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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.13674 of 2012

N.K.Surana

...Petitioner

Vs

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

2.The Principal Secretary and
Commissioner for Survey & Settlement,
Survey House,
Chepauk, Chennai - 600 005.

3.The Settlement Officer,
Chepauk, Chennai - 600 005.

4.The Assistant Settlement Officer,
Chepauk, Chennai - 600 005.

5.The Tahsildhar,
Sriperumbudur Taluk,
Kanchipuram District.

6.B.Jayaraman
(R6 impleaded as per order dated
12.06.2012 in MP.No.3 of 2012 in
WP.No.13674 of 2012)

...Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari calling for the records of the first Respondent in his proceedings dated 23.01.2012 bearing ROC/K1/13765/2009 and quash the same in so far the petitioner is concerned.

For Petitioner : Mr.V.Ramesh
for Mr.Sundar Narayanan

For Respondents
R1 to R5 : Mr.Richardson Wilson
Government Advocate

For R6 : No appearance



O R D E R

The writ petition has been filed to issue a Writ of Certiorari calling for the records of the first Respondent in his proceedings dated 23.01.2012 bearing ROC/K1/13765/2009 and quash the same in so far the petitioner is concerned.

2. The case of the petitioner is that the land comprised in survey No.312/1 part admeasuring 3 acres 71 cents situated at Beemanthangal Village, Nemili Mathura, Sriperumbudur Taluk, Kanchepuram was purchased by the petitioner by the registered sale deed dated 06.10.2005 registered vide document No.9498 of 2005 from one Mr.M.Sathyanarayana Reddy and four others. They traced out the title by the sale deed dated 29.02.1936 registered in the name of his ancestors and the title to owners by the proceedings of the fourth respondent dated 26.07.2000 and the proceedings of the fifth respondent dated 30.06.2003. After the sale deed, the petitioner approached the fifth respondent for grant of patta for the said land and also for the lands purchased by his son admeasuring 7 acres 40 cents. At that juncture, the petitioner came to understand about the suo motu revision taken by the second respondent as against the order passed by the fourth respondent as directed by the first respondent dated 30.04.2010. The second respondent after conducting enquiry issued ryotwari patta by proceedings dated 26.04.2011 as contemplated under Section 11(a) of the Tamil Nadu Estates(Abolition and Conversion into Ryotwari) Act 1948 (hereinafter called as 'the Act'). After the order passed by the second respondent dated 26.04.2011, the same is not taken up for suo motu revision by the first respondent.

3. The learned counsel for the petitioner would submit that already the second respondent by the order dated 30.04.2010, delegated his power of revision to the second respondent and directed to review the order passed by the fourth respondent dated 26.07.2000. Once, the power of the first respondent delegated in favour of the second respondent, the order passed by the second respondent would amount to order passed by the first respondent. Therefore, the first respondent cannot revise his own order on suo motu or by any application. There is no power vested with the first respondent to review the order passed by the second respondent. Powers and functions of various respondents are governed by Sections 4, 5 and 7 of the Act. After vesting of land under Section 3 of the Act, the Settlement Officer is the person competent to grant ryotwari patta to various categories of ryots under Sections 11 to 18 of the Act. The Order passed by the Settlement Officer is subject to review or revised by the Director of Survey and Settlement under Section 5 of the Act. At the same time, the order of the



Director of Survey and Settlement can be cancelled or revised under Section 7 (d) of the Act. Here, by virtue of power of delegation, the powers and functions of the first respondent is delegated to the second respondent. The second respondent is not subordinate to the first respondent. Therefore, once the power delegated in favour of the second respondent to revise the order passed by the fourth respondent as contemplated under Section 5 (2) of the Act, therefore the power having been recognised by the first respondent cannot be subject to further review by the first respondent as against the order passed by the second respondent from whom the power was already delegated. Therefore, the show cause notice issued by the first respondent dated 23.01.2012 is bad in law. In support of his contention, he relied upon the judgment in the case of State of Orissa and others Vs. Commissioner of Land Records and Settlement, Cuttack and others reported in (1998) 7 SCC 162.

