

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.40474 of 2015 and
M.P. Nos.1 and 2 of 2015

M.Govindaswamy

.. Petitioner

-vs-

1.District Collector,
Salem District, Salem.

2.District Revenue Officer,
Salem, Salem District.

3.Revenue Divisional Officer,
Attur, Salem District.

4.Tahsildar,
Pethanaickenpalayam Taluk,
Pethanaickenpalayam,
Salem District.

5.Assistant Settlement Officer,
Salem, Salem District.

.. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the first respondent in his proceedings Na.Ka.1706/2006/G1 dated 27.02.2006 communicated through proceedings of the Public Information Officer and Personal Assistant (General) to District Collector, Salem in Proceedings O.Mu.29180/2015/G1 dated 10.09.2015 and quash the same and direct the respondents to restore the patta in Patta No.244 in Survey No.229/2, 229/3, 230/2 measuring 12.47 hectares in Periakalrayan Hills, Kunnur Village.

For Petitioner:: Mr.S.Kamadevan
for M/s.C.S.Associates

For Respondents:: Mrs.P.Rajalakshmi,
Additional Government Pleader

ORDER

The writ petition has been filed challenging the proceedings Na.Ka.1706/2006/G1 dated 27.02.2006, communicated through the Public Information Officer and Personal Assistant (General) to District Collector, Salem in Proceedings O.Mu.29180/2015/G1 dated 10.09.2015 and seeking a direction to the respondents to restore the Patta No.244 in Survey Nos.229/2, 229/3, 230/2 measuring to an extent of 12.47 hectares in Periakalrayan Hills, Kunnur Village.

2.Learned counsel appearing for the petitioner would submit that the District Collector, Salem has no authority to cancel the patta issued by the Assistant Settlement Officer, Salem, by virtue of Section 12(2) of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (herein after referred to as 'the Act') which says that as against a decision of the Settlement Officer under sub-section (1), the Government may, within one year from the date of the decision and any person aggrieved by such decision may, within three months from the said date, appeal to the Tribunal. In the present case, when the petitioner was issued with a patta by the Assistant Settlement Officer, Salem, the fifth respondent herein, way back on 26.12.1978, the learned Tribunal alone has got the authority to examine the correctness of the order passed by the Assistant Settlement Officer, but, the District Collector, Salem District, who has no power or jurisdiction to question the order passed by the fifth respondent, has wrongly cancelled the patta and therefore, the impugned order is liable to be set aside as it has no legal sanctity or legal validity. Since the District Collector, Salem has not conducted any enquiry or not issued any notice before cancellation of patta, the petitioner and his family members were unaware of the impugned order for a quite long time.

3.In the meanwhile, after getting patta No.244 in Survey Nos.229/2, 229/3 & 230/2 in Periakalrayan Hills, Kunnur Village, the petitioner decided to join with some other persons and form a partnership Firm for the horticulture plantation. Accordingly, they formed a Farm in the name and style of M/s.Em-Gee Samy Farm in the year 2003 and decided to cultivate the Anmol, Pepper, Orange, Cinnamon, Banana etc. and for financial assistance, they approached the U.T.I. Bank, now Axis Bank. After going through the patta and other documents, the Bank sanctioned loan of Rs.1.5 crores in October 2003. After getting the loan amount, entire areas were planted with trees like silk oak, pepper, Anmol, Orange, Banana, Coteus, Mary Gold flower. Moreover, for the irrigation purpose, they dug two wells and also obtained electricity connection and installed solar energy system. While

so, in the year 2005, some strangers entered into the land and started felling the trees for which they have given a police complaint. But the police only warned them, after obtaining undertaking that they would not enter into the land and fell down the trees. Thereafter, the petitioner came to know that the patta granted by the fifth respondent was cancelled. Therefore, they approached the Revenue Divisional Officer, Salem District, the third respondent herein. As the petitioner came to know the fact that the patta has been cancelled behind his back and those lands were converted as Anadeenam only through the information obtained under Right to Information Act on 10.09.2015, the petitioner is before this Court challenging the order dated 27.02.2006.

4.Learned counsel appearing for the petitioner would further submit that as there was no notice issued to the petitioner and no enquiry has been held, before passing the impugned order by the first respondent District Collector, Salem, the same is liable to go by virtue of Section 12(2) of the Act.

5.Learned Additional Government Pleader appearing for the respondents, after reading Section 12(2) of the Act which clearly mentions that as against the order passed by the Assistant Settlement Officer granting patta, the appeal shall lie only before the Tribunal and such appeal can be filed within one year from the date of the decision taken by the Government, would agree that the District Collector has no legal sanctity or no authority to pass such an order. However, she sought for liberty to challenge the said order before the appropriate authority.

