

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.27058 of 2011, 22659 of 2011, 24853 of 2011, 25610 of 2011, 26170 of 2011, 26035 of 2011 and 2499 of 2012

&

connected Miscellaneous Petitions

THIASHOLA PLANTATIONS PRIVATE LTD.
A COMPANY INCORPORATED UNDER THE
INDIAN COMPANIES ACT, 1956
WITH ITS REGISTERED OFFICE AT NEEDARI
THIASHOLA POST, KUNDAH
NILGIRIS

...PETITIONER IN WP.27058 OF 2011

M/S.PARRY AGRO INDUSTRIES LTD.,
PARRY HOUSE 5TH FLOOR
43, MOORE STREET,
CHENNAI-600 001.

...Petitioner in WP.22659 of 2011

GLENROCK ESTATES (P) LTD.,
REP.BY ITS DIRECTOR G.CHANDRASEKAR
48, ANNA SALAI,
CHENNAI-600 002.

...Petitioner in WP.24853 of 2011

HINDUSTAN UNILEVER LIMITED
NO.101 SANTHOME HIGH ROAD
ENTRANCE FROM SOUTH CANAL BANK ROAD,
CHENNAI-600 028.

...Petitioner in WP.25610 of 2011

ROUSDONMULLAI ESTATE
REP. BY ITS GENERAL MANAGER
A DIVISION OF IRM LIMITED
DEVALA-643 270 THE NILGIRIS.

...Petitioner in WP.26170 of 2011

TEA ESTATES INDIA LIMITED
ROCKWOOD ESTATE REGISTERED OFFICE AT 10
DAMU NAGAR
COIMBATORE-641 045.

...Petitioner in WP.26035 of 2011

HARRISONS MALAYALAM LTD.
MAYFIELD ESTATE NILAKOTTA POST
GUDALUR TALUK NILGIRIS
REP.BY M.V.H.MENON MANAGER-LEGAL

...Petitioner in WP.2499 of 2012

Vs.

- 1.The State of Tamil Nadu
represented by its Secretary
Revenue Department
Fort St. George
Chennai 600 009
- 2.The Settlement Officer and District Revenue Officer
Gudalur Janmam Lands
Gudalur
The Nilgiris District
- 3.The District Collector
Collectorate
Udhagamandalam
The Nilgiris ... R1 to R3 in all W.Ps
- 4.The District Forest Officer
O/o the District Forest Officer
Gudalur, The Nilgiris. ... R4 in W.Ps.27058, 26035
of 2011 & 2499 of 2012
... R5 in W.Ps.22659, 24853,
25610 & 26170 of 2011
- 5.The Tahsildar
Taluk Office
Pandalur
The Nilgiris ... R5 in W.Ps.27058, 26035 of 2011
& 2499 of 2012
- 6.The District Revenue Officer,
Collectorate, Udhagamandalam,
The Nilgiris. ... R4 in W.Ps.22659, 24853, 25610
& 26170 of 2011
- 7.The Revenue Divisional Officer,
O/o.Revenue Divisional Office,
Gudalur, The Nilgiris. ... R6 in W.Ps.22659, 24853, 25610
& 26170 of 2011

Writ Petitions filed under Article 226 of the Constitution of India seeking a Writ of Certiorari,

W.P.No.27058 of 2011 : Calling for the records of the second respondent comprised in the Notification issued by the second respondent in Na.Ka. No.370/2011 dated 03.08.2011 as published in the Nilgiris District Gazette Extra Ordinary Edition dated 11.08.2011 in respect of the determination made by the second respondent relating to lands comprised in Survey Nos.16, 22, 24,

36/7, 81/1, 81/2, 81/5, 81/6, 413, 414, 415/2, 415/3, 415/5, 427, 428/1 in Cherumulli Village, Gudalur Taluk in Nilgiris District admeasuring 28.58 acres, 6.23 acres, 7.28 acres, 8.64 acres, 16.25 acres, 39.02 arces, 18.82 acres, 3.16 acres, 2.50 acres, 11.08 acres, 0.84 acres, 15.86 acres, 2.40 acres, 5.92 acres and 17.26 acres, aggregating to 183.84 acres and Survey admeasuring 6.90 acres and 20.00 acres aggregating to 26.90 acres and totalling to 210.74 acres and to quash the same as being arbitrary and illegal and violative of the Tamil Nadu Gudalur Janman Estates (Abolition and Conversion into Ryotwari) Act, 1969.

