

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	20/02/2020
DELIVERED ON	25/02/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.55 OF 2020

&

C.M.P.NO.1189 OF 2020

V.Seethapathi Naidu (Died)
Rep. by his Power of Attorney Agent
Chandrasekaran

- 1.S.Panneerselvam
- 2.Chandrasekaran
- 3.S.Mohan
- 4.S.Babu

...Appellants/Appellants 2 to 5/
Plaintiffs

Versus

1. Government of Tamil Nadu,
Rep. by its Chief Secretary,
Fort St. George,
Chennai - 600 009.
2. The Special Commissioner,
(Land Administration),
Chepauk, Chennai.
3. The State of Tamil Nadu,
Rep. by its District Collector,
Sathuvachari, Vellore.
4. The Revenue Divisional Officer,
Tirupattur.
5. The Tahsildar,
Tirupattur.

.. Respondents/Defendants

Prayer:-

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 30.07.2019 rendered in A.S.No.4 of 2014, on the file of Subordinate Judge, Tirupattur, Vellore District, confirming the Decree and Judgment dated 22.07.2013 rendered in O.S.No.150 of 2003, on the file of the Additional District Munsif, Tirupattur.

For Appellants : Mr.Subbiah
Senior Counsel
For Ms.Elizabeth Ravi

For Respondents : Mr.Y.T.Aravind Gosh
Government Advocate

JUDGMENT

K.V.Seethapathy Naidu filed the suit in O.S.No.150 of 2003 for declaration, declaring his possessory title to the suit property and to direct the defendants 1 to 5 to grant patta to him for the land measuring 1.92 acres in S.No.92/1 by way of mandatory injunction. The original plaintiff died, his legal-heirs have filed this appeal.

2. The case of the plaintiff is that his father Late Venkatachala Naidu purchased the property measuring an extent of 3.75 acres in S.No.48 on 07.04.1935 from the estate holder of Yelagiri. Ever since, he was in possession and enjoyment of the land and was paying kist to the estate holder. While so, the Government abolished Zamindari System all over the State of Tamil Nadu in the year 1948, and passed the Tamil Nadu Estates Abolition and Conversion into Ryotwari Act, 1948 (in short "the Act") for introduction of Ryotwari Settlement of all Zamindari Villages. In pursuance thereof, estate of Yelagiri was taken over by the Government in and around 1951. The Settlement Department surveyed the land in S.No.48 and assigned S.Nos.92/1 and 92/3 for an extent of 1.92 and 0.78 acres respectively.

3. It is further averred that during the enquiry for grant of Ryotwari Patta, the Assistant Settlement Officer treated the suit lands as tank bed lands and in his proceedings, dated 22.01.1957, rejected his case. However, the Board of Revenue (Settlement of Estates), in the revision preferred by the plaintiff, allowed Ryotwari Patta for an extent of 0.78 acres in S.No.92/3 and disallowed the claim for S.No.92/1 for an extent of 1.92 acres. He further stated that the Board of Revenue passed an order, dated 13.05.1971, directing the Settlement Officers to take up enquiry suo motu for grant of Ryotwari Patta

for those lands lying in tank beds, which were held continuously by the ryots. The Assistant Settlement Officer took up suo-motu enquiry on 28.05.1975 and passed an order again disallowing patta for S.No.92/1. The plaintiff pursued the matter before the Commissioner of Land Revenue and Settlement of Estate by way of revision. The Commissioner, in his letter dated 21.02.1977, called for the records from the plaintiff and thereafter forwarded the records to the Sub-Collector, Tirupattur for necessary action in that matter. But, no action was taken, even after lapse of 25 years. It is the case of the plaintiff that the land in dispute is under his possession and enjoyment for more than 67 years, hence he is entitled for patta.

4. In the written statement filed by the fifth defendant and adopted by the defendants 1 to 4, the averments and allegations of the plaintiff were denied. It is stated that even though the plaintiff's father purchased the land in S.No.48 measuring to an extent of 3.75 acres on 07.04.1935 and he was in possession of the property, but he is not entitled for patta, since the land in S.No.92/1 is classified as 'water spread land' and hence, the claim of the plaintiff was rejected by the Sub Collector, Tirupattur. There is no cause of action for filing of the suit and prayed for dismissal of the same.

