IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.08.2022	17.10.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10423 OF 2013
AND
W.M.P. NOS.5807 & 8809 OF 2017

1. E.Dhanapal
2. N.Poongothai
3. P.Krishnaveni .. Petitioners

- Vs -

1. State of Tamil Nadu
Rep. by its Secretary to Government
Revenue Department
Fort St. George, Chennai 600 009.

2. The Special Commissioner &
Commissioner of Land Administration
Chepauk, Chennai 600 005.

3. The Collector
Kancheepuram District
Kancheepuram.

4. The District Revenue Officer
Kancheepuram District.

5. The Tahsildar
Alandur Taluk, Kancheepuram Dt.

6. The Chief Executive Officer
Cantonment Board
St. Thomas Mount-cum-Pallavaram
Chennai. .. Respondents
(R-6 suo motu impleaded vide order
Dated 24.10.2019 made in WP 10423/13)

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent comprised in the impugned order in G.O. Ms. No.99 Revenue LD-I(1) Department dated 28.3.2013 and quash the same as arbitrary, illegal and unconstitutional and consequently direct the 5th respondent to carry out changes in all revenue records in favour of the petitioners in respect of the property comprised in R.S. No.1455, GLRS No.363 of St. Thomas Mount Village, Alandur Taluk, Kancheepuram District, admeasuring 1 acre and 17,947 sq.ft.

For Petitioners : Mr. M.S.Krishnan, SC, for
M/s. Ganesh & Ganesh

For Respondents : Mr. Ramanlal, AAG, assisted by
Mr.R.P.Muruganraja, GA for RR-1 to 5
Mr. C.Mohan for

M/s. King & Partridge for R-6

ORDER

Assailing the rejection of the application seeking patta for the lands, which have been in continuous possession and enjoyment of the petitioner's vendors and their predecessors for over a hundred years and subsequently at the hands of the petitioner, which have been established through proper documentary evidence establishing continuous title to the property, the present writ petition has been filed by the petitioners.

2. The brief facts, which are necessary for the disposal of the writ petition, as culled out from the voluminous documents, is as under :-

It is averred by the petitioners that they are the co-owners of the property comprised in R.S. No.1455, GLRS No.363 at St.Thomas Mount Village, Alandur Taluk, Kancheepuram District, admeasuring 1 acre and 17,947 sq.ft. The petitioners had purchased the property jointly and had applied for patta.

3. It is the further case of the petitioners that the property was originally owned by one Mrs.Susan Pembartan, which was purchased from one Katheja

Beevi Ammal. The said Susan Pembartan had borrowed a sum of Rs.300/- on 27.10.1902 by mortgaging the property and the mortgagee, Krishnaswamy Chettiar, instituted a suit in O.S. No.82 of 1904, on the file of the District Munsif, Poonamallee, on account of non-payment of rent, which was decreed in favour of the mortgagee on 24.3.1904 directing Susan Pembartan to pay a sum of Rs.570/- along with interest at 6% p.a. and as the said Susan Pembartan could not pay the said amount, she executed a sale deed on 19.9.1905 conveying the subject property in favour of the said Krishnaswamy Chettiar and his brother Govindaswamy Chettiar, which was registered as Document No.1439 of 1905 on the file of the Sub Registrar, Saidapet, in which it has been specifically mentioned that a bungalow house along with appurtenant land is being sold.

4. It is the further case of the petitioner that the said Krishnaswamy Chettiar and Govindaswamy Chettiar and their sons jointly conveyed the subject property to and in favour of one Captain Clemet George Taylor by way of registered sale deed dated 12.9.1935 registered as Document No.1422 of 1935, which land was mortgaged by the said Capt. Clement George Taylor with one Oscar Harry Sheffield by way or registered mortgage deed dated 16.4.1936

registered as Document No.524 of 1936. Pursuant to the discharge of the mortgage on 17.4.1946, the said Capt. Clement George Taylor sold the subject property to one Mrs. B.E.Montaut vide sale deed inn Document No.663 of 1946, which was, thereafter, sold by the said Mrs. B.E.Montaut to and in favour of one T.S.Swaminatha Iyer, an Advocate, registered as Document No.2101 oof 1946. Pursuant to the said sale, the said T.S.Swaminatha Iyer applied for patta in the year 1968.

5. It is the further averment of the petitioner that on 10.6.1974, the Special Tahsildar, Saidapet, issued notice in Ref. No.RC.69/74A stating that the Government is proposing to resume the entire extent of land since it is a time expired lease and, therefore, vide the said notice, the said T.S.Swaminatha Iyer was called upon to submit explanation, to which the said T.S.Swaminatha Iyer submitted representation on 11.6.1974 to which reply was given on 12.6.1974 followed by the submission of all the requisite documents by the said T.S.Swaminatha Iyer asserting that it was never a lease land and, thereby requested the Collector to grant patta for the lands in question.

6. It is the further case of the petitioner that thereafter report was sent by the Special Tahsildar to the Collector observing that the said T.S.Swaminatha Iyer is in continuous possession of the property and that the lands are not lease lands and that it has also been observed in the said report that resettlement was introduced in FASLI 1320 corresponding to the year 1910 and based on the said report, recommendation was sent to the Collector, but no action was taken. It is the further case of the petitioner that the subject lands were also assessed to Tamil Nadu Urban Land Tax.

7. It is the further case of the petitioner that the said T.S.Swaminatha Iyer expired on 3.10.1974 and his legal heirs, five in number, succeeded to the estate. However, as the Tahsildar tried to interfere with the possession and enjoyment of the legal heirs of T.S.Swaminatha Iyer, one of the legal heirs of the said T.S.Swaminatha Iyer, viz., T.S.Sabesan, filed O.S. No.1499 of 1982 on the file of the District Munsif, Poonamallee. However, consequent to the death of T.S.Sabesan on 31.3.1987, the said suit was dismissed as abated.

8. Subsequently, the other legal heirs of T.S.Swaminatha Iyer conveyed the subject property in as is where is condition by means of Document Nos.4191/1994, 4192/1994, 4193/1994 and 3149/1995 to M.Dhanalakshmi, R.Fathima, S.K.M.Chandrakala, P.Lakshmiammal, P.Manoranjitham, K.V.K.Prema, V.Chandrika, Vijayalakshmi and M/s.Beyana Technologies Pvt. Ltd. And M/s.Pridar Heavy Fabricator Industries Pvt. Ltd. and all the aforesaid purchasers appointed one E.Baskaran as Power Agent on 24.3.1995 vide Doc. No342/1995.

9. Subsequently, the said power agent sold the property to one R.Prabha by way of registered sale deed dated 23.2.1996 registered as Document No.3153/1996 and the said Prabha, acting through her power agent, sold the property to one Chockalingam vde sale deed dated 17.3.2004 registered as Document No.476 of 2004.

