

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.T.A.No.1 of 2013
and
M.P.No.1 of 2013

Pallipalayam Agrahara Inam
Ferry and Shandy Managing
Committee, Pallipalayam,
Salem District,
Represented by its President,
S.Parasuraman. ... Appellant / Appellant

-vs-

1. Pallipalayam Selection
Grade Town Panchayat by
its Executive Officer,
Pallipalayam.
2. The District Collector,
Salem, having office in
Collectorate, Salem - 1. ... Respondents / Respondents

PRAYER: This Special Tribunal Appeal has been filed under Section 46 of Tamil Nadu Inam Estate [Abolition and Conversion Ryotwari] Act, 26/63 against the Judgement and Decree dated 12.10.2012 made in M.I.A.No.1/2008 on the file of the Inam Abolition Appellate Tribunal (Subordinate Judge) Tiruchengode, confirming the order in S.R.No.1/98/A1 Act 26/63 dated 20.08.1999 of the Assistant Settlement Officer.

For petitioner : Mr.M.V.Venkataseshan
For Respondents : Mr.N.Manokaran for R1
Mr.A.Dev Narendran,
Government Advocate for R2.

O R D E R

(Order of the Court was delivered by N.KIRUBAKARAN, J.)

The appeal has been preferred by the appellant against the order of disposal passed in their appeal filed before Inam Abolition Appellate Tribunal, Tiruchengode for grant of ryotwari patta.

2.The case has got a checkered history starting from 1682. According to the appellant, the property measuring to an extent of 86 cents viz., 0.35.0 hectares located in R.S.No.179/1, Pallipalayam Agraharas Village is a private shandy enjoyed by the appellant right from 1682. By a settlement order dated 11.03.1968, the Tahsildar declared the above land as communal poramboke. Against the said order one K.R.Parasurama Pillai filed an appeal in M.I.A.No.26 of 1968 before the Inam Tribunal. After hearing the parties, the order was set aside and the same was remanded back to the Settlement Tahsildar, Salem for fresh disposal.

3.However, on 01.09.1987, the office of the Settlement Tahsildar, Salem was abolished and all the matters were taken over by Assistant Settlement Officer, Tharapuram. The Assistant Settlement Officer, Tharapuram in S.R.No.4 of 1987 once again rejected the claim for grant of patta made by one K.R.Parasurama Pillai by virtue of order dated 14.09.1988 and further held that the land shall be retained as Shandy poramboke. The said order was challenged by K.R.Parasurama Pillai by filing an appeal in M.I.A.No.1 of 1988 on the file of the Inam Tribunal/Sub Court, Salem. Pending the appeal, K.R.Parasurama Pillai filed an interim application to implead the District Collector as a party respondent and the said petition was dismissed on 08.01.1991.

4.The said order was challenged before this Court in C.R.P.No.2419 of 1991. Pending the said petition, K.R.Parasurama Pillai is said to have died and S.Parasuraman claiming himself as Legal Heir of K.R.Parasurama Pillai, filed a petition in C.M.P.No.14805 of 1994 to implead himself as legal heir in the place of K.R.Parasurama Pillai in the Civil Revision Petition No.2419 of 1991 and the said petition was allowed and finally, the Civil Revision Petition was also allowed.

5.Pursuant to that, the Inam Tribunal/Principal Sub Court, Salem passed a remand order in M.I.A.No.1 of 1988 dated 23.09.1997 to the Assistant Settlement Officer to receive the

additional documents filed in I.A.No.8 of 1997. The Assistant Settlement Officer conducted field inspection and verified the usage of the land and found that the entire extent of 86 cents had been used as a shandy. On 20.08.1999, the Assistant Settlement Officer, Tharapuram declared the land as shandy poramboke and rejected the claim of the appellant. Against the said order, the said S.Parasuraman filed an appeal in M.I.A.No.1 of 2008 before the Inam Abolition Tribunal/Sub Court, Tiruchengode. The said tribunal dismissed the appeal preferred by the appellant S.Parasuraman. Against the said dismissal order, the present appeal has been filed.

6.Heard Mr.M.V.Venkateshan, learned Counsel appearing for the petitioner, Mr.N.Manokaran, learned Counsel appearing for R1 and Mr.A.Dev Narendran, learned Government Advocate appearing for R2.

