

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.10.2020

DELIVERED ON : 13.10.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.33162 of 2018 and

W.M.P.Nos.38478, 38479 & 38481 of 2018

Sarah Michelle Coelho

Represented by her Power of Attorney Agent

Ethelbert Joseph Francis Coelho

Silver Cloud Estates,

Gudalur - 643 211.

...Petitioner

v.

1. The State of Tamil Nadu,  
Represented by its  
Principal Secretary to Government  
(Environment and Forest),  
Secretariat, Fort. St. George,  
Chennai - 600 009.
2. The Principal Chief Conservator of Forests,  
No.1, Jennis Road ,  
Panagal Buildings, Saidapet,  
Chennai - 600 015.
3. The Chief Conservator of Forests,  
Kurinchi,  
Mettupalayam Road,  
Coimbatore - 641 002.
4. The District Collector, The Nilgiris,  
Office of the District Collector,  
Ootacamund - 643 101.
5. The District Forest Officer,  
Gudalur Division,  
Gudalur P.O. - 643 212,  
The Nilgiris.
6. The Settlement Officer/District Revenue Officer,  
Gudalur Jenmam Lands,  
Gudalur - 643 212.  
The Nilgiris

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuing a Writ of Certiorarified Mandamus, calling for the records of the 6<sup>th</sup> respondent pertaining to Notification No.370/2011, dated 03.08.2011 and quash the same and consequently directing the 5<sup>th</sup> respondent, their men, staff, agents or servants to remove illegal constructions in petitioner's property comprised in S.No.750 (23.36 Acres), S.No.813/1 (32.22 Acres), S.No.813/2 (2.35 Acres) totally 60.93 Acres of Gudalur Village, Nilgiris District.

For Petitioner : Mr. P. Wilson, Senior Counsel  
for M/s. Wilson Associates

For Respondents : Mr. P.H. Aravind Pandian,  
Additional Advocate General  
Asst. by Mr.s.Vijaya Prashanth,  
Special Govt. Pleader (F)

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the 6<sup>th</sup> respondent pertaining to the Notification No.370/2011, dated 03.08.2011, to quash the same and consequently directing the 5<sup>th</sup> respondent to remove the illegal constructions in the petitioner's property comprised in S.No.750 measuring an extent of 23.36 Acres, in S.No.813/1 measuring an extent of 32.22 Acres and in S.No.813/2 measuring an extent of 2.35 Acres, totalling 60.93 Acres of Gudalur Village, The Nilgiris District.

2. The brief case of the parties necessary for the disposal of the Writ Petition is as follows:-

(i) According to the petitioner, he is one of the co-owners of Jenmam lands in Gudalur Taluk measuring an extent of 105.63 acres in old Survey No.13/1A and the new Survey No.750, 813/1 and 813/2 of Gudalur Village, The Nilgiris District. The said property was purchased by the petitioner's father I.R. Coelho and his brother Gilbert Vitus Coelho, both sons of G.J. Coelho under the deed of Indenture No.513/1966, dated 05.11.1966 registered as Document No.513 of 1966 in the office of the Sub Registrar, Gudalur, executed by T.N. Ravi Varma Tirumal Pad and two others, who were the Joint Receivers of the Nilambur Koliakam Forest, Kerala State. The petitioner's father died on 08.09.1990 leaving behind one son and three daughters including the petitioner. Likewise, his brother Gilbert Vitus Coelho died in March 2015 leaving behind his wife, two

daughters and a son. Before the said purchase, the petitioner's grand father Gregory Joseph in respect of the entire area called Silver Cloud Estate was a tenant in respect of these lands under the Nilambur Kovilakam. After the purchase in the year 1966, the petitioner's father became the absolute owner of the property in old S.No.13/1A, new S.Nos.750, 813/1 and 813/2 of Gudalur Village, The Nilgiris District. On 31.12.1968, joint patta was issued to an extent of 1766.83 acres of Jenmam lands, including the subject land in favour of the petitioner's father and other co-owners. When the Act 1969 came into force, the petitioner's father and his brother, who were called as Jenmi Cultivators were entitled to ryotwari patta under section 8 of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act 1969.