10. Subsequently, the legal heirs of T.S.Swaminatha Iyer along with the aforesaid Chockalingam, one Alocius Mathaias, Sheela Mathaias, Rajkumari Royan, Britto Rajkumar Mathaias, Ruby Sampson, Swarna Solomon, Susan Pramod, V.K.Murthy and Sasikumar, conveyed the property to the petitioners by

way of registered Document Nos.713, 738, 739, 765, 805 and 806 of 2004. It is the further case of the petitioners that apart from the legal heirs of T.S.Swaminatha Iyer and Chockalingam, the other parties to the deed were added as confirming parties, since they claimed the subject property by way of adverse title and had claimed ryotwari patta.

11. However, as the confirming parties did not have any title to the property, they joined the aforesaid persons and conveyed perfect title to the petitioners and since one of the legal heir of T.S.Swaminatha Iyer, viz., T.S.Sailesam died intestate as bachelor, his share devolved upon his sisters, who were the other legal heirs of T.S.Swaminatha Iyer, which was also conveyed to the petitioners.

12. It is the further case of the petitioner that Alocius Mathaias and others claimed that the lands in question are time expired leases and that they are in possession of the said property and, therefore, they should be granted ryotwari patta and to this end, they filed W.P. No.8597 of 1992 for grant of ryotwari patta and this Court, vide order dated 1.7.1992 directed the Assistant

Settlement Officer to consider the said claim. Pursuant to the said direction, the Assistant Settlement Officer considered the claim and rejected the same vide order dated 20.12.1996 holding that the lands in question do not come within Schedule I of the Tamil Nadu Leasehold (Abolition & Conversion into Ryotwari) Act, 1963 and, therefore, the said authority has no jurisdiction to grant patta. It is therefore the claim of the petitioner that the subject lands are not time expired leases covered under Act 27 of 1963. In view of the said Alocius Mathaias and other joining the legal heirs of T.S.Swaminatha Iyer as confirming parties and conveying the lands to the petitioners, except the petitioners, there are no other adverse claims against the said property.

13. Subsequent to the purchase of the subject property, the petitioners have been repeatedly approaching the respondents for grant of patta and since no action was taken on the same, the petitioners filed W.P. Nos.21904 to 21906 of 2005 and this Cort, vide order dated 5.7.2005 directed the 1st and 2nd respondents therein, viz., the 1st and 3rd respondents herein to consider the claim of the petitioners and pass orders after giving opportunity to the petitioner. Pursuant to the said order, reports were exchanged between the authorities

relating to grant of patta to the petitioners. The 5th respondent sent a report to the 4th respondent vide letter Ref. No.RC.8268/98-B2 dated 16.6.2004, which report clearly records the fact that the title of the petitioners has been traced to more than 100 years and possession vests with the petitioners. Based on the reports sent by the authorities, the 3rd respondent sent report dated 17.10.2005 to the 2nd respondent and the 2nd respondent, vide his communication dated 31.3.2006 to the 1st respondent, requested the 1st respondent to reject the claim of the petitioners and the 1st respondent, vide order dated 9.8.2006, rejected the claim of the petitioners.

14. Aggrieved by the said order, W.P. Nos.40021 to 40023 of 2006 were filed by the petitioners and this Court, while allowed the said petitions, remanded the matter to the 1st respondent and the 1st respondent was directed to give opportunity to the petitioners before passing orders. Pursuant to the said orders of this Court, the 1st respondent, vide his communication dated 14.11.2007 sought report as to the exact nature of the lands, whether they are private lands or poramboke lands and proof was also directed to be produced. Pursuant to the same, in the communication of the District Revenue Officer in

the year 2008, it was specifically addressed that there are no records in their office to show that quit rent was levied and collected for the lands in question. Once again when proof was demanded by the 1st respondent as to the nature of the lands, the District Revenue Officer, vide his communication dated 7.5.2008 addressed to the Special Commissioner and Commissioner for Land Administration that the basic settlement records relating to the land are only available at the Commissioner's office. It has also been confirmed by the Tahsildar in his letter dated 5.6.2008 that the lands are assessed to Urban Land Tax and has been paid for FASLI 1415 and 1417.

15. It is the further case of the petitioners that though a specific query was raised by the Assistant Commissioner of Urban Land Tax to which the Tahsildar has replied that there was no proof to show that a lease deed was specifically executed in favour of Krishnaswamy Chettiar and lease amount was being collected from the said Krishnaswamy Chettiar. Based on the aforesaid reports, the Special Commissioner and Commissioner of Urban Land Tax and Ceiling sent a report in R.C. No.6890/2008/C2 dated 26.06.2008 to the 1st respondent stating that the said lands are private lands.

16. It is the further case of the petitioner that for the first time, though it was admitted by the District Collector in his report to the 1st respondent about the possession of the petitioners and that there is no record to show that the land was a lease land, but an entry has been made for the first time in the year 1912 claiming the land to be a Government poramboke, which resulted in the issuance of a letter dated 27.1.2009 by the 1st respondent calling upon the petitioners to show cause as to why their request should not be rejected. Since by the show cause notice the 1st respondent had pre-determined the issue, the petitioners filed W.P. Nos.20166 to 20168 of 2010 to quash the said order and this Court, by order dated 29.10.2010 permitted the petitioners to submit a reply to the show cause notice and the respondents were directed to dispose of the representation within a particular period after giving an opportunity of personal hearing to the petitioners.

17. The petitioners gave a reply, which was followed by a further representation on 17.6.2011 and also attended the enquiry in person on the same day. Inspite of the enquiry, since the 1st respondent did not pass any

order, the petitioner issued contempt notice on 10.12.2012 followed by a contempt petition in Contempt Petition No.559 of 2013 and on notice being ordered in the contempt petition, the present impugned order came to be passed.

18. It is the further case of the petitioner that through their power agent, the petitioners obtained the necessary records under the Right to Information Act and also sought information under the Right to Information Acct from the Defence Estates Officer with regard to the status of the land in question by letter dated 10.01.2011. In reply to the same, the Public Information Officer of the Ministry of Defence, by reply dated 31.01.2011 stated that there is no record in their office to show the status of land and prior to 1905. It is the further case of the petitioners that the land, which has been classified as B2 land, is not within the purview of the Cantonment Board. Though the Kancheepuram Collectorate, vide their letter dated 28.9.2010 claimed that the land is not a lease land, but a Government land, however, the same has been contradicted by the Tahsildar vide letter of September, 2010, stating that it is a time expired lease. The contradictory stand of the respondents clearly reveal that the respondents are

bent upon denying the rights of the petitioners and that the impugned order has been passed without any regard to the material records, which clearly show that the subject property is a private land and not a Government land or a leasehold land and there being no adverse claim against the said property, the impugned order is erroneous, which deserves to be set aside and an affirmative direction ought to be issued to the respondents to grant patta in favour of the petitioners. Therefore, for the aforesaid relief, the present petition has been filed.

