

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.10872 of 2008

and

W.M.P.No.2 of 2008

1.Kuttiammal

2.R.Saroja

3.P.Rajendran

4.B.Dhanalakshmi

5.S.Vasanth

... Petitioners

Vs

1.State of Tamil Nadu,
Rep. By Secretary to Government,
Revenue Department, Chief Secretariat,
Chennai-600 009.

2.Director of Survey and Settlements,
Survey House, Chepauk, Chennai-600 005.

3.The District Collector,
Udhagamandalam, The Nilgiris District.

4.The Revenue Divisional Officer,
Gudalur, The Nilgiris District.

5.The Assistant Director,
Survey and Land Records Department,
Udhagamandalam, The Nilgiris District.

6.The Tahsildar,
Gudalur, The Nilgiris District.

7.The Firka Surveyor,
Gudalur Taluk, The Nilgiris District.

8.S.M.Allavudeen Badsha,
now working as P.A. to the R.D.O.,
Gudalur, The Nilgiris District.

9.A.Mohammed Yousuf,
Firka Surveyor,
Gudalur, The Nilgiris District.

10.The Inspector of Police,
Gudalur Police Station,
Gudalur, The Nilgiris District.

11.Angammal

... Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order bearing Tho.Mu.Pa.Ma.2 995-07-08 dated 20.10.2007 and the Patta Transfer Order bearing Mu.Mu.(A.10) Tha.Pa.Ma.II 1109/07-08, dated 15.11.2007 on the file of the 6th respondent and the Identification and Delivery Note bearing REF(F)B.V.20/08, dated 04.04.2008 on the file of the 7th respondent and quash the same and consequently, direct the respondents 6 to 11 to restore possession of the Southern portion of the petitioners House Site bearing R.S.No.356/4 in Gudalur Village, The Nilgiris District and measuring 0.2 $\frac{3}{4}$ cents to them, direct the 1st respondent to pay damages at Rs.3,00,000/- to the petitioners for the oppression, harassment, mental agony and loss caused to them and recover the same from the salaries of the respondents 6 to 8 within the time limit.

For Petitioners : Mr.T.M.Naveen
for
Mr.K.P.Jotheeswaran

For Respondents : Mrs.Thangavadhana Bala Krishnan,
(1 to 7&10) Additional Government Pleader

(R8 & R9) : No appearance

R11 : Mr.P.Saravana Sowmiyan

ORDER

The petitioner prayed for a Writ of Certiorarified Mandamus to quash the order of the respondents 6 to 11, the respondent passed the order bearing Tho.Mu.Pa.Ma.2 995-07-08 dated 20.10.2007 and the Patta Transfer Order bearing Mu.Mu.

(A.10) Tha.Pa.Ma.II 1109/07-08, dated 15.11.2007 on the file of the 6th respondent and the Identification and Delivery Note bearing REF(F)B.V.20/08, dated 04.04.2008 on the file of the 7th respondent and direct the respondents 6 to 11 to restore possession of the Southern portion of the petitioners House Site bearing R.S.No.356/4 in Gudalur Village, The Nilgiris District and measuring 0.2 $\frac{3}{4}$ cents to them and further direct the 1st respondent to pay damages at Rs.3,00,000/- to the petitioners for the oppression, harassment, mental agony and loss caused to them and recover the same from the salaries of the respondents 6 to 8 within the time limit.

2 The case of the petitioner is that the 3rd petitioner by name one P.Rajendran submits that his late father R.Palanisamy was in possession of a House Site, measuring an extent of 0.12 $\frac{1}{2}$ cents comprised in Old S.No.145 in Gudalur Village, Nilgiris District and out of the said area, his father had left a narrow stretch on the Northern side, measuring 0.1 $\frac{1}{4}$ cents for using on the Southern side as its owner through the purchase of leasehold rights made under two sale deeds dated 24.05.1965 & 18.05.1967 and registered as Doc.nos.361/65 & 303/67 on the file of the Sub-Registrar, Gudalur since, the lands belonged to the Nilambur Kovilagam. He also constructed a house, including latrine for use of the occupants as per the proceedings L.Dis.No.24/71-72 dated 31.07.1971 in the year 1971-1972. The Panchayat has assigned Door No.12/905-A to the House and collecting property Tax.

