

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.01.2017

Delivered on : 18.01.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.2857 of 2010 & 27043 of 2009
& MP No.1 & 2 of 2010 & 1 & 2 of 2009

1. M.Periyaswami
2. M.Raman, deceased, by
 - a) R.Nallammal
 - b) Rathinam
 - c) Lakshmi
 - d) Vasantha
 - e) Poonkodi
- R.Ananda Kumar
3. A.Marimuthu
4. V.Kalimuthu
5. S.Manivannan
6. A.Vasantha
7. K.Loganathan
8. S.Muthulingam
9. A.Varadaraj
10. M.Thangaraj
11. P.Muniappan
12. K.Murthy
13. M.Revathi
- K.Arran

... Petitioners in WP 2857 of 2010

1. K.Periyamuthan, deceased, by
 - a) K.Sumathi
 - b) K.Thilagamani

2. K.Anil Kumar
3. R.Boopathi, deceased, by
 - a) R.Saroja
4. N.Eswaramoorthy
5. R.Palaniswamy
6. N.Nallammal
7. R.Kandasamy
8. P.Dhanalakshmi
9. N.Ramasamy, deceased, by
 - a) R.Nalliappan
 - b) R.Kandasami
10. P.Sarasu

11.R.Nalliappan
12.K.Saraswathi
13.K.Yogaraj
14.S.Paramasivam
15.K.Duraisamy
16.R.Lakshmi
17.S.Sivathanam
18.A.Mani
19.M.Muthulakshmi
20.C.Pavayee
21.C.Shanmugasundaram
22.K.Sumathi
23.A.Chinnammal
24.C.Papayee, deceased
25.C.Periswami @ Thangavelu
26.Seeragan
27.T.Periyasammi
28.M.Balakrishnan
29.M.Muthu
30.P.Gopal

... Petitioners in WP27043/2009

versus

1. The State of Tamilnadu,
rep. by its Principal Secretary to Government.
Revenue Department (L.A1-2),
Fort St.George, Chennai-09.

2. The Principal Secretary cum
The Commissioner of Land Administration,
Chepauk, Chennai-5.

3. The Collector,
Namakkal District, Namakkal.

4. The District Revenue Officer,
Namakkal District, Namakkal.

5. The Tahsildar,
Thiruchengodu taluk,
Namakkal District.

6. R.Sathiyamurthy

7. R.Vijayakumar

.. Respondents in
both W.Ps.

Prayer in both Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent impugned G.O.Ms.No.338 Revenue (L-

A1-2) Department dated 10.9.2009, quash the same and to direct the respondents 1 to 5 to consider the claim of the petitioners for grant of patta/assignment in their favour in respect of the lands in occupation of the petitioners situated at A.Eraiyamangalam in S.No.136/2 sub divided as S.No.408 to 432 situated in S.Eraiyamangalam and lands situated in A.Eraiyamangalam in S.No.153/1 sub divided as S.No.433 to 447 situated in S.Eraiyamangalam village, Thiruchengodu taluk, Namakkal District.

For Petitioners : Mr.S.Thiruvenkataswamy
for Mr.K.A.Ravindran

For Respondents: Mr.S.Gunasekaran, AGP-R1toR5
Mr.Doraisamy, SC for
Mr.Muthumani Doraisamy, SC-R6&R7

COMMON ORDER

The present Writ Petitions have been filed by the respective petitioners, seeking the following common relief:

"To issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent impugned G.O.Ms.No.338 Revenue (L-A1-2) Department dated 10.9.2009, quash the same and to direct the respondents 1 to 5 to consider the claim of the petitioners for grant of patta/assignment in their favour in respect of the lands in occupation of the petitioners situated at A.Eraiyamangalam in S.No.136/2 sub divided as S.No.408 to 432 situated in S.Eraiyamangalam and lands situated in A.Eraiyamangalam in S.No.153/1 sub divided as S.No.433 to 447 situated in S.Eraiyamangalam village, Thiruchengodu taluk, Namakkal District."

2. Since both the Writ Petitions raised common grounds and issues and also as the grievance of the petitioners is also one and the same, they are taken up together for common disposal.

3. The petitioners have entered and occupied the lands in the year 1960 with a view to carry out agricultural activities for their livelihood since the lands at that time, remained waste and uncultivated. The petitioners came into possession of the lands and enjoyment of the same, situated in S.No.136/2 sub divided as S.Nos.408 to 432 and in S.No.153/1 sub divided as S.No.433 to 447 situated in S.Eraiyamangalam village, Tiruchengodu taluk, Namakkal District.