19. Learned senior counsel appearing for the petitioners submitted that the petitioners title to the subject property is flawless and it dates back to more than hundred years. It is the further submission of the learned senior counsel that the earliest document in the chain is one relating to the sale of the property by one Susan Pembertan to Krishnaswamy Chettiar, which is on the basis of a court decree, which is of the year 1905 and at that point of time, there is no entry in the revenue records to show that the said property belonged to the Government or that the lands were leased out to any individual, much less the vendor in the chain of ownership.

20. It is the further submission of the learned senior counsel that even the Special Tahsildar, Resumption of Time Expired Lease Lands, as early as in the year 1974, had clearly stated that there was no lease on the said property as there was no records to establish that lease was granted by the Government to any of the vendors in the chain. The said authority has also held that no lease was executed in respect of the said lands either before or after the introduction of resettlement in Fasli 1320. It is therefore the submission of the learned senior counsel that merely because an erroneous entry has crept in, in the settlement register in the year 1912 would in no way alter or confer title or right on the Government over the said lands. It is the further submission of the learned senior counsel that the communication that had emanated between the vendors of the petitioners, who are the legal heirs of T.S.Swaminatha Iyer and the Government would clearly reveal that the petitioners hold uninterrupted and unblemished title over the said property and the Government had no shred of document to establish any right over the property at any point of time prior to 1905.

21. It is the further submission of the learned senior counsel that the purchase made by the purchaser in the chain, viz., Krishnaswamy Chettiar from Susan Pembertan is through a court decree in the year 1905, in which it has been clearly mentioned that the bungalow along with appurtenant land is being sold. Such being the case, an erroneous entry in the resettlement register cannot prevail over the said instrument of sale executed through a court proceedings. Except the entry in the resettlement register, which is only in the year 1912, there are no other documents to show that the lands are either leased out at any time anterior in point to the execution of the sale deed of the year 1905 or there is any other material on which it could be safely concluded that the lands are Government poramboke lands.

22. It is the further submission of the learned senior counsel that under normal circumstances, if there are no other claimants for patta based on registered documents of title, the record made in the settlement register may be relied upon, but in the case on hand, the petitioners, who are the subsequent purchasers, rely upon a decree of the civil court, which was granted in the year 1904, which is eight years anterior to the entry in the resettlement register,

which clearly stands proof of the existence of the mortgage deed and its subsequent sale in the year 1905 through a registered document of sale, which are all prior to the entry made in the year 1912, which could unerringly be inferred that not only the land is a private land, but the entry made in the settlement register is erroneous as to a miscellaneous lease.

23. It is the further submission of the learned senior counsel that the entry as to miscellaneous lease in the resettlement register had been made in the year 1912 in the survey which was undertaken between 1910 and 1912. However, even in the year 1905, the property, which is of a private character, comprising land, bungalow, well and trees has been alienated through a court decree, which not only proves the private character of the property, but the said fact has also been admitted by the authorities, viz., the Special Commissioner and Commissioner of Urban Land Ceiling, District Revenue Officer as also the Tahsildar. It is the further submission of the learned senior counsel that even the purchaser of the property in Court auction, viz., Krishnaswamy Chettiar also finds reflection in the resettlement register. However, without considering the said entry, which is on the basis of a registered sale deed, without any basis,

classification of land has been made erroneously as a miscellaneous lease, which is not substantiated by any material document.

24. It is the further submission of the learned senior counsel that in respect of the adjacent property in S. No.1456 the extract of the settlement register reveals the details of the lease, which clearly shows that while the adjacent property in S. No.1456 was a leased property, which has found place in the settlement register even prior to 1912, however, for the subject property no such classification existed and for the very first time during the resettlement survey, the erroneous entry has crept in. It is the further submission of the learned senior counsel that the aforesaid position has been rightly assessed by the revenue authorities and they have rightly conceded that the subject property is private in nature and it is not a leased property.

25. It is the further submission of the learned senior counsel that the respondents have, right through, not disputed the sale transactions culminating in the execution of various sale deeds and all the sale deeds are accepted to be true and genuine documents. Such being the case, it is submitted that the

petitioners having proven title over the property for more than 100 years, a stray entry in the revenue record, that too in the year 1912, without any basis, cannot be the basis to reject the claim of the petitioners, when the very fact that the details sought for as to the lease, alleged to have been executed, by T.S.Swaminatha Iyer, has still not seen the light of the day and the said representation seeking the relevant records as to the lease has not been provided to the petitioners or to the vendors of the petitioners. This clearly shows that not only the respondents are not possessed of any documents to show that there exists a lease between the Government and the predecessors-in-title of the petitioners, but the said lease is also available, which forms the basis for the rejection of the claim of the petitioners for grant of patta.

26. It is the further submission of the learned senior counsel that if the stand of the respondents that the subject lands are really leased lands, then there would arise no occasion for collection of tax. However, contrary to the said stand, the Special Commissioner and Commissioner of Urban Land Ceiling had assessed the subject lands to urban land tax, which clearly reveals that it is a

private property and not Government as claimed through the erroneous entry made in the resettlement register.

27. It is the further submission of the learned senior counsel that even the communications of the respondents reveals that there is no authority for the amount previously paid and that the land is temporarily charged to quit rent at block rate. Merely because the entry shows a charge of quit rent would not effectively make the subject property a lease property, as quit rent is merely a form of tax collected by the Government, which is a source of revenue and the collection of quit rent would not confer any title to the said lands on the Government, more especially in the form of lease.

28. It is the further submission of the learned senior counsel that the encumbrance certificate obtained for a period of 100 years does not reveal any encumbrance over the property, much less a lease, alleged to be in existence by the respondents. It is the further submission of the learned senior counsel that the opinion of the Government Pleader as also the opinion of the then learned Advocate General relating to the validity of the petitioners claim for patta and

further, the opinion of the Government Pleader is categorical in stating that the subject property is a freehold land. Such being the case, the subject property being a private property, no claim can be made by the Government on the basis of an erroneous entry in the resettlement register. It is the further submission of the learned senior counsel that except for the said entry in the resettlement register the revenue authorities and the other respondents have not placed any documents to show that a lease, in fact, existed and is still in existence to disprove the claim of the petitioners. In the absence of any such document, the petitioners having been in possession of the property for more than 100 years with clear and uncontroverted title, the petitioners are entitled to grant of patta in their favour.

29. It is the further submission of the learned senior counsel that the dismissal of the suit, which is relied on by the respondents to claim that the subject property is, in fact, a leased land, cannot be accepted for the simple reason that the suit was dismissed as abated, as the plaintiff, who was one of the legal heirs of T.S.Swaminatha Iyer, died. The dismissal was not on the basis of merit and, therefore, the respondents cannot lay much stress on the said

decision to stake claim of the subject property, when there are no documents, which conclusively or even theoretically establish that the respondents have entered into any lease with regard to the subject property.

