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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.09.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

W.A. (MD).Nos.180 and 181 of 2014 &
W.A. (MD).Nos.948 and 949 of 2017 &
M.P. (MD).Nos.1 and 2 of 2014 &
C.M.P. (MD).Nos.5346 and 5347 of 2016 &
C.M.P. (MD).Nos.6403 and 6405 of 2017 &
C.M.P. (MD) D.No.8727 of 2017

W.A. (MD) .No.180 and 181 of 2014

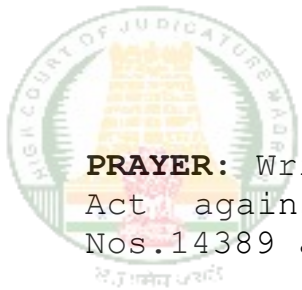
1. The Additional Chief Secretary/
Commissioner, Land Administration (i/c),
Chennai-600 005.
2. The District Collector,
Madurai District,
Madurai.
3. The Tahsildar,
Madurai North Taluk,
Madurai District.

... Appellants/ Respondents 1 to 3
in both appeals

Vs.

1. S.Mariammal ... Respondent-1 / Petitioner
in W.A. (MD).No.180/2014
1. P.Pinni Ammal ... Respondent-1 / Petitioner
in W.A. (MD).No.181/2014
2. The Assistant Settlement Officer,
Madurai.
3. The Commissioner of Survey and Settlement,
Chennai-600 005. ... Respondents 2 & 3 /
Respondents 4 & 5 in both appeals

(As there is no relief is sought against respondents 2 & 3 notice
<https://heservices.courts.gov.in/heservices/>
may be dispensed with for respondents 2 & 3)



PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent Act against the order dated 29.11.2013 passed in W.P.(MD). Nos.14389 and 14390 of 2013.

Prayer in WP(MD).Nos. 14389/ 2013 and 14390/2013:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings R.Dis.K1/22023/2012 dated 20.05.2013 passed by the first respondent and quash the same and consequently direct the respondents 2 and 3 to issue patta to the petitioner lands in Old S.Nos. 174/4,174/3 respectively in New Survey NO. 33/1 in Siruthur Village, Madurai North Taluk, Madurai and pass such other orders.

For Appellants : Mr.B.Pugalendhi
Additional Advocate General
Assisted by
Mr.VR.Shanmuganathan
Special Government Pleader

For Respondents : Ms.N.Krishnaveni for R1
Senior Counsel for
M/s.C.Jeganathan
R2 and R3 dispensed with

W.A. (MD) .No.948 and 949 of 2017

1. The District Collector,
Madurai.

2. The Tahsildar,
Madurai North Taluk,
Madurai District.

... Appellants/Respondents 2 and 3
in both appeals

Vs.

1. Tmt.S.Mariammal

... 1st Respondent/Petitioner
in W.A. (MD) .No.948/2017

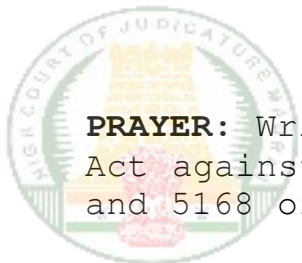
1. Tmt.P.Pinini Ammal

... 1st Respondent/Petitioner
in W.A. (MD) .No.949/2017

2. The Commissioner of Survey and Settlement,
Chennai 600 005.

1

... 2nd Respondent/1st Respondent



PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent Act against the order dated 18.04.2012 passed in W.P.(MD).Nos.5167 and 5168 of 2012.

Prayer in WP(MD).Nos. 5167/ 2012 and 5168/2012 :

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Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS, directing the third respondent to implement the order of the first respondent in Na.Ka.I-1/4741/2011 dated 06.05.2011 and the consequential order of the second respondent in Na.Ka No.J1/92912/2010 dated 02.09.2011 forthwith and carry out the mutations in revenue records in favour of the petitioner as per orders of the first respondent.

For Appellants : Mr.B.Pugalendhi
Additional Advocate General Assisted by
Mr.VR.Shanmuganathan
Special Government Pleader

For Respondents : R1 - Tabal Returned(in Both case)
R2 - Service Awaited.