4. Per contra, the learned Government Advocate submitted that the first respondent is the higher authority and the second respondent is next to the first respondent under Section 5(2) of the Act. The second respondent has jurisdiction to revise the order passed by the fourth respondent. At the same time, the order passed by the second respondent can be reviewed by the first respondent under Section 7 (d) of the Act. In the case on hand, the first respondent found some irregularities in the order passed by the fourth respondent dated 26.07.2000 and directed the second respondent to correct the mistakes committed by the fourth respondent under Section 5(2) of the Act. It would not amount to delegation of any power and jurisdiction of the first respondent in favour of the second respondent. Therefore, under the power and jurisdiction conferred under Section 5(2) of the Act, the second respondent issued notice and passed order on 26.04.2011, thereby issued patta in favour of the petitioner and the sixth respondent. Therefore, the first respondent being the appellate authority has power to review the order passed by the second respondent as contemplated under Section 7(d) of the Act. In support of his contention, he relied upon the judgment in the case of The Special Commissioner and Director of Survey and Settlement Chepauk, Chennai 5 Vs. M.Arumugam reported in 2007-3-LW 988.

5. Heard, Mr.V.Ramesh, the learned counsel for the petitioner and Mr.Richardson Wilson, Government Advocate appearing for the respondents 1 to 5.

6. The petitioner purchased the property and applied for patta along with land purchased by his son. On the request, the fourth respondent by order dated 26.07.2000, changed the land from 'Punjai Anadhinam' to 'Riat Punja' and ordered to issue patta in favour of the petitioner. However, the first respondent



found some irregularities in the order passed by the fourth respondent and on receipt of the petition filed by the sixth respondent herein, directed the second respondent to review and cancel the order passed by the fourth respondent dated 26.07.2000 after giving notice, hearing and pass order in accordance with the rules as contemplated under Section 5(2) of the Act. It is relevant to extract the provisions under Section 5(2) of the Tamil Nadu Estates(Abolition and Conversion into Ryotwari) Act, 1948 hereunder:

5(2) Every Settlement Officer shall be subordinate to the Director and shall be guided by such lawful instructions as he may issue from time to time; and the Director shall also have power to cancel or revise any of the orders, acts or proceedings of the Settlement Officer, other than those in respect of which an appeal lies to the Tribunal.

7. Accordingly, the fourth respondent is subordinate to the second respondent and the second respondent has power to cancel or revise any order passed by the fourth respondent. Accordingly, the second respondent conducted detailed enquiry after issuance of notice to the petitioner and the sixth respondent and passed order on 26.04.2011, thereby issued patta in favour of the petitioner to an extent of 14.82 acres in the land comprised in survey No.312/1 in favour of the petitioner in respect of the land comprised in survey No.346/4, 347/1 and 347/5 admeasuring 2.30 acres, 6.48 acres and 5.67 acres respectively in respect of the sixth respondent herein. Therefore, the second respondent passed order on the power conferred under Section 5(2) of the Act under revision as against the order passed by the fourth respondent. It would not amount to any delegation of power by the first respondent to revise the order passed by the fourth respondent. As against the order passed by the second respondent, the first respondent issued show cause notice as power conferred on the first respondent under Section 7(d) of the Act dated 23.01.2012.

8. It is revealed from the impugned show cause notice dated 23.01.2012, during the settlement the subject land was classified as 'grazing ground poramboke'. Therefore there are some material irregularities appeared on the facts of the records and the first respondent initiated suo motu revision under section 7(d) of the Act on certain grounds. Therefore, the grounds raised in this writ petition is that the first respondent delegated his power of revision in favour of the second respondent and therefore the order passed by the second respondent is equivalent to the order passed by the first respondent. As such the first respondent has no jurisdiction to revise his own order. In this regard, the learned counsel for



the petitioner relied upon the judgment in the case of State of Orissa and others Vs. Commissioner of Land Records and Settlement, Cuttack and others reported in (1998) 7 SCC 162, wherein it is held as follows:

25. We have to note that the Commissioner when he exercises power of the Board delegated to him under section 33 of the Settlement Act, 1958, the order passed by him is to be treated as an order of the Board of Revenue and not as that of the Commissioner in his capacity as Commissioner. This position is clear from two rulings of this Court to which we shall presently refer. The first of the said rulings is the one decided by the constitution Bench of this Court in Roop Chand vs. State of Punjab [1963 Suppl. (1) SCR 539]. In that case, it was held by the majority that where the State Government had, under section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its appellate powers vested in it under section 21(4) to an 'officer', an order passed by such an officer was an order passed by the State Government itself and "not an order passed by any officer under this Act" within section 42 and was not revisable by the State Government. It was pointed out that for the purpose of exercise of powers of revision by the State under section 42 of that Act, the order sought to be revised must be an order passed by an officer in his own right and not as a delegate of the State. The State Government was, therefore, not entitled under section 42 to call for the records of the case which was disposed of by an officer acting as its delegate.