30. It is the further submission of the learned senior counsel that the repeated act of the respondents rejecting the claim of patta filed on behalf of the petitioners would only go to show that the revenue authorities, who are deemed to be in possession of records, failing to produce the same would only lead to drawing an adverse inference in favour of the petitioners. The petitioners having proven their title and continuous possession and enjoyment of the property through the chain of vendors would only go to show that the onus is on the respondents to disprove the claim of the petitioners to patta through valid documentary evidence and mere inference and a stray entry in the resettlement register, that too, posterior in point of time to the earliest document filed by the petitioners relating to the sale, which is on the basis of a court decree, would only strengthen the case of the petitioners that the subject lands are private lands and at no point of time, the said lands were Government lands which was leased out to private individuals. If really the subject property was leased out to

private individuals by the Government, necessarily the Government should have been in possession of the documents and the failure of the respondents to submit any document clearly strengthens the case of the petitioners, coupled with the fact that the letter of the Tahsildar, Tambaram, dated 11.7.06 unerringly show that the office has been functional since 1865, yet there are no records to show that the subject lands were leased to the petitioners and only records back-dating to 25 years from 1905 were available, which also did not provide any proof as to the character of the lands as leased lands.

31. It is the further submission of the learned senior counsel that even the letter of the Tahsildar, Tambaram, dated 23.06.2008 clearly show that no records as to the existence of any lease deed executed by the Government or with regard to collection of lease amount with regard to the subject property by the Government are with the said office, which clearly establish that no lease, as alleged by the respondents, is subsisting or was even in existence at any point of time.

32. In fine, it is the submission of the learned senior counsel that while the petitioners have proved their title for over a century by placing documentary evidence, evidencing the passing of the subject property through various hands and ultimately landing in the hands of the petitioners, however, the respondents, except for the lone document, viz., the resettlement register of the year 1912, has not placed any material to counter the claim of the petitioners with regard to title and also the respondents have not placed any material to establish the fact that there existed a lease given by the Government to the predecessors-in-title of the petitioners and that it is only the leasehold right which had been passed on through the chain of sale deeds. In the absence of the respondents placing materials to establish the lease, the prayer for grant of patta in favour of the petitioners deserves to be accepted and, accordingly, it is prayed that this writ petition should be allowed.

33. Per contra, learned Addl. Advocate General, appearing for respondents 1 to 5, relying upon the various documents, which have been filed by the petitioners and more particularly the communications as has emanated from the various authorities submitted that the subject lands are time expired

lease, for which there was no record to show quantification of quit rent, which necessitated the charging of temporary quit rent, as is evident from the revision and resurvey register.

34. It is the further submission of the learned Addl. Advocate General that the document No.1439/1905, which is the first of the sale deed alleged to have been entered into between one Susan Pembertan and Krishnaswamy Chettiar on the basis of a court decree does not carry the flow of title to Susan Pembertan, in that the vendor of Susan Pembertan does not find place. It is the further submission of the learned Addl. Advocate General that no reliance can be placed on the said document to connect the subject lands with that of the lands in the said document, as no survey number has been provided in the said document. Further, it is the submission of the learned Addl. Advocate General that the boundaries in Document No.1439/1905 are at variance with the subsequent sale deed, alleged to have been entered into between Krishnaswamy Chettiar and Capt. Clement George. Further, there is no mention about the superstructure, viz., the bungalow, alleged to have been purchased by Susan Pembertan from Kathija Beevi, which clearly shows that Susan Pembertan did not have any title

to part with the said subject lands by way of sale to Krishnaswamy Chettiar. It is therefore the submission of the learned Addl. Advocate General that once the base document, viz., Document No.1439/1905 is found to be spurious, the subsequent alienations does not have any legs to stand and all those alienations are totally illegal and without any valid title.

35. It is the further submission of the learned Addl. Advocate General that though T.S.Saminatha Iyer claims to have purchased the subject property as early as in the year 1946, yet patta was applied for by the said T.S.Swaminatha Iyer only in the year 1968. The recitals in the communications between Swaminatha Iyer and the revenue authorities is silent on the long delay in seeking patta for the said property, which casts a grave doubt on the alleged purchase made by Swaminatha Iyer from B.E.Mountat.

36. It is the further submission of the learned Addl. Advocate General that though the subject property is claimed to be at the hands of T.S.Swaminatha Iyer and, thereafter at the hands of his legal heirs, viz., the vendors of the petitioners, yet, one Alocius Mathaias, who is claimed to be a tenant under T.S.Swaminatha

Iyer had sought to issuance of ryotwari patta for the subject property by raising a claim that he has been in continuous possession and enjoyment of the subject property for the past 75 years, which casts a grave doubt on the claim of T.S.Swaminatha Iyer with regard to purchase of the subject property from B.E.Mountat.

37. It is the further submission of the learned Addl. Advocate General that the claim of Alocius Mathaias claiming ryotwari patta was rejected by the Assistant Settlement Officer on the ground that claim for ryotwari patta under Act 27 of 1963 would be available only for the villages covered under the 1st schedule and St.Thomas Mount Village having not been brought within the 1st schedule, no ryotwari patta could be granted for the lands covered under S.No.1455. The appeal filed against the said order before the Settlement Officer and further revision before the Director of Survey and Settlement ended in confirming the order passed by the Assistant Settlement Officer. Therefore, the claim of Alocius Mathaias confirms the stand of the Government that the lands are Government poramboke lands, as otherwise the said Alocius Mathaias could

not have claimed ryotwari patta had the lands been the private lands purchased by T.S.Swaminatha Iyer.

38. It is the further submission of the learned Addl. Advocate General that the documents in and by which the legal heirs of T.S.Swaminatha Iyer sold the superstructure to one Dhanalakshmi, and other persons, the recitals in the said document clearly reveals that the lands are lease lands and that they are Government poramboke lands. There is a categorical admission by the vendors of the petitioners in the said document that the said lands, of which they are selling the superstructure are leasehold lands. Therefore, the claim of the petitioners that the subject property is private lands is wholly fallacious and not substantiated by the very own documents filed by the petitioners.

39. It is the further submission of the learned Addl. Advocate General that the suit in O.S. No.1499/1982 before the District Munsif Court, Poonamallee, challenging the orders of eviction issued by the Tahsildar stood dismissed, which is in favour of the Government and no appeal having been filed against the said order by the other legal heirs of T.S.Swaminatha Iyer, the only presumption that

could be drawn from the said fact is that the vendors of the petitioners have accepted the said order and realized the leasehold character of the subject property and, therefore, in the absence of any steps having been taken by the vendors of the petitioners till date to set aside the said order would only go to show that the vendors of the petitioners have accepted the said order and the same has attained finality and, therefore, it is not open to the petitioners to dispute the character of the said lands at this point of time.

40. It is the further submission of the learned Addl. Advocate General that in the application filed by Alocious Mathaias seeking ryotwari patta was not contested by T.S.Swaminatha Iyer and he did not apply for ryotwari patta, which clearly shows that it was mere speculation on the part of T.S.Swaminatha Iyer in trying to hold the property knowing fully well that the subject property are lease hold lands belonging to the Government. It is the further submission of the learned Addl. Advocate General that the payment of 'B' Memo charges by Alocious Mathaias for Fasli 1399 to 1406 also establishes the claim of the respondents that the subject property is Government poramboke lands.