7.The above history would show that matter is being prolonged under one pretext or the other. For getting ryotwari patta, the main criterion is that the land in question should be a cultivable land. The ryotwari patta used to be granted only to ryots viz., farmers in their interest as they are the cultivators of the land whereas, in this case, the land has been admittedly used as shandy. When such is the position, irrespective of the locustandi of the appellant, there cannot be any prayer for grant of ryotwari patta either in the name of the appellant or in the name of the individual S.Parasuraman or in the name of the original appellant K.R.Parasurama Pillai.

8.The ground raised by the appellant before the tribunal was that he was not given an opportunity and therefore, the order has to be set aside, whereas, after going through the records, the tribunal has given the details of the dates of hearings viz., 18.05.1998, 08.06.1998, 22.06.1998, 24.08.1998, 24.09.1998, 22.10.1998, 08.12.1998, 08.01.1999, 11.02.1999, 08.03.1999, 12.04.1999, 17.05.1999, 21.06.1999, 12.07.1999 and lastly on 19.07.1999. Therefore, it is clear that the appellant did not appear before the Assistant Settlement Officer to adduce any oral evidence as per the remand order passed by the tribunal by order dated 23.09.1997. When the appellant himself had not appeared before the Assistant Settlement Officer, inspite of various opportunities given as observed supra, it is not open to the appellant to raise any grievance in this regard. After going through the records, the tribunal rightly found that the Assistant Settlement Officer gave enough opportunity and appellant had not made use of that.

9.It is seen from Paragraph No.5 of the order impugned before this Court that the Assistant Settlement Officer perused the evidences and inspected the disputed land in person on 11.08.1999 and found that the disputed land is only a vacant land where shandy is conducted by the public from the surrounding villages. Since, there was no building, he confirmed the previous order passed in S.R.No.4 of 1987 dated 14.09.1988. Not only based on personal inspection, but also based on oral as well as documentary evidence, the Assistant Settlement Officer rightly rejected the claim of the appellant.

10.The tribunal rightly held that there is no clinching evidence to prove that the disputed land absolutely belongs to the appellant and it is represented in the document which has been filed by the appellant in Ex.P.1 to Ex.P.7. Even the suit filed by the appellant committee claiming right over the demised land was also dismissed against the appellant. Except PW1, interested witness, no other witnesses were examined on the side of the appellant to prove the title and possession of the property. That apart, the tribunal opined that the appellant is admittedly not a registered society and there is no proper authority or authorization letter obtained from the said committee to prosecute the case of the appellant and to give evidence on behalf of the Pallipalayam Agrahara Inam Ferry and Shandy Managing Committee. Therefore, the tribunal rightly held that the said K.R.Parasurama Pillai has got no locustandi to file an appeal.

11.The tribunal rightly held and confirmed the Assistant Settlement Officer's order that the land is a communal land as defined under Section 3 (b) and (c) of the Inam Abolition Act and therefore, the appellants are not entitled to claim any patta under the provisions of Tamil Nadu Inam Estate [Abolition and Conversion Ryotwari] Act, 26/63. In the absence of any document to prove their title or possession, the tribunal rightly confirmed the order of the Assistant Settlement Officer in concluding the disputed land in R.S.No.171/1 as shandy and rightly classified as shandy poramboke.

12.In the absence of any proof that the disputed land is a private land which is coming under the definition of 3(10) of the Estate land Act, the Government is entitled to take over the disputed land under Section 3 (b) and (c) of the Inam Abolition Act. Therefore, the authorities below rightly rejected the appellant's claim.

13. One more aspect which has been dealt with by the tribunal is that the alleged person S.Parasuraman has not filed any document to say that he is the legal heir of K.R.Parasurama Pillai, the original appellant or any other document to connect with the appellant committee. Even though, the said S.Parasuraman has been impleaded as legal heir in C.R.P.No.2419 of 1991 filed before this Court, no document has been produced before this Court by the appellant to prove that he is the legal heir or a person who is entitled to represent the appellant. Therefore, the tribunal was right in holding that S.Parasuraman has got no locustandi to file the appeal. For the reasons stated above, there is no illegality or perversity in the order passed by the lower authorities and the claim for patta or any right over the property in question is hereby rejected confirming the findings of the lower authorities.

