

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23-08-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.31984 of 2014

And

M.P.Nos.1 to 3 of 2014

Action for Community Organisation,
Rehabilitation and Development (ACCORD)
Represented by its Secretary,
12/669 B Thottamoola,
Gudalur Bazaar 643 212,
Nilgiris District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary Revenue
Department,
Fort St. George,
Chennai-600 009.

2.The Settlement Officer And District
Revenue Officer,
Gudalur Janmam Lands,
Gudalur,
Nilgiris District.

3.The District Collector,
Office of the Collector,
Udhagamandalam,
The Nilgiris.

4.The District Forest Officer,
Office of the District Forest Officer,
Gudalur,
The Nilgiris.

5.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Gudalur,
The Nilgiris.

.. Respondents

PRAYER: Writ petition is filed under Article 226 of the
Constitution of India praying for the issuance of a Writ of
Certiorari, calling for the records of the second respondent

comprised in the notification issued by the second respondent in Na.Ka.V.370 of 2011 dated 3.8.2011 as published in the Nilgiris District Gazette Extraordinary Edition dated 11.8.2011 in respect to the determination made by the second respondent relating to the lands of the petitioner comprised in O.S. No.93/1 and 94 of Devala Village, Gudalur Taluk measuring an extent of 180.80 acres and pertaining to R.S. No.147, measuring 49.92 acres and to quash the same as it is arbitrary and violative of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969.

For Petitioner : Mr.M.K.Kabir, Senior Counsel for
Mr.T.Jayaraman
For Respondents-1to3 Ms.A.Sri Jayanthi,
& 5 : Special Government Pleader.
For Respondent-4 : Mr.M.Santhana Raman,
Additional Government Pleader (Forests).

O R D E R

The lis on hand is for a Writ of Certiorari, to call for the records of the second respondent comprised in the notification issued by the second respondent in Na.Ka.V.370 of 2011 dated 3.8.2011 as published in the Nilgiris District Gazette Extraordinary Edition dated 11.8.2011 in respect to the determination made by the second respondent relating to the lands of the writ petitioner comprised in O.S. No.93/1 and 94 of Devala Village, Gudalur Taluk measuring an extent of 180.80 acres and pertaining to R.S. No.147, measuring 49.92 acres and to quash the same as the same is in violation of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (hereinafter referred to as the 'Act').

2. The facts, in nutshell, as presented by the learned Senior Counsel, appearing on behalf of the writ petitioner, are that the writ petitioner is a registered Society and a voluntary organisation registered under the Karnataka Societies Registration Act on 6.3.1986. The Society was constituted for rehabilitation and development of economically and socially underprivileged communities. In order to carry out its objectives, the writ petitioner-Society had to purchase the properties in Gudalur Village and accordingly, approached the Lessees of the properties comprised in O.S.No.93/1 and 94 of Devala Village. Under Sale Deeds dated 24.9.1998 and 28.9.1998, the Lessees of the aforesaid properties sold the same to the writ petitioner-Society. Thus, the writ petitioner became the absolute owner in respect of the leasehold rights of the said properties.

3. The properties purchased by the writ petitioner originally belongs to Nilambur Kovilakam. Various properties owned by Nilambur Kovilakam were leased to various people from 1941. An extent of 180.80 acres in O.S.No.93/1 and 94 of Devala Village was leased to one Thomas Mattil through a registered Deed of Lease dated 29.8.1941. Subsequent thereto the said lands and the leasehold rights became vested with various persons namely Mr.C.J.Mathew and others. The Lessees C.J.Mathew and others sold their leasehold rights in favour of the writ petitioner-Society. They were Janmis cultivating land for a period of three agricultural years prior to 1.6.1969. They were admitted into possession on 1.6.1961. The writ petitioner-Society, being a Transferee of the said right enjoys the right of the Transferor in terms of Section 55 of the Gudalur Janmam Act and is entitled to grant of Ryotwari Patta.

4. The abovesaid lands, subsequent to being leased were cultivated by the Lessees. In order to cultivate various crops permission had to be obtained from different authorities and the lands had to be exempted from various Acts. Under G.O.Ms.No.16, Agricultural Department, dated 3.1.1969, the properties owned by the predecessors in title of the writ petitioner were granted exemption from the purview of the Madras Preservation of Private Forest Act, 1949. Through G.O.Ms.No.1009, Agricultural Department, dated 31.3.1970, the properties owned by the predecessors in title of the writ petitioner, were granted exemption from the purview of the Tamil Nadu Hill Stations (Preservation of Trees) Act, 1955. The authorised Officer (Land Reforms) Oottacamund by Order dated 3.8.1973 granted exemption to the said land under the TN Land Reforms (Fixation of Ceiling on Land) Act.