41. It is the further submission of the learned Addl. Advocate General that the petitioners cannot claim parity to the persons in S. No.429, who have been granted patta, though they had held leasehold lands, belonging to the Government, as at no point of time, such a stand was taken by the petitioners. Further, the petitioners cannot claim negative equality to the persons in S. No.429 as such practice had been deprecated by the Full Bench of this Hon'ble Court in W.A. (MD) No.201/2021 dated 5.3.2021 and also the decision of the Hon'ble Supreme Court in 2020 (11) SCC 242.

42. Therefore, learned Addl. Advocate General appearing for respondents 1 to 5 fervently prays this Court that the documents submitted by the petitioners cannot form the basis for granting patta in favour of the petitioners, which aspect has been rightly appreciated by the 1st respondent while passing the order impugned herein and, therefore, interference is warranted with the order impugned herein.

43. Since the subject land lies within the Cantonment Zone, this Court, *suo motu,* had impleaded the 6th respondent and in response to such impleadment, the 6th respondent has appeared and assisted the Court.

44. It is the contention of the learned counsel appearing for the 6th respondent that the writ petition is, *per se,* not maintainable, as it involves several disputed questions of facts, which cannot be gone into by this Court in exercise of its powers under Article 226 of the Constitution.

45. It is the submission of the learned counsel that the St.Thomas Mount-cum-Pallavaram Cantonment was one of the oldest cantonments in India amongst the 62 cantonments operating in the country. The Cantonments Act, 2006 is a self-contained code, which superceded the earlier Cantonments Act, 1924, which covers various aspects relating to the Cantonment area, including its regulation and exercises its power in relation to elections in the Cantonments, taxes, town planning and control over the buildings. It is the submission of the learned counsel that the primary object of the Cantonments Act is for regulating

the defence area ownership and that more than 2.00 Lakh acres were situated within the 62 notified cantonments out of the 17.00 Lakh acres under its control.

46. It is the further submission of the learned counsel that the total extent of notified area in the St.Thomas Mount-Pallavaram Cantonment was 2914 acres which was comprised in various classification of lands, which have been prescribed under the Cantonment Land Administration Rules, 1937. It is the further submission of the learned counsel that the subject property, to which patta is claimed by the petitioners falls within the lands classified as 'B-2' which type of lands are under the Management of the State Government.

47. It is the further submission of the learned counsel that the petitioners claim to be the owner of the subject property, carries the General Land Register Survey No.363 (for short 'GLRS'). The said land is classified as 'B-2' which comes under the Management of the State Government in terms of the classification of lands made under the Cantonment Land Administrative Rules, 1937. It is the further submission of the learned counsel that though the subject land is under the management of the State Government, but yet it is the 6th respondent, which

is a statutory authority, which administers/regulates the said land and is the administrative authority for the said land having GLRS No.363. It is the further submission of the learned counsel that all buildings and activity in the lands falling under the Cantonment jurisdiction are regulated under Chapter X of the Cantonments Act pertaining to Town Planning and control over buildings and that any superstructure to be erected shall have to be done only under the provisions of the Cantonments Act. It is the further submission of the learned counsel that a temporary structure/shed with sheets for roof has been erected on the subject property, for which no permission/sanction has been sought for or granted till date and, therefore, the temporary structure in GLRS No.363 is without the approval of the Cantonment Board and, therefore, the same is illegal.

48. It is the further submission of the learned counsel that with regard to any registration of an immovable property within the cantonment area, information of such registration needs to be sent to the Chief Executive Officer and the Defence Estates Officer. However, the petitioners claim that various sale transactions culminating in sale deeds have been registered with regard to

the subject property in GLRS No.363, but till date no information has been made available to the 6th respondent in consonance with Section 354 of the Cantonments Act, which prescribes that with regard to such transfers, the Registrars or Sub-Registrar of the District or Sub-District formed for the purposes of the Registration Act should send information of such registration, which has not been done so, which creates a doubt on the veracity of the various sale transactions and such transactions are not in consonance with the provisions of the Cantonments Act.

49. It is the further submission of the learned counsel that the sale deeds purported to have been executed have not been notified or intimated in the manner prescribed u/s 354 of the Cantonments Act and, therefore, the same are illegal, contrary to law and cannot be referred or relied on by the petitioners. It is therefore the submission of the learned counsel that the petitioners having not established clear and valid title to the subject property in consonance with the relevant provisions of the Cantonment Act for the said land lying with the cantonment jurisdiction and that the title being shrouded by discrepancies and doubts, necessarily, the petitioners have to be relegated to the jurisdiction of the

civil court to establish their title and, therefore, prays this Court to dismiss the present petition.

50. In reply to the aforesaid submissions, learned senior counsel appearing for the petitioners submitted that the name of Krishnaswamy Chetty, who is the predecessor-in-title of the petitioner is shown as pattadar in the resettlement register of the year 1912. However, the reflection of ML having reference as 'Miscellaneous Lease' cannot be the basis to claim that the lands are under lease as the same is negative by the fact that the character of the property is evidenced by the sale entered into in the year 1905, which is on the basis of the suit of the year 1904. It is the further submission of the learned senior counsel that it has been the consistent view of the courts that entry in the land register is not a conclusive proof to establish the character of the land and the same could only be considered for the purpose of payment of land revenue and not for determining the character of the land.

51. It is the further submission of the learned senior counsel that the proceedings with regard to Aloysius Mathaias seeking ryotwari patta cannot be

put against the title holders as the said Aloysius Mathaias is a speculator, who was a tenant under T.S.Swaminatha Iyer and was trying to usurp the property by illegal means, which has been put a stop by the orders of the Assistant Settlement Officer holding that the said village does not form part of the village in the Schedule, which order has since been confirmed by the Settlement Officer and the Director of Settlement and Survey.

52. It is the further submission of the learned senior counsel that adjacent land owners, whose lands have also been shown as Miscellaneous Lease lands have been granted patta, but only the case of the petitioners is being excluded, which is grossly unsustainable and is in stark violation of Article 14 of the Constitution, moreso, when the petitioners have been holding title over the lands for more than a century without any interruption and that the petitioners and their predecessors-in-title have also been in possession and enjoyment of the property.

53. It is the further submission of the learned senior counsel that even way back in the year 1974, when the Special Tahsildar (Resumption of Lease

expired Lands) and the District Collector have opined that there was no lease on the subject lands and that the lands are private in character, however, without acting on the said opinion, after a lapse of more than three decades, in the year 2005, on the basis of the further report of the then Tahsildar and District Collector, without any conclusive material so as to establish the leased character of the property, the respondents have given opinion, which has been acted upon by issuance of the impugned order, which is wholly unsustainable, when the fact remains that even the learned Advocate General and the learned Government Pleader have given their opinion on the basis of the very same record that the petitioners are entitled to patta on the basis of the documents of title submitted by them in the absence of any material on the side of the respondents to establish that the subject property has been leased to the predecessors-in-title of the petitioners.