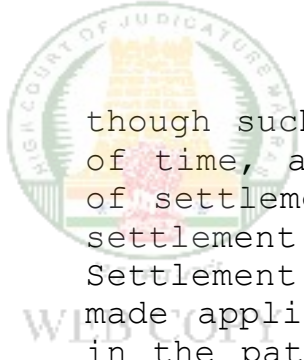
COMMON JUDGMENT

[Common Judgment of the Court was delivered by **M.M.SUNDRESH, J**]

This case has got a chequered history. There are various actors involved in this case. Land is a commodity which always attracts different stakeholders. Apparently, the land in question is highly valuable as even recorded by the parties in the proceedings before us. With this preface let us discuss the matter.

2. The respondents/writ petitioners claimed title in pursuant to a patta said to have been issued by one Darga, by name Goripalayam Darga, which is admittedly not a party before us, in favour of one Pechiammal way back in the year 1924. Even the said Pechiammal is not a party before us. Perhaps she will not be alive as of now. Accordingly, the writ petitioners claimed title based upon an unregistered sale deed alleged to have been executed in the year 1937. Even according to the writ petitioners, the original owner was Goripalayam Darga. The said Pechiammal was a patta holder. However, she sold the properties by an unregistered sale deed in the year 1937.

3. In support of the unregistered sale deed reliance has been made on a settlement land register dated 30.04.1956. This settlement register strangely speaks about Madurai North District,



though such a sub division was not available at the relevant point of time, admittedly. Thus there was no Madurai North on the date of settlement land register in the year 1956. Notwithstanding the settlement land register, claiming a patta from the Assistant Settlement Officer under Act XXVI of 1948, the writ petitioners made applications. It is to be noted that the property mentioned in the patta dated 27.06.1924, unregistered sale deed in the year 1937 and the Settlement Land Register dated 30.04.1956, is Survey No.174/4. It is more strange that there was no sub division at the relevant point of time. Apparently, the said sub Division come into being only in the year 1962, as seen from the 'A' register extract of Thirupalai Group. Thus all these documents on their own face appear to be fabricated to say the least. May be, that is the reason why no reliance was made by the respondents at the time of their applications.

4. The Assistant Settlement Officer, duly extended his benevolence in favour of the respondents/writ petitioners by giving a finding which is equally strange that the classification is wrong and the land is situated in an elevated place and therefore it cannot be termed as water body, despite the fact it was so, over the period of time. In the application itself, the writ petitioners sought for Ryotwari patta based upon long enjoyment, which is on the basis of 'B' memo charges paid by them. Even according to them, they are enjoying the Government property.

5. The Settlement Land Register dated 30.04.1956 was issued by way of a copy of the records registered by the officers as against whom departmental proceedings are stated to have been initiated apart from a criminal case. Added to that, one Senthil, petitioner in C.M.P.(MD).No.8727 of 2017 who is also a revenue official entered into a sale agreement dated 09.07.2008 and 24.07.2008, by which he has received substantial amount of money namely about 9 crores, for getting patta and thus undertook to do the needful. No wonder he was also proceeded against departmentally, which has resulted in an order of dismissal as confirmed by the Division Bench of this Court. The said Senthil has also filed a Review Application to review the order of the Division Bench. C.M.P.No.8727 of 2017 has also been filed by him before us after sniffing the pendency of the writ appeals. In fact, these appeals are being heard today after hearing the learned Senior Counsel appearing for the writ petitioners/respondents at length on the last hearing and in order to make her to get proper instructions at that point of time itself, we had expressed our view. Therefore, it is not known as to how the petitioner in CMP No.8727 of 2017 was able to know the hearing today. It is pertinent to note that he did not file such an application either before the learned Single Judge or in our previous hearing. The Assistant Settlement Officer by name Muthukrishnan passed an order without reference to anything on merit but only on possession. On an earlier hearing, the learned single Judge of this Court has taken



note of the modus operandi in W.P.(MD).No.2994 of 2005, dated 24.09.2008, which is extracted hereunder for better appreciation.

" 14. Before going into other issues a brief history of the fraud committed on the State, the role played by two Assistant Settlement Officers of Madurai, should be narrated as found in the records. They are Mr.Muthukrishnan and Mr.S.Ganapathirajan. They along with certain officers in the Assistant Settlement Office, at Madurai, committed these frauds. The following F.I.Rs. were registered against these officers under Sections 468, 471 r/w 420 I.P.C.

SL.No. Police Station FIR No Date of F.I.R.

