

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.42787 of 2002

1.R.Subramanian
2.S.Sahadavan
3.S.Murugan

... Petitioners

Vs.

1. The Special Commissioner and Commissioner
of Land Administration,
Chepauk, Chennai.
2. The Settlement Officer,
(North) Ezhilagam, Chepauk,
Chennai-5.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari calling for the records of the 1st respondent herein pertaining to the order bearing No.R.Dis.R.P.(k1)12408/2001 dated 16.10.2002 and quash the same.

For Petitioners : Mr.Srinath Sridevan

For Respondents : Mr.P.H.Arvind Pandian,
Additional Advocate General
assisted by
Mr.P.Sanjai Gandhi,
Additional Government Pleader

ORDER

The deponent of the affidavit filed in support of this petition is the Power Agent of the petitioners and it is averred that the petitioners are in occupation of the patta land admeasruing to an extent of 5.83 acres in S.No.431/1 in Pallikaranai Village and that their predecessors in title have been in possession right from the year 1990 and according to the petitioners, this is a patta land. The patta in respect of the said property was far back as 1990. It is further averred by the petitioner that in or about the year 1986, the land appears to have erroneously reclassified as "wet assessed waste" and therefore, they made an application to the first

respondent for a patta copy under the UDR Registered scheme. The claim of the petitioners is that in cases like this, where there is erroneous classification in the revenue records, the competent authority to issue patta, is only the Assistant Settlement Officer and not the Tahsildar in terms of the Departmental instruction dated 29.04.1991.

2. The second respondent had issued Ryotwari Patta under the Madras Estates Abolition and Conversion into Ryotwari Act, 1948 (now under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948) and according to the petitioner, there is a clerical mistake as the property in question is not a inam asset. However, the first respondent has exercised a suo motu revision power and revised the order and challenging the legality of the same, came forward to file this writ petition.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment rendered in 2013 (2) CTC 129 [Rajathi and another Vs. The Principal Secretary & Commissioner of Land Administration] and would contend that the first respondent herein has exercised suo motu revision power under Section 7(c) of the said act and interpreting the said Section, the Division Bench held that, if the remedy of the appeal is provided under the said Act to challenge the order of Assistant Settlement Officer, the suo motu power under Section 7(c) of the Act cannot be exercised and in the case on hand, admittedly, challenging the order of the Assistant Settlement Officer, Thiruvannamalai dated 10.04.2001, the Tahsildar, Thambaram, Kanchipuram District has filed an appeal before the first respondent and instead of taking the appeal and disposing of the same, the first respondent has exercised suo motu power under Section 7(c) of the Act and passed the impugned proceedings cancelling the Ryotwari Patta granted in favour of the petitioners and therefore, prays for interference. The learned counsel appearing for the petitioner has also drawn the attention of this Court to the affidavit as well as the supplementary affidavit and would submit that in respect of the lands comprised in S.No.431/1 belonging to other persons in Pallikarani Village, Ryotwari Patta have been issued by the concerned Assistant Settlement Officer and those pattas are yet to be cancelled and whereas, the Ryotwari Patta granted to the petitioner alone was chose to be cancel for the reasons best known to the first respondent and prays for appropriate orders.

4. Per contra, Mr.P.H.Arvind Pandian, learned Additional Advocate General, assisted by Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents, who has invited the attention of this Court to the counter affidavit as well as the additional counter affidavit filed on

behalf of the first respondent and would contend that the petitioners through their Power of Attorney has submitted an application to the Commissioner of Land Administration for grant of Ryotwari Patta admeasuring to an extent of 6.22 acres in S.No.431/1 at Pallikaranai Village and it was forwarded to the Assistant Settlement Officer, Thiruvannamalai for taking necessary action and the Settlement Officer, vide his letter dated 16.02.2001, has sent a report stating that the predecessor in title of the petitioners have failed to apply for Ryotwari Patta during settlement scheme/operation and therefore, the delay in preferring the claim may be condoned. Based on which, a further report was also called for from the said official and instead of sending a further report, the Assistant Settlement Officer, vide proceedings dated 10.04.2001, had granted Ryotwari Patta in favour of the petitioners admeasuring to an extent of 5.83 acres in S.No.431/1 at Pallikaranai Village under Section 11(a) of the Act. Since the first respondent found that the order of the Assistant Settlement Officer dated 10.04.2001 is contrary to Rules, has initiated suo-motu revision under Section 7(c) and (d) of the said Act r/w G.O.Ms.No.714, Commercial Taxes and Religious Endowments Department, dated 29.06.1987 by following the defects noticed in the order passed by the Assistant Settlement Officer:

"(a) Though the Government, in their Order Ms.No.714, Commercial Taxes and Religious Endowments Department, dated 29.06.1987 have fixed the last date for filing of application on or before 20.08.1987 and approved amendment to Act XXVI/1948, the then Assistant Settlement Officer in his own capacity received application from the petitioner and issued patta under Section 11(a) of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act XXVI/1948. This action is totally outside the purview the Act XXVI/1948. सत्यमेव जयते

(b) The then A.S.O. has not obtained copies of SF-1, SF-7 and SF-10. As such, the then A.S.O. has not looked into the classification of the land on the Notified Date or prior to that date.