26. A like question came up for consideration before a Bench of this court in Behari Kuni Sahari Awas Samiti & Another vs. State of U.P. & Others [1997 (7) SCC 37] to which one of us (Majmudar, J.) was a party. In that case the Custodian General under the Administration of Evacuee Property Act, 1950 acting under section 55 could delegate his powers to the Deputy or Assistant Custodian General. The Custodian passed an order on 11.11.1982 and submitted the same for approval of the Assistant Custodian - the delegated authority. The latter approved the same. Against the said order of approval passed by the delegate, the State of U.P. filed a revision under section 27 of the Act before the custodian General. The Custodian General held that he could not pass any order as the impugned order was one passed by his delegate. The High Court disagreed with that view and remanded the case to the Custodian General. This Court allowed the appeals and held the Custodian General was



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right in holding that the revision to him under section 27 was incompetent. It was held that if a revision were to be entertained, it would tantamount to exercising a power of review which did not flow from section 27. In that case, this Court followed *Roop Chand vs. State of Punjab* (supra).

27. The basis of the above cases is that the order of the delegate is to be treated, for all intents and purposes, as an order of the principal itself here, the Board of Revenue and hence the Board cannot revise an order passed by the delegate, the Commissioner.

Can the Board review an order passed by its delegate, the Commissioner?

28. It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to 'review' of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available to his successor.

30. In the light of the above, it is therefore clear that the Board of Revenue which never heard the case cannot review the order of the Commissioner, its delegate, passed under section 15 of the 1958 Act. In fact, if it does so, that will amount to the exercise of an indirect power of revision by the Board which is not permissible in the light of the ruling in *Roop Chand's* case and case in *Behari Kunj Sahakari Awas Samithi* referred to above.

The Hon'ble Supreme Court of India held that the Board of Revenue which never heard the case cannot review the order of the Commissioner, its delegate, passed. If it does so, that will amount to the exercise of an indirect power of revision which is not permissible. No doubt, if the order passed by one authority delegate, such authority cannot exercise power to review.

9. As stated supra, the first respondent never delegated his power of revision in favour of the second respondent. By the communication dated 30.04.2010, the first respondent directed the second respondent to revise the order passed by the fourth respondent under revisional power contemplated under Section 5 (2) of the Act. Therefore, the above judgment is not helpful to the case on hand.



10. The learned Government Advocate relied upon the judgment in the case of The Special Commissioner and Director of Survey and Settlement Chepauk, Chennai 5 Vs. M.Arumugam reported in 2007-3-LW 988, wherein the Full Bench of this Hon'ble Court held as follows:

12. In M.Veeraswamy's case, cited supra, the Division Bench repelled the contention that the Board has no jurisdiction to suo motu exercise its revisional power under Section 7(c) and 7(d) of the Act and held as follows:

'7. It is next contended that the Board has no jurisdiction to suo motu exercise its revisional powers under S.7(c) and S.7(d) of the Act. The argument proceeds that the Board could exercise such powers only if there is an application before it for revising the order of lower authority. There is no substance in this contention also. The Section does not contemplate any specific application being filed under Section 7(c) and 7(d) of the Act. The Section confers powers on the Board to cancel or set aside any orders passed by the lower authority and certainly it is open to the Board to exercise the said power suo motu whenever it is found necessary."