5. The Joint Controller of Licensing, Tea Board granted permission to plant tea in the property by order dated 5.6.1968. Orders were granted for planting cardamom on 29.7.1975 and coffee on 24.3.1979 by the competent authorities. After the purchase of the properties by the writ petitioner-Society, Nelliylalam Municipality granted permission on 2.2.2007 for mutation of names in favour of the writ petitioner-Society. After such ownership was transferred, the writ petitioner filed application for grant of patta before the second respondent under the Gudalur Janmam Act, on 8.10.2007. The District Forest Officer filed written statement in the above petition and statements were also filed by the Receiver Nilambur Kovilakam on 8.10.2007. On 19.11.2008, the District Forest Officer filed written statement in the above petition and statements were also filed by the Receiver Nilambur Kovilakam. The Tahsildar Gudalur filed the written statement on 17.2.2011 before the second respondent. Thus, the said petition for grant of patta is pending for adjudication. The writ petitioner also sent a letter

to the second respondent on 14.12.2009, seeking to exclude the lands sought to be acquired under Section 53 of the Gudalur Janmam Act. Thus, the application for grant of patta and for exclusion were pending before the second respondent when the impugned notification was published.

6. Even at the time of admission of the present writ petition, several other writ petitions were filed, challenging the very same impugned notification dated 11.8.2011 and based on the interim order granted in those writ petitions, an interim order of Status-Quo was granted by this Court in the present writ petition also.

7. The learned Senior Counsel, appearing on behalf of the writ petitioner, contended that the writ petitioner is committed to serve for the welfare of the Tribals in that locality and they are thriving hard and initiating efforts to uplift the lifestyle and the situations of the Tribals of that locality. In this regard, the learned Senior Counsel cited the 'Activity Report' of the writ petitioner-Society for the period from 2012-2014, wherein the activities of the writ petitioner-Society has been narrated and it was informed that such details are available in the website also. Thus, the cause undertaken by the writ petitioner-Society is of genuine one and therefore, the writ petitioner-Society must be granted with an order of exemption in respect of the land which was declared as a 'Forest Land' in the impugned notification.

8. The learned Senior Counsel for the writ petitioner admitted the fact that the similar writ petitions filed challenging the very same notification dated 11.8.2011, were dismissed by this Court, by way of a final order on 20.12.2016. However, the learned Senior Counsel for the writ petitioner made an attempt to distinguish the present case on the ground that the writ petitioner is fighting for a noble cause of upliftment of Tribals of that locality and therefore, the case of the writ petitioner is to be considered in isolation and an exemption is to be granted, so also the patta to be granted in favour of the writ petitioner.

9. While narrating the Schemes and the efforts taken by the writ petitioner for the upliftment of the Tribals of that locality, the learned Senior Counsel for the writ petitioner has taken sincere efforts to convince this Court by showing various brochures and other details of the activities being conducted by the writ petitioner in that locality.

10. The learned Additional Government Pleader, appearing on behalf of the respondents, strenuously objected to the contentions raised by the learned Senior Counsel appearing on

behalf of the writ petitioner. The learned Additional Government Pleader strongly contended that the writ petitioner has no legal right to remain in the forest land or conduct any such activities in the forest land. The writ petitioner has no locus standi nor having any legal right to occupy the forest land by illegally obtaining a Sale Deed from some other persons, who have no right of alienation in respect of the forest land in question.

11. The learned Additional Government Pleader also filed additional typed set of papers and those additional typed set of papers are nothing but the documents available in the website of the writ petitioner themselves. Those documents would show that the writ petitioner has involved in commercial activities. The writ petitioner has constructed guest houses. The writ petitioner is running a luxury Resort, wherein large number of foreigners are arriving and staying in the Resort and conducting various activities in the forest area, which all are prohibited under the Statutes. The writ petitioner is causing damage to the environmental situation prevailing in the forest area and running a luxury Resort by constructing buildings inside the forest land. Thus, the case of the writ petitioner deserves no consideration at all.

12. All such claims regarding upliftment of Tribals are kept in the papers and those welfare activities are now placed before this Court in order to circumvent the illegalities committed by the writ petitioner and to escape from the clutches of law. Thus, the writ petitioner has no locus standi to continue in the forest land and liable to be evicted without any further delay.

13. The learned Additional Government Pleader enclosed the details available in the website of the writ petitioner-Society and has stated that the writ petitioner-Society is running various commercial activities and admittedly in order to make the Aadhivasi Institutions financially sustainable and self reliant. Thus, the writ petitioner themselves have admitted that they are utilising the forest land for their commercial activities. Various activities published in the official website are furnished in the additional typed set of papers showing that Resort like buildings and Bungalows are constructed in the forest land and the tariff applicable to the Resorts and Bungalows are also mentioned. The learned Additional Government Pleader states that Rs.20,000/- is charged per day for a guest. Thus, the writ petitioner is running a commercial activities in the forest land, which is certainly impermissible. The writ petitioner-Society is conducting Trucking activities in the forest area without the permission of the Forest Officials. They are conducting various other activities, which are not congenial to the preservation of the forest land in accordance with the

Statutes. The various photographs shown that many foreigners from various other countries are frequently arriving to these forest lands and staying in the Resorts being run by the writ petitioner-Society.

14. This apart, the writ petitioner-Society is getting huge amount of foreign grants and donations. The details of foreign grants and donations received during July to September 2017 itself running to the tune of Rs.71,87,051/- and for the months of October to December 2017, it was Rs.78,65,526/-. Thus, the very claim of the writ petitioner -Society that they are thriving hard for the upliftment of the Tribals of that locality is false. Under the guise of the development of Tribal activities, the writ petitioner-Society is developing commercial activities in the forest land. This apart, the Government has introduced lot of Welfare Schemes for the Tribals and the District Administration is implementing such Schemes systematically. Even the Act provides grant of patta in favour of the original Janmis. Thus, the very claim of the writ petitioner is unsustainable and cannot be accepted at all.

