



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 01.08.2016
CORAM

THE HONOURABLE MR. JUSTICE S. S. SUNDAR

W.P(MD)No.15854 OF 2013 & M.P(MD)No.1 of 2013

M.Senthamarai

..Petitioner

.-Vs.

The Settlement Officer,
Chepauk, Chennai-5.

..Respondent.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 30.07.2013 bearing R.C.No.C1/3205/2012 passed by the respondent and quash the same and consequently directing the respondent to issue Ryotwari patta in favour of the petitioner in respect of land in Survey No.279/1C for an extent of 1.47.5 hectares in Navalpattu Village, Thiruverumbur Taluk, Trichi District and pass orders as this Court may deem fit and proper.

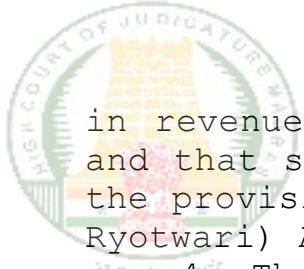
For Petitioner	:Mr.T.Antony Arul Raj
For Respondent	:Mr.Aaiyram K.Selvakumar Govt.Advocate.

ORDER

The petitioner has filed this Writ Petition seeking a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 30.07.2013 bearing R.C.No.C1/3205/2012 passed by the respondent and quash the same and consequently directing the respondent to issue Ryotwari patta in favour of the petitioner in respect of land in Survey No.279/1C for an extent of 1.47.5 hectares in Navalpattu Village, Thiruverumbur Taluk, Trichi District

2. It is the case of the petitioner that her father, namely one Arumugasamy was in possession and enjoyment of the land comprised in Survey No.279/1C, measuring an extent of 1.47.5 hectares. Though her father passed away in the year 1994 and the petitioner got married in the year 1982, the petitioner states that her father had asked her to be in possession and enjoyment of the land. Despite the fact that the petitioner is in possession and enjoyment of the land for nearly 31 years, the petitioner's grievance is that the land has been erroneously classified as waste land.

3. According to the petitioner, the classification of the land was done without any notice to the petitioner. Hence, the petitioner appears to have submitted a representation on 09.01.2012, praying for issuance of Ryotwari patta in favour of the petitioner on the ground that the classification of the land



in revenue records assessing the same as waste land is erroneous and that she is entitled to get Ryotwari patta in accordance with the provisions of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act.

4. The representation of the petitioner was rejected by the respondent by order dated 27.11.2012 on the ground that the application has no power or jurisdiction to entertain her application in view of G.O.Ms.No.714, Commercial Taxes and Religious Endowment Department dated 29.06.1987. As per the said Government Order, it is not permissible for the Settlement Officer or any other authority to entertain the appeal, revision or application under Act 26/48 to consider the entitlement of persons for getting Ryotwari Patta beyond certain period, outside the purview of the Act.

5. The petitioner challenged the order of Settlement Officer, dated 23.01.2012 before this Court in W.P(MD)No.3702 of 2012 and this Court on 27.11.2012, passed the following order:-

"8. In the result, this writ petition stands allowed. The impugned endorsement bearing No.K.K.n.1/853/2012 dated 23.01.2012 issued by the 1st respondent is set aside and the matter is remitted back to the 1st respondent for fresh consideration, after affording an opportunity of personal hearing to the petitioner as well as other interested persons, if any, and in the personal hearing, the petitioner is entitled to raise all the issues, which have been raised in this writ petition, including the issue as to, whether the Government Order in G.O.Ms.No.714, Commercial Taxes Department, dated 29.06.1987, oust the jurisdiction of the first respondent for the grant of patta and pass a reasoned order, on merits and in accordance with law as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order. No costs."

6(a). In the present context it is necessary to refer to some of the provisions and scope of Act 26 of 1948.

Under Section 3(b) of Act 1948, the entire estate shall stand transferred to the Government and vest in them, free of all encumbrances. However, this Honourable Court on the interpretation of various provisions of the Act, particularly the proviso to Section 3(d) of the Act, has repeatedly held that the rights of ryots and landholders in some cases are protected and that the vesting of title in Government under the Act is also subject to the pre-existing



right of the ryots or land holders to get Ryotwari patta under Section 11 to Section 13 of the Act.

(b) The Act provides for dealing with claim of persons in possession regarding the nature of lands and their enjoyment etc in a summary manner for the purpose of registering persons in the revenue records so as to collect land revenue. The Act also provides for further appeals against the order of Settlement Officer granting or refusing to grant Ryotwari patta. Since the Act does not provide sufficient machinery to deal with rival claims regarding the character of land and possession etc, it has been held by our High Court and Supreme Court that the Civil Court is competent to adjudicate upon the real nature and character of the land and title irrespective of the decision of the Settlement Officer or the Tribunal. Except saving the jurisdiction of civil Court to decide the question of title or rival claims the orders passed by the authorities under the Act in respect of matters to be determined for the purpose of the Act, subject only to any appeal or revision provided by the Act and rules is held to be final.