13. In the case of R.Ramadoss (supra) the Divisions Bench (consisting of Nainar Sundaram and Thanikachalam, JJ) held that with reference to the exercise of power under Section 5(2) of the Act, there has been a delineation of the same by the rules framed pursuant to the power under Section 67 (2)(b) of the Act. It must be taken that it is the only way and method in which the power of revision under Section 5(2) of the Act could be exercised by the Director and he has no power to act suo motu. It was held that the rules framed under the statute must be treated for all purposes of construction of powers or obligations, as if they are in the statute itself, and are to be of the same effect as if adumbrated in the statute itself. We are unable to agree with the view taken by the learned Judges of the Division Bench in the aforesaid case. It is no doubt true that the rules could be used as aid to interpretation of the provisions of the Parent Act, but only where the meaning of the Act is ambiguous (see Hanlon v. Law Society, 1980 (2) ALL E.R

199). The provisions of Sections 5 and 7 of the Act confer extremely broad powers on the Director and the Board respectively for correcting the mistakes



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committed by the lower authorities and for the purpose of effectuating the Scheme of the Act and implementing the purpose behind the Act. We are inclined to agree with the view taken in David Pillai's case and M.Veeraraswamy's case (supra) that the Director of Settlement as well as the Board of Revenue have suo motu powers to interfere with the orders passed by the lower authorities. The reference is answered accordingly.

11. This Hon'ble Court held that Section 7(d) of the Act confers powers on the Board to cancel or set aside any orders passed by the lower authority and certainly it is open to the Board to exercise the said power suo motu whenever it is found necessary. Here, the first respondent is the Revenue Board and the second respondent is the Director of Settlement. Therefore, the first respondent has got power and jurisdiction as contemplated under Section 7 (d) of the Act to revise the order passed by the second respondent. Therefore, the above judgment is squarely applicable to the case on hand.

12. The learned counsel for the petitioner also submitted that Section 5(2) and Section 7(c) of the Act are one and the same i.e. the power of revision as against the order passed by the fourth respondent. Originally the petitioner was granted patta on 26.07.2000 and after period of 10 years, the first respondent delegated his power to revise the order passed by the fourth respondent in favour of the second respondent. Therefore, there is limitation to revise the order passed by the fourth respondent to revise on suo motu on any application. However, the second respondent passed order in favour of the petitioner and the sixth respondent. Again, it cannot be revised by the first respondent since already he delegated power in favour of the second respondent. The learned counsel for the petitioner raised another ground that the first respondent delegated his power to revise the order passed by the fourth respondent after period of 10 years.

13. On perusal of communication dated 30.04.2010, revealed that the first respondent found some irregularities in the order passed by the fourth respondent and even then, the first respondent failed to take by revision and also in view of the petition submitted by the sixth respondent seeking for patta as the subsequent purchaser of the subject land and directed the second respondent to revise the order passed by the fourth respondent. Thereafter, by the representation dated 19.02.2011, the petitioner also requested the second respondent to grant patta. Therefore, the petitioner having been requested the second respondent to issue patta and also having been accepted



the direction issued by the first respondent appeared before the second respondent and after detailed enquiry, the second respondent passed order dated 26.04.2011, thereby issued patta in favour of the petitioner and the sixth respondent herein. Therefore, the petitioner never challenged the order issued by the first respondent and also the order passed by the second respondent since the order was passed in his favour. Therefore, now in the present writ petition, the petitioner cannot raise the ground that the first respondent directed the second respondent to revise the order of fourth respondent after period of 10 years from the date of issuance of patta in his favour.

14. In view of the above discussion, this Court finds no infirmity or illegality in the show cause notice issued by the first respondent and the writ petition is devoid of merits and the same is dismissed. However, the first respondent is directed to issue fresh notice to the petitioner and the sixth respondent within a period of two weeks from the date of receipt of copy of this order. Thereafter, the first respondent is directed to give opportunity of hearing to the petitioner and the sixth respondent herein and pass orders on merits and in accordance with law within a period of twelve weeks thereafter. No order as to costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

- 1.The Special Commissioner and
Commissioner for Land Administration,
Chepauk, Chennai - 600 005.
- 2.The Principal Secretary and
Commissioner for Survey & Settlement,
Survey House,
Chepauk, Chennai - 600 005.
- 3.The Settlement Officer,
Chepauk, Chennai - 600 005.
- 4.The Assistant Settlement Officer,
Chepauk, Chennai - 600 005.



5.The Tahsildhar,
Sriperumbudur Taluk,
Kanchipuram District.

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+1 CC to Mr.Sundar Narayanan , Advocate sr 49591.

W.P.No.13674 of 2012

AD (CO)
SP (10/11/2021)