4. According to the petitioners, the lands were originally formed Kokkarayenpettai Zamin, which was taken by the Government on 12.1.1951 under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948 (hereinafter referred to as 'Act 26/1948'). According to the petitioners, the lands comprising in S.No.269, 264, 245/1, 245/2, 250/1, 250/5, 257, 136/2 and 136/1 in S.Erayamangalam village, belonging to Zamin family, represented by 6th and 7th respondents herein. According to the petitioners, right from the day when they entered into possession of the subject lands in 1960, they have been in absolute possession and enjoyment of the same for more than five decades. After entering into the lands, the petitioners started cultivating the lands and some of them have also constructed houses in the property. According to them, the said lands had been showed in the revenue records as Anadeenam/Assessed Waste Dry (AWD). The petitioners are also paying requisite tax and electricity charges and initially, they were also issued 'B' memo by the Revenue authorities.

5. The case of the petitioners is that in 1974, the Revenue officials had inspected the lands and recognized their possession and included their names in the Adangal Register. Further, after some time, the Revenue officials have stopped issuing B memo to the petitioners without any reasons. In these circumstances, the villagers and the petitioners made an appeal on 18.3.1978 to the Revenue Divisional Officer, Sangagiri and claimed assignments in their favour and the same was forwarded to the Tahsildar, Tiruchengode taluk. However, no action was taken by the 5th respondent till filing of the writ petitions. The petitioners had been making repeated representations for assignment of the lands under their occupation.

6. The case of the petitioners is that the father of 6th and 7th respondents, Shri Ramachandran claimed patta for various extent of lands including the subject lands outside the scope of the Abolition Act, 26/1948. The claim of the said Ramachandran was rejected by the proceedings of the Revenue Settlement Officer, dated 9.8.1974 which was also confirmed by the proceedings of the Commissioner of the Land Revenue on 25.7.1979 and confirmed the classification of the lands as Assessed Waste Dry (AWD).

7. While matters stood thus, the first respondent had passed G.O.Ms.No.338 Revenue (L.A.) Department, dated 10.09.2009 granting patta to respondents 6 and 7 who are pattadars of the original Zamin family in respect of the subject lands which are under the occupation of the petitioners in both the writ petitions. According to the petitioners, no notice was given to them nor they were made aware of any proceedings pending before the first respondent and all of a sudden, the impugned G.O. came

to be issued in 2009 granting patta in favour of the respondents 6 and 7. Challenging the said G.O.Ms.No.338 dated 10.09.2009, the petitioners are before this Court in both the writ petitions.

8. Upon notice, Mr.S.Gunasekaran, learned Addl.Government Pleader entered appearance for respondents 1 to 5 and Mr.Doraisamy, learned senior counsel entered appearance for respondents 6 and 7.

9. Separate counter affidavits have been filed on behalf of the respondents. In the counter affidavit filed on behalf of the respondents 1 to 5, it is submitted that by the Act 26 of 1948, Zamin was abolished and ryotwari was introduced in respect of the subject lands with effect from 12.1.1951 and was given effect in corresponding to the fasli year 1367 and after taking over the lands by the Government, the lands were classified as Poramboke by the Settlement Officer vide proceedings dated 14.10.1961 and the revenue records were also changed accordingly.

When the father of the respondents 6 and 7 had approached for grant of patta under the Abolition Act 16/1948, the Board of Revenue held that the matter did not fall under the proviso to Section 11 of the said Act and directed the land owners to apply for patta outside the scope of the said Act. Thereafter, an application was made for grant of patta outside the scope of the Act, however, the same was rejected by the Government on the ground that the respondents 6 and 7 had possessed more than the limit of the lands that could be held by an individual under the Tamil Nadu Land Reforms (Fixation of Ceiling on land) Act, 1961 (hereinafter referred to as "Land Ceiling Act"). However, further action was taken for subdividing the lands for the purpose of assignment to third parties. The father of the respondents 6 and 7 had passed away and the respondents 6 and 7 approached the Civil Court and filed a suit in O.S.No.397 of 1977 before the District Munsif Court, Sankari at Salem for declaration and permanent injunction against the Government authorities. The District Munsif Court had passed a judgment and decree in the said suit on 25.7.1978 to the following effect:

i) The plaintiffs are the absolute owners of the suit properties in S.No.136/2 (half) and in S.No.153/1 (half).

ii) Suo motu change of classification as poramboke lands without invoking the provisions under the Land Ceiling Act is not a proper way unless otherwise, the Land Ceiling Act is implemented in their case by paying necessary compensation to the petitioners.

Iii) Permanent injunction

restraining the Revenue Officials from interfering with the plaintiffs' possession and enjoyment of the suit lands in any manner disturbing their peaceful possession until they are acquired and taken over by the Government of Tamil Nadu under the Land Ceiling Act under due process of law."

10. Based on the above said decree and judgment, third respondent directed the 5th respondent/Tahsildar, Tiruchengodu not to disturb or interfere with the possession of the respondents 6 and 7. On scrutiny of the decree and judgment, an opinion was obtained from the Government Pleader and on the basis of the opinion, no further appeal was filed and thus, the judgment and decree of the District Munsif Court had become final.