1 Karaikudi P.S. 386/2005 27.07.2005 2 Thirupachethi P.S 174/2004 19.07.2005 3 Crime Branch Police, Sivagangai 33/2008 12.09.2008

15. When the said Muthukrishnan, Assistant Settlement Officer, Madurai, on coming to know that the registration of criminal cases against him regarding the fabricating the Government documents and misusing the power, he moved for an anticipatory bail before this Court in CrI.O.P.No.7113 of 2005. He was granted anticipatory bail by an order dated 12.08.2005. During the course of the order, this Court observed in para:2, which is as follows:- "2. The petitioner in CrI.O.P.No.7113 of 2005 is a retired Asst.Settlement Officer. The petitioner in CrI.O.P.No.7116 of 2005, is working as Superintendent in the Settlement Office. It appears elsewhere in the year 1996, the petitioner in CrI.O.P.No.7113 of 2005 had passed 11 orders favouring patta in respect of Government property to several persons and the said orders were not implemented. Aggrieved party appeared to have moved a petition for implementing the said orders.'

16. In fact, it was only when this Court gave directions to dispose of the grievances of certain individual, the entire land scam came to the notice of the higher officials. Even the village adangals produced in the typed set showing the survey nos for which possession and pattas were claimed, contains remarks that those survey nos. are entered in the Prohibitory Order Book (POB). When one Periya Karuppan moved this Court with a writ petition in W.P.No.2232 of 2002 seeking for a direction to grant patta in respect of the same Kalanivazahal Village on the



strength of the order passed by the then Assistant Settlement Officer, Madurai (R.Muthurkrishnan), this Court gave a direction vide an order dated 27.08.2003 to the District Revenue Officer, Sivagangai, to dispose of his representation.

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17. The said officer, Sivagangai, in turn contacted the Special Commissioner, Chennai. The Land Commissioner after examining the records sent the following clarifications dated 22.07.2005. The entire letter may be reproduced for better appreciation of the facts involved in this case. "2) As requested by you and in the light of the directions of the Hon'ble High Court, Madras in the reference second cited the order of the Assistant Settlement Officer, available file S.R.145/96(A) dated 15.02.1996 has been scrutinised. It is seen from the file of the Assistant Settlement Officer, that one Peria Karuppan by his petition dated Nil, applied to the Assistant Settlement Officer for grant of patta for an extent of 5.45 acres in old S.No.55 without enclosed any valid documentary evidence in support of his claim.

3) The following other defects were also noticed.

(i)The petition was not even numbered and there is no office seal of the Assistant Settlement Officer in the face of the petition.

(ii)No statutory notice was sent to the Tahsildar, petitioner or any other person by the Assistant Settlement Officer.

(iii)The Assistant Settlement Officer has filed the depositions of the Village Administrative Officer and the petitioner alone.

(iv)Although the Assistant Settlement Officer has stated in the alleged order that he has inspected the lands on 27.01.1996, no notes of inspection is available in the file.

(v)The Assistant Settlement Officer had not verified or called for any prior settlement records and S.F.1,7 & 10 and filed.

vi)the time limit for applying for patta under Section 9 or any other provisions of the Act.26/63 were over as early as 35 years back. The petition is time barred and also the A.S.O. has no jurisdiction or powers to grant patta even under his official authority. When the land had been treated as Government land, the Assistant Settlement



Officer had no power to reopen the matter which had been settled already.

vii) Further no record of evidence is available in the file to show that the applicant had filed title with continuous possession and enjoyment of the Government poramboke land.

3) Therefore, it is clear from the above facts that the petitioner conspired to grab the Government lands with the connivance of the Village Administrative Officer and the Assistant Settlement Officer and created an order illegally for unlawful gain.

4) In the circumstances explained above, the illegal order passed by the Assistant Settlement Officer, Madurai cannot be implemented in the village accounts. I request you to give a detailed reply to the petitioner on the above lines and send a copy to this office.

5) I also request you to report these fraudulent and illegal activities of the A.S.O's Madurai who have connived with the land grabbers and paved way to grab Government lands in Kazhanivasal and their misfeasance in granting Government lands in other villages also. The Government Pleaders may be properly explained about the illegal and bogus orders of the then A.S.O. Thiru.Muthukrishnan which could not be implemented. If the Government Pleaders of Madurai Bench of Madras High Court are properly appraised about this land scam we may avoid these kind of directions from the High Court and unnecessary embarrassment to the State.'

