IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 01.08.2019

Reserved On: 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22384 of 2007

1.A.Punniakodi

2.P.Ramadoss

3.S.Subramani

4.R.Manoharan

5.P.Nagesh

6.M.Devendran

(Petitioners 1 to 6 are rep. by their
Power of Attorney agent
P.K.O.Habeeb) ... Petitioners

Vs.

1.The Special Commissioner &
Commissioner of Land Administration,
Chepauk, Chennai – 5.

2.The District Revenue Officer,
Collectorate Office,
32, Rajaji Salai,
Chennai – 1.

3.The Kalakshethra Foundation,
rep. by its Director,
Thiruvanmiyur,
Chennai – 41.

4.Kasnavi

5.Muthu Mohammed

6.Nasi Banu

7.Yasmin Begum

8.J.Ashrab Ali

9.Habiba Beevi

(Respondents 4 to 9 are not the contesting respondents
and no relief is sought against them.
Hence, they are given up and no
notice to R4 to R9 is necessary) ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent herein in D.Dis.No.K4/14850/06 and quash the order therein dated 15.03.2007.

For Petitioners : Mr.T.R.Rajagopal
Senior Counsel
for Mr.T.Susindran

For Respondents : Mr.S.R.Rajagopal
Additional Advocate General
Assisted by
Mr.J.Ramesh for R1 & R2
Additional Government Pleader
Mr.Raghunathan for R3

O R D E R

The petitioner has filed this petition seeking issuance of Writ of

Certiorari to call for the records of the first respondent herein in D.Dis. No.K4/14850/06 and quash the order therein dated 15.03.2007.

2.The sum and substance of the petitioners' case is as follows:

The petitioners herein are represented by their Power of Attorney Agent P.K.O.Habeeb. The case of the petitioners is that 1.5 acres of dry land situated in R.S.No.170/1B located at No.140, Thiruvanmiyur Village, Saidapet Taluk, Chenglepet District was enjoyed by the petitioners herein for a long time as their own property. The total extent of old S.No.170/1 of Thiruvanmiyur Village was 4 acres and 26 cents. During 1976-77, there was a sub-division effected to S.No.170/1 and the same was sub-divided as S.No.170/1A and S.No.170/1B. Survey No.170/1A measuring an extent of 2 acres and 76 cents belongs to third respondent herein. Survey No.170/1B measuring an extent of 1 acre and 50 cents belonging to the petitioners herein. Patta for the said property was also conferred by Revenue authorities in favour of the petitioners herein as early as in the year 1978 itself vide Patta No.176 and stand in their names. In the year 2006, the petitioner executed a Sale Deed in favour of one Jalaludeen to an extent of 3025 sq.ft. Like wise, certain other persons have also purchased some portions of land. In order to prevent the trespassers from encroaching the petitioners' patta land, the petitioners and the other joint owners have erected a pucca compound wall to the height of 7 feet for the entire extent of 1.50 acres.

3.In the year 1997, at the instigation of the third respondent, the District Collector, Chennai, along with Police Official and also the Chennai Corporation Authorities came to the above said property and tried to demolish the compound wall. However, some portion of the compound wall was demolished. As against the said Act, one of the purchaser namely Jalaludeen, filed W.P.No.9989 of 1997, before this Court seeking for Mandamus, forbearing the Collectror of Chennai, the Tahsildar, Mylapore from interfering with the peaceful possession and enjoyment of the property situated in Old S.No.170/1B. Subsequently, the Tahsildar, Mylapore Triplicane Taluk, Chennai has issued a certificate dated 30.10.1998 identifying that an extent of 1.29.82.5 hectares in T.S.No.285(corresponding to S.NO.170/1A) belonging to the third respondent, who are in occupation of the land in T.S.No.295(corresponding to S.No.170/1B).

4.The above said writ petition was disposed of by observing that the disputed land is not a poromboku land. The members of the said association are deemed to have been the owners of the said land. The character of the land has been decided in the earlier W.P.No.14288 of 1992, if there is any further dispute with regard to the title over the property is in existence between the petitioner herein and the Kalakshethra Foundation, it is open to the parties to approach the Civil court to establish their title. The said order has become final and hence, both the petitioners and the third respondent are bound by the said order.

5.Subsequently, in order to find the identification of the property, a writ petition was filed in W.P.No.15342 of 1999, before this Court and the third respondent has also filed W.P.Nos.8161 & 8162 of 2002, seeking for a direction to remove the encroachments. However, no order was passed in favour of the petitioners, against which the third respondent has preferred an appeal in W.A.No.1676 of 2002 before Division Bench of this Court. Though, the said Jalaludeen, was shown as one of the respondent in that writ appeal, the Division Bench of this Court by its order dated 11.06.2002 issued a direction to the second respondent that on collection of the proper charges payable thereto, shall get the land surveyed through the Deputy Inspector of Survey by issuing notice to the appellant and also the neighbours, based upon which, peg stones can be fixed on the land so demarcated as belonging to the appellant therein and also the appellant therein will be entitled to protect this property either by constructing the compound wall or fixing up a fence.

