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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.16542 of 2011
and M.P.No.1 of 2011

1. V.R.Venkataramani
2. R.V.Kannan

... Petitioners

-Vs-

1. The Principal Secretary and Commissioner
of Land Administration - Ezhilagam,
Chepauk, Chennai - 600 005.
2. The Tahsildar,
Taluk office,
Bodinayakanur.
3. The District Forest Officer,
Theni Forest Division,
District Forest Office,
Theni.

... Respondents

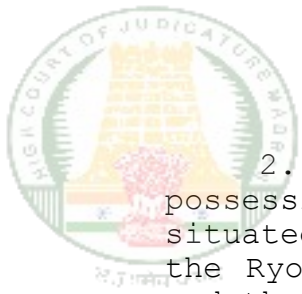
Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ Certiorarified Mandamus calling for the records pertaining the impugned order in RE.K1/22054/09 (K2/WRS 18/85), dated 30.07.2010, passed by the first respondent and quash the same and direct the first respondent to issue patta to the petitioners for 36.82 ¼ acres situated in Survey Field No. 1317 and 1318 Kottagudi Village, Bodinayakanur Taluk, Theni district.

For Petitioners: Mr.V.Manohar
for Mr.S.B.Viswanathan

For Respondents: Mr.Richardson Wilson
Government Advocate.

ORDER

This Writ Petition has been filed to call for records pertaining the impugned order in RE.K1/22054/09 (K2/WRS 18/85), dated 30.07.2010, passed by the first respondent and quash the same and direct the first respondent to issue patta to the petitioners for 36.82 ¼ acres situated in Survey Field No. 1317 and 1318 Kottagudi Village, Bodinayakanur Taluk, Theni District.



2. The case of the petitioners is that they are in possession and enjoyment of the land ad measuring 64.54 acres situated at Kottagudi Zamin Village, Theni District, in which the Ryotwari patta was granted to an extent of 27.71 $\frac{1}{4}$ acres and the balance extent of 36.82 $\frac{3}{4}$ acres as deficit extent. The Kottagudi Village was a Zamin Estate which was notified in G.O.Ms. No.3157 Revenue dated 09.12.1950 and was taken over by the government on 06.11.1952. The extent of 101.95 acres was assigned by the Zamindar to one Sankaranarayana Iyer before 31.10.1939, in which 100.20 acres in paimash No.102, 1.06 acre in paimash No.102, 0.69 acres in paimash No.109. One Subramanian Chettiar filed a suit against the said Sankaranarayana Iyer in O.S.No.498 of 1934 on the file of the District Munsif Curt, Periyakulam, in which the above property belonged to Sankaranarayana Iyer was brought for Court auction.

3. One Mahadeva Iyer purchased 101.26 acres in the Court sale dated 22.08.1940. He sold out the same in favour of one Ramanatha Chettiar by the registered sale deed dated 09.12.1940 vide document No.3289/1940. Thereafter the said Ramanatha Chettiar also acquired 2.00 acres land by assignment in paimash No.109 and obtained Zamin patta No.241. Thereafter he sold out the entire property ad measuring 103.26 acres to three persons S.S.Marikayar, O.Subramanian and Peer Mohamed Sahib by the sale deed registered vide document No.304/55. The said S.S.Marikayar sold out the land ad measuring 16.63 acre to the petitioners under two sale deeds dated 16.10.1978 and 17.10.1978 registered vide document Nos.2123 of 1978 & 2135 of 1978. Likewise, the said Peer Mohamed Sahib sold out the land ad measuring 11.08 $\frac{3}{4}$ acres to one Sivasubramaniam by two registered sale deeds dated 15.11.1978 vide document Nos.2299 of 1978 and 2300 of 1978. The second petitioner had purchased the said land by two sale deeds dated 09.02.1979 registered vide document Nos.273 of 1979 & 274 of 1979.