18. Thereafter, on 03.11.2005, the Commissioner for Land Administration sent a letter to the District Collector, Sivagangai, and in para:3, it was observed as follows:-

"3. In the first instance, I would like to reiterate that Thiru R.Muthukrishnan and then Assistant Settlement Officer at Madurai had passed orders on all the 12 cases under reference without any jurisdiction. As per the provisions of the Act 26 of 1963 and extant Government instructions, the ASOs were authorised to handle cases of residual nature, but they did not have any jurisdiction to interfere with any of the cases settled during settlement in 1965. In this regard, I would also like to recall that the Tamil Nadu Act 26 of 1963 and 30 of 1963 were totally excluded from the operation of the Limitation Act. Accordingly, any person claiming patta under these Acts should have made a claim within six months from the notified date. Even under the Act XXVI of 1948 the Government had passed an order in G.O.Ms.No.714 CT&RE dated 29.06.1987 and as per this G.O. One month time was given to the effect that all objections should be submitted on or before 29.07.1987. Hence, it is quite



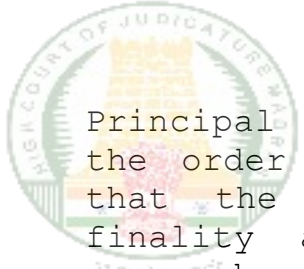
obvious that no Assistant Settlement Officer had the jurisdiction to inquire and pass any orders on settled matters that too after a long gap of more than 30 years in 1996. I would also refer to my predecessor's D.O.letter K1/16007/2004 dated 13.10.2005 in which the orders on all the 12 cases were declared as a fraud committed by Thiru R.Muthukrishnan and his accomplices."

19. Subsequently, the same officer addressed all the District Collectors by a communication dated 21.01.2006 and in paras:3 and 4 of his circular letter reads as follows:-

"3. In one instance Thiru R.Muthukrishnan, who worked as Assistant Settlement Officer, Madurai during 1994-1996 issued several illegal and fabricated orders which are highly injurious to public interest. There is some evidence to suggest that he had issued the bogus orders even after his retirement in 1996. The beneficiaries of such illegal orders have approached the revenue authorities for mutation of records in this favour. In some cases, they moved the Courts for implementation of such illegal orders by the revenue authorities.

4.Thiru.R.Muthurkirshnan issued such illegal orders in several districts coming under the Madurai ASO's jurisdiction. These orders which were passed without any jurisdiction and authority have caused irreparable damage to the image of Land Administration. This matter is reviewed in all seriousness so as to undo the damage and also to ensure that the action taken proves to be a deterrent against such attempts in future. The Collectors of Sivaganga, Ramanathapuram and Madurai have already filed criminal cases against Thiru.R.Muthukrishnan and his accomplices in respect of a few cases and further probe is still on.'

6. The afore-said order explains the state of affairs. As against the benevolence extended by the Assistant Settlement Officer, vide order dated 23.02.1996, doling out State largesses, proceedings were initiated by the Principal Secretary and Commissioner of Survey and Settlement. This was a suo motu action initiated. In the said order, it was held that the Assistant Settlement Officer does not have the jurisdiction to change the classification of land and issue a Ryotwari patta. The settlement land register relied upon by the writ petitioners was also dealt with by doubting its genuineness as the entire records were found missing. Interestingly even before the Assistant Settlement Officer, the settlement land register was not relied upon. A finding has been given that the order passed by the Assistant Settlement Officer is contrary to Section 5(2) of the Act XXVI of 1948. An appeal was filed against the afore-said order before the



Principal Secretary and Commissioner of Land Administration. By the order dated 03.11.2010, the appeal was rejected by holding that the 'A' Register published on 25.08.1962 has attained finality and what was collected was 'B' memo charges from encroachers. There was not even a service of notice even to the claimant as well as to the Tahsildar, as it could be seen from the records. Furthermore, the order of the Assistant Settlement Officer was also not served either to the claimants or to the Tahsildar. There was no office seal of the Assistant Settlement Officer along with machine number affixed. With the above damnifying finding the appeal was dismissed accordingly.