(c) The then A.S.O. has no locus standi to change the classification of the land classified as "Nanjai Tharisu" during settlement. As such, the action of the then A.S.O. in allowing patta for "Nanjai Tharisu" is beyond his jurisdiction.

(d) As per Section 11(a) of the Act XXVI/1948, the land should be a ryoti land and the ryot should have paid kist to Zamindar or

the land ought to have been included in the land holders chitta, i.e., the claimant to the patta should have cultivated the land as his ancestral occupation. Moreover, the petitioner should have submitted the pattas granted by Zamindars for every Fasli or the receipt given by the land holder. But, there is no such document is available in the lower Court file.

(e) The A.S.O. had not given an opportunity to the Tahsildar, Tambaram to represent the case, since he is the custodian of Government land, and issued exparte orders arbitrarily allowing patta."

Having noticed the above defects, the first respondent had issued show cause notice to the petitioner calling upon him to explain as to why the patta granted by the Assistant Settlement Officer, Thiruvannamalai, vide proceeding dated 10.04.2001 should not be cancelled and after taking note of the written objections, with due and proper application of mind to the entire materials, has passed the impugned order by cancelling the Ryotwari Patta granted in favour of the petitioners. It is the further submission of the learned Additional Advocate General that the judgment relied on by the learned counsel appearing for the petitioner reported in 2013 (2) CTC 129 [Rajathi and another Vs. The Principal Secretary & Commissioner of Land Administration] though referred to a Division Bench Judgement of this Court reported in 1996 Writ L.R.554 [M.Veeraswamy v. Special Commissioner & Commissioner of Land Administration and others] as well as the Full Bench Judgment of this Court reported in 2007 (4) CTC 538 [Special Commissioner & Director of Survey & Settlement Vs. M.Arumugam] had took a view that if the remedy of the appeal is provided under the Act, the suo-motu power cannot be taken up by exercising the power under Section 7(c) of the Act and sought to distinguish the said judgment by inviting the attention of this Court to the above cited two judgments as well as the judgment rendered by the single Bench of this Court reported in 2011-3-L.W.922 [M.Govindan Vs. The Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai and others].

5. In 1966-2-L.W.451 [M.Veerasamy Vs. Special Commissioner & Commissioner of Land Administration, Madras and others] suo-motu power was exercised by the Special Commissioner and Land Administration, Chepuak, Chennai and it was contended that the Board has no jurisdiction to exercise the suo-motu revision under Section 7(c) and 7(d) of the said Act and it has been held that the said Section does not contemplate any application being filed under Section 7(c) and 7(d) of the said Act and it confers powers on the Board to

cancel or set aside any orders passed by the lower authority and certainly it is open to the Board to exercise the suo-motu power whenever it is found necessary.

6. In 2007 (4) CTC 538 [Special Commissioner & Director of Survey & Settlement Vs. M.Arumugam], Full Bench judgment, there are two conflicting judgments reported in 1992 (2) LW 265 [The Director of Survey and Settlement Vs. R.Ramadoss] and 1996 WLR 554 = 1966-2-L.W.451 [[M.Veerasamy Vs. Special Commissioner & Commissioner of Land Administration], with regard to the suo motu exercise of power under Section 5(2) and 7(c) of the said Act. The Full Bench after taking note of the judgment in the case of David Pillai Vs. The Settlement Officer, Madurai [W.A.No.1296 of 1986] and the judgment in the case of M.Veerasamy Vs. Special Commissioner & Commissioner of Land Administration, Madras and others reported in 1996 WLR 554 = 1966-2-L.W.451, had approved the views in the above cited two judgments and held that the Director of Settlement as well as the Board of Revenue have suo motu powers to interfere with the orders passed by the lower authorities.

7. In 2011-3-L.W.922 [M.Govindan Vs. The Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai and others] a Single Bench of this Court following Veeraswamy's case as well as Arumugam's case (cited supra) took the very same view.