15. Now let us look into the provisions of the Gudalur Janmam Estates (Abolition and Conversion of Ryotwari) Act, 1969. Though the Act was enacted in the year 1969, the same had been notified and came into force with effect from 27.11.1974. The Act extends to the Gudalur Taluk of the Nilgiris District. It applies to all Janmam Estates. The Act came into force with effect from 27.11.1974 and the same was notified on that date.

16. Section 2(6) of the Act, defines that "Janmam Estate" means any parcel or parcels of land included in the holding of a janmi". Section 2(7) of the Act, defines "Janmi" means a person entitled to the absolute proprietorship of land and includes a trustee in respect thereof". Chapter II of the Act deals with Vesting of Janmam Estates Etc., in Government.

17. Section 3 (b) and 3(c) of the Act, reads as under:-

"(b) every janmam estate including all communal lands and porambokes, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries, and ferries situated within the boundaries thereof shall stand transferred to the Government and vest in them free of all encumbrances, and the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864), the Tamil Nadu Irrigation Cess Act, 1865 (Tamil Nadu Act VII of 1865), The Tamil Nadu Cultivating Tenants Protection Act, 1955 (Tamil Nadu Act

XXV of 1955), the Tamil Nadu Cultivating Tenants; (Payment of Fair Rent) Act, 1956 (Tamil Nadu Act XXIV of 1956) and all other enactments applicable to Ryotwari lands shall apply to the janmam estate;

(c) all rights and interests created by the janmi in or over his janmam estate before the appointed day shall as against the Government cease and determine."

18. Sections 3(e), (f) and (g) of the Act, are extracted hereunder:-

"(e) the janmi and any other person whose rights stand transferred under clause (b) or cease and determine under clause (c) shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act;

(f) the relationship of janmi and tenant, shall as between them, be extinguished; and

(g) any rights and privileges which may have accrued in the janmam estate to any person before the appointed day against the janmi shall cease and determine and shall not be enforceable against the Government or against the janmi and every such person shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act."

19. Chapter III of the Act provides grant of Ryotwari pattas. Section 8 and Explanations 1 and 2 to Section 8 are extracted hereunder:-

"8. The Janmi shall with effect on and from the appointed day, be entitled to a ryotwari patta in respect of all lands proved to have been cultivated by the janmi himself, or by the members of his tarward, tavazhi, illom or family or by his own servants or by hired labour with his own or hired stock in the ordinary course of husbandry for a continuous period of three agricultural years immediately before the 1st day of June 1969.

Explanation I. "Cultivate" in this section includes the planting and rearing of topes, gardens, orchards and plantation crops, but does not include the rearing of topes of spontaneous growth.

Explanation II. Where any land is

cultivated with plantation crops, any land occupied by any building for the purpose of or ancillary to the cultivation of such crops of the preparation of the same for the market and any waste land lying interspersed among or contiguous to the planted area up to a maximum of twenty-five per centum of the planted area shall be construed to be land cultivated by the janmi."

20. Section 9 (1) and (2) of the Act, reads as under:

"9. (1) Every tenant shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of the lands in his occupation;

Provided that such land in proved to have been cultivated by the tenant himself or by the members of his tarwad, tavazhi, illom or family or by his own servants or by hired labour with his own or hired stock in the ordinary course of husbandry for a continuous period of three agricultural years immediately before the 1st day of June 1969.

Provided further that no person who has been admitted into possession of any land by a janmi on or after the 1st day of June 1961 shall, except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land.

(2) Notwithstanding anything contained in sub-section (1), no tenant shall be entitled to a ryotwari patta in respect of any land under sub-section (1) if such tenant has voluntarily abandoned or relinquished his rights in respect of such land on or before the date of the decision of the Settlement Officer under sub-section (1) of Section 12."

21. Section 17 deals with right of Lessee to Plantations and Section 17(1)(a) and (b) are extracted hereunder:-

"17. (1)(a) Where at any time before the appointed day the janmi has created by way of lease, rights in any lands for purposes of cultivation of plantation crops, the Government may, if in their opinion, it is in the public interest to do so, by notice given to the person concerned terminate the right with effect from such date as may be specified in the notice, not being earlier

that three months from the date thereof.

(b) The person whose right has been so terminated shall be entitled to compensation from the Government which shall be determined by the Board of Revenue in such manner as may be prescribed, having regard to the value of the right and the period for which the right was created."

22. With reference to the arguments as advanced by the learned Senior Counsel, appearing on behalf of the writ petitioner, it was contended that after implementation of the said Act, the permissions granted prior to the implementation of the Act in the year 1974, cannot be relied on by the writ petitioner for the purpose of claiming ownership in respect of the land in question. The writ petitioner-Society has enclosed the Sale Deeds executed in their favour by the erstwhile Lessees of the notified land.