(ii) On 21.05.1979, the petitioner's father Robert Isidore Coleho made an application for grant of ryotwari patta in Form 4 to the Settlement Officer under section 8 of the Act 1969. Since there were legal proceedings initiated by the petitioner's father I.R.Coleho regarding the validity and applicability of the Act 1969 before this Court, which ultimately ended before the Hon'ble Supreme Court on 09.09.2010 in Civil Appeal Nos. 1344 and 1345 of 1976, on account of pendency of the said proceedings, no action was taken on the application submitted to the Settlement Officer in Form 4 of the Act. While the matter stood so, some third parties, laid claim over portion of Silver Cloud Estate and filed a Writ Petition before this Court in W.P.No.12505 of 2013 and objected to the issuance of Ryotwari Patta in the petitioner's favour. By order dated 19.02.2014, this court directed the Settlement Officer to consider their objections while dealing with the application under section 8. The Settlement Officer considered the objections and dismissed the objections of the third parties by order dated 12.10.2017. However, under the same order, the application seeking for grant of Ryotwari Patta in the petitioner's land and other co-owners favour was rejected by the Settlement Officer on the ground that hyper-technic he could not trace the original application. Therefore, the petitioner and other co-owners had filed an appeal under section 12(3) of the Janmam Estate (Abolition and Conversion into Ryotwari) Act 1969 before the Janmam Abolition Tribunal (District Court), Ootacamund in C.M.A.No.1 of 2018 and the same is pending consideration.

(iii) The petitioner has contended that she and other co-owners are in possession and enjoyment of the entire Silver Cloud Estate by growing tea, coffee, cardamom and pepper. By Notification No.370 of 2011, dated 03.08.2011, the 6<sup>th</sup> respondent, invoking section 53 of the Gudalur Janmam Estates

(Abolition and Conversion into Ryotwari) Act 1969 , declared portions of the petitioner's land measuring an extent of 60.93 acres in three Survey numbers as Forest Lands.

(iv) According to the petitioner, the order passed by the 6<sup>th</sup> respondent is in violation of section 53 of the Act and the 6<sup>th</sup> respondent has no jurisdiction to pass such an order violating the principles of natural justice, since no notice was given either to the petitioner or to the other co-owners. Further, according to the petitioner, the 6<sup>th</sup> respondent can exercise the power only when there is a lis before him and only when a question is raised before him as to whether the land is a forest land or not, he case exercise the jurisdiction to declare the land as a forest land. Further, the petitioner contended that no such lis was pending before the 6<sup>th</sup> respondent to determine the nature of the petitioner's private lands. Therefore, according to the petitioner, the order passed by the 6<sup>th</sup> respondent arbitrarily is bad in law and liable to be quashed.

(v) Further, according to the petitioner, the subject matter of the Writ Petition is surrounded on all sides by human inhabitations, viz., workers quarters on one side and godowns and National Highway No.67 on the other sides. Further, the other side is surrounded by coffee, cardamom and pepper plantations by St. Joseph Estate. At this juncture, as per G.O.Ms.No.15, Environment and Forests, dated 20.01.1997, an Expert Committee was constituted for the identification of forest lands in the whole of Tamil Nadu as per the orders of the Hon'ble Supreme Court in W.P.No.(C) 202 of 1995, dated 12.12.1995. According to the petitioner, the said Committee of Experts, which was appointed by the State Government under the directions of the Hon'ble Supreme Court, visited the Nilgiris District including the lands of Silver Cloud Estate in the year 1995-1997 to identify the forest lands. However, the Committee has not identified any land in Silver Cloud Estate as forest lands. Therefore, according to the petitioner, the order of the 6<sup>th</sup> respondent runs counter to the findings of the Expert Committee.

(vi) According to the petitioner, the issuance of notification of the 5<sup>th</sup> respondent dated 03.08.2011 did not come to the petitioner's notice immediately and the petitioner was kept in the dark all along. The petitioner came to know about the notification only when the Forest Department began illegal construction in the petitioner's land in the first week of September 2018.

(vii) In the application dated 21.05.1975 submitted by the petitioner in Form 4, for issuance of Ryotwari Patta before the Settlement Officer, by order dated 12.10.2017, the 6<sup>th</sup> respondent/Settlement Officer rejected the application stating that the application is barred by limitation. As against the order passed by the 6<sup>th</sup> respondent dated 12.10.2017, the petitioner preferred an appeal in C.M.A.No.1 of 2018 on the file of the Janmam Estates Abolition Tribunal (District Court), Ootacamund and the Tribunal by order dated 05.06.2020 set aside the order passed by the 6<sup>th</sup> respondent and allowed the appeal and directed the Tahsildar, Gudalur and the concerned authorities to issue ryotwari patta to the petitioner for an extent of 1705.90 acres [total extent 1766.83 acres less an extent of 60.93 acres, which was declared as forest land] in survey Nos. 13, 179, 187, 188 and 192 of Gudalur Village as per Form 4 application dated 21.05.1975 and dismissed the appeal in respect of an extent of 60.93 acres comprised in old Survey No.13A and 13/3A in R.S. Nos. 750, 813/1 and 813/2 of Gudalur Village, which was declared as Forest Land under section 53 of the Act.

