

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2016

DATE OF DECISION: 15.07.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.A.Nos.847, 850 to 852, 875 to 877
and 2031 to 2037 of 2004

Bava G.Chokkappa ... Appellant in all appeals

-Vs-

The District Revenue Officer,
Appellate Authority,
Kudiyiruppu Act,
Nagapattinam. ... First respondent in all appeals

K.Kunju Pillai ... Second respondent in
W.A.(MD)No.847 of 2004

V.Rangan ... Second respondent in
W.A.(MD)No.850 of 2004

V.Thiagarajan ... Second respondent in
W.A.(MD)No.851 of 2004

Settu alias Krishnamoorthy (deceased)

Raju

Jena

(R-3 and R-4 brought on record as LR's
of the deceased R-2 vide order of Court
dated 17.02.2016) made in CMP No.
2604 of 2016).

... Respondents 2 to 4 in
W.A.(MD)No.852 of 2004

G.Thiagarajan, G.Mangalam,
G.Nagarajan, G.Saraswathi
LRs of Govindaraj

... Second respondent in
W.A.(MD)No.875 of 2004

Krishnaveni

... Second respondent in
W.A.(MD)No.876 of 2004

M.Pakirisamy

... Second respondent in
W.A. (MD) No.877 of 2004

Jayalakshmi

... Second respondent in
W.A. (MD) No.2031 of 2004

2.G.Muthusamy (deceased)

3.Karunanidhi (died)

4.Sankar (died)

(R-3 and R-4 substituted as LR
of the deceased R-2 vide order
of Court dated 16.09.2015 made
in WAMP Nos.20 to 22 of 2011 in
W.A.No.2032 of 2004).

5.M.S.Selvi

(R-5 brought on record as LR of
the deceased R-3 vide order of
Court dated 17.02.2016 made in
CMP No.2605 of 2016).

6.Vasanthi

(R-6 brought on record as LR
of the deceased R-4 vide order of
Court dated 17.02.2016 made in
CMP No.2606 of 2016).

... Respondents 2 to 6 in
W.A. (MD) No.2032 of 2004

2.Singaram (deceased)

3.Selvam

(R-3 substituted as LR of the
deceased R-2 vide order of Court
dated 16.09.2015 made in WAMP
Nos.20 to 22 of 2011 in W.A.No.
2033 of 2004).

... Respondents 2 and 3 in
W.A. (MD) No.2033 of 2004

1.Vedantham

... Second respondent in
W.A. (MD) No.2034 of 2004

2.S.Govindasamy (deceased)

3.Moorthy

(R-3 substituted as LR of the deceased
R-2 vide order of Court dated
16.09.2015 made in WAMP Nos.
20 to 22 of 2011).

... Respondents 2 and 3 in
W.A. (MD) No.2035 of 2004

K.Govindarajan

... Second respondent in
W.A. (MD) No.2036 of 2004

Kaliyamoorthy

... Second respondent in
W.A. (MD) No.2037 of 2004

Appeals filed under Clause 15 of the Letters Patent, against the order dated 22.04.2003 passed by this Court in W.P.Nos.21136, 21128, 21134, 21127, 21129, 21132, 21133, 21123, 21130, 21126, 21131, 21125, 21135 and 21124 of 1994, respectively.

W.P.Nos.21136, 21128, 21134, 21127, 21129, 21132, 21133, 21123, 21130, 21126, 21131, 21125, 21135 and 21124 of 1994 : It is prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorari, calling for the records relating to the impugned Order of the Ist Respondent dated 17.08.1994, Appeal Nos.32/1992, 39/1992, 34/1992, 29/1992, 31/1992, granting Kudiyiruppu Patta under the Tamilnadu Occupants of Kudiyiruppu (Conferment of Ownership) Act 40 of 1971 in favour of the 2nd Respondent in respect of House Situate in T.S.No.263, Kamalayalam North Bank, Ward I Block 7, Tiruvarur of an extent of 1496 Sq.ft., 751 Sq.ft., 432 Sq.ft., 1496 Sq.ft., 1710 Sq.ft., 352 Sq.ft., 704 Sq.ft., 791 Sq.ft., 1000 Sq.ft., 880 Sq.ft., 720 Sq.ft., 800 Sq.ft., 1496 Sq.ft., 1000 Sq.ft., respectively belongs to the Petitioner.