W.P.No.22659 of 2011 : Calling for the records of the second respondent comprised in Gazette Notification No.5, dated 11.8.2011 and quash the same as being arbitrary and illegal and violative of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969.

W.P.No.24853 of 2011 : Calling for the records of the second respondent comprised in the Notification issued by the fourth respondent dated 03.08.2011 in Na.Ka.No.370/2011 as published in the Nilgiris District Gazette extraordinary Edition dated 11.08.2011 and quash the same as being arbitrary and illegal and violative of the Constitution of India and Tamil Nadu Gudalur Janmam Estates (Abolition and conversion into Ryotwari) Act, 1969.

W.P.No.25610 of 2011 : Calling for the records of the second respondent comprised in the Notification issued by the fourth respondent dated 3.8.2011 in Na.Ka.No.370/2011 as published in the Nilgiris District Gazette Extra Ordinary Edition dated 11.8.2011 and quash the same as being arbitrary and illegal and violative of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969.

W.P.No.26170 of 2011 : Calling for the records of the second respondent comprised in the Notification issued by the 3rd respondent dated 3.8.2011 in Na.Ka.No.370/2011 as published in the Nilgiris District Gazette Extra ordinary Edition dated 11.8.2011 and quash the same as being arbitrary and illegal and violative of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969.

W.P.No.26035 of 2011 : Calling for the records of the second Respondent comprised in the Notification issued by the second Respondent in Na.Ka.No.370/2011 dated 03.08.2011 as published in the Nilgiris District Gazette Extra Ordinary Edition dated 11.08.2011 in respect of the determination made by the second respondent relating to lands comprised in Survey Nos.904 905 907/1 & 923 in Nelliyalam Village of Pandalur Taluk in Nilgiris District admeasuring 263.57 acres, 17 acres, 137.80 acres, 2.63

acres & 5.85 acres respectively aggregating to 426.85 acres, and to quash the same as being arbitrary and illegal and violative of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion in to Ryotwari) Act, 1969.

W.P.No.2499 of 2012 : Calling for the records of the second respondent comprised in the Notification issued by the second respondent in Na.Ka.No.370/2011 as published in the Nilgiris District Gazette Extra ordinary Edition dated 11.8.2011 in respect of the determination made by the second respondent relating to lands comprised in R.Survey No.742/1 (Old Survey No.38/1), Nelliylam Village of Pandalur Taluk, Nilgiris District and (Old Survey Nos.1/2A1, 1/2A2, 1/2B.1/2C, 1/3, 1/4, 1/5) in Cherumulli Village of Gudalur Taluk and in Nilgiris District admeasuring 4.19 acers, 827.30 acres respectively, aggregating to 831.49 acres and to quash the same as being arbitrary and illegal and violative of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion in to Ryotwari) Act, 1969.

For Petitioners : Mr.R.Parthiban in
W.Ps.27058, 26035 of 2011 &
2499 of 2012

: Mr.Sathish Parasaran for
M/s.R.Parthasarathy in W.Ps.25610,
22659 & 26170 of 2011

: Mr.N.Anand Venkatesh in
W.P.24853 of 2011

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

: Mr.M.Santhanaraman
Additional Government Pleader
(Forest)

COMMON ORDER

The issue involved being common, all these writ petitions are being considered and decided by this common order.

2. While W.P. No.22659 of 2011 is filed calling into question the legality and validity of the gazette notification dated 11.08.2011 issued by the Settlement Officer and District Revenue Officer, Gudalur Janmam lands, Gudalur, the Nilgiris District (fourth respondent), all the other writ petitions are filed assailing the notification dated 03.08.2011, issued by the Settlement Officer and District Revenue Officer, Gudalur Janmam

lands, Gudalur, the Nilgiris District and published in the Nilgiris District Gazette Extra Ordinary Edition dated 11.08.2011.

3. The factual matrix of the case is as under:

3.1 Gudalur, which is located in the cradle of the confluence of the Western Ghats and Eastern Ghats, is the epicentre of these litigations. Gudalur and Pandalur, which are adjacent taluks, were in the control of the Nilambur Kovilagam, Nelliylam Raja and two other Zamindars. After the re-organisation of the States in 1956, certain portions of Gudalur went into the control of the State of Kerala and certain other portions fell within Tamil Nadu. It requires no reiteration that the Western Ghats, which is said to have had its origin in Madagascar millions of years before, is a home to thousands of species and is a declared UNESCO heritage site. To usher in land reforms, the State of Tamil Nadu passed the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (for brevity "the Act") for the acquisition of the rights of Janmies in the Janmam estates in the Gudalur and Pandalur Taluks and for the introduction of ryotwari settlement in such estates.