4. However, the Settlement Authority issued Ryotwari patta only to an extent of 44.35 acres alone in favour of the said S.S.Marikayar, O.Subramanian and Peer Mohamed Sahib and the balance 58.91 acres was deemed as forest poromboke and included in survey No.1284. But the entire area of 103.26 acre are in possession and enjoyment of the petitioners' predecessors and thereafter with the petitioners. Therefore, the first petitioner filed revision before the Director of Survey and Settlement, Chennai for cancellation of notification as forest poromboke and seeking for Ryotwari patta. After receipt of the report from the Assistant Settlement Officer, the Director of Survey and Settlement by an order dated 28.06.1980 set aside the registration of said land and remanded the case to the Assistant Settlement Officer, Madurai, for fresh enquiry and disposal. Further the Assistant Settlement Officer granted patta only to an extent of 44.35 acres and refused to grant patta for 58.91 acres.



Aggrieved by the said order, the present Writ Petition has been filed.

5. The learned counsel appearing for the petitioners would submit that the entire land ad measuring 103.26 acres were under cultivation by the said three persons and they were planted coffee plant. Those lands were purchased by the petitioners and prayed for patta. They also produced all the records before the Settlement Officer to prove their possession and holdings. Their vendor were already granted Zamin patta Nos.241, 666 & 667 and even then the same was not considered and refused to grant patta for 58.91 acre. In fact, the land ad measuring 101.26 acre was purchased by the said Mahadeva Iyer in the Court auction sale. Thereafter, three persons were purchased and they were issued patta to the total extent of 103.26 acre.

5.1. He further submitted that the petitioners are in continuous possession and enjoyment of the survey excess land ad measuring 36.82 $\frac{1}{4}$ acres. The petitioners also filed Writ Petition before this Court in W.P.No.9201 of 1984 challenging the order passed by they Commissioner Land Administration Department in which, they were granted interim injunction and subsequently, the Writ Petition was allowed on 08.11.1995 and the matter was remanded back for fresh disposal. Even till today, the petitioners are in possession and enjoyment of the said property without any hindrance. Further, the first respondent failed to note that the ryot character of land should be determined as on the notified dated and whether it was properly included in the holding of the ryot, to determine the entitlement for Ryotwari patta. Once the ryoti land is always a ryoti land and the character will not be changed by the Government and to declare the same as forest land. Therefore, the petitioners are entitled to make a claim for patta in spite of the refusal, in the year 1961.

6. Per contra, the learned Government Advocate appearing for the respondents filed the third respondent's counter and submitted that the subject land was classified as forest poramboke as per Section 26 of the Tamil Nadu Forest Act, 1882 vide G.O.Ms.No.1416 Revenue Department dated 02.06.1951. The subject land was correlated to paimash No.1284 as forest poramboke. The settlement patta has been granted to the area in enjoyment of the petitioners and if so any omission with regard to the petitioners' enjoyment in respect of the subject land, the petitioners ought to have initiated the action immediately after the settlement. Their request was rejected in the year 1961 as such, the entire claim is barred by limitation. The petitioners failed to produce any of the document to prove their claim. The petitioners have not produced valid zamin period records to establish their claim in respect of excesses land in survey No.1284. The order of rejection dated 17.08.1991 has become final, under Section 64 (C) of the Tamil Nadu Forest Act.

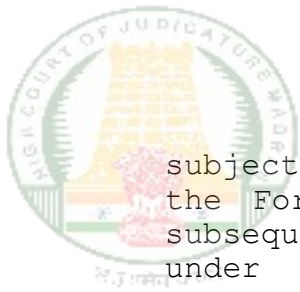


6.1. He further submitted that the petitioners have failed to establish any right over the subject property as per Section 5 of the Tamil Nadu Forest Act. This Court reiterated that the forest should be saved in order to maintain the fragile forest eco system ensuring sustainable flow of tangible and intangible benefits to the humanity. The Assistant Settlement Officer, Madurai in his proceedings dated 15.04.1972, declared the survey No.1284 as forest, under Section 63 of the Tamil Nadu Estates Abolition Act XXVI of 1948. Accordingly, Kottagudi Forest Block was notified as proposed Kottagudi Reserved Forest under Section 4 of the Tamil Nadu Forest Act, vide G.O.Ms.No.103 Forest and Fisheries Department dated 14.02.1978. Thereafter on 05.12.2012, the notification issued under Section 16 of the Tamil Nadu Forest Act, declaring that the subject land as reserved forest. Therefore, the first respondent rightly rejected the claim of the petitioners and prayed for dismissal of this Writ Petition. The learned Government Advocate also relied upon the judgment of the Hon'ble Division Bench of this Court in W.P.No.3536 of 2005 dated 05.12.2006 in the case of C.Sankareswaran Vs. The Commissioner, Land Ceiling and Land Reforms and ors.