For Appellant : Mr.S.Devanathan

For Respondents : Mr.S.T.S.Moorthy, Government Pleader
assisted by Mr.V.R.Kamalanathan,
Additional Government Pleader
and Mr.V.Shanmugasundar,
Government Advocate
for R1 in all appeals

Mrs.G.Devi for R2 in W.A.No.850 of 2004
and for R3 in W.A.No.2033 of 2004

Mr.J.Nandagopal for R3 and R4 in
W.A.No.852 of 2004

JUDGMENT

R.MAHADEVAN, J.

These writ appeals have been filed by the appellant against the dismissal of the writ petitions in W.P.Nos.21123 to 21136 of 1994 by order dated 22.04.2003.

2.The facts leading to the filing of the writ petitions from which the present writ appeals have arisen, are as follows:

(i)With regard to the writ petitions except W.P.Nos.21131 and 21133 of 1994, the question involved is as to the correctness of the grant of patta made by the first respondent,

ie., the District Revenue Officer, Nagapattinam in favour of the respective private respondents, in exercise of the powers under the provisions of the Tamil Nadu Occupants Kudiyruppu (Conferment of Ownership) Act 40 of 1971. With regard to the other two writ petitions, ie., W.P.Nos.21131 and 21133 of 1994, the question is about the correctness of the grant of patta in exercise of the powers under the provisions of the Tamil Nadu Rural Artisans (Conferment of Ownership) Act 38 of 1976. The provisions relating to grant of patta are identical in both the Acts. The only difference being in the former, such grant of patta is in favour of the Agriculturists or Agricultural Labourers, whereas, in the latter, it is in favour of Rural Artisans. Under Act 40 of 1971, the appointed date is 19.06.1971.

(ii) The private respondents in these writ petitions, originally filed applications before the Revenue Tahsildar, Tiruvarur on 03.04.1984, and when the jurisdiction of the said Authority came to be shifted to the Revenue Court, Mayiladuthurai, fresh applications were filed by the applicants before the Revenue Court, Mayiladuthurai on 04.08.1985. Even before the fresh applications came to be filed by all the applicants on 04.08.1985, there was a counter statement filed on behalf of the appellant to the earlier applications dated 03.04.1984. The said counter was filed by the appellant on 02.09.1985. After the change of jurisdiction from Tiruvarur to Mayiladuthurai and after filing of the fresh applications on 04.08.1985, the appellant filed additional counter on 02.01.1989. Subsequently, by Amendment Act 39 of 1990, the appointed date was shifted from 19.06.1971 to 01.04.1990.

(iii) All the applications were numbered as KMP Nos.131 to 144 of 1989 and 146 of 1989, in which, the Special Deputy Collector Mayiladuthurai passed ex-parte orders in K.M.P.Nos.140 and 141 of 1989 rejecting the applications on merits. Subsequently, the same Authority also passed orders in all other applications, viz., K.M.P.Nos.131 to 139, 142 to 144 and 146 of 1989 on 20.06.1990 rejecting all the applications. The applicants, thereafter, preferred appeals before the first respondent in A.Nos.29 of 1992, 31 to 48 of 1992 and 57 of 1992 on 06.09.1990. When these appeals were pending, applications were filed by the applicants under Section 151 of CPC before the first respondent on 19.03.1993 for letting in additional evidence. The appellant filed his counter affidavit to the interim applications on 23.04.1993. Memo of Arguments was also filed on behalf of the applicants and on behalf of the appellant on 25.10.1993 and 07.03.1994. By order dated 07.08.1994, the first respondent has allowed all the appeals.

3.(i) It was argued on behalf of the petitioner in all the writ petitions, that the impugned orders are liable to be set

aside on the ground that the Appellate Authority, in exercise of its jurisdiction, entertained certain additional materials in support of his conclusion while granting patta in favour of the respective individuals. According to the writ petitioner, when under the Act, while the original authority had every power and jurisdiction to record evidence and entertain the documents in the manner provided under the Act, in the absence of any such specific provision either in the Act or in the Rules, the Appellate Authority ought not to have entertained fresh materials while dealing with the appeal and therefore, any conclusions reached on that basis is liable to be set aside. It was also contended that none of the fresh materials which were taken on record by the first respondent, had any relevance to the issue in question and therefore, the patta granted by the first respondent even on the basis of the additional materials cannot be sustained. According to the writ petitioner, the first respondent misconstrued the presumption to be drawn under the explanation to Sub Section 6 of Section 2 while granting the relief. It was also contended that in the absence of any evidence to show that the site was leased out to the respective individuals, by the original owner, it cannot be held that the individuals, proved the basic requirement of Kudiyiruppu in order to claim the benefit of grant of patta.