3.2 During the British rule, the original Janmies had sold, leased out or tenanted some pockets of the vast estate to various tea companies for plantation purpose and those companies are claiming rights either as Janmies or leaseholders or tenants. After the passing of the Act and before it was brought into effect, the constitutional validity of the Act was challenged before the Madras High Court and the same was upheld. The aggrieved parties appealed to the Supreme Court. A writ petition under Article 32 of the Constitution of India was filed before the Supreme Court directly challenging the vires of the Act. A Constitution Bench of the Supreme Court in Balmadies Plantations Ltd. and another vs. State of Tamil Nadu [(1972) 2 SCC 133], upheld the validity of the Act. The Supreme Court, however, held that the provisions of Section 3 of the Act insofar as they relate to the transfer of forests in Janmam estates to the Government are not protected by Article 31-A and struck down the same as being violative of the Constitution of India. The Act was brought into force vide notification in G.O.No.587, Commercial Taxes and Religious Endowments Department dated 18.11.1974 with effect from 27.11.1974. The Government of Tamil Nadu also framed Rules under Section 60 of the Act titled "Gudalur Janmam Estates (Abolition and Conversion of Ryotwari Rules, 1974" (for brevity "the Rules") vide G.O. Ms.No.695, Commercial Taxes and Religious Endowments Department dated 07.12.1974. By the 34th Constitutional Amendment, the Act was inserted into the IX Schedule of the Constitution of India. This Act was again challenged before this Court by the Janmies and

lessees and this Court dismissed the writ petitions on 23.09.1976. Aggrieved by the order passed by this Court, 11 civil appeals were filed by various parties before the Supreme Court, of which, 9 cases were withdrawn by the petitioners and the remaining two cases filed by Glen Rock and Silver Cloud Estate were ultimately dismissed by the Supreme Court on 09.09.2010 [Glenrock Estate Private Ltd. vs. State of Tamil Nadu, (2010) 10 SCC 96].

4. At this juncture, it may be relevant to refer to the important provisions of the Act.

4.1 Section 8 of the Act provides that the Janmies (holders of the original Janmam lands are those who had purchased the land from the Kovilagam) would be entitled to grant of pattas under the Act in respect of the agricultural lands which they have cultivated for a continuous period of three years immediately before 1st June 1969. The area under this category is approximately 9,272.49 acres.

4.2 Under Section 9 the lessees in possession of and carrying on agricultural operations continuously for three years before the cut off date of 1st June, 1969, could be granted pattas in respect of the area under their cultivation. However, pattas cannot be granted for areas, which were not under actual agricultural operations.

4.3 Section 10 provides that the persons who were in occupation of land not falling in the above two categories, but, in possession of and cultivation for three years immediately before the cut off date of 1st June 1969, could be granted pattas.

4.4 Section 11, which is an overriding provision, prevents grant of pattas against claims filed under Section 8,9 and 10 if the area/land is found to be a forest. This is an important provision in the context of protection of forest.

4.5 The cumulative effect of the above provisions would be that no pattas can be granted in respect of forest land, but, pattas can be granted in respect of land under agriculture operations / plantations, subject to the condition that the occupant of the land is under continuous possession for a period of three years between 1.6.1966 and 1.6.1969.

4.6 Section 17 is an important provision which empowers the Government to renew or terminate leases (Section 8 category) held on Janmam lands. However, there is provision for grant of pattas in respect of land covered under this provision, subject to the condition that the person was cultivating the land for a

continuous period of three agricultural years immediately before the 1st day of June 1969.

4.7 Section 53 empowers the Settlement Officer to determine the character of the Janmam estate land and to decide whether it is forest land or land being used for agricultural purpose.

5. In short, the Act broadly recognises four categories, viz., (i) Janmies, (ii) tenants, (iii) those who are cultivating for three agricultural years immediately before 01.06.1969 and (iv) lessees of Janmies. Of the four categories, the first three categories can seek ryotwari patta.

