

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2016

PRONOUNCED ON : 28.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.21085 of 2014

Mr.R.Ganesan

... Petitioner

Vs.

1.The District Revenue Officer,
Office of the District Collector,
Kanchipuram,
Kanchipuram District.

2.Mr.K.B.Balakrishnan,
Ex-Vice President,
Kunnavakkam Village Panchayat,
No.218, Kunnavakkam, Chengalpet Taluk,
Kanchipuram District.

3.The Revenue Divisional Officer,
Chengalpet Taluk Chengalpet,
Kanchipuram District.

4.The Tahsildar, Chengalpet Taluk Office,
Chengalpet, Kanchipuram District.

... Respondents

(R2 is impleaded as per order dt-26.10.2015
in M.P.1/2015 in W.P.21085/2014)

(R3 & R4 impleaded as per order dt 17.03.2016
in W.M.P.8731/2016 in W.P.21085/2014)

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent culminating in passing the impugned order R.C.No.47388/2003/B1, dated 04.05.2014 and to quash the same and consequently, to direct the respondent to restore the classification of lands in respect of S.No.36, Echankaranai Village to its original status as found in the 1977 order.

For Petitioner : Mr.S.Rajendrakumar

For respondents : Mr.P.Rajalakshmi, GA (For R1)

Mr.Alagu Goutham
(For R2 - No appearance)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 04.05.2014 passed by the 1st respondent in R.C.No.47388/2003/B1, and to quash the same and consequently, to direct the 1st respondent to restore the classification of lands in respect of S.No.36, Echankaranai Village to its original status as found in the 1977 order.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2-1.The petitioner is a resident of Echankaranai Village. His forefathers also hailed from the same village. His forefathers and the petitioner were in possession and enjoyment of 3 acres of land in Survey No.36 in Echankaranai Village. The said village was notified and taken over by the Government on 15.04.1965 under Act 26 of 1963 and Ryotwari settlement was introduced. The petitioner applied for grant of Ryotwari patta in respect of 3 acres of land in S.No.36. The reports were called for from the Tashildar; after perusing the records and after ascertaining the fact that Adangal Extracts were available from Fasli 1384 onwards and that there has been no dispute or objection in the village regarding the continuous possession of the petitioner and his forefathers in respect of the said land, the Sub-Collector, Chengalpet has granted patta in favour of the petitioner by order dated 31.12.1977. The petitioner has been enjoying the land by paying kist regularly from then onwards.

2-2.It is further stated by the petitioner that at the time of granting patta by the Sub-Collector, the classification of the land was 'Dry Unassessed Waste'. Even in the village 'A' Register, the petitioner's name was shown against Surveny No.36/2. As against survey No.36/4, it was remarked as 'Hill'. The petitioner has been in continuous possession of the land for more than 3 decades.

2-3.It is the case of the petitioner that there has been concerted efforts by certain persons in the village to reverse the classification of the subject land. The petitioner has been called by the revenue officials and they had obtained the petitioner's signatures in some papers during enquiry. It appears that the Vice-President of the Village Panchayat moved a writ petition in W.P.No.14000 of 2011 seeking to direct the Revenue Department, Commissioner of land Administration, District Collector and the 1st respondent herein to cancel the patta granted in favour of the petitioner herein and other persons in the survey field and to restore the classification of the land. In the said writ petition, this Court by order dated 17.06.2011 directed the District Collector and the District Revenue Officer, Kancheepuram, to conduct enquiry and pass orders. Pursuant to the said order passed by this Court, the District Revenue Officer, Kancheepuram (1st respondent herein) after conducting enquiry, by the impugned order dated 04.05.2014, cancelled the order passed by the Sub-Collector granting patta in respect of 3 acres of land in favour of the petitioner in S.No.36, Echankaranai Village, and also directed the Tahsildar, Chengalpet to effect necessary changes in the village records. Aggrieved over the same, the petitioner has come forward with the present writ petition before this Court.

3.When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the petitioner was granted patta by the Sub-Collector and the classification of the land was 'Dry Unassessed Waste'. Patta was granted in favour of the petitioner on 31.12.1977. By virtue of said patta, the petitioner has been in continuous possession and enjoyment of the property for more than three decades. According to the learned counsel for the petitioner, the 1st respondent has no jurisdiction to cancel the Ryotwari Patta issued by the settlement authorities issued under a special statute; on this sole ground alone, the impugned order passed by the 1st respondent is liable to be quashed. In support of his contention, the learned counsel for the petitioner has relied upon the judgment reported in 1995(2) MLJ 594 [Palaniappa Pandaram and others Vs. The Special Commissioner and Commissioner of Land Administration, Madras and others], wherein it has been held as follows:-

".... Regular Tahsildar of the Taluk under the Revenue side has no power to deal with claims under the Special enactment in question. The patta granted in favour of the temple cannot be interfered with by the Tahsildar or any of

the ordinary revenue authorities exercising their powers under the Revenue Standing Orders and the patta granted under the said Special Enactment under a particular provision can, if at all, be interfered or modified only by the statutory authorities provided Under the statute itself in the manner and extent provided therein."