11. In view of the above development, the entire case put up before the second respondent, who in turn was requested to issue necessary instruction for restoration of classification of the lands to its original character so as to enable the concerned authority to proceed under the provisions of the Land Ceiling Act.

12. Be that as it may, after protracted correspondence, the Government had finally passed order vide G.O.Ms.No.338 Rev. (L.A.) Department dated 10.9.2009 by granting patta to respondents 6 and 7. According to the respondents 1 to 5, the petitioners have no right over the property and the entire classification and character of the lands stood seized of after passing the judgment and decree by the District Munsif Court, Sankari on 25.7.1978 in O.S.No.397 of 1977. Therefore, any further claim by the petitioners on the subject land cannot be entertained since the lands in question were restored to its original character and therefore, the petitioners cannot have any cause of action for pursuing their remedy any further with the Government. With these averments, the respondents 1 to 5 sought for dismissal of the writ petitions.

13. On behalf of the respondents 6 and 7, a counter affidavit has been filed, almost reiterating the facts as contained in the counter affidavit filed on behalf of the respondents 1 to 5. In addition to the same, the counter affidavit filed by the respondents 6 and 7 would state that some of the writ petitioners filed O.S.No.372 of 1983 on the file of the District Munsif Court, Tiruchengode against them for permanent injunction. On 10.4.1990, the suit was decreed ex parte. However, an interlocutory application in I.A.No.720 of 1990 in the suit was filed on behalf of the respondents 6 and 7 and the ex parte decree was stayed and finally on 11.1.1993, the

said suit was dismissed for default. After that no further action was taken on behalf of the plaintiffs therein. This statement made by the respondents 6 and 7 has not been disputed by the petitioners. According to the respondents 6 and 7, the petitioners having failed to prove their possession and enjoyment in O.S.No.372 of 1983, cannot now approach this Court invoking jurisdiction of this Court under Article 226 of the Constitution of India, seeking assignment of the lands in their favour de hors the decree and judgment of the competent Civil Court on 25.7.1978 in O.S.No.397 of 1977. According to the said respondents, the petitioners are none other than the trespassers in the said lands and such trespass cannot be confirmed with any benefit of assignment by abdicating the pre existing right of the respondents 6 and 7.

14. Mr.S.Thiruvengkataswamy, learned counsel appearing for the petitioners would submit that the petitioners had been in physical and continuous possession of the subject lands from 1960 onwards and by virtue of that possession for long number of years, they are entitled to be granted assignment. In this connection, he would draw the attention of this Court to the Government Order in G.O.Ms.No.1300 dated 30.4.1971 issued under the Abolition Act, 12/1948 which deals with the grant of patta to persons in continuous possession and enjoyment. He would place emphasis on para 3 of the G.O., which reads as under:

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

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

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

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

Persons whose claims have been rejected under the Act or under the orders referred

to above, may also apply this order, if such persons have been in continuous possession and enjoyment of the lands.

....."

15. According to the learned counsel, patta was not claimed by respondents 6 and 7 within time limit as prescribed under the Act and therefore, grant of patta to the respondents 6 and 7 was not valid and the same is liable to be interfered with.

16. In support of his submissions, the learned counsel appearing for the petitioners would rely upon the following decisions, viz.,

i) 2016 (3) CTC 39 (Sundaram and others versus The Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai and others). The learned counsel would draw the attention of this Court to para 29 of the judgment passed by the Division Bench, which is extracted below:

"29. The State Government, subsequently, by several Government Orders, as referred to in G.O. Ms.No.1300, Revenue Department dated 30 April 1971, had permitted the landholders or the ryots, who could not obtain patta within the prescribed time under the provisions of the Act, to make an application for grant of patta in respect of such lands, provided they were in continuous possession and enjoyment of any land in the estate taken over under the Act. The said permission came to an end subsequently by G.O. Ms.No.714, which stipulated the last date as 20 August 1987. The appellants had never come forward under the aforesaid provisions of the Act or under the extended time granted by several Government Orders, claiming to be in continuous possession and enjoyment of any land in the estate taken over under the Act."

According to the learned counsel, respondents 6 and 7 have not approached the authority for grant of patta within the time stipulated by the Government, cannot be granted patta in 2009 after a lapse of several years.

ii) 2005 (2) CTC 741 (FB) (Ramaraju versus The State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department). This Full Bench decision of this Court is relating to Tamil Nadu Land Encroachment Act, 1905 and this Court is unable to understand as to how the said decision is of any help

to him to advance the case of the petitioners.

iii) An unreported decision rendered by a learned Judge of this Court in W.P.No.22045 of 2009 and 4119 of 2010, dated 24.1.2013 for the purpose that the reclassification of land ought not to have been done by the Settlement Officer beyond the period of limitation. However, the learned counsel was unable to point out as to how a statement made in the order by the learned single Judge can be applied in the present factual matrix of the case. The learned counsel would however, submit that even though the petitioners were trespassers, yet by virtue of their physical possession of the land for more than five decades and the lands having been originally declared as Anadeenam/AWD, they were unable to get assignment under the Abolition Act 1948. Therefore, he would urge this Court to allow the writ petitions as prayed for.