6. The Act and the Rules made thereunder made it compulsory for the aforesaid three classes of persons to make an application under Section 12 of the Act before the Settlement Officer seeking ryotwari patta. Section 12(3) of the Act envisages an appeal to the Tribunal against the order passed by the Settlement Officer. The District Judge, Ootacamund has been notified as the Tribunal under the Act.

7. While so, the Settlement Officer published a notification dated 03.08.2011 in the District Gazette of Nilgiris under Section 53 of the Act on 11.08.2011 specifying the taluks, village names, survey numbers and extent of ryotwari lands and forest lands, impugning which, these writ petitions have been filed.

8. Heard M/s. R. Parthiban, Madhan Babu, Prahalad Bhat and Anand Venkatesh, learned counsel for the petitioners, Mr. M.Santhanaraman, learned Additional Government Pleader appearing for the District Forest Officer and Mr. V. Jayaprakash Narayanan, learned Special Government Pleader appearing for other official respondents.

9. At the outset, it was contended by the learned counsel for the petitioners that the notification in question is illegal inasmuch as the Settlement Officer had not heard the petitioners before issuing the said notification.

10. Refuting this contention, Mr. Santhanaraman, learned Additional Government Pleader (Forest) submitted that the petitioners herein have no locus standi at all as they are not even holders of ryotwari patta since their claims are still pending before the authorities without final adjudication. He also contended that the impugned notification was issued after the Settlement Officer had conducted a complete survey of the estate under Section 19 of the Act and only thereafter, he has clearly demarcated the areas covered by ryotwari settlements and forest in each survey number of a village.

11. All the learned counsel appearing for the petitioners, in unison, submitted that a pre-decisional hearing by the Settlement Officer under Section 53 of the Act read with Rules 37 and 38 of the Rules is a sine qua non and even if the Section does not provide specifically for the same, principles of natural justice, which inheres in every administrative and quasi judicial action, casts a duty upon authorities, to hear the aggrieved parties before passing an order that is likely to affect their rights.

12. In the counter affidavit filed by the District Forest Officer, it has been stated as under:

"22. It is respectfully submitted that when the settlement works were under process, the Central Empowered Committee appointed by the Supreme Court of India in W.P. (C) No.202/95 had received many complaints from various sources and corners alleging violations of Supreme Court of India directions by way of illegal felling of trees and large scale encroachments in the major estates in the Gudalur Janmam lands. Further, a contempt petition has also been filed by the District Forest Officer, Gudalur in respect of one of the major estate (Glenrock Estate's) land for the violations of the above said Apex Court orders as the estate had involved in large scale felling of valuable trees and fresh encroachments. The said contempt petition No.193/2001 is pending before the Apex Court. On receipt of such complaints and based on the contempt petition, the Central Empowered Committee had visited the Janmam lands in Gudalur region during May 2003 and took note of the situation and submitted a report to the Apex Court with its recommendations. The report of the Central Empowered Committee is pending in the file of the Hon'ble Supreme Court of India in I.A. No.925 in W.P. (C) No.202/1995. Affidavits are filed in the Hon'ble Supreme Court of India on the progress made on the recommendation of the Central Empowered Committee, whenever the IA is taken up for hearing.

23. It is respectfully submitted that the Central Empowered Committee has made thirteen recommendations and recommended in Para 35 (iii) and (iv) to the State Government:

- Survey of all estates to demarcate the actual developed area (plantation area) and the undeveloped areas in the estates in Janmam Lands

in Nilgiris District (with reference to various periods) under the Janmam Act.

- Direct the State Government to complete the survey and settlement of all Janmam land under the Janmam Act and notify them as Janmam Forests under Section 53 of the Gudalur Janmam Act and notifying them as reserved forest under the Tamil Nadu Forest Act, 1882 by completing all the formalities within the period of three months."

As per the report of Central Empowered Committee filed in Hon'ble Supreme Court of India, action has been initiated by the Settlement authorities for survey and settlement of the Janmam lands thereby the undeveloped lands in the form of forests as on ground were surveyed from 2003 onwards...."

13. Mr. Madhan Babu, learned counsel, to buttress his contention that what is stated in the impugned order cannot be supplemented by averments in the counter affidavit, placed strong reliance upon paragraph no.8 of a Constitution Bench judgment of the Supreme Court in Mohinder Singh Gill and another vs. the Chief Election Officer, New Delhi and others, [(1978) 1 SCC 405], which reads as under:

"8 The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji.