(viii) So far as the land in respect of an extent of 60.93 acres is concerned, the Tribunal directed the petitioner to pursue the issuance of patta subject to the result of the present Writ Petition. The Tribunal in its Judgment, clearly found that the observation of the Settlement Officer is not at all justifiable having regard to the admitted fact that the claimant has filed Form No.4 application well within the period of limitation under Rule 8(1) of the Rules 1974. The copy of Form No.4 application dated 21.05.1975 also marked before the Settlement Officer as Ex.No.16. In spite of receiving the application in Form No.4 for the issuance of ryotwari patta on 21.05.1975 for an extent of 1766.83 acres of Gudalur Village, has held that no such application was available in the office of the Settlement Officer to establish the claim of the claimant that Form No.4 application has been filed within the period of limitation. As against the order dated 11.08.2011 passed by the 6<sup>th</sup> respondent declaring an extent of 60.93 acres as forest land, the petitioner has preferred a Writ Petition in W.P.No.13662 of 2015 and the same is pending.

3. In the counter filed by the 5<sup>th</sup> respondent it has been stated that the application for patta ought to have been made within six months from 27.11.1974. Since the petitioner did not make the application within six months time, the claim of the petitioner was rejected on the ground of limitation. Further, the 5<sup>th</sup> respondent has denied the averments stated in the affidavit filed in support of the petition.

4. Mr. P. Wilson, learned Senior Counsel appearing for the petitioner submitted that the learned District Judge had clearly held that the application submitted by the petitioner in Form 4 on 21.05.1975 was very much available with the 6<sup>th</sup> respondent and that the same is not barred by limitation. Further, the learned Senior Counsel submitted that a similar challenge was made by the other land owners challenging the Notification dated 03.08.2011 and this Court in W.P.No. 27058/2011 etc., batch by order dated 20.12.2016, while dismissing the Writ Petitions, observed as follows:-

" ... 31. The learned counsel for the petitioners submitted that in the event of the Settlement Officer or the Tribunal granting ryotwari patta to the petitioners in respect of land which has been declared as forest by the impugned notification, it will indeed cause serious prejudice to them.

32. There appears to be force in their apprehension. Therefore, this Court directs that in the event of the petitioners being given ryotwari pattas in respect of land declared as forest in the impugned notification, to that extent, the notification will stand modified. It is hereby clarified that the findings of the Settlement Officer or the Tribunal, as the case may be, shall be on the merits of the cases and without being influenced by the impugned notification in any manner whatsoever.

33. It is seen that the proceedings before the Tribunal and the Settlement Officer are pending for quite a long time. Hence, it will sub-serve the interest of justice if the cases are disposed of at the earliest, so that the parties are aware of their respective rights.

34 Accordingly, this Court directs the Tribunal (District Judge, Ootacamund) to dispose of C.M.A. Nos.17, 20 and 22 of 2008) within three months from the date of receipt of a copy of this order. ..."

Further, the learned Senior Counsel submitted that since the correctness of the order dated 03.08.2011 had already been decided in the said Writ Petitions, the petitioner is not re-agitating the said issue in the present Writ Petition. however, the other observations made by this court in para 32 to 34 of the order may be granted to the present petitioner also.

5. The main contention of the 5<sup>th</sup> respondent is that the application made by the petitioner for the grant of ryotwari patta is barred by limitation. But, the Janmam Estates Abolition Tribunal (District Court), Ootacamund, in its Judgment dated 05.06.2020 clearly found that the application made by the petitioner claiming ryotwari patta is not barred by limitation and is within time. The Form No.4 application dated 21.05.1975 was marked as Ex.No.16 before the Settlement Officer. Though the application in Form No.4 was produced before the Settlement Officer as Ex.No.16, the Settlement Officer rejected the petitioner's claim for the issuance of ryotwari patta on the ground of limitation. As per Rule 8(1) of the Janmam Estates (Abolition and Conversion into ryotwari) Rule 1974, the application for the issuance of ryotwari patta should be filed within six months stipulated under the Act from the appointed date i.e. 27.11.1974. The Tribunal also observed that the Settlement Officer had also acknowledged the Form No.4 application dated 21.05.1975 submitted by the petitioner on 22.05.1975. Hence, the Tribunal found that the application submitted by the petitioner is within the period of limitation.

6. The Tribunal, by order dated 03.08.2011, had directed the Tahsildar, Gudalur and the concerned authorities to issue ryotwari patta to the petitioner for an extent of 1705.90 acres after excluding 60.93 acres, which was declared as forest land. It is brought to the notice of the Tribunal that the petitioner filed the present Writ Petition challenging the declaration of the land measuring an extent of 60.93 acres as forest land.

7. So far as the order dated 03.08.2011 is concerned, this Court upheld the order dated 03.08.2011, which was published in the Government Gazette on 11.08.2011. The learned Senior Counsel submitted that he is not making his submission with regard to the impugned order dated 03.08.2011 in this Writ Petition. Hence, I am not giving any finding with regard to the correctness of the order dated 03.08.2011.