6.Though the said order was passed on 11.06.2002, the petitioners were not received any order from the Tahsildar. Subsequently, the third respondent appointed an Estate Officer, who had issued an eviction notice under Section 4(1) of the Public Premises(Eviction of unauthorized occupants) Act 1971, in order to evict the petitioners in the disputed land against which the petitioners and the said Jalaludeen have filed W.P.No.40948 of 2005 before this Court. This Court, while entertaining the said writ petition, granted an order of interim stay as against the third respondent . Aggrieved by the said order, the third respondent filed W.A.No.754 of 2006 before this Court and the same is pending. While being so, the third respondent is unable to succeed on legal aspects with the sole intention to defeat the valuable rights of the petitioners belatedly approached the second respondent for the cancellation of patta issued to the petitioners in T.S.No.295. The second respondent after entertaining belated application, issued notice to the petitioner for enquiry. The petitioners appeared through their counsel and filed their preliminary objections.

7.In the preliminary objections, the petitioners have specifically stated that the nature of enquiry was not made known to the petitioners and at any rate the proceeding itself is barred by limitation. However, without considering the objections, the second respondent hastily concluded the enquiry without providing sufficient opportunity to the petitioners, cancelled the patta issued to the petitioners vide order dated 04.04.2006. Challenging the said order, the the petitioners have filed revision petition before the first respondent. After hearing both the parties, the first respondent by order dated 15.03.2007, confirmed the order passed by the second respondent, against which, the present writ petition has been filed.

8.In the light of the above factual matrix, I have heard the learned Senior Counsel appearing for the petitioners, the learned

Additional Advocate General appearing for the respondents 1 and 2 and the learned counsel for the third respondent.

9.Mr.T.R.Rajagopal, learned Senior Counsel appearing for the petitioners would submit that admittedly the Deputy Zonal Tahsildar, Mylapore, granted patta. Based on the said patta, the petitioners are in possession to the extent of 1.50 acres. However, without authority the third respondent continuously disturbing the possession of the petitioners. One Jalaludeen, who is one of the subsequent purchaser filed W.P.No.9989 of 1997, before this Court seeking for Mandamus, forbearing the Collectror of Chennai, the Tahsildar, Mylapore from interfering with the peaceful possession and enjoyment of the property situated in Old S.No.170/1B of Thiruvanmiyur Village.

10.This Court, after hearing the Kalakshetra Foundation/ the third respondent herein in W.M.P.Nos.20280 of 1992 & 21501 of 1996 in W.P.No.14288 of 1992, vide order dated 27.03.1997 had appointed an Advocate Commissioner and the Advocate Commissioner submitted his report after verification of all the revenue records to the effect that the said land is not the poromboke land. It is further absorbed that the disputed land is not the poromboke land, though the character of the land has been decided in the earlier writ petitions if any further dispute with regard to the title over the property is in existence between the petitioners and the third respondent, it is open to the parties to approach the civil court to establish their title. However, till date, the third respondent did not file any suit for claiming title over the property and taken of novel method to defeat the rights of the petitioner.

11.Though, the third respondent is unable to succeed the legal proceedings initiated against the petitioners as well as the other purchasers and finally filed a petition before the second respondent, the second respondent though did not have power to entertain the cancellation of patta, however, he entertained the petition and without giving any opportunity hastily decided the issue against the petitioner, which is unsustainable one as per Patta Pass Book Act 1983. As against the order of the original authority namely the Tahsildar, the appeal remedy is available before RDO and thereafter, before the DRO. Further, the second respondent decided the title in between the parties, which is impermissible one. The second respondent has no authority to decide the title. However, in the present case, the second respondent decided the title in favour of the third respondent and the first respondent has also without applying his mind mechanically confirmed the order of the second respondent.

12.The learned Senior Counsel appearing for the petitioner vehemently referred various provisions and argued that without any appeal, no revisional Authority can usurp the power of the Tahsildar. When there is appeal provision available before the Revenue Divisional Officer, the impugned order is without jurisdiction. This Court is well aware of the facts and this Court also perused the decisions referred to by the learned Senior Counsel appearing for the petitioners.

13.In support of his contentions, the learned Senior Counsel for the petitioners relied upon the following decisions:

(i) The decision of this Court reported in ***2011 (5) CTC 94 (Vishwas Footwear Company Limited Vs. The District Collector, Kancheepuram)***, the relevant portion of which reads as follows:

> ***"20.It is the specific case of the appellant herein that the property was initially registered in the name of one Ramanathan and others, who were***

granted Patta No.243 in the year 1963. Thereafter, the property was conveyed to one Palani and he was issued with the Patta No.707. The said Palani conveyed 80 cents of land in Survey No.93/3 to one Shoba Ramalingam in the year 1981, who was issued with the Patta No.459. The appellant company acquired 51 cents of land in Survey No.93/3 from the said Shoba Ramalingam by a registered sale deed in the year 1992 and was issued with the Patta No.1515. As far as the other land in Survey No.93/4A is concerned, the land was originally owned by Shoba Ramalingam having purchased from one Annamalai Chettiar in the year 1981 by a registered sale deed and she has been issued with the Patta No.459. The appellant company acquired 57 cents from the said Shoba Ramalingam by a registered sale deed of the year 1992 and has been issued with the Patta No.1515. It is the specific case of the appellant that a portion of the land to an extent of 0.163 square metres in Survey No.93/4 was acquired by the Highways Department and they were paid compensation. It is their further case that right from the date of

purchase, they are in possession of the land. On the other hand, it is the case of the fourth respondent, E.Kumar that he submitted a petition dated 21.2.2005 requesting the grant of patta in Survey No.93/3 to an extent of 1.32 acres in favour of Alamelu Ammal from whom he has got power of attorney for the said property. He claimed that the said Alamelu Ammal was the owner of the property. The Revenue Divisional Officer, having gone into the rival claims, ultimately decided that the land belongs to Alamelu Ammal and on that ground the power of attorney holder was entitled to seek for cancellation of patta given in favour of the appellant company and consequently, directed the registration of patta in favour of the said Alamelu Ammal. In the impugned proceedings dated 16.7.2005, for the purpose of cancelling the patta granted in favour of the appellant, the Revenue Divisional Officer, having gone into the rival contentions, found that Thiru Palani Achari, S/o Kanniappa Achari had mistakenly sold the land to Tmt.Shoba