7. Against the said finding, the writ petitioners approached this Court. The learned Single Judge taking note of the submissions made by the learned Government Advocate, was pleased to set aside the orders passed and remitted the matter back to the Principal Secretary and Commissioner of Survey and Settlement, Chennai. For better appreciation, the relevant portion of the proceedings of the Principal Secretary & Commissioner of Land Administration and the order passed referred supra are reproduced hereunder"-

"8. As per settlement 'A' Register, the land in S.No.174/1 of Thirupalai village to an extent of 64.05 acres was settled as Government - Poramboke - Sirudhur chinna kanmoi. This water source catered the needs of 98.54 acres of single crop lands. This 'A' register was published on 25.08.1962 by the Settlement authority and there was no objections against the registry. Even in the UDR scheme this was not objected and thus the registry attained finality. It is seen from the Assistant Settlement Officer's file S.R.6/Madurai/95, dated 23.02.1996, that the claimant Tmt.Mariammal never claimed that the land to an extent of 3.00 acre was held by her husband, Thiru Seenai Achari as patta land as per SLR and that she is remitting 'B' memo charges for the encroachment committed by her husband. Further, she had not submitted relevant papers such as Zamin patta kist receipts issued by the land holder to claim patta under the Abolition Act, XXVI/1948, nor claimed patta under the said Act. It is seen that in the Assistant Settlement Officer's file there are two notices with same date, viz 18.01.96 approved by the Assistant Settlement Officer, are available. These notices were intended only to the claimant Tmt. Mariammal, however, the notices were not served on her. It is to be noted that the first notice dated 18.1.96 (P 29 CF) the date of enquiry was posted as 18.1.96 and this was not intended to the petitioner was also not served. Therefore, it is clear that there was no service of



notices even to the claimant as well as to the Tashildar concerned and there was no enquiry statement of the claimant is available in the file, which proves that there was no enquiry at all by the Assistant Settlement Officer, on 18.1.96 and 12.2.96 as alleged by the Assistant Settlement Officer. It is also seen that the order of the Assistant Settlement Officer, was also not served either to the claimant or to the Tahsildar.

9. As per the amended rules issued under G.O.Ms.No.714, Commercial Taxes and Religious Endowment Department, dated 29.6.1987, which was issued as per the decision made in W.A.No.98 of 1971 - (1974-MLJ-328) the Assistant Settlement Officer has no power to entertain any claim subsequent to this G.O. Further, section 17 (a) of the Act, XXVI/1948, has nothing to do with the correction of mistakes if any alleged. The reliance placed based on the SLR entry is also not correct since, SLR entries are provisional and a person whose name found place in the SLR has to prove his entitlement before the competent Settlement authority in the statutory enquiry with relevant evidences as provided in the Abolition Act. But, in this case, no such statutory order was produced by the claimants to prove their claim, before the Assistant Settlement Officer or Commissioner of Survey and Settlement or before this forum. As noted earlier, the Assistant Settlement Officer's file itself seems to be a bunch of cooked up papers, since, there as no office seal of the Assistant Settlement Officer, and machine number affixed on the face of the petition, and the enquiry notices were not served. Further, the Assistant Settlement Officer's Order itself was not served to the claimant as well as to the Tahsildar. In the circumstances the grounds now put forth by the claimant merely after thoughts and not supported by any documentary evidences. The averments are not sustainable since, which are necessary to state a claim under the provisions of the Abolition Act, XXVI/1948.

10. Further, there is no papers to show that the claimant was in possession and enjoyment or encroachment of the land in question even after the date of introduction of settlement. It is pertinent to note that the appellant did not even identify the land claimed by her in the larger area of 65.05 acres by indicating four boundaries in his petition preferred before the Assistant Settlement Officer. The appellant also not provided valid evidences that how the orders of the Commissioner of Survey and Settlement suffers from infirmities. Besides, the Commissioner of Survey and



Settlement has considered the matter elaborately with reference to records and evidences and has passed a well considered order.

11. In the circumstances, there are no valid grounds to interfere with the orders of the Principal Secretary and Commissioner of Survey and Settlement passed in S.R.11/18/2009 dated 1.7.2010, and thus I here by uphold the above orders and accordingly the appeal is dismissed as devoid of merits."

The single judge order is as follows:

"2. The learned counsel appearing on behalf of the respondents had submitted that, from the impugned orders passed by the first and the second respondent, it is not clear, as to whether they had taken into consideration, the applicability of the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, to the facts and circumstances of the case in hand.