7. Heard Mr.V.Manohar, learned counsel appearing for the petitioners and Mr.Richardson Wilson, learned Government Advocate appearing for the respondents.

8. According to the petitioners, they have purchased the subject property to an extent of 64.54 acres situated at Kottagudi Village, Bodinayakanur Taluk, Theni District, in the year 1978 and 1979. For the said land, Ryotwari patta was issued for the land ad measuring 27.71 $\frac{1}{4}$ acres and rejected for the land to an extent of 36.82 $\frac{3}{4}$ acres, by the Settlement Officer, by an order dated 17.08.1961 itself. Therefore, the petitioners have filed claim petition before the Director of Survey and Settlement, Madras and by an order dated 28.06.1980, the case was remanded to the Assistant Settlement Officer, Madurai, for fresh enquiry. The Assistant Settlement Officer, Madurai conducted detailed enquiry and by an order dated 07.05.1981 dismissed the claim petition, for the reason that the said land is forest.

9. Thereafter, the petitioners filed an appeal before the Settlement Officer, Coimbatore, and the Settlement Officer conducted the enquiry and finally passed order to treat the said land as forest, on 24.11.1981. The petitioners again filed an appeal before the Director of Survey and Settlement, Madras and he also passed an order to treat the said land as forest on 25.03.1982. Aggrieved by the same, the petitioners have not filed any appeal. Therefore, the petitioners cannot claim the same prayer in this Writ Petition.



subject land are in possession of the third respondent viz., the Forest Department. The said Kottagudi Forest Block was subsequently notified as proposed Kottagudi Reserved Forest under Section 4 of the Tamil Nadu Forest Act, vide G.O.Ms.No.103, Forests and Fisheries Department, dated 14.02.1978 and the same was published in the Tamil Nadu Government Gazette on 08.03.1978. Thereafter, the Kottagudi Forest Block declared as Kottagudi Reserved Forest by the notification dated 05.12.2012, issued under Section 16 of the Tamil Nadu Forest Act.

11. In this regard, the learned Government Advocate appearing for the respondents, relied upon the order dated 05.12.2006 passed by the Hon'ble Division Bench of this Court, in W.P.(MD)Nos.3536 of 2005 & 943 of 2006 in the case of C.Sankareswaran & anr Vs. The Commissioner, Land Ceiling and Land Reforms & ors. Those Writ Petitions have been filed seeking direction restraining the Revenue officials and the third respondent herein from granting patta in respect of the lands situated in Kottagudi Village, Bodinayakkanoor Taluk, Theni District. In the said Writ Petition, the Hon'ble Division Bench of this Court held as follows :-

"14. The Central Government keeping in mind deforestation, which causes ecological imbalance and leads to environmental deterioration, had brought up the Forest (Conservation) Act, 1980 to check further deforestation. The said Act applies to any forest land irrespective of the fact that it has been declared as reserve forest area. Equally it applies to any unutilised land, which lies in the midst of a forest.