5. On the basis of the above pleadings, necessary issues were framed by the trial Court. On the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A39 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B3 were produced and the Resolution Book of Jolarpet Municipality was marked as Ex.C1.

6. After analysing the evidence adduced by the parties, the trial Court dismissed the suit. On appeal, the finding of the trial Court was confirmed. Challenging the same, the present appeal has been filed.

7. Mr.Subbiah, learned Senior Counsel, representing Ms.Elizabeth Ravi, learned counsel for the appellants submitted that admittedly the land in dispute is in possession and enjoyment of the original plaintiff and his father more than 67 years. The claim in respect of the suit property was rejected by the Assistant Settlement Officer and the Board of Revenue in the year 1958, however, in view of G.O.Ms.No.1300, Revenue Department, dated 30.04.1971, the plaintiff is entitled for patta. He further added that all water channels to Putheri have been closed and the said lake is being used as weekly market. There is no outlet from the lake and there is no irrigation from the tank and even the sluices in the tank were removed and in view of change of circumstances, the appellants are entitled for patta for the land in S.No.92/1 also. The learned counsel

further submitted that D.W1. without even inspecting the tank and the suit property, chose to give evidence and when the evidence of the plaintiff was not controverted, they are entitled to succeed in the suit.

8. Per contra Mr.Y.T.Aravind Gosh, learned Government Advocate appearing for the respondents would argue that the claim of the plaintiff was rejected way back in the year 1958 and this is the third round of litigation. It is the submission of the learned Government Advocate that mere possession and enjoyment of a property would not entitle a person to get patta and the request of the appellants were rejected twice in view of the bar contained in Section 14-A of the Act and prayed for dismissal of the appeal.

9. Heard the rival submissions and perused the materials available on record.

10. In the case on hand, it is not disputed that the original plaintiff's father Venkatachala Naidu purchased the property measuring an extent of 3.75 acres in S.No.48 from the estate holder of Yelagiri on 07.04.1935. After the enactment of the Act, it appears that the landlord approached the authorities concerned for issuance of Ryotwari Patta. It is seen that S.No.48 was assigned as S.Nos.92/1 and 92/3. The Assistant Settlement Officer seems to have rejected the application of the landlord. According to the appellants, the Board of Revenue granted Ryotwari Patta for the land measuring an extent of 0.78 cents in S.No.92/3, and in respect of the land measuring an extent of 1.92 acres in S.No.92/1, it was disallowed due to the reason, it was classified as water spread land.

11. From perusal of the records, it is seen that the landlord again approached the Commissioner of Land Revenue and Settlement of Estate in the year 1975 and 1977, seeking patta for the land in S.No.92/1. It is the case of the appellants that after perusing the records of the plaintiff, the matter was sent to the Sub Collector, Thirupattur, but no action was taken by him for about two decades. It is pertinent to note that the suit in O.S.No.150 of 2003 was filed to declare possessory title to the suit property and for mandatory injunction for issuance of patta in respect of the land in dispute. P.W.1 during cross-examination has admitted that after abolition of the Act, he paid 'B' memo charges and after institution of the suit, 'B' memo charges are not received, which would show that they did not dispute that the land belongs to the Government. The defendants resisted the suit contending that even though the plaintiff and his father have been in possession and enjoyment of the property, since 1935, they are not entitled for patta, since the land is classified as catchment area (water spread

area).

12. Section 14-A of the Act reads as follows:-

(1) Notwithstanding anything contained in this Act, no ryotwari patta shall be granted in respect of any private tank or oorani.

(2) Any ryotwari patta granted in respect of any private tank or oorani under this Act before the date of the publication of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1974, in the Tamil Nadu Government Gazette, shall stand cancelled, and for purposes of compensation under this Act, the private tank or oorani shall be deemed to be land in respect of which neither the landholder nor any other person is entitled to ryotwari patta under this Act.]

A cursory reading of the above Section would make it clear, that no ryotwari patta shall be issued to the lands classified as private tank or oorani and the patta if any issued in respect of the above lands shall stand cancelled. In the case on hand, admittedly, the land in dispute has been classified as water spread area (catchment area) in the revenue records, therefore, the appellants are not entitled for patta albeit to their possession and enjoyment is not disputed by the respondents.