3 He would further submit that in the year 1972, the Tamil Nadu Government has enacted the Gudalur Janman Estates (Abolition and Conversion into Ryotwari) Act, 1969 (herein after called as "the GJE Act") on 27.11.1974 and the Act came into force on and from the said date. In exercise of the powers conferred under Section 5 of the GJE Act, the Government of Tamil Nadu has appointed an officer in the rank of District Revenue Officer or Revenue Divisional Officer as settlement Officer to issue patta. He would further submit that by operation of the provisions contained under Section 14(1) & (2) of the GJE Act, the buildings constructed by his father vested on him and his late father applied for patta for the said House Site and also the enquiry was conducted and the buildings were inspected and measured and the Settlement Officer had passed an order granting Patta to his father under Patta No.168 to the extent of 0.04.5 HAC. The said extent was sub-divided, given a separate re-survey number as R.S.No.356/4 and his father name has been included in the Revenue Records. If anybody is aggrieved by the said order, they ought to have filed a Revision as provided under Section 5(2) of GJE Act to the second respondent. Since, no one has challenged the said order, the

extent to which Patta was granted, become final in the year 1980 itself and binding on all.

4 The petitioner would further submit that the 11th respondent in the Writ Petition is his paternal uncle's wife and being an aunt to him, she was in occupation of the House Site adjacent to this the properties comprised in Old S.No.145/1 in Gudalur Village and measuring 0.08.0HAC (.0.20 cents). As per the provisions under Section 14(1) & (2) of the GJE Act, the said House Site was vested on her. For an extent of 20 cents, the Settlement Officer has passed an order and granting Patta No.169. The said land was sub-divided and re-survey number R.S.No.356/5 was allotted and entered in the Revenue records in her name. If the Patta was granted in lesser extent than the possession and the entitlement of her and if she had any claim, she ought to have challenge the order and by way of Revision under Section 5(2) of GJE Act to the 2nd respondent. Since she has not done so, the said order passed in the year 1980 itself becomes final and binding on her. Accordingly, the Patta was granted to the petitioner's father and notice was issued under Section 9(2) of the Tamil Nadu Survey and Boundaries Act, 1923, (herein after called as "the Survey Act"), and after making enquiries, measurement and demarcation of the boundaries was taken place. Similarly for the 11th respondent also, the same procedures were followed and in 1980, the Patta has been issued. The remedy for the 11th respondent had to file an appeal, under Section 11 of the Survey Act and thereafter, a Second Appeal is provided under Section 12-A of the Survey Act. There is an another remedy available by way of Revision under Section 12-B of the Survey Act. However, the 11th respondent has not availed any of these remedies and after, the same has been notified in the Government Gazette also. If at all, she is aggrieved by the said order, the 11th respondent ought to have filed a Civil Suit under Section 14 of the Survey Act and she has not done so. As per Section 13 of the Survey Act, the notifications of the boundaries and House Sites have been notified and extent has been notified, which become final and it has been determined after following due procedures. There is no remedy available to the respondents 6 & 7 to change, alter or modify even the boundaries in any manner and on any ground.

