

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.18163 of 2003 and
W.P.No.13849 of 2003

1. P.Palaniappan

2. V.Muthu

3. H.Periakaruppan

...Petitioners in
W.P.No.18163 of 2003

4. V.Ayyavoo

... Petitioner in
W.P.No.13849 of 2003

1.The Special Commissioner and
Commissioner for Land Administration
Ezhilagam, Chempauk,
Chennai- 600 005.

2. The District Revenue Officer
Madurai.

3. The Revenue District Officer
Madurai.

4. The Tahsildar,
Melur Taluk,
Madurai District.

5. The commissioner
Kottampatty Panchayat Union,

Kottampatty, Madurai.

6. A.Muthu

... Respondents in
both the Writ petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order made in Na.Ka.F2/15660/2001 dated 22.10.2002, passed by the first respondent and quash the same and to forbear the sixth respondent from bringing the five tamarind trees situated at Survey No.74 at the tank bed of Pappankulam Kanmai, Melavalavu Villge, Malur Taluk, Madurai District in public auction for which 2-C patta has been given to the petitioners.

For petitioners : Mr. G.Ethirajulu
in both WPs

For Respondents : Mr. K.Ravikumar, Additional
in both WPs Government Pleader

COMMON ORDER

The prayer sought for in these writ petitions is to issue a Writ of Certiorarified Mandamus calling for the records relating to the order made in Na.Ka.F2/15660/2001 dated 22.10.2002, passed by the first respondent and to quash the same and to forbear the sixth respondent from bringing the five tamarind trees situated at Survey No.74 at the tank bed of Pappankulam Kanmai, Melavalavu Villge, Malur Taluk, Madurai District in public auction for which three petitioners filed W.P.No.18163 of 2003 and the one petitioner namely Ayyavoo

filed W.P.No.13849 of 2003, for which 2-C patta has been given to the petitioners.

2.1The short facts which are required to be noticed for the disposal of these writ petitions are as follows:-

2.2The petitioners seem to have made a request to the 4th respondent for issuance of 2C Patta under B.S.O.No.18 (2) (C) for twenty number of tamarind trees at the banks of Periya Pappankulam tank under the Kottampatty Panchayath limit of Melur Taluk, Madurai District. Considering the said request made by the petitioners, the fourth respondent had passed an order on 27.03.1997 granting 2-C patta for all these petitioners and another, totalling 4, each for five tamarind trees. Challenging the said issuance of 2C Patta to the petitioners and another, one Muthu belongs to the Village and others filed an appeal before the Revenue Divisional Officer, the third respondent herein, who had set aside the order of the fourth respondent, Tahsildar granting 2-c Patta to the petitioners.

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2.3Aggrieved over the said order passed by the third respondent, the petitioners had preferred a further appeal before the second respondent i.e. The District Revenue Officer, Madurai, who, after hearing the parties had passed an

order on 30.04.1998, whereby setting aside the order passed by the third respondent, Revenue Divisional Officer and restored the order of grant of 2-C patta issued by the 4th respondent Tahsildar.

2.4As against the said order passed by the District Revenue Officer i.e., the second respondent herein, the Muthu i.e., the sixth respondent and others, have filed a revision before the first respondent i.e., the Special Commissioner and the Commissioner for Land Administration. The said Revision was decided through the impugned order dated 22.10.2002 passed by the first respondent, whereby, the order of the second respondent, District Revenue Officer was set aside and thus, the order granting of 2C Patta in favour of the petitioners herein by the fourth respondent was also set aside and the order of the third respondent, the Revenue Divisional Officer was restored.

2.5Aggrieved over the said order passed by the first respondent dated 22.10.2002, the petitioners filed this writ petition with the aforesaid prayer.

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3.I have heard Mr. G. Ethirajulu, learned counsel for the petitioners, who submits that, under the Board Standing Order 18 (2)(C), there are three category of persons for whom or in favour of them patta to exploit the usufructs of the

trees standing in Government lands can be granted. The three category of persons are

(i) Those who plant the tree.

(ii) Those who nurtured the tree and in the absence of two category people.

(iii) who makes application at the first instance seeking 2-C patta.

4.The learned counsel appearing for the petitioners would further submit that, insofar as the petitioners claim is concerned, they come under all the three categories as they have only planted the trees [20 tamarind trees] and they nurtured the same and in fact they only made an application for grant of 2C patta. Further, the concerned Panchayat through the President has also made a recommendation that, 2C patta can be granted to the petitioners. Only considering all these aspects especially the Criteria fixed in B.S.No.18 (2) (C), patta was granted in favour of the petitioners by the fourth respondent Tahsildar on 04.07.1980.