Ramalingam registered in Document No.743 of 1981. By this finding, he has gone into the genuineness of the sale effected in the year 1981 in the proceedings under section 12 of the Act after a lapse of nearly 24 years. In our opinion, the dispute being one of civil nature, the title of either the appellant company or the said Alamelu Ammal cannot be gone into by the Revenue Divisional Officer. The Revenue Divisional Officer having gone into such title has not only decided to cancel the patta in favour of the appellant company, but also directed the registration of patta in favour of Alamelu Ammal. Both the above acts are without jurisdiction. In the event the act of the Revenue Divisional Officer is without jurisdiction, the writ petition is maintainable. Accordingly, the contention of Mr.P.Wilson that the writ petition itself is not maintainable cannot be accepted.

21.In the light of the judgments in Kuppuswami Nainars case and Chockkappans case, the person who has applied to the Revenue Divisional Officer

for cancellation of patta should be directed to approach the civil Court to establish the title and for seeking the grant of patta after cancelling the patta granted in favour of the appellant company. On this ground, the appellant is entitled to succeed. Accordingly, the order of the learned single Judge is set aside. The order impugned in the writ petition is set aside and the patta granted in favour of the appellant company is restored. However, we make it clear that this order shall not stand in the way of the said Alamelu Ammal to approach the civil Court to establish the title and to consequently seek for cancellation of patta granted in favour of the appellant company and for further direction for grant of patta in favour of the said Alamelu Ammal. With these observations and directions, the writ appeal is allowed. No costs."

(ii) The decision of this Court reported in ***2011 (5) CTC 241 (C.Sabesan Chettiar (Deceased) and Others Vs. The District Revenue Officer, Coimbatore District, Coimbatore and others)***, the relevant portion of which reads as follows:

> ***"27.The Fourth Respondent/Writ Petitioner projected his objections and also took a plea that the issue before the First Respondent / District Revenue Officer related to title and therefore he had no jurisdiction to decide the same. After the purchase made by the Fourth Respondent/Writ Petitioner on 07.02.1975, he had dealt with the lands as his own and a portion of the land was also acquired for the purpose of run-way for Coimbatore Airport and he had also received the compensation amount. He also formed a lay-out in respect of the remaining extent of land after acquisition and secured approval from the Directorate of Town and Country Planning. It is not in dispute that he gifted some portion of the lands towards Open Area Reservation and the Local Body viz., Kalapatti Town Panchayat also accepted the same. A perusal of the judgment in O.S.No.287/1966 reveals that the Fourth Respondent/Writ Petitioner's predecessors in title were in possession and enjoyment of the property and thereafter, he was in possession and***

enjoyment of the same, right from the date of purchase viz., 07.02.1975.

29.As per Section 4 of the Tamil Nadu Patta Pass-Book Act, 1986 (4 of (1986), the entries in the Patta Pass-book and the certified copies of entries in the Patta Pass-book shall be presumed to be true and correct, until the contrary is proved or a new entry is lawfully substituted therefor. As a matter of fact, Section 6 of the Act envisages that the entries in the Patta Pass-book issued by the Tahsildar as per Section 3 shall be prima facie evidence of title of the person, in whose name the Patta Pass-book has been issued to the parcels of land entered in the Patta Pass-book, free of any prior encumbrance, unless otherwise specified therein. However, the Patta Pass-book being a prima facie evidence is a rebuttable presumption in law, as opined by this Court.

30.From a reading of Rule 4(4) of the Tamil Nadu Patta Pass Book Rules, it is clear that if the Tahsildar is satisfied that a dispute concerning ownership of

patta is already pending in a Court or issues are raised before him which impinge on personal laws or laws of succession and all the parties interested do not agree on the ownership in writing, he shall direct the concerned parties to obtain a ruling on ownership from a competent Civil Court having jurisdiction before changing the entries already recorded and existing in the various Revenue Records. The Learned Single Judge, in paragraph No.19 of the order, had specifically held that in terms of Sub-Rule (4) of Rule 4, the First Respondent / District Revenue Officer ought to have directed the parties to go before the competent Civil Forum for adjudication of dispute with regard to the ownership, as the Fourth Respondent/Writ Petitioner and the Deceased Appellant / Fourth Respondent disputes the version projected by each one of them.

36.On a careful consideration of the factual position presented in the instant case and in the light of the qualitative and quantitative discussions mentioned supra, we have no hesitation to hold that the

dispute between the parties relates to title of the lands measuring an extent of 7.18 acres in S.F.Nos.547 and 548, Kalapatti Village, Coimbatore District and the proper forum for the parties to agitate and ventilate their grievances in respect of their title to the said property is only before the competent Civil Forum. As such, we come to an inevitable conclusion that the Learned Single Judge had rightly held that it is open to the Fourth Respondent/Writ Petitioner and the Deceased Appellant/Fourth Respondent to work out their remedies before the competent Civil Forum in accordance with law. We are also of the considered view that the dispute between the Fourth Respondent/Writ Petitioner and the Deceased Appellant/Fourth Respondent is one of both mixed question of fact and law, which needs to be gone into in detail by means of adducing oral and documentary evidence by examining witnesses as the case may be and the only course open to the parties is to approach the competent Civil Court."