5 He would further state that since his father died on 09.04.1996, the legal heirs inherited the property along with the buildings measuring 0.11 1/4 cents. However, based on the Patta, granted by the Settlement Officer to the 11th respondent, she had sold an extent of 0.10 cents to other persons in the year 1997. Therefore, now she is owning the remaining extent of 0.04.00 HAC (0.10 cents). Since the order passed on 24.01.1980 by the Settlement Officer has become final in the year 1980 itself, the Settlement Officer himself has no power or

jurisdiction under the said GJE Act to alter or modify the said order. The demarcation of the boundaries made by the Survey Officer under the Survey Act is binding on both the parties and the Survey Officer cannot change or alter or modify the said boundaries. While that being so, after more than 27 years i.e., in September 2007, the 11th respondent has falsely filed an application that she was entitled to 0.22 3/4 cents. However, the Settlement Officer has granted Patta only to an extent of 0.08.0 HAC (0.20 cents) and for the remaining extent of 0.2 3/4 cents, patta was granted to the late father of the petitioner and submitted an Application on 06.09.2007 before the 6th respondent to recover the said extent of 0.2 3/4 cents from his late father and hand it over to her. This can be done if there is an order has been passed by the Settlement Officer only, modifying the orders passed by the Settlement Officer under Section 14 of the GJE Act. The same can be modifying the determination and demarcation of the boundaries made by the survey Officer under the Survey Act. The respondents 6&7 who are not designated as Authorities under the GJE Act has no power or authority to change, alter or modify the extent of the House Sites. Further, if there is any dispute arises regarding the boundaries between the two properties, the Survey Act confers right of the powers on the Survey Officer only to measure and identify the correct boundaries as per the Pattas granted to those properties and passed an order that the officers to take possession of a portion of a property owned by one person having excess and hand over the same to the others. The persons have aggrieved by the order and they have to approach only the Civil Court to recover possession of such portion from the other. Hence, this petition filed by the 11th respondent is not entitled and the 6th respondent has no power or authority or jurisdiction to entertain the said application.

6 Per contra, the 6th respondent has acted in a malafide manner and colluded with the respondents 6 & 7 had abused his official position and taken up the Application dated 06.09.2007 on file, without serving any notice to the petitioner's legal heirs and when conducting an enquiry no opportunity herein has passed an order dated 20.10.2007 which is arbitrary. They also passed an order that the 11th respondent is entitled to 0.23 3/4 cents in R.S.No.356/5, patta has been incorrectly granted to her to an extent of 0.20 cents and directed the authorities to include her name also as joint Pattadar along with his late father Palanisamy in R.S.No.356/4 and no such order has been received by the petitioners, the 7th respondent has acted in a harried manner, measuring the property and demarking the same, immediately after the above order passed on 20.10.2007, for effecting the transfers in the Village and Taluk records is unreasonable. Based on the said Report, the 6th respondent has issued a Patta Transfer Order dated 15.11.2007, by transferring

an extent of 0.01.0 HAC from the position of petitioners bearing R.S.No.356/4 to the 11th respondent and assigning a separate re-survey number to it as R.S.No.356/4-B in her name and retaining the remaining extent of 0.03.5 HAC (0.8 ¼ cents) in the name of the petitioner's late father and assigning re-survey number as R.S.No.356/4-A. Even at this point of time, no notice was issued to the petitioners and no copy of the order was communicated to them.

7 That apart, the Taluk Sub-Inspector of Survey from the 6th respondent's office has issued a Memo dated 05.02.2008 by fixing the time at 10 A.M. on 11.02.2008 for measuring the area boundaries to the husband of the 11th respondent. The said notice was communicated only to the said tenants herein and when he went to the said House Site on 11.02.2008, the 6th and 7th respondents have not considered the objections raised by the petitioners and shown the Southern portion of his House Site as belongs to the 11th respondent. Hence, the petitioners started the enquiry and the 7th respondent has issued a notice dated 02.03.2008 to the 11th respondent, informing her about the enquiry to be conducted by him on 19.03.2008 and the same was on his house. Further, the 7th respondent has also submitted a letter to the 6th respondent dated 11.03.2008, falsely alleging that the petitioners are planning to create problems and sought for police protection from Gudalur Police Station and the 10th respondent has also been issued with the same instructions.