(ii) In W.P.Nos.21131 and 21133 of 1994, it was contended on behalf of the writ petitioner that under Section 1(2) of the Act, when the Act itself is not applicable to a Municipal town, the order of the first respondent granting patta in favour of the respective individuals, is liable to be set aside.

(iii) As against the above submissions, learned counsel appearing for the contesting second respondents in the writ petitions, contended that all the respective applicants were inducted as tenants by the original owner, namely, one Kamalambal prior to coming into force of the Act 40 of 1971 and Act 38 of 1976, that by virtue of the operation of Section 3 of the Act, the benefit automatically became available to the applicants, that since after some civil disputes amongst the family members, the writ petitioner attempted to interfere with the possession of the respective applicants, it became necessary for them to move the concerned authority for grant of patta under the Act and the said applications unfortunately came to be rejected by the original authority without proper understanding of the scope of the Act. According to the learned counsel appearing for the contesting second respondents, the very stand of the writ petitioner, the appellant herein, in the original counter dated 02.09.1985 would show that all the applicants were in possession of the lands in question as tenants and in such circumstances, when the writ petitioner failed to establish to the satisfaction of the first respondent that they were not so inducted as tenants by the original owner Kamalambal, no fault

can be found with the conclusion of the first respondent while granting patta in favour of the applicants. According to the learned counsel, when the petitioner did not examine himself nor produce any material to support his stand, he cannot find fault with the conclusions reached by the first respondent while granting patta under the orders impugned in the writ petitions. According to the learned counsel, the applicants established to the satisfaction of the authority concerned by examining three witnesses to the effect that the applicants put up superstructures in the respective sites and were living there right from the year 1968. It was also pointed out that the second witness of the applicants was a Vice Chairman of the Thiruvarur Municipality in the year 1986, that he was living near the houses of the applicants and that as he was also living in that place for more than 20 years, he was very much aware of the occupation of the superstructures by the applicants in the respective sites from 1968 onwards as contended by the applicants. It was further pointed out that the third witness who was examined as an independent witness, also confirmed the version of P.Ws.1 and 2. In the case of the applicants in W.P.Nos.21131 and 21133 of 1994, it was submitted that the question whether the site was situated in an area comprised in a Municipal town or in a township not having been proved by the writ petitioner/appellant herein, it cannot be held that the Act itself is not applicable to those cases.

(iv) As regards the first contention raised on behalf of the writ petitioner/appellant, the learned counsel for the petitioner/appellant, by drawing a comparison to Section 5 along with Section 12 of the Act, contended that while the authorised Officer had every power and jurisdiction to summon and enforce the attendance of witnesses and acceptance of any documentary evidence, such a power was not conferred on the appellate authority in an appeal filed under Section 5 of the Act. The learned counsel by referring to the Rules framed under the Tamil Nadu Act XL of 1971, further contended that the procedure contemplated for the disposal of the appeal being summary in nature, the appellate authority ought not to have entertained fresh evidence, while disposing of the appeals. For that purpose, the learned counsel relied on the following Judgments:

- a) 1995 SC 2272 (Mukri Gopalan vs C.P. Aboobacker)
- b) 1950 SC 188 (Bharat Bank vs Employees of Bharat Bank)

(v) After hearing the submissions made on either side and on perusal of the materials available on record, this Court dismissed the writ petitions. Challenging the same, the present writ appeals have been filed.