13. It is relevant to note that the Government has brought an Act called Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007). The very object of the Act is to preserve and protect the water bodies from encroachment. Further, in public interest litigations, this Court has been repeatedly and consistently issuing directions to the Authorities to remove the encroachers in the larger interest to augment storage capacity in the tanks.

14. Hence, I am unable to accept the contention of the learned Senior Counsel for the reasons even if the water channels are closed and sluices have been removed, they can be restored either by the authorities themselves or at the intervention of Constitutional Courts. If the prayer of the appellants are granted, no action could be taken to restore the water body and it would amount in encouraging the encroachers.

15. It is relevant to note that the request of the original plaintiff for issuance of Ryotwari Patta was rejected in the year 1948 and after lapse of 50 years, the suit was instituted seeking issuance of patta. It appears that in the meanwhile, they approached the authorities after issuance of G.O.1300,

Revenue Department, dated 30.04.1971. In Nawab Wallajah Sahib Pallivasal Vs. The Commissioner of Land Administration/Board of Revenue and others [2019 (3) CTC 625], Ryotwari Patta was sought after 54 years, following the decisions referred infra, the Division Bench, rejected the prayer on the ground of laches.

16 (i) Santhosh kumar Shiragonda Patil v. Bala Saheb Thukkaram Sheralale [MANU/SC/1608/2009 : AIR 2009 SC (Supp) 2411]:-

16. It seems to be fairly settled that if a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.

Ordinarily, the reasonable period within which power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of Tehsildar passed on March 30, 1976 is flawed and legally not correct.

Pertinently, Tukaram Sakham Shevale, during his lifetime never challenged the legality and correctness of the order of Tehsildar, Shirol although it was passed on March 30, 1976 and he was alive upto 1990. It is not even in the case of Respondent Nos. 1 to 5 that Tukaram was not aware of the order dated March 30, 1976. There is no finding by the Sub-Divisional Officer either that order dated March 30, 1976 was obtained fraudulently."

(ii) Jt. Collector, Renga Reddy District and another v. D. Narasing Rao & others [MANU/SC/0024/2015 : AIR 2015 SC 1021]:-

"11. No time limit is prescribed in the above Regulation for the exercise of suo motu power but the

question is as to whether the suo motu power could be exercised after a period of 50 years. The Government as early as in the year 1991 passed order reserving 477 acres of land in Survey Nos. 36 and 37 of Gopanpally village for house-sites to the government employees. In other words the Government had every occasion to verify the revenue entries pertaining to the said lands while passing the Government Order dated 24.9.1991 but no exception was taken to the entries found. Further the respondents herein filed Writ Petition N o. 21719 of 1997 challenging the Government order dated 24.9.1991 and even at that point of time no action was initiated pertaining to the entries in the said survey numbers. Thereafter, the purchasers of land from respondent Nos. 1 and 2 herein filed a civil suit in O.S. No. 12 of 2001 on the file of Additional District Judge, Ranga Reddy District praying for a declaration that they were lawful owners and possessors of certain plots of land in survey No. 36, and after contest, the suit was decreed and said decree is allowed to become final. By the impugned Notice dated 31.12.2004 the suo motu revision power under Regulation 166B referred above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.

12. In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law.

24. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised

are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

25. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed."

17. It is the submission of the learned Senior Counsel that the occupant is entitled for Ryotwari Patta as per G.O.Ms.No.1300, Revenue Department, dated 30.04.1971. A similar issue came up for consideration in Sundaram and others v. The Principal Secretary and Commissioner of Land Administration [2016 (2) L.W. 45] and it was brought to the notice of this Court that in G.O.Ms.No.714, outer limit was fixed to approach the concerned authorities and the relevant paragraph is extracted hereunder:-

"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 afore stated 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."

18. Therefore, looking from any angle, there is absolutely no possibility for the appellants to get patta for the land in dispute. This Court is of the considered opinion that the factual findings rendered by the Courts below on proper appreciation of evidence warrant no interference.

19. For above stated reasons, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Subordinate Judge,
Tirupattur,
Vellore District.
2. The Additional District Munsif,
Tirupattur.

+1cc to Ms.Elizabeth Ravi, Advocate, S.R.No.15908
+1cc to the Special Government Pleader, S.R.No.16415

S.A.No.55 of 2020 &
C.M.P.No.1189 of 2020

VGII(CO)
CS/15/12/2020