheepuram District.

...Respondents

Prayer: Writ petition is filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari to call for the
records pertaining to Ref.R.Dis(K1) 51527/2001, dated 24.09.2002, on
the file of the 1st respondent.

For Petitioners : Mr.K.Hariharan
For Respondents : Mr.M.S.Ramesh
(Additional Government Pleader)

O R D E R

The petitioner further submits that he is having a landed property in and around Thirukazhukundram. One among the properties owned by him is situated in Survey No.54 in Mangalam Village. He is the absolute owner of two items of properties, Item No.1 is in S.No.54/1-AC.3 and 1.26 cents and totally 4.92 cents in No.190, Mangalam Village in Tirukazhukundram Taluk very near to his residence. The land was originally a Zamin Village and a Ryotwari land. The zamin was originally owned and administered by Showthriamdhars Vallipuram V.K.Ramasamy Mudaliar. They granted only old patta under No.126 for fasli 1356-1357, granted Rokka patta. The land was enjoyed by his grandfather Raji Mudaliar. The Old Survey number was 66/3 and 68/1 according to the Rokka Patta No.126 which is known as Zamin Patta. Eversince the grant, his grandfather had been cultivating and enjoying the Punja land as Ryot and his enjoyment and cultivation were recorded every year and the land assessment was collected. Subsequently to his grandfather's death, his father late Thiruvengadasamy Mudaliar succeeded to his interest and was cultivating and enjoying and was in possession thereof along with the other land till his death. There was a family partition between himself and his brothers viz., Karunakara Mudaliar and his minor son, Giriraj, Spundararaja Mudaliar and the terms of partition was written and registered as deed of partition on 06.09.1967 as Document No.1949/67, S.R.O.Thirukazhukundram in pages 261 to 266 in Vol.436. Under the said partition, Schedule 'B' properties were allotted to him and since then he had been cultivating these lands with dry crops with well irrigation and had been paying kist periodically upto date. The present patta number concerning Survey Number is 599.

2. In the year 1996 some of the Villagers out of enmity and spite tried to interfere with his possession of the suit land (this land) without any right whatsoever and he had to file Civil Suit in O.S.No.18 of 1996 before the District Munsif Court of Thirukazhukundram and by judgment and decree in that suit dated 31.01.1997, the District Munsif Court was pleased to decree and in his favour upholding his title and granted relief of permanent injunction against the attempted trespassers, thereby establishing

enjoyment and possession thereof. It was only then it was revealed that the State was trying to classify these lands as unclaimed land much against the established government records upholding his title and possession.

3. The petitioner further submits that an application dated 02.01.2000 to the respondents 1 and 2 and copy marked to the 3rd respondent herein and requested them that his possession of the land in survey Nos.54/1 and 54/2 has to be recognized statutorily acted upon and ryotwari patta must be granted to him. The application appears to have been forwarded to the 3rd respondent herein who took the application on file in Ref.Tha.Pa(a1)/10/2001 took up the case for enquiry and recorded his submissions and respective documents filed by him in support of his claim. In fact he has high-lighted his case with specific Rokka Patta granted to his grandfather and father and the certificate of enjoyment issued by the Village Administrative Officer. The 3rd respondent herein who is the Assistant Settlement Officer, a statutory authority appointed under section 5 of the Act held detailed enquiry. Such an authority is empowered to carry out the functions and duties assigned to him and especially the powers transferred under section 11 of the Act namely to ascertain the land and the person included in the Ryotwari land immediately prior to the act and to determine the person entitled to the Ryotwari patta. Accordingly, the 3rd respondent herein passed an order on 23.02.2001 specifically holding that the Village was erstwhile a Zamin Village and had recorded Rokka Patta granted by Shoudriamdhars and that there was no bar for his requiring the Ryotwari patta and had considered the old patta which had found that he is the ryot entitled to the patta and took note of the fact that neither the Tahsildar concerned nor any of the Government officials has objected to either in person or by post against granting of Ryotwari patta to himself during enquiry and further held that it is only cultivable land without any actiques or minerals and that grant of Ryotwari patta was also recommended by the Revenue Officer who had referred to the specific powers and guidelines issued to him in this regard by the Office of the Commissioner concerned and had re-classified the land from Anaadheenam to a Ryotwari and had ordered for issue of patta. Accordingly, the 4th respondent also was pleased to issue patta for his land in patta No.599, dated 03.07.2001. He continues to pay the Kist under new patta also and the matter had become final with that.