54. It is the further submission of the learned senior counsel that even the Central Public Information Officer, in reply to the RTI query, by proceedings dated 6.1.2011 has informed the petitioners that patta lands exist in St.Thomas Mount-cum-Pallavaram Cantonment and even the communication of the

Defence Estate Office clearly show that the subject land is classified as B2 land and it does not vest with the cantonment.

55. It is the further submission of the learned senior counsel that even according to the 6th respondent, the 6th respondent is not possessed of any material to show the character of the subject lands and that being the admitted case of the 6th respondent, the instruments of sale dating back to 1905 would be the sole basis to determine the character of the lands and an entry in the yer 1912 during the resurvey and resettlement process cannot be the basis for deciding the character of the subject lands when even according to the revenue authorities, there are no materials to substantiate that the subject lands are under the management of the State Government and that the said lands are lease lands.

56. It is the further submission of the learned senior counsel that the rejection of the claim of Alocius Mathaias would not in any way have a bearing on the claim of the petitioners for grant of patta, as way back in the year 1968, T.S.Swaminatha Iyer, the father of the vendors of the petitioners had sought for

issuance of patta in his name and in fact the Special Tahsildar had even recommended grant of patta in his name vide his report dated 4.7.1974, yet, no orders have been passed either granting or rejecting the claim of T.S.Swaminatha Iyer for patta.

57. It is the further submission of the learned senior counsel that the claim of the respondents that the suit filed by one of the legal heirs of T.S.Swaminatha Iyer, viz., Sabesan, has been dismissed, which in effect endorses the view of the respondents that the lands are leasedhold lands cannot be sustained for the simple reason that the said order has been passed as a result of the death of the plaintiff, viz., Sabesan and in effect, the suit has been dismissed as having abated and no orders on merits has been passed. Such being the case, it is not open to the respondents to place reliance on the said dismissal to further their case. Therefore, learned senior counsel prays for allowing the writ petition, in the light of the admitted and uninterrupted title, possession and enjoyment of the petitioners and their predecessors-in-title to the subject property by granting patta in the name of the petitioners.

58. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

59. When the matter was taken up for hearing, before hearing the extensive arguments of the learned counsel on either side, as this Court felt that the proper course in the present matter would be for the petitioners to approach the Civil Court and establish their right over the subject property and seek for issuance of patta, it was submitted by the learned senior counsel for the petitioners that the materials on record would reflect undisputed facts, which would suffice for this Court to issue necessary direction for grant of patta and, therefore, prevailed upon this Court to hear the matter and on that premise, this Court, had gone ahead and heard the extensive arguments. After having heard the arguments at length, it is necessary for this Court to discuss the materials in detail before deciding on its power and jurisdiction to pass one order or the other, as has been sought for by the respective parties. Therefore, in the interest of justice, this Court is proceeding to discuss in detail the materials available on

record to decide the nature of order that could be best passed without affecting the rights of either party to the *lis.*

60. The fact that stands admitted by all the parties is that the subject lands lie within the cantonment area and that the Cantonment Board is the authority, which manages and administers the said lands. It is the case of the 6th respondent that classification of the land is shown as B-2, which in effect means that the said lands are under the management of the State Government. The said fact is not disputed in toto by the petitioners, but only to the extent of submitting that though the subject are lands are under the management of the State Government, the said property is private lands of which the control of the Government over the same is only to the extent of collecting the necessary statutory dues, due and payable on the said lands and there is no lease as claimed by the respondents.

61. To substantiate their case, the petitioners place heavy reliance upon the title devolution chart, which shows the passing of title from one hand to the

other. For better appreciation, the devolution of the subject property through various hands is tabulated hereunder :-

Document	Transaction - Party
Sale Deed dated 19.08.1905 – Regd. Doc. No.1439/1905	Mrs. Susan Pembarton sold the entire property including the bungalow house and land appurtenant thereof to and in favour of Mr.Krishnasway Chettiar and his brother Mr.Govindasamy Chettiar
Sale Deed dated 12.09.1935 – Regd. Doc. No.1422/1935	Krishnaswamy Chetty, Govindaswamy Chetty & their sons jointly sold/conveyed the entire extent of the subject property to and in favour of Capt. Clement George Taylor
Sale Deed dated 17.04.1946 – Regd. Doc. No.663/1946	Capt. Clement George Taylor sold/conveyed the entire property to and in favour of Mrr. E.D.Montaut
Sale Deed Dated 14.10.1946 – Regd. Doc. No.2101/1946	Mrs. E.D.Montaut sold the entire property to and in favour of T.S.Swaminatha Iyer
Swaminatha Iyer died on 03.10.1974 Kalyaniammal, W/o Swaminatha Iyer died on 09.12.1976 T.S.Sabesan, S/o Swaminatha Iyer died on 25.01.1986 – Unmarried (1/5th rights and title devolved on the following legal heirs) T.s.Neela – D/o Swaminatha Iyer Tara Manohar - D/o Swaminatha Iyer Satya Bhama - D/o Swaminatha Iyer	

Lakshmi Sumukadass - D/o Swaminatha Iyer T.S.Sailesan - S/o Swaminatha Iyer Daughters sold and conveyed 1/5th undivided share, title and rights over the land vide Sale Deed Nos.711, 712, 713 & 805 of 2004 T.s.Sailesan died unmarried on 16.04.2004 without any Class-I legal heirs	
Sale Deed Nos.711, 712, 713 and 805 of 2004 – Dated 22.03.2004, 22.03.2004, 15.04.2004 and 17.05.2004	Daughters sold and conveyed 1/5th undivided share, title and rights over the land to the petitioners
Sale Deed dated 30.04.2004 – Regd. Doc. No.738/2004 – SRO Joint-II, Saidapet	T.S.Neela sold her 1/4th share out of the 1/5th share as legal heir of T.S.Sailesan to and in favour of the petitioners
Sale Deed dated 30.04.2004 – Regd. Doc. No.739/2004 – SRO Joint-II, Saidapet	T.S.Satyabhama sold her 1/4th share out of the 1/5th share as legal heir of T.S.Sailesan to and in favour of the petitioners
Sale Deed dated 04.05.2004 – Regd. Doc. No.756/2004 – SRO Joint-II, Saidapet	Lakshmi Sumukadas sold her 1/4th share out of the 1/5th share as legal heir of T.S.Sailesan to and in favour of the petitioners
Sale Deed dated 17.05.2004 – Regd. Doc. No.806/2004 – SRO Joint-II, Saidapet	Tara Manohar sold her 1/4th share out of the 1/5th share as legal heir of T.S.Sailesan to and in favour of the petitioners

62. The crux of the stand of the petitioners is that the title in respect of the subject property is clear for more than 100 years till it had reached the hands of the petitioners, the mere entry ‘ML’ in the resettlement register in the year

1912 would not make the property a lease property when there is no attendant document to support the said stand at the hands of the respondent.