6.It is claimed by the petitioner that he was issued with Patta No.244 in Survey Nos.229/2, 229/3 & 230/2 situated at Periakalrayan Hills, Kunnur Village by the Assistant Settlement Officer, the fifth respondent herein on 26.12.1978. While so, all of a sudden, the impugned order has been passed by the District Collector cancelling the said patta. Since the learned counsel appearing for the petitioner would submit that the District Collector has no authority to cancel the patta issued by the Assistant Settlement Officer, it is necessary to refer to Section 12(2) of the Act as under:

'12.(2) Against a decision of the Settlement Officer under sub-section (1), the Government may, within one year from the date of the decision, and any person aggrieved by such decision may, within three months from the said date, appeal to the Tribunal:

Provided that the Tribunal may, in its discretion, allow further time not exceeding six months for the filing of any such appeal:

Provided further that the Tribunal may, in its discretion entertain an appeal by the Government at any time if it appears to the Tribunal that the decision of the Settlement Officer was vitiated by fraud or by mistake of fact.

7.No counter affidavit has been filed by the respondents though the writ petition is of the year 2015. A perusal of Section 12(2) of the Act clearly shows that if a decision is taken by the Settlement Officer for issuance of patta, against such decision of the Settlement Officer, the Government, may, within one year from the date of the decision and any person aggrieved by such decision, within three months from the said date, appeal to the Tribunal. Section 8 of the Act also makes it clear that the Government shall constitute as many Tribunals as may be necessary for the purposes of the Act, while trying suit or when hearing an Appeal. Therefore, in the present case, when the Assistant Settlement Officer, the fifth respondent herein has passed an order on 26.12.1978 granting Patta No.244 in Survey Nos.229/2, 229/3 & 230/2 situated at Periakalrayan Hills, Kunnur Village, the Tribunal alone is the appropriate authority to consider the correctness of the impugned order as per Section 12(2) of the Act. But in the present case, the District Collector, who has no authority whatsoever, has wrongly cancelled the patta, therefore, the impugned order is set aside and the writ petition stands allowed. It is for the respondents to work out their remedy in the manner known to law. Consequently, connected M.Ps are closed. No costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1.District Collector,
Salem District, Salem.

2.District Revenue Officer,
Salem, Salem District.

3.Revenue Divisional Officer,
Attur, Salem District.

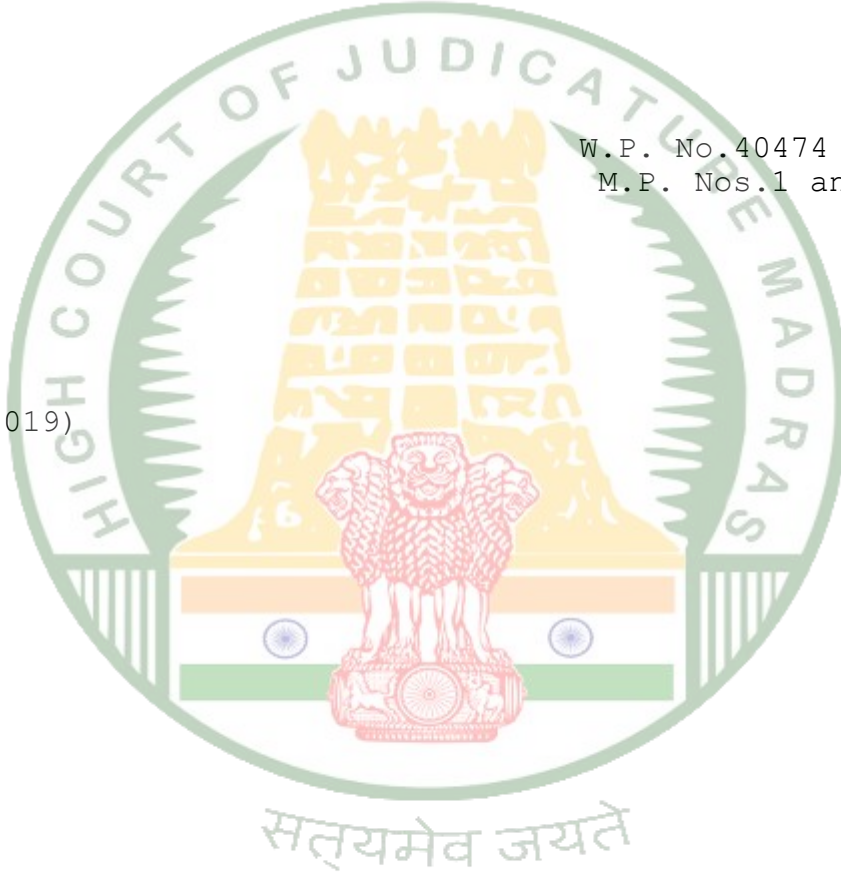
4.Tahsildar,
Pethanaickenpalayam Taluk,
Pethanaickenpalayam,
Salem District.

5.Assistant Settlement Officer,
Salem, Salem District.

+1 CC to The Govt. Pleader sr 91791.
+4 Ccs to M/s.C.S. Associates sr 91751, 92249

W.P. No.40474 of 2015 and
M.P. Nos.1 and 2 of 2015

SAI (CO)
SP(16/12/2019)



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