23. Many number of such Lease Deeds were enclosed in the typed set of papers filed along with the writ petition. The Sale Deed enclosed in page No.19 of the typed set of papers, which is a Deed of Sale. The Deed of Sale narrates the manner in which the original Lessees were in possession of the land, which all are notified in the impugned notification dated 11.8.2011. The Sale Deed proceeds as if the writ petitioner had purchased the land for a consideration. In the internal page No.11 of the said Sale Deed, it reads as under:-

"The Vendor further expressly covenant and specify with the purchaser that he has got good, exclusive and marketable title over the properties hereby conveyed that none else has got any sort of claim interest possession or right, whatsoever over the same that there are no encumbrances, charges, liabilities or attachments of any kind, subsisting in the properties hereby assigned, that there are no litigations, concerning the properties, pending before any Court, Tribunal or other Forums that there are no legal impediments whatsoever for the execution of these presents and that the Vendor is also not in possession of land in excess of the ceiling area as envisaged under the ceiling laws prevailing in the State of Tamil Nadu."

24. The Vendor also executed the Deed of Sale by clearly stating that he is the absolute owner and having marketable title in respect of the property. Similar clauses are available in all Sale Deeds now presented before this Court by way of the

typed set of papers. Relying on the said documents, the learned Senior Counsel for the writ petitioner states that it is the lease rights, which were transferred in favour of the writ petitioner and therefore, the Sale Deeds cannot be construed as sale of land by way of transferring the right for a valuable consideration. The writ petitioner-Society has acquired the said lands and put in possession. Thus, there is no irregularity in respect of the transfer of lease in favour of the writ petitioner-Society.

25. Considering the submissions made on behalf of the writ petitioner and the respondents, this Court is of an opinion that how deeply the forest lands are encroached and dealt with by the writ petitioner and some other similarly placed persons in respect of other lands for the purpose of commercialising the forest area. Undoubtedly, the website of the writ petitioner now produced by the learned Additional Government Pleader categorically portrays that the writ petitioner-Society has involved in commercial activities inside the forest land. The writ petitioner-Society planted tea plantations and further cultivating certain other plantations. This Court cannot say that all those commercial activities are done for the welfare of the Tribals of that locality.

26. Once the forest land is commercialised, then the very purpose of maintaining the forest land in accordance with the Statutes are defeated. Private persons are not entitled to invade into the forest area and commence commercial activities. Such activities ought to have been stopped at the first instance by the officials concerned. However, the writ petitioner-Society has continued the commercial activities by virtue of the interim orders granted one way or the other in many writ petitions. By obtaining the interim orders from the Courts, the illegalities continued for many years which is to be construed as sad state of affairs. Even at the first instance, such illegalities ought to have been noticed and the authorities are duty bound to brought to the notice of this Court, without causing any undue delay. However, long pendency of the litigations before the Courts paved the way to the writ petitioner and other similarly placed persons to commit such illegalities in the forest area.

27. Undoubtedly, such a situation arising from and out of the delay in disposing of the cases in a Justice Delivery System is to be rechecked. All such cases wherein the illegalities to the maximum is committed by some persons, the Courts are to be cautious and the authorities competent are duty bound to brought to the knowledge of the Court in respect of such illegalities and the ill effects of the continuance of all such interim orders for an unspecified period.

28. Article 226, sub-clause (3) of the Constitution of India enumerates that "where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated".

29. Even in the present writ petition, the interim order was granted by this Court on 5th day of December, 2014. The petition for vacating the interim order of status-quo was filed by the respondents on 9th day of July, 2018. Thus, there is enormous delay on the part of the respondents even in filing a petition to vacate the interim order. In this regard, the inaction of the Government Officials are deprecated. Such Officials who are not prompt in initiating action against the interim order is to be properly dealt with by the Higher Officials in accordance with the Rules in force. Whenever, the High Court issued notice and an interim order was passed considering the prima facie case placed before the High Court, if the respondents are of the opinion that the facts placed before the High Court are either incorrect or not adequate, then such Officials are duty bound to protect the interest of the public by filing appropriate vacate stay petition within a reasonable period of time. If no such vacate stay petitions are filed by the Officials, a factual inference has to be drawn that such illegal activities are carried out by the writ petitioner-Society or they have committed an act of negligence or dereliction of duty in taking action in respect of the interim orders passed by the High Courts. In all such circumstances, it is duty mandatory on the part of the Higher Officials to ensure that suitable disciplinary actions are initiated against such erring Officials, who are all committing an act of negligence in not protecting the public interest and also for committing dereliction of duty.

30. In the present case, the interim order was passed by this Court on 5.12.2014. However, the petition for vacating the

interim order of status-quo was filed by the respondents only on 9.7.2018, after a lapse of about four years from the date of grant of the interim order. Thus, suitable actions are to be initiated against all the Officials, who are responsible for not taking actions and explaining the prevailing situations and the facts and circumstances. In this regard, the first respondent has to review the files and initiate suitable actions.