5.The learned counsel for the petitioners would submit that, the said order, without considering the said factors, cannot be interfered with and set aside by the third respondent Revenue Divisional Officer which triggered the petitioners, to further appeal to the second respondent who after having

considered the factual matrix as well as the legal position, had restored the grant of 2-C Patta in favour of the petitioners which was unfortunately again interfered with by the first respondent through the impugned order.

6. In this regard the learned counsel appearing for the petitioners would further submit that, the reasoning given by the first respondent in the impugned order for interference with the second respondent District Revenue Officer's order is, mainly on the basis of the two Government Orders namely G.O.Ms.No.443, Revenue Department, dated 31.05.1993 and also G.O.Ms.No.1550, Rural Development and Local Administration Department, dated 30.05.1961.

7. According to the learned counsel for the petitioners, both the Government Orders do not pave the way of cancellation of 2-C Patta on the ground cited by the first respondent in the impugned order and therefore on the said reasoning, the 2C Patta granted in favour of the petitioners ought not to have been cancelled by the first respondent, therefore, the impugned order has to be interfered with.

8. Per contra, Mr.K.Ravikumar, learned Additional Government Pleader appearing for the official respondents would submit that, the first respondent, in

the order impugned, has traced out the history of the case and after having considered the report submitted by the Revenue Department i.e., the Tahsildar concerned, and also the District Revenue Officer concerned passed the impugned order. The report of the Tahsildar concerned submitted before the first respondent states that, the persons who actually planted the trees and nurtured the trees had not been found out, as there is no proof of evidence to show that, only the petitioners had planted and nurtured the trees.

9. In that circumstances, merely on the basis of the petitioners claim of seeking 2C Patta, whether 2C Patta was granted in favour of them had also been considered by the first respondent. In fact, the two Government Orders which are giving proper guidance and guidelines to act upon in respect of grant of 2C Patta have been taken into account by the first respondent.

10. The learned Additional Government Pleader, in this regard, by producing a copy of the G.O.(Ms).No. 1550 Rural Development and the Local Administration department dated 30.05.1961, has relied upon para 14 of the said G.O which reads thus:-

"14. Vested Public Land:- Some categories of poramboke lands including cattle-stands, cart-stands, burning and burial grounds topes unreserved forest vest in the

panchayat under the provisions of the Madras Panchayats Act, 1958. In respect of trees standing on all such lands vested, the entire rights of Government will stand transferred to the Panchayat of the Village concerned. The Panchayat will be entitled to the exploitation of the usufructs of trees standing on such porambores. The Panchayat will also be entitled to the withered and wind fallen trees on these lands. The Panchayat will conduct auction for the sale of the usufructs as well as for the sale of withered trees and will be entitled to credit the proceeds of such sale to its own funds."

He has also relied upon para 25 of the said G.O which reads thus:-

"25. In respect of trees transferred to the Panchayats in accordance with this order the Panchayats shall have the power to lease out the usufruct and effect sale by auction of withered and wind-fallen trees. Such lease or auction will have to be done with the approval of the Panchayat and shall not be done by the Panchayat president acting solely in his capacity as executive authority of the Panchayat. All lease, auctions, sales etc., will have to be confirmed by a legal resolution of the Panchayats."

11. By relying upon both these two paragraphs of the said Government Orders, the learned Additional Government Pleader would argue that, since the

trees standing in the poramboke lands, as has been mentioned in the Panchayat limit, shall automatically stand vest with the concerned Panchayat and in this regard the Panchayat alone would be entitled to exploit the usufruct of the trees standing on such poramboke. When there is a Government Order, which has been given clear indication that the trees standing in poramboke land which is vested with the panchayat are governed by the said Panchayat concerned and usufruct trees would be exploited only by Panchayat and not by any one, the Tahsildar concerned should not have issued patta in favour of the petitioners. Though the same was properly appreciated by the Revenue Divisional Officer concerned, however the District Revenue officer concerned, has altered the possession which require interference of the first respondent, who by considering these aspects in proper perspective, has passed the impugned order, strictly in accordance with the Government Order in this regard. Therefore, the impugned order does not require any interference from this court.

12.I have considered the rival submissions made by the learned counsel for both sides.

13.The fact remains that, there are 20 number of tamarind trees standing in the tank bed of Periyapappankulam tank and according to the Revenue authority, the tank was under the control of the Panchayat Union. It is also to be

noted that, the concerned Panchayat Village namely Melavalavu, had passed two resolutions one is on 22.11.1995, under which they sought for permission from the Revenue Department that the trees in question have to be permitted for public auction by the Panchayat. However, the very same Panchayat by a further resolution dated 05.12.1995 had stated that the trees in question can be given 2-C Patta in favour of the petitioners as they sought for.