17. Per contra, the learned Addl.Government Pleader appearing for the respondents 1 to 5 reiterated the elaborate contents of the counter affidavit filed on behalf of the respondents 1 to 5 and would submit that patta granted vide impugned G.O.Ms.No.338 dated 10.9.2009 was in pursuance of the decree and judgment of the Civil Court in O.S.No.397 of 1977 dated 25.07.1978 which had become final. The Government is bound by the said judgment and decree and therefore, after a protracted correspondence among the authorities, final decision was taken to restore the lands to its original character and thereafter, the patta was ordered to be issued in favour of the respondents 6 and 7 under the impugned G.O.

18. Shri Doraisamy, learned senior counsel appearing for the respondents 6 and 7 reiterated the submissions of the learned Addl.Government Pleader and also the contents of the counter affidavit filed on behalf of his clients. A compilation of decisions was also filed on behalf of the respondents 6 and 7. The first and foremost contention of the learned senior counsel is that the judgment and decree of the Civil Court, have reached finality and therefore, the entire action initiated by the Government under the impugned G.O. was in pursuance of the same and therefore, the same cannot be faulted. According to him, respondents 6 and 7 are having pre-existing right over the subject lands which cannot be extinguished by any passage of time. He would place reliance upon the following decisions in support of his various aspects of contentions.

i) 2007(8) SCC 449 (Prestige Lights Ltd. versus State Bank of India). The learned senior counsel would draw the attention of this Court to paragraphs 35 and 36 of the judgment passed by the Hon'ble Supreme Court which reproduced as below:

"35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

"36. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent-Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company. "

According to the learned senior counsel this Court, exercising extraordinary jurisdiction under Article 226 of the Constitution of India, can refuse to grant the relief to the petitioners who approached this Court with unclean hands. He would submit that the petitioners having not disclosed that they had filed earlier suit as stated supra and having failed to secure any order in their favour and without disclosing the same, the writ petitions came to be filed and therefore, on this ground alone, he would urge this Court to dismiss the writ petitions filed by the petitioners.

iii) (1989) 3 SCC 612 (Corporation of the City of Bangalore versus M.Papaiah and another). The learned senior counsel would submit that the revenue records are not documents in title. The observation of the Hon'ble Supreme Court made in paragraph 5 is reproduced herein below:

"5. In reversing the decision of the first appellate court the High Court committed several serious errors of law. The High Court appears to have been confused on the question whether the issue of title to the disputed property was involved in the suit or not. The judgment shows that the High Court has made several inconsistent observations. By way of illustration, the following passage at page 13 of the paper book (of this Court) may be seen:

This Court must accept this argument in view of the circumstance that there was no issue involving the title has been satisfactorily established by the appellants and the respondent has failed to establish its title. Therefore, the first appellate court is wholly wrong in raising issues which did not arise in the case and reaching the conclusion that the suit was bad since the appellants did not seek the relief of declaration of title and possession.

We do agree that the suit cannot be dismissed on the ground that the relief of declaration of title and possession has not been specifically mentioned in the plaint. But the observations on the question whether the issue of title is involved in the suit or not are clearly discrepant. In some other part of the judgment the High Court has mentioned a portion of the relevant evidence

on the question of title and possession and made adverse comments against the findings of fact recorded by the first appellate court without giving any valid reason therefor. So far the revenue records are concerned, the appellate court considered the same and held that they did not support the plaint. The High Court has reversed the finding saying that the interpretation of the first appellate court was erroneous. It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law. These errors have seriously vitiated the impugned judgment of the High Court which must be set aside."

iv) 2010 WLR 356 (S.Kulanthaivel versus The District Revenue Officer, Namakkal and others). The learned senior counsel would draw the attention of this Court to paragraph 23, 29, 30, 31 to 34 of the judgment passed by the learned judgment of this Court, which are extracted herein below:

"23. Realising the difficulties faced by the similarly placed land owners in getting the patta on time, G.O.Ms.No.1300, Revenue dated 30.4.1971 was introduced. The preamble to the said Government Order refers to the various earlier Government Orders passed, wherein the Government took note of the difficulties faced by certain land holders who did not apply for Ryotwari Patta in time, but who would have got patta, if they had applied in time. In the circumstances, G.O.Ms.No.1300 Revenue dated 30.4.1971, along with earlier Government Orders passed for public purpose has to be viewed as beneficial notifications issued by the Government, taking note of the practical difficulties experienced by certain land owners in applying for Ryotwari Patta in time. There is nothing on record from the side of the respondents to contend that the petitioner, or for that matter the petitioner's mother, had applied for Ryotwari Patta during the relevant period of settlement.