3. In such circumstances, he had submitted that this Court may set aside the impugned order of the second respondent, dated 01.07.2010, and the order of the first respondent, dated 03.11.2010, and remit the matter back to the second respondent to consider it afresh, to decide as to whether the provisions of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948, would be applicable to the present case.

4. In view of the submissions made by the learned counsel appearing on behalf of the petitioners, as well as the respondents, the impugned order of the second respondent, dated 03.11.2010, are set aside and the matter is remitted back to the second respondent to consider the matter afresh, and to decide as to whether the provisions of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, would be applicable to the case of the petitioner. The second respondent shall pass appropriate orders thereon, on merits and in accordance with law, after giving an opportunity of hearing to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order."

8. A decision was made to file an appeal against this order and accordingly appeals have been filed. During the pendency of the proceedings, it appears a communication dated 10.03.2011, was received from the Division Bench stating that the enquiry has been conducted in compliance of the order of the learned Single Judge. Thereafter, the matter stood posted for being mentioned,



the order was modified slightly to the effect that such a statement was made by the private counsel for the private respondent which was confirmed by the letter produced by the Government Advocate dated 10.03.2011. What transpires from it could be seen from the following two orders:-

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"Today, when the matters are taken up, the learned Government Advocate has submitted that the order of the learned Single Judge has been acted upon and an enquiry has also been conducted on 08.02.2011. The letter dated 10.03.2011 of the Commissioner of Survey and Settlement produced by the learned Government Advocate also confirms this.

3. Since the order passed by the learned Single Judge has been acted upon and an enquiry has also been conducted on 08.02.2011, as on date, nothing survives for adjudication in these writ appeals.

In view of the above, the writ appeals are closed, No costs. Consequently, connected miscellaneous petitions are closed."

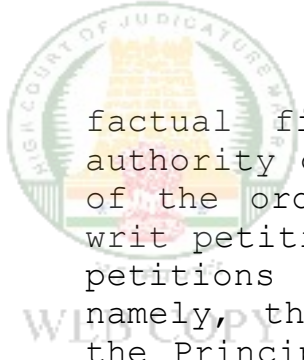
and

"In view of the said submission made by the learned Government Advocate appearing for the appellants, Paragraph No.2 of the Judgment dated 14.03.2011 passed in W.A. (MD).Nos.296 and 297 of 2011 is modified as follows:-

2. On 08.03.2011, when the matters were taken up, the learned counsel appearing for the private respondents has submitted that the order of the learned Single Judge has been acted upon and an enquiry has also been conducted on 08.02.2011. The letter dated 10.03.2011 of the Commissioner of Survey and Settlement produced by the learned Government Advocate also confirms this."

Registry is directed to issue corrected order copy to the parties."

9. Thus the afore-said order dated 10.03.2011 was not mentioned in the order passed by the Commissioner of Survey and Settlement. This order was passed on 06.05.2011. It appears that the Officer who passed the order was also on the verge of retirement. A perusal of the order would show that it was passed on a report given by the Public Works Department officials, obtained by the writ petitioners as against the report of the services. There is no surprise in the order passed as it would only indicate the entire episode starting from the year 1996 onwards. Further, the said order has given a complete go by to the



factual finding rendered on both law and facts by the very authority on the earlier occasion. After becoming the beneficiary of the order passed by the Commissioner of Land and Settlement, writ petitions were filed by the writ petitioners. In these writ petitions they sought for an order directing the respondent No.3 namely, the Tahsildar to implement the order passed earlier by the Principal Secretary and Commissioner of Survey and Settlement, dated 06.05.2011. The learned Single Judge accordingly allowed the writ petitions. It is seen that the writ petitions were allowed without affording opportunities to the appellant therein, though represented by the Government counsel. Similarly the earlier writ appeals in W.A.(MD).Nos.296 and 297 of 2011 were also disposed of on the very first day of hearing, on a joint representation made by the counsel appearing for the respondents as well as the learned Government Advocate at the relevant point of time. We do not wish to elaborate anything more.