31. It is highly necessary for this Court also to ensure that whenever such petitions to vacate the interim orders are filed, the same must be listed for hearing before the appropriate Court, within a period of two weeks from the date of numbering of such petitions filed to vacate the interim orders. It is a constitutional mandate that whenever the petition to vacate the interim order is filed, then the same shall be disposed of by the High Court, within a period of two weeks. Otherwise, the interim order granted will automatically vacated after the period of interim order is lapsed. In this regard, the Registrar-General, High Court, Madras, has to issue appropriate Circular to the Registry to ensure that the petitions filed to vacate the interim orders are listed before the appropriate Court for hearing, within a period of two weeks, enabling the Court to deal with the matter in accordance with law. Thus, the Registrar-General, High Court, Madras, is directed to issue appropriate Circular in consonance with the directives enumerated in Article 226 (3) of the Constitution of India. The Registry shall follow the same scrupulously and without any deviation in this regard.

32. If the Resorts are constructed inside the forest area and the natural water resources and other plants, trees etc., from the forest area are tampered with by the private persons by way of commercial activities, then this Court is afraid that the Statutes in this regard have failed in its implementation and the authorities competent are failed in their duties to prevent and control such illegal activities inside the forest land.

33. On a perusal of the entire brochures, the writ petitioner themselves have admitted that there is a guest house and the website states in respect of the Guest House, which reads as under:-

"During the four winter months, mid-November to mid-April, like-minded PLENTI Project volunteers stay for a minimum of one month (from either 1st or 15th of the month) to enjoy the beauty of the place while developing a connection with the people and the social issues of the communities. The full board charges for volunteer guests, during the Plenti months, are 8,000 Rupees per day, for a couple, or 5,000 Rupees for a

single person, in a double room."

34. The various photographs enclosed in the typed set of papers portrays that a beautiful Resort buildings are constructed including Bungalows and large number of foreigners are staying there and involved in various activities. First of all, allowing such foreign Nationals to enter into the forest area itself is not preferable and such activities are in violation of the Statutes. Large number of activities are going on in side the forest area and the water falls, water bodies, nature, environmental cleanliness, everything is damaged on account of such commercial activities inside the forest area. This apart, the movements of animals, elephants etc., are also illegally prevented, which all are in violation of the various statutes.

35. On a perusal of the statement of foreign grants and donations received during the year 2017, the writ petitioner-Society had received several lakhs of rupees from the foreign sources. This Court is unable to understand whether such donations from foreign countries were received in accordance with law or not. All these aspects are to be examined by the authorities concerned and suitable actions are to be initiated to regulate all these activities of the writ petitioner. If such foreign grants and donations are received contrary to the law of the land and the RBI Regulations and the Government of India Orders, then suitable actions are to be initiated against the writ petitioner in this regard. The District Administration is bound to initiate action in this regard and check the activities of the writ petitioner in all respects and initiate appropriate actions in accordance with law.

36. The details of the donations received by the writ petitioner-Society, are as under:-

(i) From July to September 2017	- Rs.71,87,051.67
(ii) From October to December 2017	- Rs.78,65,526.18
(iii) From January to March 2017	- Rs.20,45,978.40
(iv) From April to June 2018	-
Rs.19,95,388.64	

This apart, donations are solicited from the donors in U.S.A., donors from other countries, donors in India, donations through Give India and donations through Ccavenue. Online donations are also accepted and there is a publication from the writ petitioner-Society that donors from abroad are free to offer their donations in favour of the writ petitioner-Society.

37. The photographs enclosed in the typed set of papers filed by the learned Additional Government Pleader (Forests) are self-explanatory that the Ecology of the forest area has been certainly tampered with on account of the activities of the writ

petitioner-Society. Permanent buildings are constructed. The Resorts and the Bungalows are in operation. The water falls, the nature in the forest are being utilised for the purpose of entertaining the guests staying in the resorts and the bungalows. The photographs show that the elephants are also crossing across the water falls and the water bodies wherein the foreign Nationals are taking bath. Thus, the activities of the writ petitioner-Society is certainly an invasion into the forest land, which all are to be protected in accordance with law.

38. A Badminton Court is functioning adjacent to the forest. The other activities of the writ petitioner-Society in the Resorts and the Bungalows are not known to this Court nor there is any check by the Competent Officials of the District Administration. Thus, the respondents are duty bound to protect the forest land and the Ecology in accordance with law.

39. The impugned order dated 11.8.2011 was issued by the Government by invoking the powers under Section 53 of the Act and the lands notified were declared as 'Forest Land'. Section 53 of the Act, states that "if any question arises whether any land in a janmam estate is a forest or is situated in a forest, or as to the limits of a forest, it shall be determined by the Settlement Officer, subject to an appeal to the Director, within such time as may be prescribed and also to revision by the (By virtue of Section 10(1) of the Tamil Nadu Board of Revenue Abolition Act, 1980 (Tamil Nadu Act 36 of 1980) any reference to the Board of Revenue shall be deemed to be a reference to the State Government) Board of Revenue".

40. Now we have to consider the rights of the writ petitioner-Society under the provisions of the Act. As discussed earlier, Section 2(7) defines 'Janmi' means "a person entitled to the absolute proprietorship of land and includes a trustee in respect thereof".

41. The Tribunal is constituted under Section 7 of the Act. Section 50 of the Act, speaks about the obligation of transferor and transferee to give notice of transfer and Section 50(1) reads as under:-

"Whenever the title of any person primarily liable to the payment of contribution under this Act is transferred, the person whose title is transferred and the person to whom the same is transferred shall, within three months after the execution of the instrument of transfer or after its registration, if it be registered, or after the transfer is effected, if no instrument be executed, give notice of such transfer to the Settlement Officer or any

other Officer authorised in this behalf by the Government (hereinafter in this Section referred to as the Authorised Officer)."