"24 to 28.

"29.. In the decision reported in 1998

(1) CTC 630 (Srinivasan and six others V. Sri.Madhyarjuneswaraswami Pattavi-athalai), a Full Bench decision of this Court, particularly paragraph 14, which was relied on by the learned counsel appearing for the petitioner, assumes significance. This Court viewed that the Division Bench decision of this Court as well as the other decisions of this Court would support the view that the abolition laws do not destroy the pre-existence of the occupants except in respect of what are known as public or communal properties meant for common use and the grant of patta had always been considered as a recognition of their pre-existing rights. In the circumstances, the Full Bench of this Court viewed that the provisions relating to abolition and vesting of the properties do not have the effect of obliterating the pre-existing rights, if any, except in respect of public or communal properties. The said decision, hence, ensures that the character attached to the property remains undisturbed. Consequently, rightly the petitioner contends that the description of the property mentioned in the 1955 document remains unaltered and in fact found to be so by the first respondent that it is a Ryoti land and is under cultivation.

"30. As rightly contended by the learned counsel for the petitioner placing reliance on the decision reported in (1956) 1 MLJ 200 (Srimathi Saraswathi Bai, by power of Attorney Agent T.S.Srinivasa Rao V. The Chairman, Estates Abolition Tribunal, Madurai and another), the character of the property has to be seen not with reference to the entries in the survey register, which is not conclusive on the issue and the right to Ryotwari Patta has to be examined having regard to the materials to support the claim of the land owner to a Ryotwari patta and in accordance with the provisions of the Act.

31. A reading of the above judgment shows that the claim for issue of Ryotwari Patta has to be considered by the provisions applicable to the claims and not by a mere entry in the land register, which is not a conclusive proof to establish the character of the land. As observed in the decision of

this Court reported in (1970) I MLJ 190 (Kuppuswamy Odayar V. Narthangudi Panchayat) that "when the extremes had been proved, those things which lie between are presumed", when the possession of the predecessors-in-title including those who had sold the same to the petitioner's mother in the year 1955 and thereafter the subsequent treatment of the land as a Ryoti land at the hands of the petitioner clearly proves the character of the land in usage and the authorities have also found as a matter of fact that the lands are under cultivation, the presumption herein is that irrespective of the entry in the Survey Register, the lands in question are Ryoti lands and not Kuttai Poramboke. The decision of this Court in the above circumstances has a greater relevance particularly to the properties held by the petitioner herein both as to the nature of ownership as well as to the enjoyment by the petitioner herein ever since 1955, or for that matter, even prior to that date.

"32. Learned counsel for the petitioner made particular reference to the decision reported in 1998 Law Weekly 89 (Mangathayi Ammal V. E.M.Sami), wherein, on a question as to the rejection of the application from a land holder claiming Ryotwari patta, this Court pointed out referring to the judgment of this Court in an unreported decision in W.P.No.1058 of dated 10th December 1960 and W.P.No.900 of 1960 dated 10th April 1962 that the land owner's right to a Ryotwari patta was, by no means lost, merely because his application under Section 13 was rejected as time barred. This Court pointed out that in the event of Ryotwari Patta not being granted, the land owner will not have a right of appeal against such an order. Nevertheless, given the nature of land as a cultivable land in respect of which the land owner was entitled to Ryotwari patta, then, independent of any enquiry conducted by the Settlement Officer in the course of any proceedings before him contemplated under Section 15 of the Act, the Government owes a duty to the land owner to grant him the

Ryotwari patta.

"33. The effect of the decision, as referred to above, is irrespective of whether a claim was made for a grant of patta by a land owner, the character of the land as a Ryotwari land remains as it is either before or after the Act unless the holding pattern undergoes a radical change either by forces of nature, Act of God or of man. Secondly, the fact that the petitioner like land owners have not approached the authorities concerned on time does not mean, the Government could, as such, take over the land as a poramboke without conducting an enquiry and survey. The duty cast on the Government is an inevitable one, that the Government has to go in the character of the land, which has to be surveyed and settled. If the survey conducted by the Government discloses that the item in question was one in respect of which the land owner was entitled to Ryotwari Patta, then, independent of any enquiry conducted by the Settlement Officer, in the course of any proceedings, the Government has to grant the owner, the Ryotwari patta.

"34. The law declared by this Court, in the circumstances, certainly go a long way in supporting the case of the petitioner, that the second respondent herein, reversing the order of the first respondent, hence, merits to be set aside by this Court. The schedule describing the location of the land clearly proved the fact that the land in S.No.11 is not a Kuttai or a tank and is only a Ryotwari land. There is hardly anything to show that a kuttai was converted into a cultivable land. The support drawn by the petitioner from the decisions of this Court as to the nomenclature in the Survey Land Register, hence, is not of any consequence, given the fact that the document of the year 1955 had not been, in any manner, challenged or a finding arrived at by the first respondent to change the character of the land from a cultivable land. The mere fact that the Survey Land Register carries the classification of the land in S.No.11 as "Kuttai Poramboke", per

se, does not defeat the claim of the petitioner, who is claiming Ryotwari Patta on the basis of the document of the year 1955."