(c) After completion/implementation of Ryotwari Settlement under Tamil Nadu Act 26 of 1948, the State Government passed various orders to enable landholders and Ryots who could not apply for Ryotwari Patta in time under Tamil Nadu Act 26 of 1948 to get patta, outside the scope of Tamil Nadu Act 26 of 1948. G.O.Ms.No.1300, Revenue Department, dated 30.04.1971, is one such G.O and it is relevant to extract the same for convenience.

GOVERNMENT OF TAMIL NADU

ABSTRACT

Lands-Lands in Estates taken over under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948- Grant of Patta to persons in continuous possession and enjoyment-Orders passed:

Revenue Department

G.O.Ms.No.1300

Dated.30.04.1971

- 1.G.O.Ms.No.1501, Revenue, dated 8.07.1958
- 2.Govt.Memo No.68348/Ji/63-3, Revenue, dt.19.9.1963
- 3.G.O.Ms.No.1312, Revenue, dt 26.7.1967
- 4.G.O.Ms.No.1925, Revenue, dt. 3.11.1967
- 5.Govt.Memo No.41399/JI/68-2, Revenue, dt.16.7.1968
- 6.G.O.Ms.No.641, Revenue, dt 28.2.1970

In the G.O first read above, the Government passed orders in which landlords who could not apply for ryotwari patta in time under the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu



XXVI of 1948) (hereinafter referred to as the Act) but who would have got patta if they had applied in time, might be granted patta outside the scope of the Act, if they apply to the Collector of the District concerned. In the Memo, second read above, the Government ordered that the vendees from the landholders might also be treated on the same basis as landholders. Subsequently in 1967, the Government passed orders in the G.O third read above that the concession allowed to the landholders should be executed to the ryots also and that they should be granted patta outside the scope of the Act on the same basis as laid down in the first read above. Thus the existing orders provide for cases for the grant of patta to the landholders and ryots outside the scope of the Act in cases:-

(i) Where the landholder or the ryot or the vendee have got patta if he had applied in time under the Abolition Act but failed to make the application in time.

(ii) Where the parties came into possession of better documentary evidence showing better title to grant of patta which were not available at the time when the applicants were heard by the appropriate authorities under the Act.

(2) It has been brought to the notice of the Government that even the implementation of the orders referred to above, there are yet a large number of persons who have been in continuous possession and enjoyment of the land for years together in estate, taken over under the Act. Such persons have not been granted patta either because they did not come under the eligible category for the grant of patta under the Act or under the orders of the Government referred to above. It has been represented that it will be a hardship if such persons who have been in continuous possession and enjoyment of their lands for together are not granted pattas.

3. The land in respect of which these persons have been in continuous possession and enjoyment have vest in the Government absolutely under the Act. The Government after careful consideration have decided that patta should be granted to such persons on the basis of such continuous possession and enjoyment of the land. The Government therefore direct that such persons may be granted patta in accordance with the instructions given below:-

(i) Any person who has been in continuous possession and enjoyment of any land in the estates taken over under the Act, may apply for the grant of patta in respect of such land.



(a) to the Revenue Divisional Officers in cases where the extent of such land does not exceed 5 acres of wet or irrigable dry or 10 acres of dry lands; and

(b) to the District Revenue Officer-Collector in all other cases.

Persons whose claims have been rejected under the Act or under the orders referred to above, may also apply this order, if such persons have been in continuous possession and enjoyment of the lands.

(2) The Revenue Divisional Officer/District Revenue Officers/Collector may grant patta of such application after the usual enquiry and after satisfying himself that the applicant has been in continuous possession and enjoyment of the land.

(3) The extent of the land for which patta is to be granted either by himself or together with the lands already held by the applicant shall not exceed the ceiling limit fixed under the Tamil Nadu Land Reforms (Fixation of Ceiling on land) Act, 1961, as modified by the Tamil Nadu Land Reforms (Reduction of Ceiling on land) Act, 1970.

(4) In cases where there are rival claims for the grant of patta in respect of the same land, the authority concerned may, in appropriate cases direct the portion to obtain a declaration from the Civil Court that they have been in continuous possession and enjoyment of the lands.

(5) In respect of cases whose land has been classified during settlement as communal poramboke but on ground, it has been converted as dry or wet field and the applicant has been in continuous possession and enjoyment of the land, the appropriate authority may grant patta in respect of such land after following the prescribed procedure for changing the classification of the land.

(6) Consultation with the settlement authorities before the grant of patta will not be necessary unless the Revenue Divisional Officer/District Revenue Officer/Collector is of the view that the matter on such required scrutiny from the settlement point of view.