4. The 1st respondent herein received his explanation and later issued a hearing notice dated 08.08.2002 calling for an enquiry and hearing on 17.09.2002. He appeared in the enquiry and presented all

the originals of his documents in support of his claim and referred to the copies that he already annexed and sent to the 1st respondent. The 1st respondent neither allowed him to speak nor heard him even a word and stated that they will hear the department and pass orders. On 24.09.2002 in Ref.No.R.Dis(K1)51527/2001, the 1st respondent passed an order as though the Settlement Officer namely the 2nd respondent herein on 27.06.2001 is alleged to have sent proposal to cancel the patta issued to the 3rd respondent in his favour of which he had not been so far communicated nor was he heard nor he was enquired before the 3rd respondent who could make up its mind to do so. Without indicating what sort of power he has exercised against him but clearly purporting to Act under section 4 of the Act. The operative portion of section 11 of the Act gives a clear right of entitlement to over-ride who is entitled to a Ryotwari irrespective of whether any of the statutory authority has to enquire and decide. It is the mandatory provision conferred and meant to be complied with by the authorities concerned. No time limit for application in the case of this nature can be stipulated in the absence of any notice of hearing or intimation regarding classification or application by the authority of the 1st stage namely the 3rd respondent herein. The mention in the order that the applicant appeared on 17.09.2002 and in the order that the applicant appeared on 17.09.2002 and argued is incorrect and not true. No chance for argument was given. He has specifically produced all the Kist receipts for the relevant period even during explanation. The appearance of Deputy Tahsildar and Village Administrative Officer before the 1st respondent and their submissions and arguments were not in his presence. The objection that the suit lands are Kunru is absolutely false and was sought to be projected so only for the first time before the 1st respondent and was not averred so even during enquiry before the 3rd respondent who granted patta. The reference to amending Act fixing the time limit is not correct. The claim is not time barred and the alleged in Government Order does not apply to the case. The statement that he has not produced documentary evidence to prove the title and possession to the suit property on the notified date is factually incorrect and is much against the department's own record. Further, the powers conferred under section of the Act for the Revisional Authority is to give effect to the provisions of the Act and referred to Section 7(c) of the Act does not refer to the final order passed by the Settlement Officer or the Assistant Settlement Officer, since, the very same Sub-section refers to orders appealable to the Tribunal and in the event of the patta having been rejected 1st authority and he could have had the right of appeal. The order passed by the 3rd respondent is subject to appealable section but no appeal need to be filed since he has succeeded and does not refer to any final order

passed based on enquiry and decision. There was nothing improper on the part of the 3rd respondent to have exercised powers under section 11 of the Act to call for any revision either by application or on suomoto powers. Further, under section 64(c) the order passed by the 3rd respondent has become final. Even suomoto powers of revision purported to have been exercised is beyond the period of limitation of 30 days prescribed, further that the scheme of the Act is only to abolish the Zamindari rights and notionally take the lands by vesting and further divesting by issuing patta to the eligible ryots as on the notified date and the scheme of the Act envisages any such exercise of power in abolishing the land holder's right and fixing compensation there of and not to enquire into the Ryot's Act. That is the reason why section 11 does not give any power of enquiry and determination regarding the Ryot's claim but gives only room to verify the bonofides of such claim as on the notified date. Hence, the exercise of powers by the alleged revisional authority is completed not warranted by the statute and especially when the alleged adverse recommendation of the 2nd respondent behind the back of the petitioner cannot be acted upon. The further allegation that it is a Kundru not put forth as a matter of fact before the enquiry authority before the 3rd respondent cannot be heard to say before the Revisional Authority that too behind the back of the applicant, adverse to him. The reference in G.Os fixing time limit does not refer to the ryots concerned and in any event the authorities are always vested with the power to entertain application beyond the time limit prescribed if in fact there is any time limit, to forward interest of justice and not to defeat the rights of the ryots against the scheme of the Act.

5. The 3rd respondent that the facts relating to the case is that Managalm Village in Thirukazhukundram Taluk of Kancheepuram District was notified in G.O.Ms.No.2302, Revenue Department, dated 01.09.1951 and taken over by the Government on 01.10.1951 and taken over by the Government under the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948 (Tamil Nadu Act XXVI/48). The village was taken over by the Government on 01.10.1951 and settlement was introduced in fasli 1370. During settlement, the suit land in S.No.54/1 and 54/2 measuring an extent of 3.66 acres and 1.26 acres respectively was treated as "Sarkar Poromboke Anadheenam". He submits that the petitioner viz., T.Girija, preferred a petition dated 05.03.2001 before the 3rd respondent for the grant of patta for the land in S.Nos.54/1 and 54/2 measuring an extent of 3.66 acres and 1.26 acres respectively in Mangalam Village under section 11(a) of the Act XXVI/48. The 3rd respondent has conducted an enquiry and filed inspection on 22.03.2001 and passed orders in his order

SR.10/2001, dated 23.03.2001 granting patta for the suit land in favour of the petitioner.