8 On 17.03.2008, the petitioners prepared a petition and narrated all the incidents and the facts requesting the authorities not to measure and demarcate the boundaries as per the FMB records and sent to the RR - 3, 4, 6, 10 and other authorities by fax. Further, the petitioners met the 4th respondent in person and they also submitted that the said petition as per the directions of the 6th respondent, the 7th respondent came along with a group of persons and police constables and entered into the property and marked an East-West line on the Southern side of their House Site, covering a portion of their residential building, water tank, 2 latrines, iron gate and concrete pillars, cement flooring and compound existing therein after demolishing the water tank, 2 latrines, iron gate and concrete pillars, cement flooring and compound, they declared that the possession has been handed over to the 11th respondent. On the same day itself, the petitioners have also submitted an Identification and Delivery Report dated 04.04.2008 to the 6th respondent. Now, the 7th respondent has marked the portion of the residential building falling within that Southern portion with yellow paint and trying to demolish the house and put up constructions by the petitioners on the ground that already the respondents 6 to 9 have demolished the property more than a sum of Rs.2,00,000/- and the damages for

the oppression, humiliation and mental agony suffered by the petitioners at a sum of Rs.1,00,000/- i.e., in total a sum of Rs.3,00,000/-. The petitioners entitled for cancellation of the above orders, restoration of possession of the portion of the petitioners' side to the 11st respondent stating that the application submitted by the 11th respondent before the 6th respondent is not maintainable as per under the Act stated Supra and they have no power to modify the said orders. The respondents 6 & 7 are not designated as Authorities under the GJE Act and no power or jurisdiction is conferred on them to change, alter or modify the extent of the House Sites to which Pattas were granted by the Settlement Officer. Since, no action has been taken by the 4th respondent to cancel the said action and since in the Southern portion of the House Site to be handing over the same to the 11th respondent on 04.04.2008 and she has also demolish the water tank, 2 latrines, iron gate with concrete pillars, cement flooring and compound existing with no other alter remedy, the petitioners have approached this Court for seeking prayer.

9 The learned Additional Government Pleader was directed to get instructions regarding these issues on 23.09.2014 and they filed a counter. The learned counsel for the respondents would submit that the Janmam land tenure system was prevailed in Gudalur Division of Nilgiris District from the British period and was abolished during the year 1969 by an Act, Janmam Estate (Abolition and Conversion into Ryotwari) Act 1969. From 27.11.1974, the said Janmam Estate Act came into force. As per the said Act all Janmam Estate land and the Janmam right of the lands were vested with the erstwhile Janmies (Zamindars) of Nilambur Kovilagam of Kerala Estate. The Janmies (Zamindars) were having ownership over large extent of land in Gudalur Division of Nigiris District and such lands were called "Janmam Estates". This Janmam Estates were listed out to many properties and the Government of Tamil Nadu has taken over all the Janmam Estate lands with effect from 27.11.1974 and commenced Ryotwari settlement in the Janmam lands. Accordingly, the petitioners and the 11th respondent have filed claim petition before the Settlement Officer for issuance of Ryotwari Patta and the Ryotwari Patta was issued for an extent of 11 $\frac{1}{4}$ cents in od S.No.145 correlated to resurvey number as No.356/4 of Gudalur Village under Patta No.168 to the petitioners. The 11th respondent also filed a claim before the Settlement Officer and got Patta for an extent of 20 cents in old S.No.145/1 correlated to resurvey number as R.S.No.356/5.

10 In 2007, the 11th respondent claimed that she is eligible for Ryotwari Patta for an extent of 23 cents but the Patta was issued only for 20 cents. The field surveyor who was incharge of the Gudalur Village after observing the formalities

made in the Survey Act found and decide to take 2 $\frac{3}{4}$ cents from the land holding of the petitioners as it belongs to 11th respondent.