(iii) The un-reported decision of this Court in dated ***02.04.2012*** made in ***W.P.No.22782 of 2011 (Mary Saroja Vs. The District Collector, Chennai and others)***, the relevant portion of which reads as follows:

> ***"10.It is not disclosed as to why the predecessor of the petitioner did not challenge the transaction, which was said to be based on forged documents, by filing the Civil Suit. Instead of taking remedy in accordance with law and prosecuting the Criminal proceedings, the predecessor in interest of the property could not have filed representation to the District Collector for issuing of patta, when the District Collector has not authority under the Act to issue patta.***
>
> ***13.It is not understood how the matter could be referred to the District Revenue Officer, as the competent authority to deal with patta was only Tahsildar. The order of the Tahsildar passed as quasi Judicial authority is further subject to statutory appeal and revision under the Act.***

> ***14.The case of the petitioner is that now the report has been received showing that the patta stands cancelled.***
>
> ***15.The order of cancellation is prima facie without jurisdiction, as the District Revenue Officer had no jurisdiction to set aside quasi judicial order as the matter was required to be taken in exercise of quasi judicial proceeding under the statute in accordance with law, so that the aggrieved party could avail his statutory remedy in accordance with law."***

14.The learned Additional Advocate General by referring to the counter affidavit filed by the respondents 1 and 2 submitted that the writ petition is not maintainable either in law or in facts. He would further submit that the property in S.No.170/1 of Thiruvanmuyur Village as per the Village 'A' Register maintained in respect of Thiruvanmiyur Village totally measuring an extent of 4.26 acres and classified as Ryotwari Punjai with an assessment of 2.13 and as per

Adangal Register which belongs to 1078, Kalakshetra, and the said field was subdivided as follows:

Survey No.	***Extent***	***Assessment***	***Patta No./Party Name.***
170/1	2.91	1.46	1078 Kalashetra
170/6	0.12	0.12	1122 T.K.Shanmugam
170/7	1.23	0.62	2157 Minor Parvathy Guardian Srinivasan Minor Muthukumarasamy Guardian Vedhanayagam

Therefore, the contention of the petitioners is that the property was subdivided as 170/1B with an extent of 1.50 acres is a false statement which deserves no consideration.

15.The learned Additional Advocate General would further submit that there is no documentary evidence to show that the petitioners are the owners of the property as claimed by them and would further submit that the petitioners are the unauthorised encroachers of the property which would not give them any legal right to claim ownership. He would further submit that when the petitioners themselves are not the owners of the property, their claim that they have sold some portion of their property to one Jalaludeen would not confer any title to the property which is said to have been conveyed.

16.One hand, the petitioners claim title through the patta granted by the Headquarters Deputy Tahsildar on 07.07.1978. However, Jeevaratnam Nagar Fishermen Association filed W.P.No.14288 of 1992 before this Court as if S.No.170 of Thiruvanmiyur Village is a natham poromboke land and since it is adjacent to sea, they put up huts and are living there without any hindrance to anybody. This Court by its order dated 27.03.1997, appointed Advocate Commissioner in order to ascertain the factual details. The learned Advocate Commissioner filed his report on 02.04.1997. On perusal of the revenue records and after examining the members of the Association including the third respondent, the learned Advocate Commissioner arrived at a conclusion that 4.26 acres vest with Kalakshethra and patta was issued in favour of Kalakshethra and the land is not a poromboke land. Hence, the said writ petition was dismissed on 15.04.1997.

17.However, on perusal of the patta which was referred to by the petitioners contain only the following names: P.Ramadas, A.Punniyakodi, S.Subramani, R.Manoharan, P.Nagesh and M.Devendran/ the petitioners herein.

18.Thereafter, a member of the Fishermen Association executed sale deed in favour of one Jalaludeen in the year 1996. Even the said Jalaludeen claim only 3.025 sq.ft. of the land in R.S.No.170/1B and he filed writ petition in W.P.No.9989 of 1997 before this Court seeking Writ of Mandamus forbearing the respondents therein from interfering with his peaceful possession and enjoyment of the property at No.140, Tiruvanmiyur Village, Saidapet Taluk, Chinglepet District, comprised in R.S.No.170/1B, Patta No.176 measuring an extent of 3,025 sq.ft. or together with the thatched hut and the compound wall. This Court vide order dated 10.11.1998 disposed of the said writ petition directing the parties to approach the Civil Court.

19.Once the patta itself is not genuine, the alleged pattadharar has no right to convey the property to some third parties. In the present case, the petitioners are encroachers who encroached the property based on the forged patta as if it was granted in the year 1978. Merely, the petitioners encroached upon the land would not get any title over the same as the patta issued by the Tahsildar was found erroneous. The District Revenue Officer after conducting enquiry and passed order which is valid one. Infact as per Section 13 of the Patta

Passbook Act and as per BSO 31 of the Revenue Standing Orders, the District Revenue Officer has power to decide the issue which is perfectly valid and the same is in consonance with Section 13 of the Patta Passbook Act and BSO 31 of the Revenue Standing Orders.