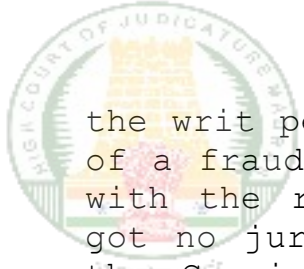
10. On receipt of the afore-said order, it was accordingly brought to the notice of the first appellant. The first appellant by exercising the *suo motu* powers has gone into the matter at length and allowed the revision. He took note of the fact that the Commissioner of Survey and Settlement cannot act as a revisional authority to take up the *suo motu* revision and at the same time, act as the original authority and grant patta under the Act. It was further held that as per Section 67 of the Act and the notification issued on the power conferred thereunder, the claims are time barred and therefore, both the Commissioner of Survey and Settlement as well as the Assistant Settlement Officer did not have any power or authority to go into the issue. On facts, the approach in relying upon a photocopy of the letter in respect of a Public Works Department at the instance of the writ petitioners was correctly rejected and that too without verifying the genuineness as against the statement of Tahsildar.

11. The writ petitioners once again knocked the doors of this Court by filing writ petitions. The learned Single Judge was pleased to set aside the order passed by the first appellant by holding that it is not open to him to undertake the exercise again and again despite the orders of this Court. A factual finding has been given that it is not proper for the first appellant to go into the issue in view of the order dated 06.05.2011, which takes away the land in question from the purview of Act XXVI of 1948.

12. The learned Single Judge made reliance upon the earlier orders passed, in W.P.(MD).Nos.14056 and 14057 of 2010, and passed an order directing the third respondent therein to make necessary corrections as per the orders dated 06.05.2011. Against which these appeals are filed.

<https://hcservices.ecourts.gov.in/hcservices/>

13. The learned Additional Advocate General, appearing for the appellants would vehemently contend that the records produced by



the writ petitioners are fabricated and inadmissible. It is a case of a fraud having been committed by private parties in connivance with the revenue officials. The Assistant Settlement Officer has got no jurisdiction. In that case, the same logic would apply to the Commissioner of Survey and Settlement as well. The learned Single Judge, has given a wrong finding on the scope and applicability of Act XXVI of 1948. In fact it is nobody's case that Act XXVI of 1948 would not apply, as the writ petitioners, did apply before the Assistant Settlement Officer, who has entertained them and granted patta. It is also submitted that the orders passed by the Assistant Settlement Officer as confirmed by the Commissioner of Survey and Settlement officer are one without jurisdiction.

14. The learned Senior Counsel appearing for the respondents/writ petitioners would submit that the documents produced would show that the writ petitioners have been in possession and enjoyment for quite some time. There is no *suo motu* power that is available to review the order of the Commissioner of Survey and settlement. The orders passed by this Court cannot be reviewed in a collateral proceedings. What is applicable to one Natarajan, would have to apply to the case of the writ petitioners. The Assistant Settlement Officer does have the power to grant settlement notwithstanding the revenue records indicating the classification as Kanmai (water body). The settlement register is only a copy of the revenue record available with the appellants. They have not produced the said records. In support of the contentions the learned Senior Counsel made reliance on the following decisions:-

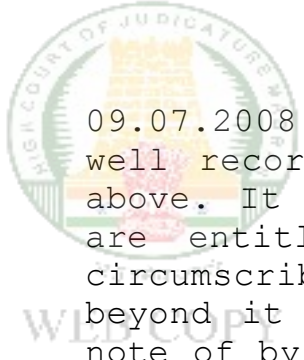
i) 2000-1-L.W.154 (Govt. of Tamil Nadu and others v. Peria Pallivasal, Abriamam and Another)

ii) 2010 Writ L.R. 356 (S.Kulanthaivel v. The District Revenue Officer, Namakkal & Ors)

iii) 2013-2-L.W.485 (Rajathi & another v. The Principal Secretary & Commissioner of Land Administration and another)

iv) 1990-2-L.W. (Mariabackiammal (deceased) v. The District Forest Officer)

15. After narrating the facts we believe nothing more required to be stated. The facts speak for themselves. Here is a case where the writ petitioners/respondent made an application based upon the possession supported by 'B' memos. It was accordingly developed through the documents unearthed, though their authenticity were not proved and rightly action was taken against the officer concerned. It started with the issuance of a copy of the settlement register, then proceeded to enter with agreement on