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older:"

14. The judgment on the aforesaid point are a legion. One can have no two opinions about that. However, in this case, the impugned notification is the outcome of a laborious process that was undertaken by the Settlement Officer in determining the extent of lands covered by ryotwari patta and the lands covered by forest areas. This is evident from a reading of the notification itself inasmuch as the notification does not say from out of blues that a particular area of the land has been declared as "forest". The notification clearly states that the Government had declared 80.087.74 acres as Janmam lands, out of which, settlement has been finalised in respect of 28.087.03 acres and the balance extent of 52.000.71 acres was found to be forest land, out of which, 17.014.43 acres of land has been declared as forest land. Thus, it is limpid that the impugned notification is a composite one and not a stand alone order merely declaring certain areas as forest areas. Therefore, the question of once again hearing all the stakeholders does not arise in the facts and circumstances of the cases at hand. Hence, this Court rejects the submission of the learned counsel for the petitioners qua pre-decisional hearing by the Settlement Officer.

15. Section 53 of the Act, which has been extracted above, also has an in-built mechanism for redressing the grievance of an aggrieved person in the form of an appeal to the Director and further revision before the Revenue (State Government). In other words, if any person is aggrieved by the order of the Settlement Officer declaring his land as forest land, he is entitled to file an appeal to the Director and further revision to the Government.

16. Mr. Parthiban, learned counsel submitted that in Civil Appeal Nos.368-72 and 374 and 375 of 1977, the Supreme Court, by order dated 18.08.1999, had given liberty to the petitioners therein to approach the State Government for ryotwari patta under provisions of Section 9 of the Act.

17. This Court carefully perused the order dated 19.08.1999 and it may be relevant to extract the same verbatim:

"Mr. R.F. Nariman, learned counsel for the appellants, submits that the appellants have made applications to the State Government for a ryotwari patta under the provisions of Section 9 of the Gudalur Jenmam Estates (Abolition and Conversion into Ryotwari) Act, 1969. The appellants shall pursue these applications. If an order is passed by the State Government adverse to the appellants either under Section 9 or under Section 17 of the said Act, the appellants shall challenge the same by taking

appropriate proceedings, for which purpose the appellants may be granted a period of twelve weeks. Mr. Shanti Bhushan, learned counsel for the State Government, fairly states that he has no objection.

On the application of Mr. Nariman, learned counsel for the appellants, the civil appeals are dismissed as withdrawn.

The appellants shall be entitled to challenge by appropriate proceedings an order passed by the State Government against them either on their applications under the said Section 9 or under Section 17 of the said Act. Such order shall not be executed against them for a period of twelve weeks to enable them to challenge the same. In the challenge, all available pleas shall be open both to the appellants and to the State Government.

On the application of Dr. Rajiv Dhawan, learned counsel for the applicants, Interlocutory Applications No.24-32 in Civil Appeal Nos.367-375 of 1977 are dismissed as withdrawn.

All other interlocutory applications are also dismissed. No order as to costs."

18. The above Civil Appeals were filed challenging the inclusion of the Act in Schedule IX of the Constitution of India. On a reading of the aforesaid order, it is apparent that the Supreme Court has not given any liberty to the petitioners therein to file fresh application before the Government, viz., Settlement Officer for ryotwari patta. Mr. Nariman, learned Senior Counsel who appeared for the petitioners therein, had represented to the Supreme Court that the writ petitioners had filed applications under Section 9 of the Act and that they are withdrawing the Civil Appeals on the ground that they would pursue their remedy before the State Government, viz., Settlement Officer. After merely recording the said statement of Mr. Nariman, the said Civil Appeals were disposed of. Therefore, it is clear that the Supreme Court has not given any new right to anyone, much less to the petitioners, to file an application under Section 9 of the Act for ryotwari patta.