14. In fact, this contrary stand taken by the Panchayat has been noted and mentioned by the first respondent in the impugned order. As has been pointed out by both sides, the main reason for rejection of the claim of the petitioners for grant of 2-C Patta by the first respondent through the impugned order is, on the basis of two G.O. namely G.O.Ms.No.443, Revenue Department dated 31.05.1993 and G.O.MS.No.1550, Rural Development and Local Administration Dated 30.05.1961.

15. Insofar as, G.O.Ms.No.443, is concerned, it is the claim of the first respondent that, it gives guidelines that if at all the Panchayat decides for grant of 2-C Patta, it can only make the said recommendation for grant of 2-C Patta to the individuals and in this regard the individual names cannot be mentioned or identified by the concerned Panchayat. Insofar as the said directive in G.O.Ms.No.443 is concerned, we have no clarity that if the Panchayat has made

a request to give 2-C Patta in favour of certain individuals, the same shall not be binding on the Revenue Department, they can independently pass orders for grant of 2-C Patta.

16. However, insofar as the directives/guidelines issued in G.O.Ms.No.1550 is concerned, since it has been heavily relied upon by the first respondent to come a conclusion, to reject the claim of the petitioners, insofar as the right of holding the exploitation of usufruct of trees standing in Government Poramboke land in the Panchayat limit is concerned the said aspect can be gone in to. Paragraph 14 and 25 of the said G.O.Ms.No.1550, speaks about this issue. The language used in Paragraph 14 of the G.O is very clear to state that, certain poramboke lands such as cattle-stands, cart-stands, burning and burial grounds topes unreserved forest would be vested with the Panchayat under the provisions of the Madras Panchayat Act, 1958. It is further made clear that in the said paragraph no. 14 of the said G.O that the trees standing in such lands vested with the Panchayat, the entire rights of the Government will stand transferred to the Panchayat of the village concerned and the Panchayat will be entitled for the exploitation of the usufruct of the trees standing in such poramboke.

17.From the reading of the above said Government Order, it became clear that, the trees standing in such poramboke lands mentioned in paragraph 14, it is definitely the Panchayat concerned will have to exploit the usufruct of the trees.

18.In the case on hand, it seems that, 20 tamarind trees are standing in a tank bed of Periyapapankulam Kanmai, and it is further stated in the impugned order itself that, the said Kanmai is under the control of the Panchayat Union. Therefore there is no clarity in this regard as to whether the bed of Periya Pappankulam Kanmai, vested with the concerned Village Panchayat namely Melavalavu Panchayat or still under the control of the Panchayat union concerned. If that being the position, unless such position is clarified that, land where the trees are standing, which are in question in this writ petition, are belonged to Panchayat, by virtue of the aforesaid G.O(Ms).No.1550, especially in the context of paragraph 14 of the said G.O., a conclusive decision cannot be arrived it, as to the right to have 2-C patta by any individual claiming under the Board Standing Order No.18(2) (C).

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19.Therefore this Court is of the view that, the order passed by the first respondent mainly on the ground that the directives issued under G.O.MS.No.1550, were not followed, without ascertaining whether the land,

where the trees are standing, belongs to the Panchayat by virtue of the said G.O. especially under Paragraph 14, cannot be sustained.

20. Therefore this court is of the further view that, the matter can be very well remitted back to the third respondent Revenue Divisional Officer for fresh consideration.

21. In the result, the impugned order is quashed, and the matter is remitted back to the third respondent i.e., the Revenue Divisional Officer who shall hear the concerned parties i.e., the petitioners, counter petitioners including the sixth respondent and the fourth respondent Tahsildar and also the representative of the Panchayat of Melavalavu as well as the concerned Panchayat Union and after ascertaining as to whether the land where the trees in question are standing already been vested with the Panchayat and if so, the decision as indicated under G.O.Ms.No.1550 Rural Development and Local Administration dated 30.05.1961 can be taken. Otherwise the third respondent shall be at liberty to take a decision on the basis of Board Standing Order 18(2)(c) .At any rate the aforementioned action has to be completed within a period of three months from the date of receipt of copy of this order.