Thus, the learned counsel for the petitioner sought for quashing the impugned order passed by the 1st respondent and to direct the respondents to restore the classification of the land.

4.Per contra, the learned Government Advocate appearing for the 1st respondent, by filing a detailed counter, contended that the Sub-Collector, Chengalpattu had granted ryotwari patta in favour of the following persons, in his order in R.Dis.No.16218/77, dated 08.11.1977 and changed the classification of the land from "malai poramboke" into "Ryotwari Dry Land".

No.	Classification	Extent (Hec.Ares)	Name of the assignees
6/1	Dry	0.41.5	Sarangapani, S/o.Ponnusamy
6/2	Dry	1.21.5	Ganesan, S/o.Rengasamy Naiker
6/3	Dry	2.88.0	Sarangapani S/o.Ponnusamy
6/4	Dry waste	50.58.5	Hill Poramboke

While so, in the year 2011, one Thiru.K.B.Balakrishnan, Vice President of Kunnavakkam Village Panachayat had filed a writ petition in W.P.No.1400/2011 with a prayer to cancel the said pattas. In the said writ petition, this Court has directed the District Collector and the District Revenue Officer to conduct proper enquiry after giving notice to the petitioners as well as to the respondents 5 to 8 therein and to other interested persons, and to pass appropriate orders. Pursuant to the order passed by this Court, the District Revenue Officer, Kanchipuram (1st respondent herein) inspected the said land on 22.05.2012 and found that the land was vacant without anyboy's enjoyment and possession. Hence, by the impugned order dated 04.05.2012, the 1st respondent has set aside the order of the Sub-Collector, Chengalpattu, granting Ryotwari patta in S.No.36 of Echankaranai Village on the following ground_

(a).Even at the time of granting of Ryotwari patta by the then Sub-Collector, Chengalpattu, no documentary evidence was

produced for confirming continuous possession and enjoyment of the predecessors in title.

(b).Even after the grant of Ryotwari patta, the ryots were not in possession and enjoyment of the land due to local objection.

(c).At present, the land is not under the possession and enjoyment of anybody and it is vacant on ground.

(d).The names of the possession and enjoyment title are not found in the Fair Land Register of Echankaranai Village which shows that the predecessor in title possession and enjoyment of the land.

It is further submitted by the learned Government Advocate that though ryotwari settlement was introduced by the Government under Act 26 of 1963, the petitioner herein applied for the grant of ryotwari patta under the aforesaid Act only during 1977 ie., after a lapse of 14 years. It is also submitted that the then Sub-Collector, Chengalpattu has erroneously granted patta to the petitioner herein, without proper documentary evidence, to prove his continuous possession and enjoyment to the said land. The then Sub-Collector, Chengalpattu has relied upon the extracts of adangal from the fasli 1384 ie., that is for the year 1974 only, in addition to the enquiry report of the then Tahsildar, Chengalpattu. According to said Act 26 of 1963, a person who has 12 years continuous occupation of the said land immediately before the date 01.04.1960, is alone eligible for ryotwari patta under the said Act. But, the then Sub-Collector, Chengalpattu has not chosen to verify this vital eligibility criteria and he had granted patta to the petitioner herein. Further more, the petitioner is not in possession and enjoyment of the land and the land is lying vacant for more than 30 years. Further, the Sub-Collector is only a subordinate to the 1st respondent and the 1st respondent has every right to cancel the patta issued by the Sub-Collector. Thus, the learned Government Advocate sought for dismissal of the writ petition.

5.Heard both sides and perused the materials available on record.

6.It is the main submission of the learned counsel for the petitioner that in respect of the subject property, patta was issued in favour of the petitioner by the then Sub-Collector as early as on 31.12.1977 and the classification of the land was 'Dry Unassessed Waste; that the petitioner has been in possession and enjoyment of the land for more than 30 years. While so, all of a sudden, the 1st respondent has cancelled the patta granted in favour of the petitioner.