63. Though the aforesaid contention, on the face of it looks attractive, but the title devolution chart has its own inherent fallacies. The first of the document in the title devolution chart relating to the sale by one Susan Pembertan in favour of Krishnaswamy Chettiar on the basis of a court decree. The said sale deed is dated 19.09.1905. Vide the said sale deed, the subject property has been conveyed in favour of Krishnaswamy Chettiar in discharge of the money received by Susan Pembertan from the said Krishnaswamy Chettiar.

64. A careful perusal of the said document reveals that the vendor in the said document is alleged to have bought the property from one Kathija Beevi, but curiously, there is no mention as to when the said property had come into the hands of the said Susan Pembertan. Further, the identification of the property by way of pimash number or other relevant number is not available in the said document. The land is merely identified on the basis of certain boundaries. It is pertinent to point out that any document of sale between a

vendor and vendee should have a recital as to how and when the property had come into the hands of the vendor. The said clause is a mandatory condition to establish the continuance of title to the said property at the hands of the vendor. Without any particulars as to when the property has come into the hands of the vendor or the instrument by which the said property has been purchased, the prescription of title by the said vendor cannot be said to be complete.

65. Be that as it may. Boundaries have been shown in the said Doc. No.1439/1905, which acts as a measure of identification of the said property. The boundaries as mentioned in the said instrument of sale, a rough translation of the same is as under :-

> *"The same is bounded on the east by Bungalow Garden & the above lane; West by Central Hospital, Ground, Sippal Line, and the house of Thoppatti Subramanian; North by Mortuary, Water Shed and vacant site and South by Quit Rent 220 Bungalow of Subbaraya Chettiar and in the middle of No.274 Quit Rent Billion … .."*

66. However, the aforesaid lands are alleged to have been sold to Capt. Clement George Taylor by the said Krishnaswami Chettiar by way of sale deed in

Doc. No.524/1936, wherein the boundaries relating to the subject property, which is said to have been purchased, is shown as under :-

> “*Description of the Property*
>
> *House ground and premises situate in No.123, St.Thomas Mount, within the Registration District of Chingleput, Sub Registration District of Saidapet bounded on the North by Re.Sy. No.1456 on the West by Cantonment Lane, on the South by Cantonment Vacant land used as Football ground and Mortuary and on the East by Cantonment land and comprised in Re. Survey No.1455, G.L.R. Sy. No.363 and measuring 24 grounds and 255 square feet.”*

67. While the first document in Doc. No.1439/1905 gives the number of the property as No.15, however, the subsequent document lists the Resurvey number as No.1455. No survey number or pimash number or GLRS survey number has been provided in Doc. No.1439/1905. There are discrepancies in the boundaries mentioned in both the documents and there is variance in respect of the boundaries. In fact the subsequent document has even quoted the GLRS survey number, which is given before resurvey by the cantonment authorities, which is conspicuously absent in Doc. No.1439/1905.

68. The subsequent sale in Doc. No.663/1946 between Capt. Clement George Taylor and B.E.Montaut and also the further sale deed between B.E.Montaut and T.S.Saminatha Iyer speaks about identical boundaries. In such a backdrop, the ambiguity in the boundaries in the earliest document, viz., Doc. No.1439/1905 in the absence of the details pertaining to the vendor from whom the said land was previously purchased by the plaintiff in O.S. No.82/1904, casts a doubt about the genuineness of the transaction, which dents the devolution of title even at the very threshold.

69. Further, it is to be pointed out that the schedule of property attached to the end of the sale deed where the boundaries in respect of the scheduled property are marked, acts as identification of the said property. In the case on hand, as detailed above, there is a lot of ambiguity with regard to the boundaries in respect to the subject property between the earliest document and the subsequent documents. Further, when the initial sale itself is put to attack by the respondents as not being established in a manner known to law, which, as aforesaid, cannot also be brushed aside, this Court cannot close its eye to the

same and without reference to the discrepancies, merely go on the title claimed by the petitioners, when the title itself has its inherent fallacies, in that the devolution of the subject property upon Susan Pembertan from Kathija Beevi does not find place in the sale deed in Doc. No.1439/1905, which has to be established in a proper manner before the devolution of title on Susan Pembertan can be accepted.

70. Pausing here for a moment in respect of title, the inclusion of 'ML' in the resettlement register of the year 1912, which has been attacked by the petitioner as a stray entry cannot be brushed aside simply as an error, which has crept in at the time of resettlement. In the resettlement register of the year 1912, though the name of Krishnaswamy Chettiar has been shown as pattadar, however, it has been entered in the column "Remarks" as under :-

> *"No authority for amount previously paid (Rs.3-1-5). Temporarily charged quit rent at block rate."*

71. In this regard, a perusal of Doc. No.1439/1905, which is the first in the series of sale deeds tracing the title of the predecessors-in-title of the petitioners

shows that the vendor of Krishnaswamy Chetty was unable to pay the municipal tax and quit rent taxes. The said statement finds a recording in the sale deed in Doc. No.1439/1905 and for better appreciation a rough translation of the same is given hereunder:-

> *"Whereas in O.S. No.82/1905, on the file of the Poonamallee Taluk Court, the abovesaid property has been found under mortgage to & in favour of the plaintiff therein, namely, P.Krishnasamy Chettiar and, hence, there was a case prosecuted in the said court and, thereby, there was a sum of Rs.68-200 towards original principal amount, interest, court expenses and decree were found to be due and payable and hence the abovesaid house, which were accommodated within the above boundaries, have been put unto the above buyers on this the 16th day of this month with possession thereof wholeheartedly by the above seller and however, since the Municipal tax, Quit rent taxes were not able to be paid by the above seller at Rs.18/- which was directed to be paid by the above buyers ……."*

72. From the above, it is evident that even at the point when sale was effected by Susan Pembertan in favour of Krishnaswamy Chettiar in pursuance to the Court decree, quit rent was not paid, which in reference shows that quit rent was charged on the said property, which has not been paid by the vendor of

Krishnaswamy Chettiar. However, this Court, even for a flicker of an eyelash is not implying that the quit rent as is found in the said document would imply a lease deed having been executed by the Government in favour of the leaseholders, as there is no material placed to substantiate the execution of a such a lease deed. But the mere fact that no lease deed has been filed alone would not be a ground to negate the claim of the Government that no lease has been executed, as the statement of non-payment of quit rent in the earliest document, viz., Doc. No.1439/1905 assumes significance. The above statement in Doc. No.1439/1905 coupled with the entry in the resettlement register in the year 1912 would cast a serious dispute with regard to the character of the land as also the ownership of the said land and, therefore, it would not be in the interest of either party for this Court to give any affirmative finding, one way or the other, when such a dispute is writ large on the materials available on record.