19. In fact, Rule 8 of the Rules reads as under:
8. Enquiry into claims under Section 8, 9 or 10:

(1) Every application for grant of ryotwari patta in respect of any land under Section 8,9 or 10 shall be in Form No.4 and shall be either presented in person or

sent by registered post to the Settlement Officer within six months from the appointed day.
(emphasis supplied)

20. The appointed day is 27.11.1974 and under Rule 8, the application should have been filed for ryotwari patta before the Settlement Officer within six months from 27.11.1974. Admittedly, none of the petitioners before this Court is a holder of ryotwari patta. Each one of them stakes a claim for ryotwari patta and the case of each of the petitioners is before various fora. For example, the case of the petitioners in W.P. Nos.2499 of 2012, 26170 of 2011, 26035 of 2011, 25610 of 2011 and 27058 of 2011 is pending before the Tribunal (District Judge, Udagamandalam), whereas, the case of the petitioners in W.P. Nos.22659 and 24853 of 2011 is pending with the Settlement Officer. Therefore, the petitioners have no locus standi to claim that the Settlement Officer should have heard them before passing the impugned notification. If such a mandate is read into Section 53, then, every fanciful claimant would demand pre-decisional hearing and Section 53 will become unwieldy. Admittedly, there is a great pressure on land which was not there before colonial times. Land was construed only as a territory by the kings and wars were fought for territorial aggrandizement. The kings, under whom, suzerainty over land vested, gifted lands and retained the power to recall the endowment. The British did not look at land as territory, but, as a commodity, because, they came here as businessmen and not as conquerors. Thus, there was a perceptual change in the attitude of people towards land after the advent of the British. By A.D. 1802 Regulation XXV, proprietary rights on land were conferred and the preamble to the Regulation would make an interesting reading:

"A REGULATION for declaring the proprietary Right of Lands to be vested in certain individual persons; and for defining the rights of such persons, under a permanent assessment of the land revenue, in the British territories subject to the Presidency of Fort St. George.

Whereas it is known to the zemindars, mereassydars, ryots and cultivators of land in the territories subject to the Government of Fort St. George, that from the earliest until the present period of time, the public assessment of the land revenue has never been fix; but that, according to the practice of Asiatic Governments, the assessment of the land revenue has fluctuated without any fixed principles for the determination of the amount; and without any security to the zemindars, or other persons, for the continuance of a moderate land tax; that on the contrary, frequent enquiries have been instituted by the ruling power,

whether Hindoo or Mahomedan, for the purpose of augmenting the assessment of the land revenue; that it has been customary to regulate such augmentations by the enquiries and opinions of the local officers appointed by the ruling power for the time being; and that in the attainment of an increased revenue on such foundation it has been usual for the Government to deprive the zemindars, and to appoint persons on its own behalf to the management of the zemindars; thereby reserving to the ruling power the implied right, and the actual exercise of the proprietary possession of all lands whatever: And whereas it is obvious to the said zemindars, merassydars, ryots, and cultivators of land that such a mode of administration must be injurious to the permanent prosperity of the country, by obstructing the progress of agriculture, population and wealth; and destructive of the comfort of individual persons, by diminishing the security of personal freedom, and of private property; WHEREFORE, the British Government impressed with a deep sense of the injuries arising to the state and to its subjects, from the operation of such principles, has resolved to remove from its administration to fruitful a source of uncertainty and disquietude, to grant to zemindars and other land-holders, their heirs, and successors, a permanent property in their land in all time to come; and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances.

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21. To give legal effect to this Regulation, the British passed A.D. 1802 Regulation XVII titled "A Regulation for establishing a registry for wills and deeds, for the transfer or mortgage of real property." This Regulation is the precursor to the present Registration Act, 1908.

22. With these Regulations, the lands which were held in common weal in India became commodities capable of being the subject matter of commercial transactions. These changes that were brought about by law, have now led to a scramble amongst the people for owning lands. This has now become an irreversible process like invention of money and to whatever extent we may wish otherwise, the clock cannot be turned back. These historical events have been recounted above only to highlight the fact that when the Act was passed, people knew that they can stake a claim for ryotwari patta. This resulted in all sorts of claims being made. In some cases, after giving a representation to the authorities even after the expiry of six months fixed by Rule 8, individuals have approached this Court for an innocuous

mandamus for considering their representations and passing of orders thereon and on such mandamus being issued, they started claiming ryotwari pattas as a matter of right.

23. In this context, it is worth having a look at Section 53 of the Act which reads thus:

53 Decision of questions regarding forests:

If any question arises whether any land in a janmam estate is a forest or is situated in a forest, or as to the limits of a forest, it shall be determined by the Settlement Officer, subject to an appeal to the Director, within such time as may be prescribed and also to revision by the Board of Revenue.