(7) No market value of the land shall be collected for the grant of patta under these orders.

(8) Adequate publicity in the village and its neighbourhood shall be given by the appropriate authority about the proposal to grant patta under these orders.



(9) The orders of the Revenue Divisional Officer/Collector as the case may be granted or refusing to grant patta are subject to revision by the Board of Revenue (Settlement of Estates) Madras either *suo motu* or on application to be filed within sixty days of services of the order."

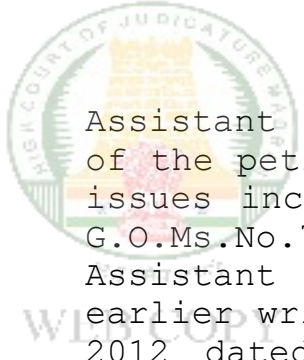
7. It is not the petitioner's case that she had applied for patta as per G.O.Ms.No.1300 dated 30.04.1971. The respondent has rejected the representation of the petitioner by the impugned order. The relevant portion of the impugned order is extracted below for convenience.

"As regards to the legal position, the village had been settled under the provisions of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act XXVI/48) and ryotwari settlement had been introduced in the year Fasli 1372 (Calendar year 1962). During the settlement, the lands had been classified as 'Unassessed Dry-Waste'. The petitioner did not file any appeal before the appellate/revisional authority within the stipulated time as provided in the rules to the Act. As no appeal had been filed, the above order as to its classification became final as per sec 60(C) (1) of the Act and it cannot be challenged before any court as per sec.60(c)(2) of the above Act. Further, as per the amendments to rules published in G.O.Ms.No.714 Commercial Taxes & Religious Endowment Department dated 29.6.87, no appeals/revisions can be entertained by the Settlement Officer on or after 20.08.1987.

I, therefore, reject the claim of the petitioner on the above reasons."

8. Having regard to the legal position, the application/representation of the petitioner to grant Ryotwari Patta has to be considered only as per the provisions of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act of 26/48. It is also not in dispute that the petitioner has not made any application for grant of Ryotwari Patta under the provisions of the Act, within the time limit prescribed by the Act. In such circumstances, there is no scope for entertaining the representation of the petitioner dated 09.01.2012, under the provisions of the Act, and the impugned order passed by the respondent rejecting the claim of the petitioner is perfectly valid.

9. Learned Counsel for the petitioner relied upon an unreported judgment of this Court dated 25.08.2011 passed in W.P. (MD) No.14237 of 2011 wherein the learned Judge of this Court has considered G.O.Ms.No.714 Commercial Taxes Department dated 29.06.1987 and held that the said Government Order decides only with admission of belated appeals and revisions and that the



Assistant Settlement Officer can be directed to consider the case of the petitioner therein afresh after giving liberty to raise all issues including the issue as to whether the Government Order in G.O.Ms.No.714 dated 29.06.1987, oust the jurisdiction of the Assistant Settlement Officer for the grant of patta. Even in the earlier writ petition filed by the petitioner in W.P(MD)No.3702 of 2012 dated 27.11.2012, the above judgment was relied upon and similar direction was issued in favour of the petitioner. Except stating that the judgment in W.P(MD)No.14237 of 2011 is not an authority for the proposition that the Settlement Officer has to consider the petitioner's claim for grant of ryotwari pattas on merits ignoring G.O.Ms.No.714 dated 29.06.1987, it is not necessary in this case to go further as no issue is finally decided. However, having regard to the provision of Act, rules made thereunder, no application for grant of ryotwari patta is maintainable after implementation of ryotwari settlement, that too after this length of time. Hence, the writ petition is liable to be dismissed.

10. However, the case of the petitioner that her father and herself are all in continuous possession and enjoyment of the land for few decades cannot be ignored. Even after the orders passed under Act 26 of 1948 had reached finality as provided under Section 64(C) of the Tamil Nadu 26/48, it has been held by this Court and the Honourable Supreme Court that such finality is only for the purpose of Act and that the civil Court can always entertain and decide the question of title and character of the land irrespective of the decisions of the authorities under the Act.

11. In the above circumstances, while dismissing this writ petition, this Court is inclined to give liberty to the petitioner to work out her remedy by filing an appropriate suit to declare the title of the petitioner and to seek appropriate consequential relief. Since the petitioner's possession is not seriously in dispute, the petitioner may also seek appropriate interim order by showing that there is a threat of dispossession. However, the request for issuing a direction to respondent to maintain status-quo is inappropriate and hence rejected. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

The Settlement Officer,Chepauk,Chennai-5.

+One cc to The Special Government Pleader, SR.No.41249

gsr

RL/3C/7P/DB/17/8/2016

W.P(MD)No.15854 OF 2013

01.08.2016