11 The Revenue Divisional Officer, Gudalur has passed an order in proceedings Rc.A1.No.3231/08 dated 25.03.2009 and ordered to cancel the order of the Tahsildar, Gudalur in proceedings Tho.Mu.Pa.ma.2-995/07-08 dated 20.10.2007.

12 The learned Additional Government Pleader has further stated that these lands were non-Janmam lands and not in Gudalur Division. There was no specific provisions in the Act which cadre of the officer to be appointed as Settlement Officer. But Rule 2(10) of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Rules 1974 defines that Settlement Officer includes the Assistant Settlement Officer or Settlement Tahsildar wherever the powers of the Settlement Officer have been delegated to the Assistant Settlement Officer of Settlement Tahsildar by the Settlement Officer in writing. Therefore Settlement Officer could be appointed in the cadre of Tahsildar also. Further, the Settlement Notification published under sub-section (1) of Section 20 of the Janmam Estate Act provides powers to correct any error in the settlement process and the petitioners claim is not acceptable. In this case, the Settlement in respect of the subject land comprised in R.S.No.356/4 and 356/5 of Gudalur Village was completed and the connected land records were handed over to the Tahsildar, Gudalur.

13 The learned Additional Government Pleader would further submit that as per Rule 26 of the Janman Act, "the extent of boundaries of the land covered by any order passed by any authority or officer in any proceedings under the provisions of this Act, shall be subject to any changes consequent on the determination of the fair area and map plotting by the survey authorities", and hence the errors can be rectified.

14 The learned Additional Government Pleader would further submit that it is very clear that the Tahsildar has only made an addition by issuing a separate order in favour of the 11th respondent by considering the Application dated 13.08.2007 and no sub-division has been made physically in the subject land since the family members of the petitioner prevented the survey staff to enter into the subject land. The said boundaries have been identified as per the order of the Tahsildar and no damages has been done. Since, no damage was made to the immovable properties of the petitioners by the survey staffs, the estimated the cost of the damage to the tune of Rs.3,00,000/- cannot be awarded. If any changes are effected in such lands by way of sale, partition, gifts etc., the Tahsildar, Gudalur made

changes in such occasion and such changes are not being done by the Settlement authorities. Hence the Tahsildar, Gudalur has powers to make any changes in all kind of Patta lands under his jurisdiction and Settlement authorities have no such powers, eventhough the Patta were issued by them. When valid records are provided by the 11th respondent such rectification has been taken place and no such portion was damaged as per the petitioners' averments. The said property was not handed over to the 11th respondent and the Tahsildar, Gudalur has passed an order in respect of the subject land in his proceedings Tho.Mu.Pa.Ma.2-995/07-08 dated 20.10.2007, which has been cancelled by the Revenue Divisional Officer, Gudalur, as per proceedings Rc.A1.No.3231/2008 dated 25.03.2009 and the changes carried out in the Taluk and Village records consequent on the Patta transfer order of the Tahsildar, Gudalur, has also been ordered to be cancelled and restored to the position prior to the change in the Village records in S.No.356/4 of Gudalur Village. He would also submit that since there was no damages has been done to the properties as alleged by the petitioners and the petitioners have not sustained any loss of property or money as claimed by them, the amount of Rs.3,00,000/- claimed by them cannot be granted.

15 Heard the learned counsel appearing for the petitioners and the learned counsels appearing for the respondents and perused all the materials on record.

16 It could be seen from the order dated 29.09.2009 passed by the Revenue Divisional Officer, Gudalur, that the averments of the respondents were wrong, since the subject lands are Janmam lands and only after an order passed by the Settlement Officer, the same should be appealed before the Coimbatore Urban Land Tax Officer within a period of one month and the 11th respondent has not shown any evidence to that effect. The Tahsildar has issued Patta and the Tahsildar has no power to include any person/land in the said Patta issued by the Settlement Officer. While that being so, it could seen from the records, no opportunity has been granted to the petitioners herein to raise their objections. Hence, the petitioners have also sent a telegram to the Tahsildar to stop the said demarcation of survey land. Accordingly the said land has been measured and necessary report has been filed. On going through the records it is found that the Tahsildar has no power to include any person's name in the chitta as the same has been granted by the Settlement Officer. Hence, the Revenue Divisional Officer has come to a conclusion that the said inclusion and the sub-division made by the Tahsildar is found to be wrong and accordingly the same has been cancelled and the name has been restored to the position prior to 20.10.2007. Accordingly, the same has been effected and the name of Palanisamy has been restored.