24. Rule 37 of the Rules regulates the mode of enquiry under Section 53 of the Act and the said Rule reads thus:

"37. Decision of questions regarding forests:

1 The Settlement Officer shall determine questions regarding forests under Section 53 either suo motu or an application.

2 Any person requiring a decision under Section 53 shall apply to the Settlement Officer in Form No.14.

1 Except where the application is on behalf of Government, it shall be signed and verified by the applicant.

2 Every such application shall be restricted to the lands in a holding of a janmam estate in a single village.

3 Every such application shall be presented in person or sent by registered post.

4 As many copies of the application, as there are respondents with one additional copy for the Tahsildar of the Taluk in which the land is situated, shall be filed with the application.

5 On receipt of the application, the Settlement Officer shall fix a date for hearing and issue notice in Form No.15 to the

applicant, the respondents and the Tahsildar of the Taluk. A copy of the application shall be sent along with the notice.

6 The Settlement Officer shall make a summary enquiry into the application and give his decision in writing after giving the parties a reasonable opportunity for adducing evidence.

7 A copy of the order shall be served on the applicant and on each of the respondents. A copy shall also be sent to the officer immediately superior to the officer making the enquiry and to the Tahsildar of the taluk."

25. Section 53 read with Rule 37 envisages two contingencies, viz., (i) suo motu order by the Settlement Officer and (ii) the order made on an application by a person.

26. Admittedly, none of the petitioners has filed an application under Rule 37 of the Rules. At the risk of repetition, most of the petitioners have not even filed an application for ryotwari patta within six months as required under Rule 8 of the Rules.

27. At this juncture, it may be apposite to extract Rule 25 of the Rules:

"25 Time barred application, appeal or revision petition to be dismissed:

"(1) Subject to the provisions of the Act and these rules, every application made and every appeal and revision petition presented to the authorities or officers having jurisdiction under the Act and these rules after the period of limitation prescribed there for in the Act and these rules, shall be dismissed although limitation has not been set up as a defence.

(2) No such application made or appeal and revision petition filed shall be admitted after the prior of limitation prescribed therefor in the Act and these rules on the ground that the applicant or the appellant or the petitioner had sufficient cause for not preferring the application or appeal or petition within such period."

28. Thus, Rule 25 of the Rules very clearly lays down that no application whatsoever can be entertained after the period of

limitation fixed under the Act. Oblivious of this provision, applications are submitted to the Settlement Officer on the sweet will of the applicant and writ petitions are filed before this Court seeking innocuous directions to the Settlement Officer to consider and pass orders. Confronted with such orders, the Settlement Officer is forced to entertain applications and give a new cause of action and appellate remedies for kite flyers and legal adventurers.

29. As regards the suo motu power of the Settlement Officer under Section 53 of the Act, he will be required to issue notice only to the pattadars who are likely to be affected by his decision to declare an area as "forest" and not to all and sundry.

30. In view of the above, the arguments raised by the learned counsel for the petitioners are rejected and the impugned gazette notification dated 11.08.2011 is upheld.

31. The learned counsel for the petitioners submitted that in the event of the Settlement Officer or the Tribunal granting ryotwari patta to the petitioners in respect of land which has been declared as "forest" by the impugned notification, it will indeed cause serious prejudice to them.

32. There appears to be force in their apprehension. Therefore, this Court directs that in the event of the petitioners being given ryotwari pattas in respect of land declared as "forest" in the impugned notification, to that extent, the notification will stand modified. It is hereby clarified that the findings of the Settlement Officer or the Tribunal, as the case may be, shall be on the merits of the cases and without being influenced by the impugned notification in any manner whatsoever.

33. It is seen that the proceedings before the Tribunal and the Settlement Officer are pending for quite a long time. Hence, it will sub-serve the interest of justice if the cases are disposed of at the earliest, so that the parties are aware of their respective rights.

34. Accordingly, this Court directs the Tribunal (District Judge, Ootacamund) to dispose of C.M.A. Nos.17, 20 and 22 of 2008) within three months from the date of receipt of a copy of this order.

35. As regards the claim of the petitioners in W.P. No.22659 of 2011 and 24853 of 2011, the Settlement Officer, Gudalur is directed to dispose of the same within six months from the date of receipt of a copy of this order.