20.The learned counsel appearing for the third respondent by referring to the counter affidavit filed by the third respondent submitted that two statutory Authorities namely, the Special Commissioner and the District Revenue Officer have factually held that the issuance of patta to the petitioners by the Tahsildar concerned was fraudulent and illegal and therefore had revoked the patta granted to the petitioners. He further submitted that the petitioners have played fraud on the third respondent and stealthily procured the sub division of patta in respect of the land belonging to the third respondent without any notice to them.

21.The learned counsel appearing for the third respondent would further submit that earlier an Association called Jeevaratnam Nagar Fishermen Association, wherein, the petitioners herein were either office bearers or members had filed W.P.No.14288 of 1992 before this

Court and in the said writ petition, this Court appointed an Advocate Commissioner in order to find out whether the members of the Association are in occupation of any portion of the land and also to verify and report as to whether the occupation by the members of the Association relates to which survey number and with whom the survey number vest and that the Commissioner should inspect the property after notice of service to both sides and to submit a report.

22.The learned counsel appearing for the third respondent would further submit that the Advocate Commissioner on perusal of the revenue records and after examining the members of the Association including the third respondent, the Advocate Commissioner arrived at a conclusion that 4.26 acres in S.No.170/1 vest with Kalakshethra and patta was issued in favour of Kalakshethra and that the land is not a poromboke land. Accordingly, the said writ petition was dismissed on 15.04.1997 on the ground that the land in which they are in occupation is a poromboke land, however, the said land is not a poromboke land.

23.In support of his contentions, the learned counsel appearing for the third respondent relied upon the decision of this Court reported in ***(2008) 7 MLJ 305 (S.Parvathi Vs. Muthukumar and another)***, the relevant portion of which reads as follows:

> ***"11. The scope of interference of this Court with the proceedings at the stage of enquiry is very limited. There are a catena of decisions, restricting the power of this Court to interfere in the matters at the stage of enquiry proceedings. The only question which remains for consideration is, whether the District Revenue Officer is competent to issue the impugned notices ?***
>
> ***13. It transpires that the Tahsildar has ordered sub-division of the subject property and issued patta in favour of the petitioners and against the granting of patta, the third respondent filed a petition to cancel the same. Since the Tahsildar has ordered sub-division of the subject property, he is not competent to deal with the appeal/revision filed by the third respondent. Revenue Standing Order 31 contemplates the rules for transfer of registry of holdings and the vesting of***

powers with Tahsildar, Revenue Divisional Officer and District Revenue Officer. In addition, under Standing Order 31 (8), against the orders of the Tahsildar, the affected person may file an appeal to the Revenue Divisional Officer or the Collector. Since there is no Revenue Divisional Officer in Chennai District Revenue Unit, the District Revenue Officer is the appellate authority to receive the appeal from the affected person. Therefore, the District Revenue Officer has issued the summons of enquiry to the petitioners. Under the circumstances, the contention of the petitioners that the District Revenue Officer is not competent to proceed with the enquiry is not in consonance with the rules made under the Revenue Standing Orders."

24.I have considered the rival submission made by the learned counsel on either side and perused the records and also given due consideration.

25.On a perusal of the entire records, it is seen that S.No.170/1 measuring 5.05 acres was registered as patta in the name of one

Somasundaram Chetti. One Thiruganam who is the brother of one K.K.Shanmugam filed a petition before the Special Assistant Settlement Officer, Chingleput claiming patta for a portion of S.No.170/1. His claim was rejected by the Special Assistant Settlement Officer, Chingleput on 15.02.1963. Thereafter, the aggrieved parties filed revision petition claiming patta for S.No.170/1 and their claim was also rejected by the Special Assistant Settlement Officer, Chingleput. In th same order, the Special Assistant Settlement Officer has allowed patta for S.No.170/5 pro (4.69 acres) in the name of the Joint Director, Kalakshetra and treated S.No.170/1 as burial ground poramboke.

26.There were several litigations inbetween them. Finally the matter was remanded back to the Assistant Settlement Officer, Chingleput. The Assistant Settlement Officer, Chingleput, by his order dated 09.04.1975 held as under:

S.No.	***Extent A.C.***	***Nature of Order***
		Ryotwari patta allowed u/s 11(a) of the Act XXVI of 1948 in favour of:
170/1pt. -6pro.	2.91 === 0.12	The Kalakshetra, Thiruvanmiyur, Thiru.T.K.Shanmugam, 14, Anna Street, Thiruvanmiyur.

S.No.	Extent A.C.	Nature of Order
-7pro	1.23 === 4.26	Minor Parvathy ..... (1) by Guardian Thiru G.Srinivasan Minor Muthukumarasamy ..... (2) by Guardian M.Vallinayagam Madras-28.
170/2pt. -8pro	0.61 === 0.14 === 0.75	Tmt.Padmini Chandrasekaran, Gandhi Nagar. Minor Parvathy ..... (1) by Guardian Thiru G.Srinivasan Minor Muthukumarasamy ..... (2) by Guardian M.Vallinayagam Madras – 28.

On perusal of the above order discloses that the land is a ryotwari land and patta was granted in favour of the aforementioned persons. Thereafter, it appears that the petitioners were granted patta by the Deputy Tahsildar.