14. At the risk of repetition, it is made clear that the property is not a cultivable land and it is only used as a shandy by the people of nearby villages and it was rightly classified as shandy poramboke (Commercial land) and there is no question of appeal under Section Tamil Nadu Inam Estate [Abolition and Conversion Ryotwari] Act.

15. It is also brought to the notice of this Court that the respondents had already taken over the property and a portion of the land has been utilised for the purpose of construction of Amma Canteen by the Government. Therefore, the taking over of the property by the respondents also, is hereby confirmed.

16. When this Court was not inclined to agree with the appellant, Mr.M.V.Venkateshan, learned Counsel for the appellant very cleverly sought permission to work out the remedy before the Civil Court. If such a relief is granted, it will be travesty of justice. The claim itself had started in 1968 and it celebrated its golden jubilee this year. Again, granting permission or liberty to prosecute the case before any other forum would be injustice to the respondents and therefore, such prayer cannot be granted and the same is rejected.

17. In the result, the appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Salem, having office in
Collectorate, Salem - 1.
2. The Subordinate Judge,
Inam Abolition Appellate Tribunal,
Tiruchengode.
3. The Assistant Settlement Officer / Tahsildar,
Salem.

Copy to; The Section Officer,
VR Section,
High Court, Madras (2 copies)

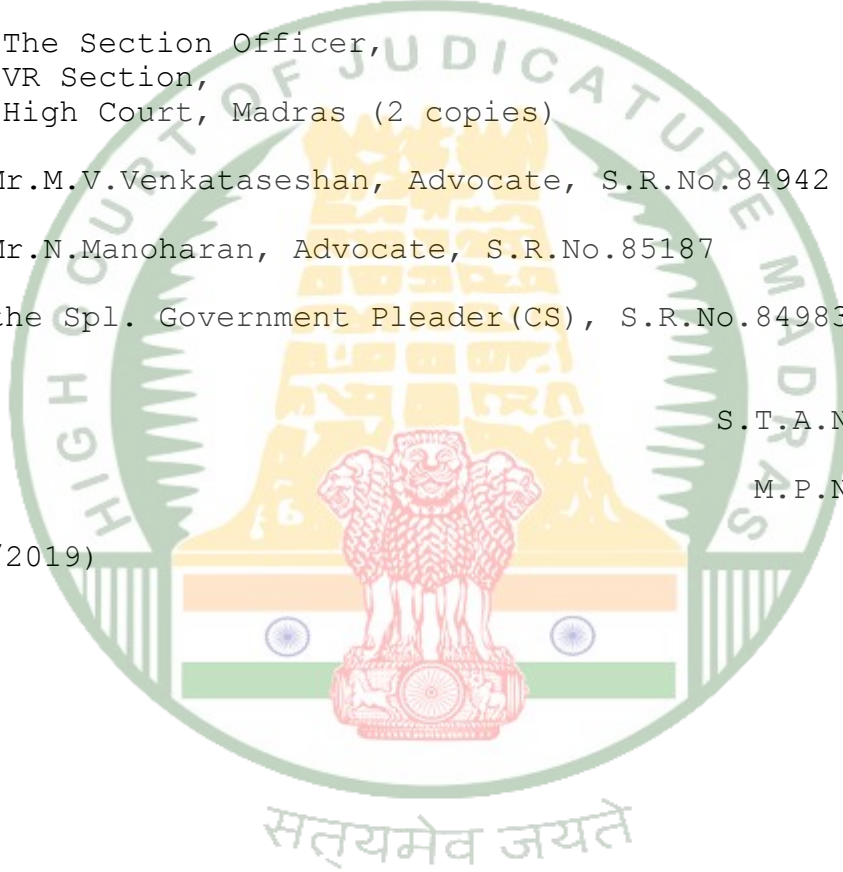
+1 cc to Mr.M.V.Venkataseshan, Advocate, S.R.No.84942

+1 cc to Mr.N.Manoharan, Advocate, S.R.No.85187

+1 cc to the Spl. Government Pleader(CS), S.R.No.84983

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and
M.P.No.1 of 2013

RJ(CO)
SSM(19/02/2019)



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