The above said paragraphs would deal with the issues raised in the writ petitions in extenso. The judgment also held the fact that the land owners have not approached the authorities concerned on time, does not mean, the Government could, as such, take over the land as a poramboke without conducting an enquiry and survey. The judgment also discusses about the character of the land as to how it should be understood and interpreted.

v) 1998 (1) CTC 630 (Srinivasan and six others versus Sri Madhyarjuneswaraswami, by its Executive Officer and others). The learned senior counsel would draw the attention of this Court to paragraph 14 of the judgment, which discusses about the pre-existing right of the occupants. The observation of the Full Bench is to the effect that the scheme underlying the Abolition laws would go to show that the vesting on abolition under everyone of these legislations are subject to the pre-existing rights of the occupants. The said para 14 is extracted as under:

"14. We have carefully considered the submissions of learned counsel appearing on either side in the light of the catena of cases noticed supra by us and the principles laid down therein. A comparison of the provisions contained in the Abolition Act, the Inam Abolition Act as also the Minor Inams Act would go to show that the ultimate object of one or the other of these legislations is the introduction of ryotwari settlement in the areas covered and notified under the respective enactments, after abolishing existing land tenure and acquiring the rights of the landholders or inamdars concerned, who, under the system of land tenure which was in vogue in these areas, were considered to be intermediaries in between the actual tiller of the soil and the State and that the other provisions pertaining to the constitution of authorities, their powers, jurisdiction and the finality given to the orders passed, or incorporation of a provision in the nature of res judicata providing for the binding nature of the orders on the parties to the same and persons claiming under them in any suit or proceeding in a civil Court insofar

as such matters are in issue between the parties or persons in such suit or proceeding, are almost identical and similar, except certain differences which, in our view, may not be that much relevant for the issue before us. Even while dealing with this aspect of the matter, the Supreme Court in the decision reported in State of Tamil Nadu v. Ramalinga Swamigal Madam, observed that the powers of the statutory authority constituted under the Act are exercised in a summary manner and the claims of occupants comes to be determined only incidentally and they cannot be equated with the civil Courts in respect of what they could do or the nature of relief that they could grant. A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these legislations are subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and vesting of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basis and fundamental rights which entitle a person to preferentially get patta under these legislations and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under rules of assignment outside the scope of the statutory enactments. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intended to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claim, in their

attempt to project a claim for patta. Consequently, in our view, the ratio of the decisions of the Apex Court reported in State of Tamil Nadu v. Ramalinga Swamigal Madam, , R. Manicka Naicker v. E. Elumalai Naicker, and Sayyed Ali v. A.P. Wakf Board, Hyderabad, and that of a Division Bench of this Court in Ramanujam Kavirayar, T.K. v. Sri-La-Sri Sivaprakasa Pandara Sannathi Avargal, 1988 (2) L.W. 513 and of a learned single Judge of this Court in Samsuddin Rowther and another v. Avvammal and 2 others, 1992 (1) L.W. 207 would squarely apply and govern the case and consequently, it has to be necessarily held that the jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which has, as their objection and aim, to implement ryotwari settlement in the areas governed by them."

vi) 1971 (1) MLJ 190 (N.S.Kuppuswamy Odayar and another versus The Pannchayat Narthangudi and others), wherein, the learned Judge as he then was of this Court, has observed in paragraph 4 as under:

"4. As I pointed out already, the appellants claimed that they were the owners of the tank and the fishery rights therein and in the alternative claimed also that they had perfected title by adverse possession. Admittedly, there was documentary evidence to show that it was the appellants' predecessors-in-interest who had been leasing out the fishery rights in the tank from 1873 onwards, as evidenced by Exhibit A-4 and other similar documents. By a partition deed dated 14th July, 1900, marked as Exhibit A-1, the tank had been dealt with as the property belonging to the family and had been partitioned. In each and every one of the lease deeds produced in this case, the lessees had acknowledged that the tank belonged to the lessor's family. However, without paying proper attention to any of these documents as evidence of title