27.On perusal of the records it is seen that the petitioners allegedly claim possessory rights through patta granted in favour of them on 07.07.1978. On a perusal of the above said patta reveals that patta was granted by the Deputy Tahsildar in favour of five persons namely, P.Ramadas, A.Punniyakodi, S.Subramani, R.Manoharan, P.Nagesh and M.Devendran.

28.The petitioners obtained a Certificate dated 30.10.1998 from the Tahsildar, Mylapore – Triplicane Taluk. On perusal of the said Certificate, it is known that S.No.170/1 of Thiruvanmiyur Village was sub-divided into two parts and assigned two separate Town Survey Numbers and they stand registered in the T.S.L.R. as follows:

1.Village: 140, Thiruvanmiyur – Block No.55
Old S.No.170/1 part, 167 part and 168 part
New T.S.No.285, 1.29.82.5 Hectares
classified as Ryotwari,
Adangal: 1118 and assigned in favour of Kalakshetra

2.Village: 140, Thiruvanmiyur – Block No.55
Old S.No.170/1 part,
New T.S.No.295, 0.52.87.5 Hectares
classified as Ryotwari,
Patta No.176 and assigned in favour of five persons, namely, Ramadoss, Punniakoty, Subramani, Manoharan, Nagesh and Devendran/ the petitioners herein.

However, the Tahsildar has not mentioned the adangal number and has mentioned only the patta number in New T.S.No.295.

29.Further, the petitioners, apart from the above, inorder to prove their title, relied upon the order of this Court dated 10.11.1998 made in W.P.No.9989 of 1997 filed by one Jalaludeen, which reveals that the said Jalaludeen is the owner of the property at No.140. Tiruvanmiyur Village, Saidapet Taluk, Chinglepet District, comprised in R.S.No.170/1B, Patta No.176 measuring an extent of 3,025 sq.ft. and that he has purchased the same vide sale deed dated 14.12.1996. In the said writ petition, the petitioner therein had relied upon the Certificate dated 30.10.1998 issued by the Tahsildar, Mylapore – Triplicane Taluk and it has been observed as 'in view of the Certificate, the possession of the parties had been decided. Hence, it is not open to the parties to interfere with the peaceful possession of the other by taking law into their own hands and this Court disposed of the said writ petition directing the parties to approach the Civil Court. Except these, no other documents were produced before this Court by the petitioners to prove their possession.

30.Further, the third respondent herein/ Kalakshetra Foundation had filed a petition for impleading them in W.P.No.9989 of 1997 and in the affidavit filed in support of that petition it is averred that the said Jalaludeen's vendor is one of the member of the Association which filed W.P.No.14288 of 1992 against the Collector of Chennai, The Tahsildar, Mylapore-Triplicane Taluk and others to restrain them from in any manner interfering with their alleged possession of the land situate in S.No.170 of Thiruvanmiyur Village. The averments in the said writ petition were to the effect that since the lands in S.No.170 of Thiruvanmiyur Village were poramboke lands, the members of the said Association had been in possession of the lands for a number of years.

31.Perusal of the order dated 15.04.1997 made in W.P.No.14288 of 1992 discloses that the learned counsel for the petitioner therein had initially sought for adjournment for getting instruction to withdraw the writ petition and thereafter on 15.04.1997 had informed the Court that he could not contact his client. It is further known that in the said writ petition, this Court had appointed an Advocate Commissioner to find out whether the members of the Jeevaratnam Nagar Fishermen Association are in occupation of any portion of the land held by Kalakshetra Foundation and also to verify with respect to the survey numbers of the land. The learned Advocate Commissioner filed his report on 03.04.1997 concluding that the disputed land is not a poromboke land. On that ground the writ petition in W.P.No.14288 of 1992 was dismissed. Thereafter no one pursued the case further.

32.Thereafter, the third respondent/ Kalakshetra Foundation filed application before the District Revenue Officer for cancellation of patta and for restoring the same in their favour. The District Revenue Officer, after issuance of notice to the contesting respondents therein repeatedly adjourned the matter. On 24.03.2006, Kalakshetra Foundation was represented by a counsel and on behalf of the respondents therein son of one P.K.O.Habeeb being their power agent appeared. After hearing the arguments, the District Revenue Officer concluded in favour of the Kalakshetra Foundation, as against which, an appeal was preferred before the first respondent herein and the first respondent herein. The first respondent herein confirmed the order of the District Revenue Officer. Aggrieved by the same present writ petition has been filed.

33.The core issue involved in the present writ petition are as follows:

Whether the District Revenue Officer/ second respondent has power to entertain the application for cancellation of patta directly and whether the order of the second respondent which was confirmed by the first respondent is valid or not? Whether the petitioners have any right or title over the disputed property?

34.In the present case, patta granted by the Deputy Tahsildar on 07.07.1978 in favour of the petitioners herein and the subsequent Certificate dated 30.10.1998 issued by the Tahsildar, Mylapore – Triplicane Taluk are the relevant piece of evidence in the matter of right to determine the issue inbetween the parties.

35.Admittedly, under the Patta Pass Book Act, there is a mechanism available for grant of patta and cancellation of patta. As per the Scheme of the Patta Pass Book Act, the original Authority for grant of patta is Tahsildar and the Appellate Authority is Revenue Divisional Officer. Further the Revenue Divisional Officer also has the revision power.

36.Grant of patta under the Tamil Nadu Patta Pass Book Act is not necessarily a quasi judicial proceedings, but merely an administrative proceedings. Even in such case, the principles of natural justice cannot be dispensed with. Any decision, if it is likely to visit any with adverse condition, that party has to be necessarily issued notice and afforded an opportunity of hearing and the objections raised must be dealt with.