42. Thus, the Act unambiguously enumerates that even in case of transfer of title, the same is to be informed to the Settlement Officer or any other Officer authorised in this behalf by the Government. However, no such actions were taken in respect of the present writ petition on hand. Contrarily, various Sale Deeds were produced before this Court, which all were registered in the year 1998, wherein the title of the property has been transferred in favour of the writ petitioner-Society by the vendor.

43. In respect of the very same impugned notification in the writ petition dated 11.8.2011, this Court has decided a batch of writ petitions in W.P.No.27058 of 2011 etc., batch, dated 20.12.2016, the learned Judge also had dealt with the provisions of the Act and the rights of the parties in respect of the forest land and the relevant paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33, are extracted hereunder:

"15. Section 53 of the Act, which has been extracted above, also has an in-built mechanism for redressing the grievance of an aggrieved person in the form of an appeal to the Director and further revision before the Revenue (State Government). In other words, if any person is aggrieved by the order of the Settlement Officer declaring his land as forest land, he is entitled to file an appeal to the Director and further revision to the Government.

16. Mr. Parthiban, learned counsel submitted that in Civil Appeal Nos.368-72 and 374 and 375 of 1977, the Supreme Court, by order dated 18.08.1999, had given liberty to the petitioners therein to approach the State Government for ryotwari patta under provisions of Section 9 of the Act.

17. This Court carefully perused the order dated 19.08.1999 and it may be relevant to extract the same verbatim:

"Mr. R.F. Nariman, learned counsel for the appellants, submits that the appellants have made applications to the State Government for a ryotwari patta under the provisions of Section 9 of the Gudalur Jenmam Estates (Abolition and Conversion into Ryotwari) Act, 1969. The appellants

shall pursue these applications. If an order is passed by the State Government adverse to the appellants either under Section 9 or under Section 17 of the said Act, the appellants shall challenge the same by taking appropriate proceedings, for which purpose the appellants may be granted a period of twelve weeks. Mr. Shanti Bhushan, learned counsel for the State Government, fairly states that he has no objection.

On the application of Mr. Nariman, learned counsel for the appellants, the civil appeals are dismissed as withdrawn. The appellants shall be entitled to challenge by appropriate proceedings an order passed by the State Government against them either on their applications under the said Section 9 or under Section 17 of the said Act. Such order shall not be executed against them for a period of twelve weeks to enable them to challenge the same. In the challenge, all available pleas shall be open both to the appellants and to the State Government. On the application of Dr. Rajiv Dhawan, learned counsel for the applicants, Interlocutory Applications No.24-32 in Civil Appeal Nos.367-375 of 1977 are dismissed as withdrawn. All other interlocutory applications are also dismissed. No order as to costs."

18. The above Civil Appeals were filed challenging the inclusion of the Act in Schedule IX of the Constitution of India. On a reading of the aforesaid order, it is apparent that the Supreme Court has not given any liberty to the petitioners therein to file fresh application before the Government, viz., Settlement Officer for ryotwari patta. Mr. Nariman, learned Senior Counsel who appeared for the petitioners therein, had represented to the Supreme Court that the writ petitioners had filed applications under Section 9 of the Act and that they are withdrawing the Civil Appeals on the ground that they would pursue their remedy before the State Government, viz., Settlement Officer. After merely recording the said statement of Mr. Nariman, the said Civil Appeals were disposed of. Therefore, it is clear that the Supreme Court has not

given any new right to anyone, much less to the petitioners, to file an application under Section 9 of the Act for ryotwari patta.

19. In fact, Rule 8 of the Rules reads as under:

8. Enquiry into claims under Section 8, 9 or 10:

(1) Every application for grant of ryotwari patta in respect of any land under Section 8, 9 or 10 shall be in Form No.4 and shall be either presented in person or sent by registered post to the Settlement Officer within six months from the appointed day. (emphasis supplied)

20. The appointed day is 27.11.1974 and under Rule 8, the application should have been filed for ryotwari patta before the Settlement Officer within six months from 27.11.1974. Admittedly, none of the petitioners before this Court is a holder of ryotwari patta. Each one of them stakes a claim for ryotwari patta and the case of each of the petitioners is before various fora. For example, the case of the petitioners in W.P. Nos.2499 of 2012, 26170 of 2011, 26035 of 2011, 25610 of 2011 and 27058 of 2011 is pending before the Tribunal (District Judge, Udagamandalam), whereas, the case of the petitioners in W.P. Nos.22659 and 24853 of 2011 is pending with the Settlement Officer. Therefore, the petitioners have no locus standi to claim that the Settlement Officer should have heard them before passing the impugned notification. If such a mandate is read into Section 53, then, every fanciful claimant would demand pre-decisional hearing and Section 53 will become unwieldy. Admittedly, there is a great pressure on land which was not there before colonial times. Land was construed only as a territory by the kings and wars were fought for territorial aggrandizement. The kings, under whom, suzerainty over land vested, gifted lands and retained the power to recall the endowment. The British did not look at land as territory, but, as a commodity, because, they came here as businessmen and not as conquerors. Thus, there was a perceptual

change in the attitude of people towards land after the advent of the British. By A.D. 1802 Regulation XXV, proprietary rights on land were conferred and the preamble to the Regulation would make an interesting reading:

"A REGULATION for declaring the proprietary Right of Lands to be vested in certain individual persons; and for defining the rights of such persons, under a permanent assessment of the land revenue, in the British territories subject to the Presidency of Fort St. George. Whereas it is known to the zemindars, mereassydars, ryots and cultivators of land in the territories subject to the Government of Fort St. George, that from the earliest until the present period of time, the public assessment of the land revenue has never been fix; but that, according to the practice of Asiatic Governments, the assessment of the land revenue has fluctuated without any fixed principles for the determination of the amount; and without any security to the zemindars, or other persons, for the continuance of a moderate land tax; that on the contrary, frequent enquiries have been instituted by the ruling power, whether Hindoo or Mahomedan, for the purpose of augmenting the assessment of the land revenue; that it has been customary to regulate such augmentations by the enquiries and opinions of the local officers appointed by the ruling power for the time being; and that in the attainment of an increased revenue on such foundation it has been usual for the Government to deprive the zemindars, and to appoint persons on its own behalf to the management of the zemindars; thereby reserving to the ruling power the implied right, and the actual exercise of the proprietary possession of all lands whatever: And whereas it is obvious to the said zemindars, merassydars, ryots, and cultivators of land that such a mode of administration must be injurious to the permanent prosperity of the country, by obstructing the progress of agriculture, population and wealth; and destructive of the comfort of individual persons, by

diminishing the security of personal freedom, and of private property; WHEREFORE, the British Government impressed with a deep sense of the injuries arising to the state and to its subjects, from the operation of such principles, has resolved to remove from its administration to fruitful a source of uncertainty and disquietude, to grant to zemindars and other land-holders, their heirs, and successors, a permanent property in their land in all time to come; and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances."

21. To give legal effect to this Regulation, the British passed A.D. 1802 Regulation XVII titled "A Regulation for establishing a registry for wills and deeds, for the transfer or mortgage of real property." This Regulation is the precursor to the present Registration Act, 1908.

22. With these Regulations, the lands which were held in common weal in India became commodities capable of being the subject matter of commercial transactions. These changes that were brought about by law, have now led to a scramble amongst the people for owning lands. This has now become an irreversible process like invention of money and to whatever extent we may wish otherwise, the clock cannot be turned back. These historical events have been recounted above only to highlight the fact that when the Act was passed, people knew that they can stake a claim for ryotwari patta. This resulted in all sorts of claims being made. In some cases, after giving a representation to the authorities even after the expiry of six months fixed by Rule 8, individuals have approached this Court for an innocuous mandamus for considering their representations and passing of orders thereon and on such mandamus being issued, they started claiming ryotwari pattas as a matter of right.

23. In this context, it is worth having a look at Section 53 of the Act which reads thus:

53 Decision of questions regarding

forests:

If any question arises whether any land in a janmam estate is a forest or is situated in a forest, or as to the limits of a forest, it shall be determined by the Settlement Officer, subject to an appeal to the Director, within such time as may be prescribed and also to revision by the Board of Revenue.

24. Rule 37 of the Rules regulates the mode of enquiry under Section 53 of the Act and the said Rule reads thus:

"37. Decision of questions regarding forests:

1 The Settlement Officer shall determine questions regarding forests under Section 53 either suo motu or an application.

2 Any person requiring a decision under Section 53 shall apply to the Settlement Officer in Form No.14.

1 Except where the application is on behalf of Government, it shall be signed and verified by the applicant.

2 Every such application shall be restricted to the lands in a holding of a janmam estate in a single village.

3 Every such application shall be presented in person or sent by registered post.

4 As many copies of the application, as there are respondents with one additional copy for the Tahsildar of the Taluk in which the land is situated, shall be filed with the application.

5 On receipt of the application, the Settlement Officer shall fix a date for hearing and issue notice in Form No.15 to the applicant, the respondents and the Tahsildar of the Taluk. A copy of the application shall be sent along with the notice.

6 The Settlement Officer shall make a summary enquiry into the application and give his decision in writing after giving the parties a reasonable opportunity for adducing evidence.

7 A copy of the order shall be served on the applicant and on each of the respondents. A copy shall also be sent to

the officer immediately superior to the officer making the enquiry and to the Tahsildar of the taluk."

25. Section 53 read with Rule 37 envisages two contingencies, viz., (i) suo motu order by the Settlement Officer and (ii) the order made on an application by a person.

26. Admittedly, none of the petitioners has filed an application under Rule 37 of the Rules. At the risk of repetition, most of the petitioners have not even filed an application for ryotwari patta within six months as required under Rule 8 of the Rules.

27. At this juncture, it may be apposite to extract Rule 25 of the Rules:

"25 Time barred application, appeal or revision petition to be dismissed:

"(1) Subject to the provisions of the Act and these rules, every application made and every appeal and revision petition presented to the authorities or officers having jurisdiction under the Act and these rules after the period of limitation prescribed there for in the Act and these rules, shall be dismissed although limitation has not been set up as a defence.