of the appellants, the Courts below proceeded on the basis that the tank was situated in natham poramboke and that the appellants themselves had admitted the same. I am clearly of the opinion that this approach was thoroughly wrong and was entirely unjustified with reference to the facts of the case and the materials placed before the Court. As I pointed out already, there is evidence to show that as early as 1873 the fishery rights in the tank were leased out by the predecessors-in-interest of the appellant's family. Both the Courts have come to the conclusion that there was no evidence as to who dug the tank and when the same was dug. Nonetheless, relying solely upon Exhibit B-1, which is an extract from the Re-settlement Register the Courts below came to the conclusion that the tank was situate in natham poramboke. D.W. 1 had stated that the Re-settlement Register was prepared in 1925, that Exhibit B-1 was an extract from the Resettlement Register and that R.S. No. 73/2 had been shown in that Register as poramboke. The fact that in 1925 the land in question was shown as poramboke did not automatically mean that at the time when the tank was dug, the land was poramboke, or that in the poramboke land, the tank was dug. Equally, the admission of the first appellant was that the tank was situate in the poramboke land, that is, he was referring to the state of affairs existing on the date when he was examined. There was no admission on the part of the appellants that the tank was dug in a poramboke land. Therefore, there could be no question of the appellants themselves having admitted that the tank was dug in a poramboke land and if at all, they could claim title only by prescription on the basis of adverse possession. Hence, the question regarding title put forward by the appellants had to be investigated into and examined independently of their alternative claim to title by prescription. The Courts below have failed to do that because of the wrong assumption that the appellants had admitted that the tank was situate in natham poramboke, failing to make a distinction

between this tank being situate in what was described as a natham poramboke in Exhibit B-1 and the tank having been dug in what was a natham poramboke or not. It has been repeatedly held that the mere fact that in the Re-settlement Register, a particular piece of land has been described as poramboke will not by itself establish title of the Government to the land in question. Under these circumstances, I do not have the slightest hesitation in holding that both the Courts below have failed to appreciate the question of title put forward by the appellants to the tank in question and approach the claim from that point of view."

The learned counsel would rely upon the above decision and submitted that mere description of the character of the property in the Settlement Register does not give any right to third parties.

vii) 2006 (4) SCC 501 (P.R.Murlidharan and others versus Swami Dharmananda Theertha Padar and others) which explains wide jurisdiction of the Civil Court in paragraph 13 as under:

"13. Furthermore, the jurisdiction of the Civil Court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit."

17. In the light of above arguments, the learned senior counsel would submit that the petitioners have not made out a case for intervention of this Court exercising its jurisdiction under Article 226 of the Constitution of India. Therefore, he would pray for dismissal of the writ petitions.

18. This Court has given its anxious consideration to the factual and legal submissions made on behalf of the learned counsels for the parties and perused the relevant materials and pleadings placed on record.

19. Although the petitioners have attempted to make out a case for grant of assignment on the ground that they have been in possession of the subject property since 1960 and have been cultivating the same ever since, such right cannot override the declaration of title declared by the Civil Court in O.S.No.397 of 1977 by judgment and decree dated 25.7.1978. The respondents 6 and 7 having obtained decree and judgment in their favour from the Civil Court declaring them that they are the absolute owners of the property and also obtained permanent injunction,

restraining the official respondents from interfering with the plaintiffs' peaceful possession and enjoyment, the vesting of the lands with the Government stood seized of with effect from the date of the judgment, i.e. 25.07.1978. It is pertinent to note that the above said judgment and decree had reached a finality and therefore, there was no other option for the Government except to implement the Civil Court judgment and decree dated 25.7.1978 passed in O.S.No.397 of 1977. Since the Government had been enjoined from interfering with the possession and enjoyment of the respondents 6 and 7 in respect of the subject property, this Court does not see under what authority, the petitioners are seeking assignment of the subject property in their favour by invoking jurisdiction of this Court under Article 226 of the Constitution of India.

20. The counter affidavit filed on behalf of the respondents 1 to 5 has given complete details in regard to action taken by the Government Officials right from 1951 and till passing of the impugned G.O.Ms.No.338 dated 10.09.2009. Moreover, some of the petitioners who had approached the Civil Court as early as in 1983 in O.S.No.372 of 1983 for permanent injunction, had failed in their attempt in obtaining permanent injunction, as the said suit was dismissed for non-prosecution and the same had also not been restored. These factors had not been disputed by the petitioners. That being the case, this Court does not comprehend as to on what legal basis, the petitioners are seeking for assignment of the lands in their favour. From the entire pleadings placed on record on behalf of the petitioners, the only basis on which the petitioners are claiming for grant of assignment was that they have been in possession and enjoyment of the subject lands from 1960 and the Settlement Officer at the time of abolition of the land by the Act 26 of 1948, had classified the subject lands as Anadeenam/AWD. However, after passage of time, when attempts were made on behalf of the respondents 6 and 7 to get patta outside the scope of the Act was not fruitful, they filed a suit in O.S.No.397 of 1977 and obtained decree in their favour. The Government admittedly had not filed any appeal against the order on the basis of the opinion obtained from the Government Pleader as disclosed in the counter affidavit filed on behalf of the respondents 1 to 5 herein. Therefore, the Government had rightly pursued the matter to its logical end and complied with the judgment and decree of the District Munsif Court, Sankari by issuing the impugned G.O.Ms.No.338 dated 10.9.2009 ordering patta to the respondents 6 and 7 herein. Such action on the part of the first respondent cannot be validly questioned by the petitioners who are admittedly trespassers into the subject land and whose rights had been circumscribed only by the fact that they have been in continuous possession of the subject land for several years.