8. It is also brought to the notice of this Court that the respondents have also challenged the judgment dated 05.06.2020 in C.M.A.No.1 of 2018, however, the Judgment and Decree passed by the Tribunal has not been stayed.

9. It is pertinent to note that in the Writ Petition in W.P.No.27058 of 2011 etc. batch, the appeals filed by the petitioner before the Tribunal were pending. In the case on hand, in the petitioner's appeal in C.M.A.No.1 of 2018 a direction has been given to the authorities to issue ryotwari

patta in her favour in respect of an extent of 1705.90 acres of land after excluding an extent of 60.93 acres, which was declared as forest land.

10. In these circumstances, I am of the view that since the petitioner is also similarly placed with the petitioners in W.P.No.27058 of 2011 etc. Batch, she is also entitled to get the benefit of the observations made in para 31 to 34 of the order dated 20.12.2016. In such view of the matter, in the event of the petitioner is found to be entitled to ryotwari patta in respect of the land declared as forest land in the pending proceedings, to that extent, the notification will stand modified.

With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

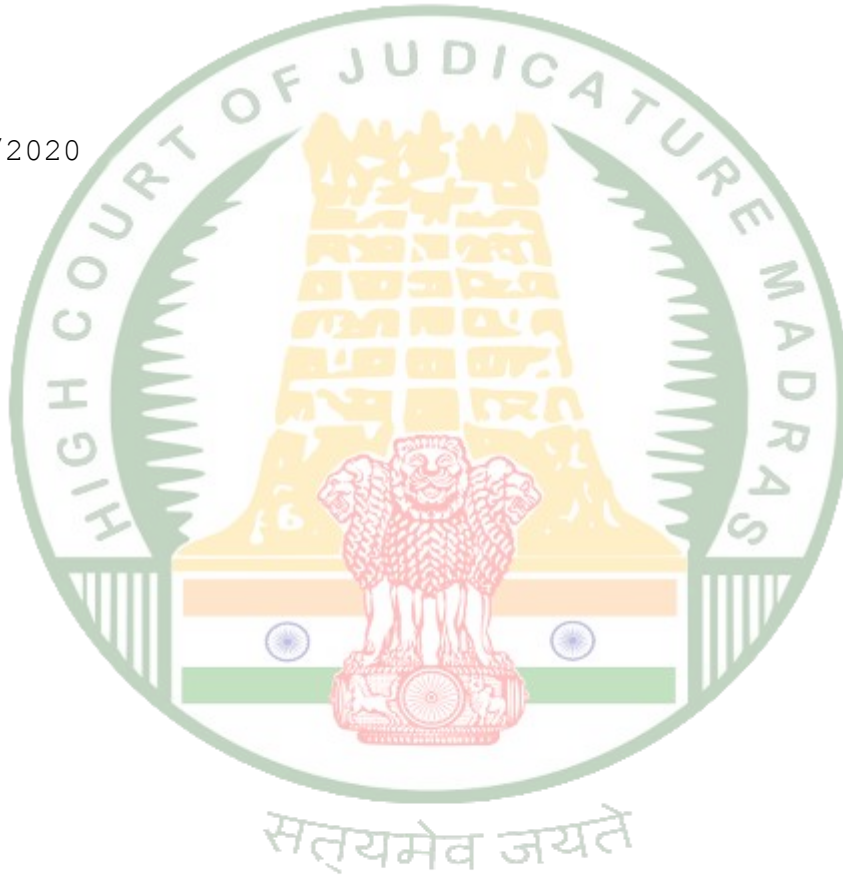
1. The Principal Secretary to Government,  
State of Tamil Nadu,  
Secretariat, Fort. St. George,  
Chennai - 600 009.
2. The Principal Chief Conservator of Forests,  
No.1, Jennis Road ,  
Panagal Buildings, Saidapet,  
Chennai - 600 015.
3. The Chief Conservator of Forests,  
Kurinchi,  
Mettupalayam Road,  
Coimbatore - 641 002.
4. The District Collector, The Nilgiris,  
Office of the District Collector,  
Ootacamund - 643 101.
5. The District Forest Officer,  
Gudalur Division,  
Gudalur P.O. - 643 212,  
The Nilgiris.

6. The Settlement Officer/District Revenue Officer,  
Gudalur Jenmam Lands,  
Gudalur - 643 212.  
The Nilgiris.

+1cc to Special Government Pleader, S.R.No.33778  
+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.33932

Pre-delivery order in  
W.P.No.33162 of 2018 and  
W.M.P.Nos. 38478, 38479 & 38481 of 2018

NRJK (CO)  
KKV/16/10/2020



WEB COPY