6. The 3rd respondent further submits that in view of certain explicit defects noticed in the statutory orders passed by the 3rd respondent in this case, the 2nd respondent in his letter dated 27.06.2001 has sent proposal to the 1st respondent to cancel the patta issued by the 3rd respondent. He submits that the case was taken up for Suo-motu revision by the 1st respondent under the power vested under section 7(c) of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948 heard on 17.09.2002. In the proceedings of the 1st respondent in R.Dis.K1/51527/2001, dated 24.09.2002, orders passed by the 3rd respondent was set aside and ordered that the classification of the land be restored as follows maintaining status quo.

S.No.	Extent	Classification
54/1	3.66	Anadeenam
54/2	1.26	Kundru

Aggrieved by the above order passed by the 1st respondent dated 24.09.2002, the petitioner has filed the present writ petition. It is submitted that during the course of enquiry conducted by the 1st respondent this matter has been discussed as follows:

(a) This case was heard by the 1st respondent on 17.09.2002;

(b) The petitioner argued that the suit land was in continuous possession and occupation of the petitioner's predecessors-in-title. He produced Xerox copy of the 'B' memo receipts and Kist receipts. He requested to confirm to the orders of the 3rd respondent;

(c) On the respondents side the Zonal Deputy Tahsildar and Village Administrative Officer appeared and argued that the suit land was registered as "Sarkar Poramboke Anadeenam" and that the suit lands are "Kundru" and the petitioner is not in possession or enjoyment of the suit land;

(d) The records of the Lower Court have been perused by the 1st respondent. According in G.O.Ms.No.714, Commercial Taxes and Religious Endowment Department, dated 29.06.1987, the time limit for applying for Ryotwari patta was over on 29.07.1987. The 3rd respondent is well aware of the above Government Order and the provision of the Act and hence he should have rejected the petition

as time barred;

(e) When G.O.Ms.No.714, Commercial Taxes and Religious Endowment Department, dated 29.06.1987 was issued, ample opportunities were given to the affected persons to represent their cases. This was the final opportunity given in addition to the provision for condonation of delay provided in the Act. No claim should have been entertained after the notified date i.e., 29.07.1987. Hence, the order passed by the 3rd respondent, dated 20.07.2000 is irregular and liable to be set aside. Further, the petitioner has not produced any valid documentary evidence to prove that the suit land belongs to him or to his predecessor-in-title on the notified date;

(f) In the circumstances, under the power vested under section 7(c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act XXVI/48, the 1st respondent has set aside the orders passed by the 3rd respondent in his proceedings No.SR.10/2001, dated 23.03.2001 and ordered that the classification of the land has to be restored as follows maintaining status quo.

Survey No.	Extent (In acre)	classification
54/1	3.66	Anadeenam
54/2	1.26	Kundru

It is submitted that the Suo-motu revisional power taken by the 1st respondent is in accordance with Rules and Acts in force and it is legal and sustainable in law and the power is conferred to the 1st respondent under Section 7(c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act XXVI/48. He submits that the 1st respondent, as a statutory authority, elaborately considered all the merits and demerits of the issue in accordance with records and reports of the Revenue Officials before passing an order and not on presumption and assumption. It is not acceptable and legally sustainable for issuing patta under section 11(a) of the Act XXVI/48, the land should be a ryoti land and the ryot should pay kist to Zamindar or the land ought to have been included in the land holders chitta i.e., the claimant of the patta should have cultivated the land as his ancestral occupation. Further, the petitioner has not applied for patta within the time specified in G.O.Ms.No.714, Commercial Taxes and Religious Endowment Department, dated 29.06.1987 and the claim petition is time barred. It is respectfully submitted that Mangalam Village in Thirukazhukundram Taluk of Kancheepuram District was notified in G.O.Ms.No.2302, Revenue Department, dated

01.09.1951 and taken over by the Government under provision of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act XXVI/48). Further, the petitioner has not produced any documentary evidence for the period prior to 01.07.1945 to prove that the suit land was properly included in the holding of the petitioner or his predecessors in title. Thus, the Government in their G.O.Ms.No.714, Commercial Taxes and Religious Endowments Department, dated 29.06.1987 has fixed the last date for filing of application on or before 29.07.1987, the 3rd respondent has without any authority received the application from the petitioner and issued patta under Section 11(a) of the Act XXVI/48. This action is totally outside the purview of the Act XXVI/48. It is respectfully submitted that the contention of the petitioner in ground (i) is baseless. Since, the 1st respondent has correctly and elaborately discussed the whole facts of the case under the power conferred to him under section 7(c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act XXVI/48. The contention of the petitioner is contrary to the statement of the Village Administrative Officer, Thirukazhukundram, producing the copies of B.memo and the kist receipts are all not valid documents to prove that the land belongs to him or to his predecessors-in-title.