15. In this context, it must be seen that the word "forest" shall generally mean such of those lands which are also in the midst of either the forest or reserve forest, as the case may be, and any restricted meaning would not be in the interest of maintaining ecological balance of the hills. The question as to whether it is utilised for any agricultural purpose or left vacant is not the criteria for determining the issue in question. To our mind, forest means a parcel of land on which trees have been grown. A forest is best defined as an ecosystem or assemblage of ecosystem dominated by trees and other woody vegetations. Moreover, a legal definition is different from an ecological definition. The perspective



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of the economist differs from that of a geographer. But all definitions stress the importance of trees in the ecosystem. That apart, considering the need to protect the wild animals, the Central Government also had brought the Wild Life (Protection) Act, 1972 to provide for the protection of wild animals, birds, plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. To give effect to the said Act, protection of wild animals in the Kottagudi hills should be ensured for ecological and environmental security. The Government of Tamil Nadu had also enacted the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 with an object to prevent deforestation and soil erosion and also to preserve the special characteristics of the hill areas as regards landscape, vegetal cover and climate. With the above object, the Act also provides for regulation of the cutting of trees and the cultivation of land in hill areas in the State. Section 3 of the said Act prohibits the cutting of trees in the forest land without previous permission of the committee constituted by the Government under Section 2A of the Act. Similarly, Section 4 prohibits the use of the land for new cultivation.

16. Factually, in the case on hand, major portion of the land in question is covered by thick forest commonly known as Shola forest, and only a small extent of land is left barren. In the event a barren land is put in use for any other purpose including for agricultural purpose, it would result in deforestation, which is bound to occur in the near future. That apart, the area is a source for continuous water flow and such water is the only source of drinking water for the Bodinaickkanur Municipality. The conservancy of forest land, though not included in the reserve forest, should be retained as open forest and in fact the State is obligated to guard against alienation of vacant land within the



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reach of forest growth in order to maintain the natural forest. Any new inhabitation would certainly affect the natural source of water apart from resulting in ecological imbalances. It would be also not in the interest of habitation of wild animals.

17. From the consistent declaration of law of the Supreme Court, in our opinion, the land in question cannot be either assigned or pattas could be granted to any individual and the said land, which is kept vacant for years and lies in the midst of thick reserve forest, should be kept as a forest only to maintain ecological balance. Any attempt to put the land for different use would certainly endanger the preservation and conservation of forest and for the said reason, the petitioners have to succeed in the writ petitions. Accordingly, the writ petitions are allowed forbearing the respondents from granting the pattas in respect of the lands in Survey Nos.1079/1B, 1110/2, 1113/1B, 1185/1B, 1195, 1197, 1186 and in Survey Nos.1079, 1185, 1186, 1195, 1197 in Kottagudi village, Bodinayakkanoor Taluk, Theni District acquired under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 to any person. No costs."

12. That apart, by the G.O.Ms.No.271, Environment and Forest Department, dated 05.12.2012, the subject land including the survey No.1284, to the total extent of 4039.95.5 Hectare were notified as reserved forest as contemplated under Section 16 of the Tamil Nadu Forest Act, 1982. Also, the petitioners failed to prove that the land claimed is a ryoti in character and properly included in the holding of the ryot. This can be proved only by pattas issued by the Zamindar or the land holder to the ryots and the pattas should be renewed for every Fasli years succeeding, to prove the continuous possession and enjoyment of the land claimed. The petitioners or their predecessors-in-title failed to produce any valid record such as, the patta issued by the Zamindar, tax receipts or other revenue receipts in respect of the land ad measuring 36.82 $\frac{3}{4}$ acres.

13. More over, the Hon'ble Division Bench of this Court held that no patta should be issued in Kottagudi Hills and the forest should be saved in order to maintain the fragile forest eco system of the area ensuring sustainable flow of tangible and intangible benefits to the humanity. Therefore, the first



respondent rightly rejected the claim of the petitioners and this Court find no illegality or infirmity in the order passed by the first respondent and the Writ Petition is devoid of merits and is liable to be set aside.

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14. In the result, the Writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Rts

To

1. The Principal Secretary and Commissioner
of Land Administration - Ezhilagam,
Chepauk, Chennai - 600 005.
2. The Tahsildar,
Taluk office,
Bodinayakanur.
3. The District Forest Officer,
Theni Forest Division,
District Forest Office,
Theni.

+1cc to Mr. S.B.Viswanathan, Advocate, S.R.No.46598
+1cc to the Government Pleader, S.R.No.46906

W.P.No.16542 of 2011
and M.P.No.1 of 2011

VG II(CO)
GN(21/10/2021)