4. Amongst many grounds raised in the writ appeals, the learned counsel for the appellant has mainly contended that the

learned single Judge was wrong in upholding the impugned order of the first respondent granting patta, when there was no evidence on record to show that the applicants satisfied the definition of "kudiyiruppu" in Section 2(8) of the Tamil Nadu Occupants Kudiyiruppu (Conferment of Ownership) Act 40 of 1971, r/w Section 3 of the said Act. He further submitted that the learned single Judge was wrong in accepting the oral evidence of P.W.1 and the other witnesses, ie., P.Ws.2 and 3, which is nothing but an unfounded assertion that P.W.1 was in possession of the site from 1968. He further submitted that the learned single Judge ought to have seen that as per the definitions in Sections 2(8) and 2(11) and the Scheme of Act 40 of 1971, the applicants as claimants for Kudiyiruppu Patta must show that the original induction into the site was as tenants or as licensees agreeing to pay rent or other consideration and such legal relationship between the landlord and the Kudiyirupputars should have existed on 19.06.1971. He further submitted that the learned single Judge failed to examine whether the oral evidence of P.Ws.1 to 3 satisfactorily established the statutory requirement of valid induction of the applicants as tenants and such a legal relationship continued to subsist on 19.06.1971. He further submitted that the learned single Judge was wrong in taking the view that the original authority has all the materials required to conclude that the applicants were in occupation of the sites prior to the appointed date. He further submitted that the decision relied on by the learned single Judge, ie. AIR 1997 SC 1300, arose under the Tamil Nadu Shops and Establishments Act, 1947, and the Hon'ble Supreme Court examined the scheme of the Act, and held that the appellate authority under the said Rules was specifically empowered to receive additional evidence, but the language of Rule 5(3) framed under Tamil Nadu Act 40 of 1971 is couched differently and the power of the appellate authority under Tamil Nadu Act 40 of 1971 is within a narrow compass. Stating so, the learned counsel for the appellant has submitted that these appeals have to be allowed.

5.The learned counsel for the appellant has relied upon the following decisions of this Court with regard to the definition of "Kudiyiruppu" and stated that the very first requirement for labelling the land as Kudiyiruppu is that it should be a site occupied either as a tenant or as licensee by any agriculturist or agricultural labourer and even if the occupant has been there for hundreds of years, the site would not become a Kudiyiruppu within the meaning of the Act unless he is there as a tenant or licensee. He further submitted that in the absence of the above compliance, the authorities have no jurisdiction to grant patta under the provisions of the Act.

(1) T.K.Narayana Pillai v. Naganatha Iyer reported in 1981 (I) MLJ 506;

(2) Sri Soundararaja Perumal Devasthanam v. Ravikannu Ammal

reported in 1995 (I) MLJ 465; and

(3)Umapathi, K. v. The Additional Collector, Appellate Authority, Thanjavur reported in (2000) 2 MLJ 725.

6.The learned counsel for the appellant further relied on the decision of this Court in A.G.Punyakoti v. M.Meera Bai, reported in 1986(I) MLJ 345 and the decision of the Hon'ble Supreme Court in Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi reported in AIR 1987 SUPREME COURT 294, and submitted that the appellate authority has no power to admit additional evidence. He also relied on a decision of the Hon'ble Supreme Court in Baddula Lakshmaiah & Ors. v. Sri Anjaneya Swami Temple & Ors., reported in 1996-2-L.W.8, in support of his contention.

7.The learned Government Pleader appearing for the first respondent as well as the learned counsel for the other respondents, submitted that the very stand of the appellant in the original counter dated 02.09.1985 would show that all the applicants were in possession of the lands in question as tenants and in such circumstances, when the appellant failed to establish to the satisfaction of the first respondent that they were not so inducted as tenants by the original owner Kamalambal, no fault can be found with the conclusion of the first respondent while granting patta in favour of the applicants. It is further submitted that when the appellant did not examine himself nor produce any material to support his stand, he cannot find fault with the conclusions reached by the first respondent while granting patta under the orders impugned in the writ petitions. Even according to the version of the contesting respondents, the appellant did not examine himself nor produce any material to support his stand, and therefore he cannot find fault with the conclusions reached by the first respondent while granting patta under the orders impugned in the writ petitions, and hence the order passed by the learned single Judge in the writ petitions, has to be confirmed and the appeals have to be dismissed. सत्यमेव जयते

8.Heard the learned counsel on either side and perused the materials available on record.