7. But, from a perusal of the materials available on record, I find that pursuant to the order dated 17.06.2012 in W.P.No.14000 of 2011 passed by this Court, the 1st respondent has inspected the subject land on 22.05.2012 and found that the petitioner was not in possession of the subject land and that the then Sub-Collector has erroneously granted patta in favour of the petitioner, solely relying upon the extracts of adangal from the fasli 1384 ie., that is from the year 1974 only, without properly verifying the documents. Whereas, as per the Act 26 of 1963, a person who is in possession of the property continuously for 12 years alone is entitled. Therefore, the 1st respondent has rightly cancelled the patta issued in favour of the petitioner.

8. It is another submission of the learned counsel for the petitioner that the 1st respondent is not competent to cancel the patta issued under special statute. In this regard, the learned counsel for the petitioner has also relied upon the judgment reported in CDJ 1995 MHC 667 (Palaniappa Pandaram and others Vs. The Special Commissioner and Commissioner of Land Administration, Madras and others).

9. But, a perusal of the factual aspects of the said case relied upon by the learned counsel for the petitioner would show that in the said case, the Tahsildar of the Taluk had cancelled the patta issued under special enactment. But, in the instant case, the District Revenue Officer, who is superior to the Sub-Collector, has passed the impugned order cancelling the patta issued in favour of the petitioner. Therefore, the case relied upon by the learned counsel for the petitioner cannot be made applicable to the present facts of the case. In fact, patta was cancelled not only against the petitioner, but also in respect of two other persons. Under such circumstances, I do not find any infirmity in the impugned order passed by the 1st respondent. I do not find any valid reason to interfere with the impugned order and the writ petition is liable to be dismissed.

For the foregoing reasons, the writ petition is dismissed.

No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To,

1.The District Revenue Officer,
Office of the District Collector,
Kanchipuram,
Kanchipuram District.

2.The Revenue Divisional Officer,
Chengalpet Taluk Chengalpet,
Kanchipuram District.

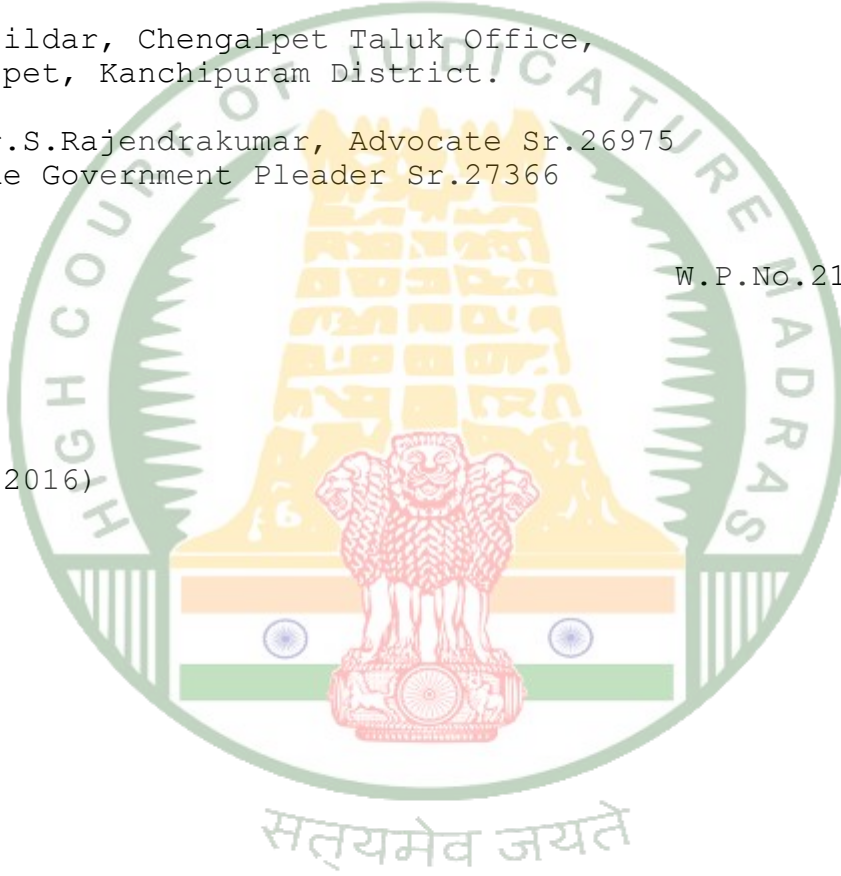
3.The Tahsildar, Chengalpet Taluk Office,
Chengalpet, Kanchipuram District.

+1cc to Mr.S.Rajendrakumar, Advocate Sr.26975

+1cc to the Government Pleader Sr.27366

W.P.No.21085 of 2014

ksj (CO)
srg(19/05/2016)



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