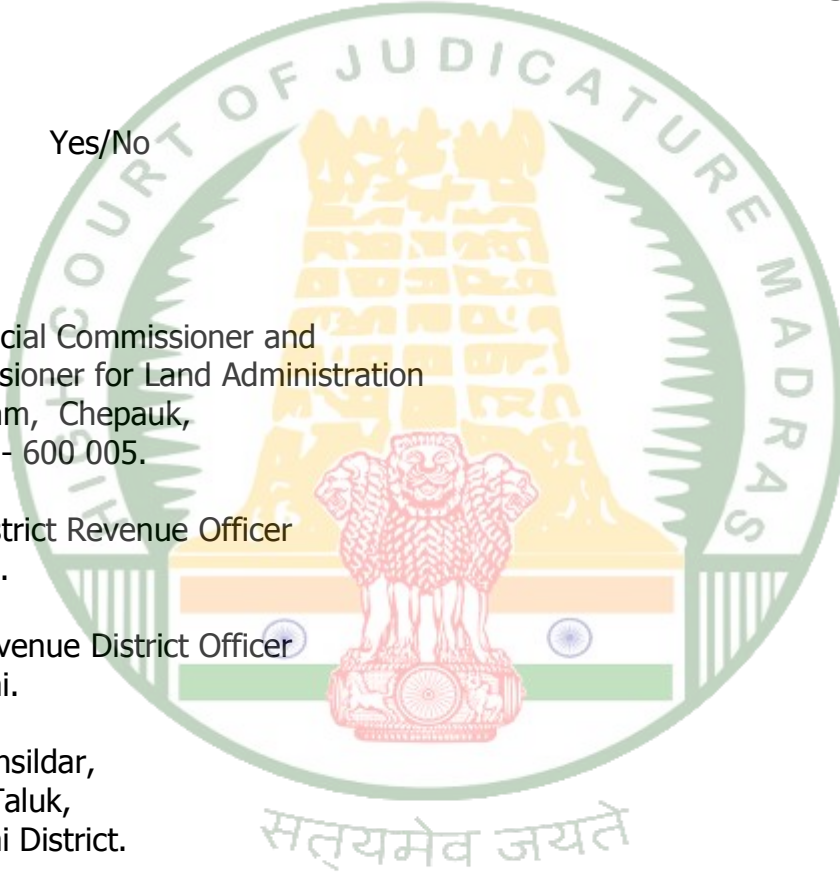
22. With the above directions, the Writ Petitions are disposed of. No costs.

30.08.2018

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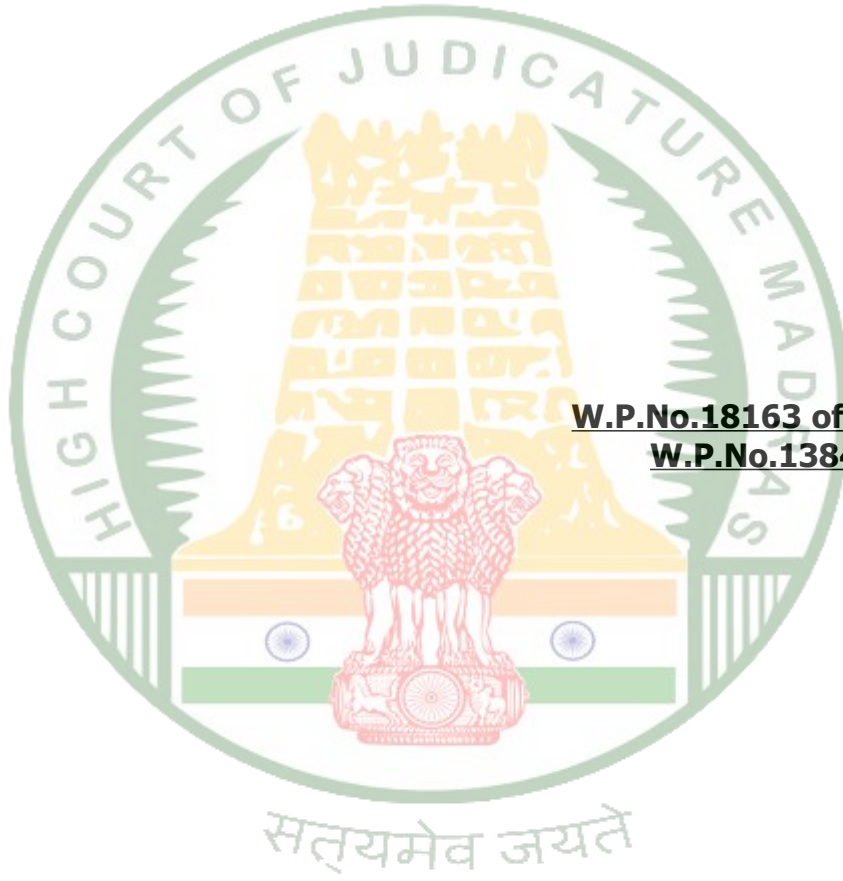
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R.SURESH KUMAR, J.

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