(2) No such application made or appeal and revision petition filed shall be admitted after the period of limitation prescribed therefor in the Act and these rules on the ground that the applicant or the appellant or the petitioner had sufficient cause for not preferring the application or appeal or petition within such period."

28. Thus, Rule 25 of the Rules very clearly lays down that no application whatsoever can be entertained after the period of limitation fixed under the Act. Oblivious of this provision, applications are submitted to the Settlement Officer on the sweet will of the applicant and writ petitions are filed before this Court seeking innocuous directions to the Settlement Officer to consider and pass orders. Confronted with such orders, the Settlement Officer is forced to entertain

applications and give a new cause of action and appellate remedies for kite flyers and legal adventurers.

29. As regards the suo motu power of the Settlement Officer under Section 53 of the Act, he will be required to issue notice only to the pattadars who are likely to be affected by his decision to declare an area as "forest" and not to all and sundry.

30. In view of the above, the arguments raised by the learned counsel for the petitioners are rejected and the impugned gazette notification dated 11.08.2011 is upheld.

31. The learned counsel for the petitioners submitted that in the event of the Settlement Officer or the Tribunal granting ryotwari patta to the petitioners in respect of land which has been declared as "forest" by the impugned notification, it will indeed cause serious prejudice to them.

32. There appears to be force in their apprehension. Therefore, this Court directs that in the event of the petitioners being given ryotwari pattas in respect of land declared as "forest" in the impugned notification, to that extent, the notification will stand modified. It is hereby clarified that the findings of the Settlement Officer or the Tribunal, as the case may be, shall be on the merits of the cases and without being influenced by the impugned notification in any manner whatsoever.

33. It is seen that the proceedings before the Tribunal and the Settlement Officer are pending for quite a long time. Hence, it will sub-serve the interest of justice if the cases are disposed of at the earliest, so that the parties are aware of their respective rights."

44. The learned Judge also has taken note of the long pendency of the appeals before the District Judge, Udhagamund and directed the learned District Judge to bestow his kind attention to this aspect and take effective steps to dispose of all the cases expeditiously.

45. However, in the present case, the learned Additional Government Pleader (Forests) brought to the notice of this Court that there is a large scale invasion and damage caused in the forest land on account of the commercial activities of the writ petitioner-Society. The documents filed by the respondents portrays that the writ petitioner-Society is running a luxury Resort, constructed Bungalows and large number of foreign Nationals are staying there to spend their holidays, this Court is of a considered opinion that such activities inside the forest land are certainly prohibited and the State in this regard is bound to implement the Laws effectively.

46. There cannot be any leniency in respect of the commercial activities now happening inside the forest land affecting the Ecology. There would be an increasing incidents of man-animal conflicts also. The photographs produced before the Courts shows that the Elephants are moving in that locality.

47. The learned Senior Counsel for the petitioner states that the C.M.A filed by the writ petitioner against the order of rejection passed by the Settlement Officer for grant of Ryotwari Patta is pending before the District Court. However, those proceedings are independent and this Court is of an opinion that under the guise of the pendency of such litigations, the writ petitioner cannot be allowed to carryout the commercial activities inside the forest land, which is otherwise to be protected under the statutes. Thus, mere pendency of a C.M.A will not of any avail to the writ petitioner to get along with the commercial activities of running luxury Resorts and Bungalows, so as to accommodate foreign nationals inside the forest lands.

48. In view of the facts and circumstances as narrated above, the following directions are issued:

(i) The claim and the relief sought for by the writ petitioner stands rejected.

(ii) The respondents 1 to 5 are directed to lock and seal all the permanent structures, buildings including Resorts and Bungalows used by the writ petitioner-Society, which was declared as a forest land within 48 hours from the date and time of the receipt of a copy of this order, either through the official website of the High Court of Madras or through the Additional Government Pleader(Forests).

(iii) The District Superintendent of Police, Nilgiris District, is directed to provide adequate Police protection to the respondents 1 to 5 to implement the above direction.

(iv) In respect of the activities of the writ petitioner-Society, the respondents 1 to 5 are directed to conduct a detailed enquiry and if there is any violation of the law of the land, while dealing with the Tribals and conducting commercial activities, the respondents 1 to 5 are directed to initiate all appropriate actions against all the persons concerned in accordance with law without any undue delay.

(v) The respondents 1 to 5 are directed to take possession of the entire forest land and protect the same in accordance with the statutes in force without any violation or deviation.

With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-600 009.
2. The Settlement Officer And District
Revenue Officer,
Gudalur Janmam Lands,
Gudalur,
Nilgiris District. सत्यमेव जयते
3. The District Collector,
Office of the Collector,
Udhagamandalam,
The Nilgiris.
4. The District Forest Officer,
Office of the District Forest Officer,
Gudalur,
The Nilgiris.

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5.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Gudalur,
The Nilgiris.

6.The District Superintendent of Police,
Nilgirs District.

7.The Registrar-General,
High Court, Madras.

8.The District Judge,
Uthagamandalam

+1cc to Mr.T.Jayaraman, Advocate, S.R.No.57810

+1cc to the Spl Government Pleader(Forest), S.R.No.57569

WP 31984 of 2014

SSV(CO)
GSP(10/09/2018)



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