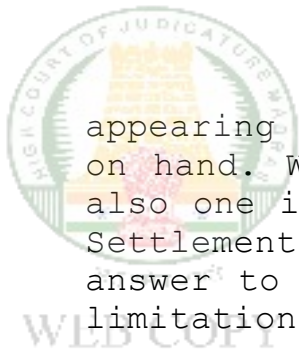


09.07.2008 and 24.07.2008 by receiving a huge sum of money. It was well recorded by the learned Single Judge in the order referred above. It is the specific case of the writ petitioners that they are entitled for Ryotwari patta. The power and authority is circumscribed by the Act. The Assistant Settlement Officer went beyond it without any basis. Despite the fact that it was taken note of by the authorities, again it was conveniently ignored time and again. There is absolutely no explanation as to how such an exercise which include an unregistered sale deed said to have been executed in the year 1937 as prefaced by us. How did survey No.174/4 which was not classified at the time of the alleged unregistered sale deed is anybody's guess. There is absolutely no material on the status of the writ petitioner otherwise than the originally pleaded before the Assistant Settlement Officer.

16. On a perusal of the sale agreement dated 09.07.2008 and 24.07.2008, the true picture emerges. The entire transaction is borne out by a well thought out execution to grab a valuable public land. The petitioner in C.M.P.No.8727 of 2017 used the office of Tahsildar for extraneous consideration. It is also to be noted that he is the one went on to apply to get a copy of Settlement Land Register at present on 20.02.2017, as seen from the documents filed on behalf of the appellants. It was granted to him in no time, though the records were stated to be missing.

17. The learned Single Judge merely went by the orders passed by this Court on the earlier occasion. On the first occasion, the learned Single Judge was persuaded by the concession made by the learned Government Advocate and the Natarajan. Once again the same methodology continued. It is rather curious to note that in both the cases the counsel appearing for the private parties and representing the Government stood on the same page. It is also to be noted in mind that even a complete compliance of an order passed by the learned Single Judge can never be the sole reason for closing the writ appeal filed against the reasoning of a learned Single Judge. To put it different, but for the submissions made, the writ appeal would not have been closed. Therefore, the illegality which started in the year 1996 continued through the Court proceedings, much to the ignorance of the Court. In the subsequent order passed by the learned Single Judge in directing the Tahsildar to issue patta, these facts are not placed. Once again an impression was given to the Court that the proceedings of the Commissioner of Land Survey and Settlement have become final and conclusive *inter se* parties. Accordingly, we find that the order of the learned Single Judge requires interference as unfortunately the background facts were not correctly placed. After all a judgment can never be read like a Statute. Secondly, a Writ Court is concerned with the process over an authority

18. The decisions relied upon by the learned Senior Counsel



appearing for the writ petitioners are not applicable to the facts on hand. We are concerned with not only with a case on merit but also one involving fraud. It is also a case in which the Assistant Settlement Officer did something beyond his power. There is no answer to the question of jurisdiction with specific reference to limitation.

19. An Assistant Settlement Officer has to act under the Act, but he extended his role by adorning the role of Revenue officials including setting aside a 'A' register which was entered into as early as on 29.07.1962 by giving a finding on the date of submission of the application on the nature of land. The land has been classified decades ago. We do not propose to say much more. We only hope and trust that the appellants would be vigilant in future in creating such a situation involving public properties. Accordingly the Writ Appeals stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20. Coming to the impleading petitions filed in C.MP.No.8727 of 2017, this is also one more factor which we need to take note of among others discussed earlier. This is also a part of abuse of process of law. This petitioner is neither a necessary nor a proper party. This petition has strangely cropped up at the time of hearing today and that too after we expressed our prima facie view of the last occasion. Perhaps this is also in tune with the documents emerged during the course of various proceedings. Accordingly, the miscellaneous petition stands dismissed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Additional Chief Secretary/
Commissioner, Land Administration (i/c),
Chennai-600 005.
2. The Commissioner of Survey and Settlement,
Chennai-600 005.
3. The District Collector,
Madurai District,
Madurai.
4. The District Collector,
Madurai North Taluk,
Madurai District.



5. The Assistant Settlement Officer,
Madurai.

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.79732,79612

jikr

MK/SV MMS/SAR-1/02.11.2017/17P/7C

Common
Judgment made in
W.A. (MD) .Nos.180 and 181 of 2014 &
W.A. (MD) .Nos.948 and 949 of 2017 &
M.P. (MD) .Nos.1 and 2 of 2014 &
C.M.P. (MD) .Nos.5346 and 5347 of 2016 &
C.M.P. (MD) .Nos.6403 and 6405 of 2017 &
C.M.P. (MD) D.No.8727 of 2017
18.09.2017