9.The primary argument advanced on behalf of the appellant herein before the writ Court is that the orders impugned in the writ petitions, are liable to be set aside on the ground that the Appellate Authority, in exercise of its jurisdiction, entertained certain additional materials in support of his conclusion while granting patta in favour of the respective individuals. According to the appellant, when under the Act, while the original authority had every power and jurisdiction to record evidence and entertain the documents in the manner provided under the Act, in the absence of any such specific provision either in the Act or in the Rules, the Appellate

Authority ought not to have entertained fresh materials while dealing with the appeal and therefore, any conclusions reached on that basis is liable to be set aside. The decisions of this Court in T.K.Narayana Pillai v. Naganatha Iyer reported in 1981 (I) MLJ 506, Sri Soundararaja Perumal Devasthanam v. Ravikannu Ammal reported in 1995 (I) MLJ 465 and in Umapathi, K. v. The Additional Collector, Appellate Authority, Thanjavur reported in (2000) 2 MLJ 725 which have been relied upon by the learned counsel for the appellant, deals only with the definition "Kudiyiruppu". In all these judgments, it has been stated that it should be a site occupied either as a tenant or as licensee by any agriculturist or agricultural labourer and even if the occupant has been there for hundreds of years, the site would not become a Kudiyiruppu within the meaning of the Act unless he is there as a tenant or licensee. This is a basic definition of "Kudiyiruppu". In the present case, the applicants established to the satisfaction of the authority concerned by examining three witnesses to the effect that the applicants put up superstructures in the respective sites and were living there right from the year 1968. Further, the second witness of the applicants who was a Vice Chairman of the Thiruvavur Municipality in the year 1986, stated that he was living near the houses of the applicants and that as he was also living in that place for more than 20 years, he was very much aware of the occupation of the superstructures by the applicants in the respective sites from 1968 onwards and this version was confirmed by P.Ws.1 and 2. Therefore, based on the above facts, the judgment has been rendered by the learned single Judge. The facts and law are clearly distinguishable to the case on hand.

10. On a perusal of the decision of this Court in A.G.Punyakoti v. M.Meera Bai, reported in 1986(I) MLJ 345 and the decision of the Hon'ble Supreme Court in Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi reported in AIR 1987 SUPREME COURT 294, which have been relied upon by the learned counsel for the appellant, we find that nowhere in those judgments it is stated that the appellate authority has no power to admit additional evidence.

11. In A.G.Punyakoti's case (cited supra), it is stated that if the Appellate Authority decides to make further enquiry, it may take additional evidence or require such evidence to be taken by the Controller. Even though it is stated that it does not create any right in a party to have additional evidence admitted as a matter of course, it is stated that if the Appellate Authority is satisfied that such additional evidence is necessary for proper disposal of the appeal, it may be done. Hence, that judgment does not come to the rescue of the appellant. The judgment of the Hon'ble Supreme Court in Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi (cited supra), which has been relied upon by the learned counsel for

the appellant, is clearly distinguishable from the facts of the present case. In that case, it was held that the person seeking admission of additional evidence should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance, which observation may not come to the rescue of the appellant. In that case, only with regard to admissibility of evidence of similar facts, the Court held that the allegations of the alleged conduct in similar cases would not be a safe basis upon which to admit additional evidence. The facts in that case is clearly distinguishable from the facts of the present case and hence that judgment will not apply to the present case.

12. In the decision of the Hon'ble Supreme Court in Baddula Lakshmaiah & Ors. v. Sri Anjaneya Swami Temple & Ors., reported in 1996-2-L.W.8, which has been relied upon by the learned counsel for the appellant, the Hon'ble Supreme Court has dealt with the powers of the Division Bench of the High Court, dealing with the orders passed by the single Judges of the High Court. That judgment will not come to the rescue of the appellant in the present case, as the facts are clearly distinguishable.

13. Further, when there is no prohibition for the Appellate Authority for recording evidence for the purpose of grant of patta, the act of the first respondent in recording additional evidence, cannot be found fault with. In the case on hand, considering the facts and circumstances, there was no other option for the Appellate Authority, except to record additional evidence. Further, the appellant did not examine himself nor produce any material to support his stand, and therefore he cannot find fault with the conclusions reached by the first respondent while granting patta under the orders impugned in the writ petitions.

14. In view of the foregoing reasons, the order passed by this Court in W.P.Nos.21123 to 21136 of 1994 dated 22.04.2003 is confirmed and the writ appeals are dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KM

To

The District Revenue Officer,
Appellate Authority under the
Kudiyiruppu Act,
Nagapattinam.

+1cc to Mr.J.Nandagopal, Advocate, S.R.No.39795
+1cc to Mr.V.Raghupathi, Advocate, S.R.No.39741
+1cc to the Government Pleader, S.R.No.39950

W.A.Nos.847, 850 to 852,
875 to 877 and
2031 to 2037 of 2004

SSK(CO)
CA(26/07/2016)



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