37.Admittedly, in the present case, the third respondent filed an application, for cancellation of patta in favour of the petitioners and to restore the same in favour of the third respondent, before the second respondent. The second respondent conducted enquiry. In the enquiry conducted on 15.03.2006, the third respondent was represented by its Director and their counsel, however, one Rajkumar/ power agent of the respondents therein for whom notice was issued did not turn up for enquiry. It was informed by the Taluk Office that there was no such person by name Rajkumar in the given address and hence, notice could not be served on him. However, the fact remains that Rajkumar was the person who applied to the Tahsildar. Thereafter, the enquiry was adjourned to 24.03.2006 to enable the respondents therein to present their case effectively, as per the principles of natural justice.

38.On 24.03.2006, Kalakshetra Foundation was represented by a counsel. On behalf of the respondents therein son of one P.K.O.Habeeb being their power agent appeared, however, he could not advance any argument effectively and hence prayed for further adjournment. Hence the enquiry was adjourned to 27.03.2006. During the enquiry on 27.03.2006, Kalakshetra Foundation was represented by their counsel and the respondents therein were represented by a counsel and he pleaded that the documents submitted by the Kalakshetra Foundation be furnished to him and also sought for a short adjournment to present his case effectively after perusing the documents. Hence, the enquiry was adjourned to 31.03.2006.

39.On 31.03.2006, the learned counsel for Kalakshetra Foundation appeared, however, the counsel for the respondents therein did not appear. It was pointed out during enquiry that the land under reference lying in Old S.No.170/1 measuring 5.05 acres was originally purchased by the Kalakshetra Foundation lawfully in the year 1960 from one Muruganandam and other and was duly registered and that an order was also passed by the Assistant Settlement Officer, Chengalpattu in the year 1975 duly confirming the right of Kalakshetra

Foundation over the said land in S.No.170/1 for an extent of 2.91 acres. It was also pointed out that the piece of land was included as the property of Kalakshetra in the Schedule appended to Kalakshetra Foundation Act, 1993, passed by the Government of India.

40.After hearing the argument of the counsel who appeared for Kalakshetra Foundation and after perusing the documents furnished by them i.e., sale deed, order of the Assistant Settlement Officer, Chengalpattu passed in the year 1975, The Kalakshetra Foundation Act, 1993 published in the Gazette, report of the Advocate Commissioner appointed by this Court in 1997, certificate issued by the Tahsildar, Mylapore – Triplicane Taluk, 1998, orders passed by this Court during the years 1998 and 1999, sale deed dated 10.03.1997, sale deed executed by one Rukmani Devi Arundale and the notice under Section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, issued by the Estate Officer of Kalakshetra Foundation, the second respondent arrived at a conclusion that the disputed land belongs to the Kalakshetra Foundation.

41.Further, the second respondent in his order has observed that the general power of attorney executed by Ramadoss and others in favour of one Rajkumar, the order of this Court made in W.P.No.9989 of 1997, certificate indicating the possession of the respondents in the land under reference issued by the Tahsildar, Mylapore – Triplicane Taluk were enclosed, however, the originals are not available and only the xerox copies are available. Hence, this Court has no hesitation to arrive at a conclusion that the order passed by the second respondent is valid and principles of natural justice was followed and sufficient opportunity was given to the petitioners.

42.Further, the third respondent has produced documents before the second respondent to prove their title over the property, however, the petitioners have not produced any document either before the second respondent or before the Appellate Authority or before this Court to prove their title over the property either by way of title or by way of possession and this Court repeatedly asked the learned counsel for the petitioners on record to produce the records to show on what basis regular patta was granted in favour of the petitioners in the year 1978 and how they secured certificate from the Tahsildar in the year 1998. However, the learned counsel for the petitioners on record expressed his inability to secure the records from the petitioners inorder to substantiate the claim of the petitioners.

43.The next issue involved in the present case is whether the second respondent has the power to entertain application for cancellation of patta?

44.For better appreciation, Section 13 of the Tamil Nadu Patta Pass Book Act, 1983 and BSO 31 (8) of the Standing Orders of the Board of Revenue are extracted hereunder:

> ***"13.Revision.- Any officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government, by notification in this behalf for such area as may be specified in the notification, may of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit:***
>
> ***Provided that no such order prejudicial to any person shall be made***

unless he has been given a reasonable opportunity of making his representation."

"BSO 31.Rules for the Transfer of Registry of Holdings:

8.To Whom applications should be made.- Applications for transfer of registry may be made to the Collector or the divisional officer or the tahsildar or the depupty tahsildar of the taluk or sub-taluk or the taluk head accountant or the revenue inspector of the firka in which the land, the registry of which it is sought to change, is situated, or to registration officers when conveyances are presented for registration.

On the death of a registered holder, the karnam of the village should at once report the fact to the tahsildar or deputy tahsildar within whose jurisdiction the village is situated, with the names of heirs of the deceased so far as he can make them out.