21. This Court after advertting to various facts and legal submissions, is of the view that the pre-existing right of the respondents 6 and 7, cannot be allowed to be extinguished to their detriment in the teeth of the petitioners' claim who are none other than the trespassers of the subject lands. This position ofcourse, would have been different if the Government had initiated timely action for bringing the land in question under the Tamil Nadu Land Reforms (Fixation of Ceiling on land) Act, 1961. Further, no action was initiated under the said Ceiling Act and before that, the respondents 6 and 7 had approached the Civil Court and obtained the decree in 1978. This fact was also admitted in the counter affidavit on behalf of the respondents 1 to 5 in paragraph 3 of the counter affidavit. In such scenario, this Court does not see on what basis, the petitioners' claim could be addressed towards grant of any relief as prayed for by them in the writ petitions.

22. In the above circumstances, this Court is of the clear view that the petitioners have not made out any case for grant of the relief as sought for. On the other hand, the respondents 6 and 7 have made out a case for passing G.O.Ms.No.338 dated 10.9.2009 in their favour and the said G.O. was validly issued by the first respondent in the circumstances of the case and therefore, the same does not call for any interference from this Court.

For the foregoing reasons, the Writ Petitions are dismissed as devoid of merits and substance. No costs. Consequently, connected WPMPs are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Suk
To

1.The Principal Secretary to Government.
The State of Tamilnadu,
Revenue Department (L.A1-2),
Fort St.George, Chennai-09.

2. The Principal Secretary cum
The Commissioner of Land Administration,
Chepauk, Chennai-5.

3. The Collector,
Namakkal District, Namakkal.

4. The District Revenue Officer,
Namakkal District, Namakkal.

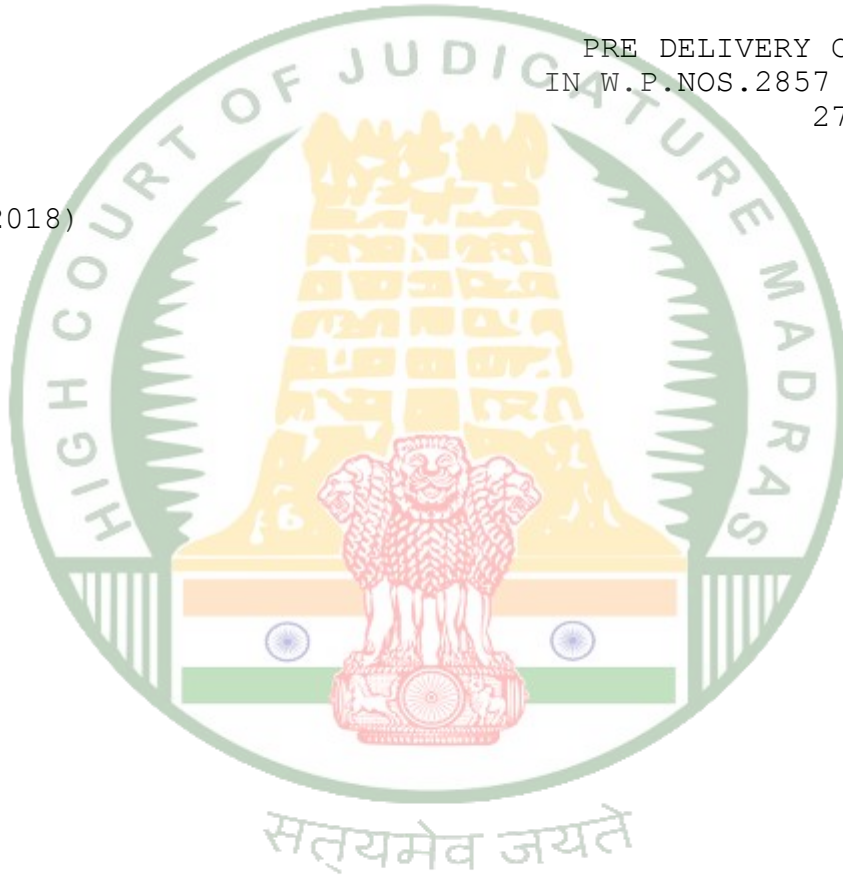
5. The Tahsildar,
Thiruchengodu taluk,
Namakkal District.

+2cc to Mr.K.A.RAVINDRAN, Advocate, S.R.No.3843

+3cc to Mr.MUTHUMANI DORAISAMI Advocate, S.R.No.3571

PRE DELIVERY COMMON ORDER
IN W.P.NOS.2857 OF 2010 AND
27043 OF 2009

GMI (CO)
TR(06/02/2018)



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