17 In view of the above said circumstances, this Court of the view that after filing the Writ Petition, the Revenue Divisional Officer has passed an order on 25.03.2009 who had modified the mistake committed by the concerned officials of the Revenue Department. Regarding the prayer for damages, the petitioners have not produced any evidence for such damage sustained by them. Hence in the absence of any materials before this Court is not inclined to award any compensation to the petitioner.

Hence in view of the above facts and circumstances of the case, this Writ Petition is allowed in part and the impugned orders are hereby quashed and consequently the authorities are directed to mutate the said records as per the orders of the Settlement Officer. Insofar the claim of damages and recovery from R6 to R8 is concerned, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nsd/vji

To

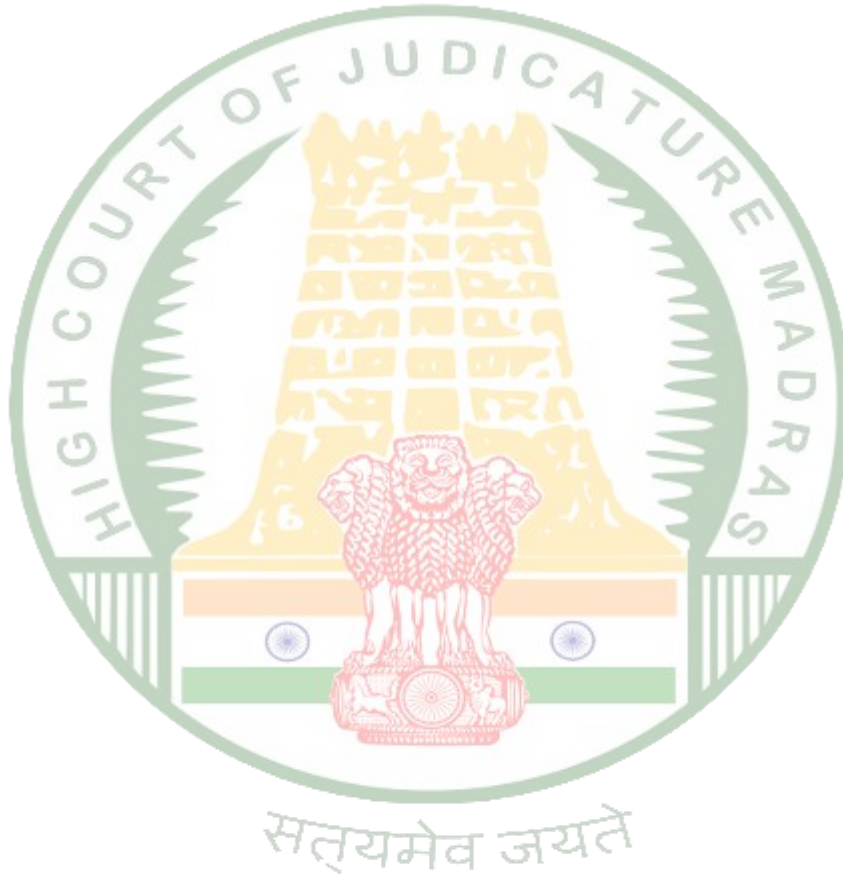
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+1 cc to Mr.K.P.Jotheeswaran, Advocate Sr.No.76662
+1 cc to The Government Pleader, Sr.No.76793

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