The Collector, the divisional officer, the tahsildar or deputy tahsildar, may

finally dispose of all cases of transfer, however arising, and direct changes of registry either of his own motion or on the enquiry and report of an officer not lower in rank than a revenue inspector. There is no right of appeal in cases of transfers of registry ordered by a tahsildar or a deputy tahsildar. The divisional officer and Collector may, however, in the exercise of their general powers of revision, entertain revision petitions at any time against the orders of their subordinate in such cases and should do so when there is any likelihood of Government being involved in a civil suit. A revenue inspector after making personal inquiry in the village where the land is situated may dispose of such of the petitions presented to him and also such of the outstanding cases of transfer ascertained by him as provided in paragraph 5 (ii) supra as do not involve the formation of new sub-divisions and about which there is no dispute. Disputed cases and cases involving sub-divisions should be submitted to the tahsildar or

the deputy Tahsildar, as the case may be, for orders. Similarly a revenue inspector

> ***will not dispose of applications for transfer of registry of enfranchised minor inams if they involve sub-divisions of jodi or quit-rent."***

45.On a cumulative reading of the above provisions makes it clear that any Officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government, by notification in this behalf for such area as may be specified in the notification, may of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under the Tamil Nadu Patta Pass Book Act and pass such orders as he may think fit, however, after giving reasonable opportunity to the parties.

46.Earlier, the very same issue was raised before this Court and this Court in its decision reported in ***(2008) 7 MLJ 305 (S.Parvathi Vs. Muthukumar and another)***, cited supra, has clearly held that the second respondent has power to entertain the application in respect of cancellation of patta. Further, the third respondent made

application before the second respondent for cancellation of patta.

Undoubtedly, the said application was filed in the year 2005. However, patta was issued in the year 1978.

47.On a close perusal of BSO 31 (8) of the Standing Orders of the Board of Revenue makes it clear that the Divisional Officer and Collector may, however, in the exercise of their general powers of revision, entertain revision petitions at any time against the orders of their subordinates.

48.In view of the above, I do not find anything wrong in entertaining the application for cancellation of patta by the second respondent. However, the second respondent has to issue notice to the aggrieved party and give reasonable opportunity for making representation. In the present case, as already concluded, there is no violation of principles of natural justice. Hence, the second respondent is well within the power to entertain the application for cancellation of patta and I do not find any illegality. Accordingly, the issue is answered.

49.This Court carefully perused the decisions referred by the learned Senior Counsel appearing for the petitioners. Further, this Court is well aware that the disputed questions of title of immovable property cannot be gone into by the revenue Courts which include the Tahsildhar and District Revenue Officer. Such disputed questions of title require lot of evidence to be let in both oral and documentary for the resolution. Only after careful analysis of the evidence so gathered an appropriate finding can be recorded by the Civil Court.

50.In the present case, the third respondent produced lot of records inorder to substantiate the title including the sale deeds, order of the Assistant Settlement Officer, Chengalpattu and revenue records. However, the petitioners did not produce any piece of evidence inorder to substantiate his claim except patta granted by the Deputy Tahsildar on 07.07.1978 and the subsequent Certificate dated 30.10.1998 issued by the Tahsildar, Mylapore – Triplicane Taluk. Further, the petitioners also failed to produce the documents to show on what basis they secured the patta.

51.On a perusal of the order of the Assistant Settlement Officer, Chingleput, dated 09.04.1975 shows that the land in S.No.170/1 is a ryotwari land. While being so, how patta was granted in favour of the petitioners by the regular Tahsildar on 07.07.1978 was not explained by the Tahsildar and it creates suspicion. Even in the Certificate dated 30.10.1998 issued by the Tahsildar, Mylapore – Triplicane Taluk, the adangal column is blank in respect of the petitioners.

52.Hence, the District Revenue Officer as well as the Special Commissioner has rightly arrived at a conclusion that the Taluk Office has granted patta without any basis. In view of the above, this Court is not inclined to issue direction to the parties to approach the Civil Court. It is an unnecessary exercise. Hence, I have no hesitation to arrive at a conclusion that the patta obtained in the year 1978 and the Certificate obtained in the year 1998 is without any basis and there is no back records available to substantiate the above said revenue records.

53.After hearing the counsels, this Court reserved the writ petition for orders on 26.06.2019. Thereafter, the learned Additional Advocate General mentioned that he wants to produce certain documents. Accordingly, he produced copy of the document in Document No.1652 of 1962 which was said to have been registered in the name of the petitioners on 27.06.1962 by Rukmini Devi Arundale is bogus. Accordingly, notice was given to the petitioners and copy of the said document was also furnished to the petitioners. The learned counsel appearing for the petitioners clearly say that he did not rely upon the document and he did not know as to how the said document was prepared in favour of the petitioners.

54.Though the counsel appearing for the third respondent submits that there is a criminal case registered against the petitioners and other persons and till date the criminal case is pending before the Investigating Officer, this Court refrains itself from giving any opinion with regard to the criminal case said to have been pending against the petitioners, which is the subject matter of investigation.

55.In view of all the above, I do not find any error in the order passed by the second respondent and confirmed by the first respondent, since they have elaborately considered the issue after perusing the entire records and has held against the petitioners. Since both the fact finding Authorities have arrived at a conclusion, this Court is not inclined to interfere with the above said orders.

56.The writ petition is accordingly dismissed. No costs.

01.08.2019

pri/dn

Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Special Commissioner &
Commissioner of Land Administration,
Chepauk, Chennai – 5.

2.The District Revenue Officer,
Collectorate Office,
32, Rajaji Salai,
Chennai – 1.

M.DHANDAPANI,J.
pri/dn

Pre-delivery Order in W.P.No.22384 of 2007

01.08.2019