8. The facts of the case would disclose that admittedly the petitioners moved an application stating that the lands admeasuring to an extent of 6.22 acres in Pallikarani Village in S.No.431/1 is classified as "Nanjai Tharisu" and prayed for patta and whereas the Assistant Settlement Officer, Thiruvannamalai, vide proceedings dated 10.04.2001, has granted Ryotwari patta in respect of 5.83 acres of land in the same survey number and also indicated that if anybody is aggrieved by the said order, he can file an appeal before the appellate authority at Thanjavur within a period of 30 days.

9. The Tahsildar, Thambaram, Kanchipuram District has filed a revision before the first respondent on 02.06.2001. The first respondent on going through the records, has noted the irregularities as enumerated above and also given a show cause notice to the petitioner as to why the Ryotwari patta given in their favour should not be cancelled by citing the said reasons and after eliciting response from the petitioners, has passed the impugned order and found that the said Village has not been taken up by the Government under Estate/Inam Abolition Act and also seen by the Village records that the said land has been registered as "Nanjai Tharisu" and therefore, the patta granted by the Assistant Settlement Officer, Thiruvannamalai under Section 11 (a) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 is

unsustainable and therefore, set aside the order with a further direction restoring the classification of the land as Nanjai Thariu.

10. It is also relevant to consider the provision of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and Section 10 of the said Act deals with determination of date on which under-tenure estate was created and as per sub-section 3 (a) of Section 10 against a decision of the Settlement Officer under sub-section (2) the Government may, within one year from the commencement of the [Tamil Nadu] Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1954 or from the date of the decision, whichever is later and any person aggrieved by the said decision, may, within two months from the said date, appeal to the Tribunal.

11. Section 11 Chapter III deals with grant of Ryotwari pattas. Section 11 speaks about the lands in which Ryot is entitled to ryotwari pattas and it is relevant to extract Section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948:

"11. Land in which ryot is entitled to ryotwari pattas.- 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 provision of this Act; and

(b) all lanka lands in his occupation immediately before the notified date, such lands having been in his occupation or in that of his predecessors-in-title continuously from the 1st day of July 1939;

provided that no person who has been admitted into possession of any land by a landholder on or after the 1st day of July 1945 shall, except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land."

12. Admittedly, the Assistant Settlement Officer has invoked Section 11 of the said Act and granted Ryotwari patta in favour of the petitioner in respect of the land admeasuring to an extent of 5.83 acres in Pallikaranai Village in Survey No.431/1.

13. It is pertinent to point out at this juncture that in respect of the orders passed under Section 11 of the said Act,

no appeal is provided and therefore, the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai-600 005 is entitled to exercise the suo-motu power under Section 7 (c) of the Act. As already pointed out that the request made by the petitioner is only for issuance of patta for Nanjai Tharisu and curiously, the Assistant Settlement Officer, Thiruvannamalai has exercised power under Section 11(a) of the said Act and cancelled the Ryotwari patta granted in favour of the petitioner in the said survey number in a similar extent. The said mistake/error committed by the Assistant Settlement Officer has been rightly taken cognizance by the first respondent and exercising the suo-motu power under Section 11 (a) of the Act, and it was rectified also.

14. It is also to be pointed out at this juncture that the suo-motu power also came to be exercised without any loss of time on the basis of the order of the Assessment Officer, Thiruvannamalai dated 10.04.2001 and the show cause notice was issued on 21.06.2002 citing the reasons and after eliciting response, the impugned order cancelling the Ryotwari Patta came to be passed on 16.10.2002.

15. In the light of the above facts and circumstances, this Court is of the view that there is no error apparent illegality or irregularity in the impugned order passed by the first respondent in cancelling the Ryotwari patta granted in favour of the petitioner in respect of extent of lands in question.

16. In the result, this writ petition is dismissed confirming the order of the first respondent dated 16.10.2002. No costs.

17. In the light of the fact that the first respondent has restored classification of the lands as Nanjai Tharisu, it is open to the petitioners to apply for patta in respect of the lands possessed by them by virtue of the said classification before the concerned authority, who on receipt of the same, is directed to consider the same in accordance with law and pass orders, as expeditiously as possible.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Special Commissioner and Commissioner
of Land Administration,
Chepauk, Chennai.
2. The Settlement Officer,
(North) Ezhilagam, Chepauk,
Chennai-5.

+lcc to Mr.Srinath Sridevan, Advocate, S.R.No.42235

+lcc to the Government Pleader, S.R.No.42163

Writ Petition No.42787 of 2002

SVI (CO)
CA(24/08/2016)



WEB COPY