36. Mr. Santhanaraman, learned Additional Government Pleader submitted that there are about 300 cases still under consideration on the file of the Tribunal (District Judge, Ootacamund) and that the encroachers, taking advantage of the pendency of the litigations, are blatantly usurping the forest lands, as a result of which, not only the very ecology is under serious threat, but has also led to increase in incidents of man-animal conflicts. It is reported that in the year 2016 alone 12 people were killed by elephants, 2 were killed by tiger and the authorities had to gun down the tiger.

37. Taking note of the above submission made by Mr.Santhanaraman, the District Judge, Ootacamund, is directed to bestow his kind attention to this aspect and take effective steps to dispose of all the cases expeditiously.

With the above directions, these writ petitions stand dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To

- 1.The Secretary
Revenue Department
State of Tamil Nadu
Fort St. George
Chennai 600 009
- 2.The Settlement Officer and District Revenue Officer
Gudalur Janmam Lands
Gudalur
The Nilgiris District
- 3.The District Collector
Collectorate
Udhagamandalam
The Nilgiris
- 4.The District Forest Officer
O/o the District Forest Officer
Gudalur, The Nilgiris.

5.The Tahsildar
Taluk Office
Pandalur
The Nilgiris

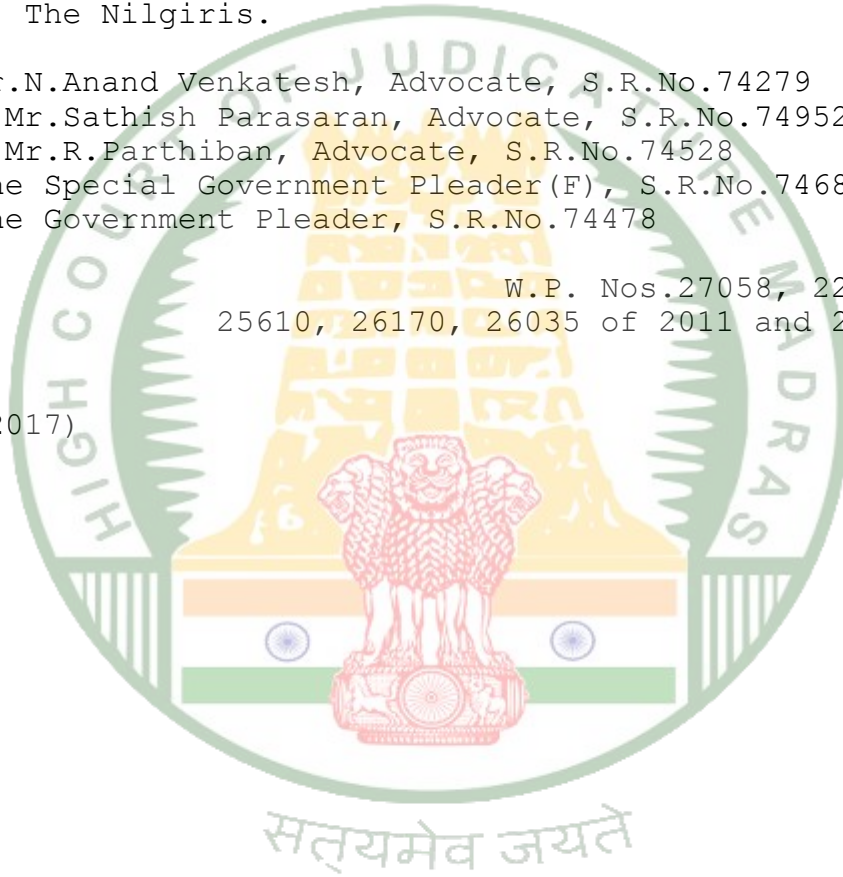
6.The District Revenue Officer,
Collectorate, Udhagamandalam,
The Nilgiris.

7.The Revenue Divisional Officer,
O/o.Revenue Divisional Office,
Gudalur, The Nilgiris.

+1cc to Mr.N.Anand Venkatesh, Advocate, S.R.No.74279
+4cc's to Mr.Sathish Parasaran, Advocate, S.R.No.74952
+3cc's to Mr.R.Parthiban, Advocate, S.R.No.74528
+1cc to the Special Government Pleader(F), S.R.No.74683
+1cc to the Government Pleader, S.R.No.74478

W.P. Nos.27058, 22659, 24853,
25610, 26170, 26035 of 2011 and 2499 of 2012

KJI (CO)
CA(23/01/2017)



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