7. The highly competent counsel, Mr.K.Hariharan, appearing for the petitioner submits that the petitioner owned two items of properties comprised in Survey No.54, situated at Mangalam Village and other property comprised in Survey No.54/1, Mangalam Village in Thirukazhukundram Taluk. The land originally belonged to a Zamin Village. The said lands was enjoyed by his grandfather viz., Raju Mudaliar, who had obtained patta named as Zamin Patta. Eversince, his grandfather had cultivated the said land. After his death, his father Thiruvenkatasamy Mudaliar succeeded to his interest and is cultivating the same. Thereafter, a family partition had taken place among the family members. The said partition had been registered on the file of the Thirukazhukundram Sub Registrar Office. As per the partition deed, the 'B' schedule mentioned property had been allotted to the petitioner herein and he is cultivating the same, with well-water irrigation.

8. The learned counsel further submits that the petitioners name has been recorded in the Chitta and Adangal records. Under the circumstances, the 3rd parties belonging to the same village had attempted to interfere with the subject matter of the property. Hence, he had filed a suit and obtained decree stating that the petitioner is in physical possession. Further, the petitioner had collected more details and has come to know that the lands were

classified as "unclaimed". The learned counsel further submits that the petitioner made an application to the 1st and 2nd respondents and requested them to issue Ryotwari patta in his name. The same was forwarded to the 3rd respondent, who conducted enquiry and assigned the land to the petitioner. On the basis of findings given by the 3rd respondent, the 4th respondent had issued patta in the name of the petitioner. The petitioner had remitted mandatory taxes to the statutory authorities. The learned counsel further submits that the 1st respondent had Suo-motu passed the impugned order against the Assistant Settlement Officer, the 3rd respondent herein. The said Suo-motu order is not maintainable under law. Hence, the learned counsel entreats the Court to set aside the 1st respondent's order.

9. The very competent Additional Government Pleader, Mr.M.S.Ramesh, appearing for the respondents submits that the 1st respondent has Suo-motu taken the case as revision as per the section 7(c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act. The subject land had been taken over by the Government under the provisions of the Tamil Nadu Estates Act (Abolition and Conversion into Ryotwari) Act. At the time of settlement, the land has been classified as "Sarkar Poramboke Anadheenam Lands". The Assistant Settlement Officer had conducted an enquiry and granted patta, in favour of the petitioner. After knowing certain explicit defects in the order passed by the Assistant Settlement Officer, Thiruvannamalai, the 1st respondent had cancelled the said patta, after assigning five reasons. The 1st respondent had specifically stated that the Settlement Officer has no locus-standi to charge the classification of the land classified as "Sarkar Poramboke Anadheenam" during settlement as this does not come within his jurisdiction. Further, the petitioner had not produced any documents pertaining to payment of Kist or Chitta or any proof regarding cultivation. Further, the Settlement Officer had not given an opportunity to the Tahsildar to be heard.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the Village Administrative Officer, had submitted the report stating that the petitioner is not in physical possession of the property. Further, the petitioner had not produced any relevant documents to prove his ownership and occupation. Besides, the petitioner had not submitted any current documents in order to prove his possession and enjoyment. Further, the 1st respondent has powers, as per section 7 (c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, to hear the matter, Suo-moto. The

1st respondent also had assigned valid reasons in his order and cancelled the patta issued by the Assistant Settlement Officer, which is appropriate. Hence, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar
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To

1.The Special Commissioner and
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai - 5.

2.The Settlement Officer,
Officer of the Commissioner and
Director of Survey and Settlement,
Ezhilagam, Chepauk, Chennai - 5.

3.The Assistant Settlement Officer (North),
Tiruvannamalai - 2,
Tiruvannamalai Town and District.

4.The Tahsildar,
Tirukazhukundram Taluk,
Kancheepuram District.

1 CC to Mr.K.Hariharan, Advocate SR.No. 29091

1 CC to the Government Pleader, SR.No. 27484

W.P.No.39935 of 2002
and

W.P.M.P.No.1462 of 2007 and 384 of 2009

MG (CO)
PSI (05.10.2015)