73. One other fact, which requires to be taken into consideration is the fact that the adjacent land in R.S. No.1456 has been given on lease. However, the remarks made in the resettlement register in the year 1912 only says that there is no record of any authority for any amount having been collected. That

cannot be taken to negate that no amount was collected; it only shows that documents are not available to show that any amount has been collected and, therefore, it is temporarily charged to quit rent.

74. It is to be pointed out that the said entry has been made in the resettlement register in the year 1912 at which point of time Krishnaswamy Chetty was alleged to be holding title to the said property. The subject property was alienated by Krishnaswamy Chetty only in the year 1936 and for more than two decades the said Krishnaswamy Chetty had been holding title to the said property. In fact, the resurvey number, viz., R.S. No.1455 has been shown in the sale deed executed by Krishnaswamy Chetty in favour of Capt. Clement George Taylor, which the subject lands were conveyed in favour of the said individual. However, neither Krishnaswamy Chettiar nor his successor-in-title, viz., Capt. Clement George Taylor have filed any application seeking patta in their favour quoting the lands as private lands. Further, what is more important to be pointed out is the fact that the above "Remarks" have been made in the resettlement register as early as in the year 1912, yet no steps have been taken

by the said Krishnaswamy Chettiar to have the remarks deleted and for issuance of patta in his favour by considering the lands as private lands.

75. It is also not out of place for this Court to point out that the father of the vendors of the petitioners, viz., T.S.Swaminatha Iyer had purchased the property way back in the year 1946, however, he has not applied for any patta till 1968, inspite of the fact that the said individual was a practicing advocate. The mere fact that T.S.Swaminatha Iyer was a practicing advocate would not be a ground to hold that not applying of patta at the earliest point of time is fatal to the case, however, it should not be lost sight of that T.S.Swaminatha Iyer, being an advocate, would have known the importance of patta and would have immediately taken steps to obtain the same. However, for reasons best known, the said Swaminatha Iyer had kept silent for over two decades and, thereafter, sought for patta. This is a circumstance which requires to be taken note of while considering the further communications that have emanated on the basis of the application submitted by T.S.Swaminatha Iyer requesting grant of patta.

76. A perusal of the typed set filed by the petitioners reveal the communication emanated from the office of the Collector, Kancheepuram to the Tahsildar, Saidapet, wherein the request of T.S.Swaminatha Iyer for providing the copy of the lease deed has been forwarded. It is to be pointed out that way back in the year 1912, during the resettlement, the lands have been classified as “Government Poramboke” in the revenue records. The subject property has been purchased by T.S.Swaminatha Iyer in the year 1946, but the request for providing the copy of the lease deed has been given only in the year 1968. Thereafter, on 10.06.1974, the Special Tahsildar (Resumption of Time Expired Lease Lands), Saidapet, has issued notice calling upon T.S.Swaminatha Iyer with regard to resumption of the subject property for which a detailed representation has been given by T.S.Swaminatha Iyer on 11.06.1974. In the said letter, there is a categorical averment by T.S.Swaminatha Iyer that the said subject property is not a lease land that that no lease deed is either pending in the office of the Special Tahsildar or in the office of the Sub Registrar. When such a categorical stand has been taken by the said Swaminatha Iyer, this Court is at a loss to understand as to the basis on which the representation has been given by

Swaminatha Iyer in the year 1968 asking for a copy of the lease deed from the office of the Collector, Kancheepuram.

77. Vide letter dated 12.06.1974, the Special Tahsildar had addressed T.S.Swaminatha Iyer with regard to his letter dated 11.06.1974 and has asked for materials to show as to how he came into alleged possession of the property in S. No.1455. Thereafter, vide letter dated 4.7.1974, addressed to the Collector of Cheinglepet District at Kancheepuram, the Special Tahsildar had held that the land is not a lease land on account of the opinion given in a similar case relating to S. No.435, by the Acting Government Pleader in which it has been opined that non-levy of quit rent was due to the recognition of the freehold character of the land. Even in the said proceedings of the Special Tahsildar, the boundaries of the subject property is at variance from the earliest sale deed Doc. No.1439/1905 between Susan Pembertan and Krishnaswamy Chetty. Further, what is more material here is the fact that there is a reference to quit rent tax in Doc. No.1439/1905 and, therefore, the stand of the respondents cannot be merely brushed aside that the lands are leased lands, but since there is a dispute with

regard to the same, adjudication of the same by this Court under Article 226 of the Constitution would be an exercise without jurisdiction.

78. Further one other fact which has a bearing on the case on hand is the dismissal of the suit in O.S. No.1499/1982 filed by Sabesan, the son of T.S.Swaminatha Iyer, which was dismissed as abated. The respondents claim that the dismissal of the suit is in essence an approval of the leased character of the lands by the respondents, however, it is to be pointed out that the suit has not been decided on merits and it has merely been dismissed as having abated, as the contesting party is no more there to contest the case and, therefore, no trial could be conducted in the case. The said order cannot be taken in the affirmative sense that it has gone in favour of the respondents, but at the same time, in the absence of any appeal or any application filed to restore the suit would also have to be taken into consideration by this Court to come to a decision whether it would be in the interest of justice to invoke its inherent and extraordinary jurisdiction under Article 226 of the Constitution.

79. One other aspect which also has to be taken into consideration is the claim made by Alocius Mathaias, who, according to the petitioners, is alleged to be a tenant under the vendors of the petitioners and who had staked claim for ryotwari patta before the Assistant Settlement Officer, which had been dismissed and the appeal and revision filed against the said order has also ended on an unsuccessful note to Alocius Mathaias. However, in the sale deed executed by the vendors of the petitioners in favour of the petitioners, the said Alocius Mathaias and his family members have been shown as confirming parties. Though it is the claim of the petitioners that only to avoid any adversarial litigation from any party at a later point of time on the ground of adverse possession, as Alocius Mathaias claimed to have been in possession of the property for more than 75 years, the said Alocius Mathaias and his family members were added as confirming parties, yet, this Court cannot make such presumption in favour of the petitioners or appreciate the intention of the petitioners on mere affidavit, which has to be established only in the manner known to law, as the inclusion of the confirming parties in the sale transaction between the vendors of the petitioners and the petitioners is put in issue by the respondents.

80. Further, one of the main plank of argument of the respondents is that the adjacent land in S. No.1456 is a leasehold land and, therefore, necessarily, the subject land would also fall within the same category, as according to R-6, the subject land is a B-2 land, which falls within the management of the State Government and, therefore, necessarily, the State Government is the authority to give the said land on lease. It is seen from the materials available on record, more especially the counter affidavit filed by the 6^{th} respondent, the subject land is a B-2 land which falls within the management of the State Government. It is the further stand of the 6^{th} respondent that GLRS No.363, which is the number allotted for the subject property till the time the subject land was with the management of the Cantonment Board, any construction put up thereon should have the approval of the Cantonment Board. However, it is the stand of the 6^{th} respondent that though a shed is put up on the subject property, but no approval has been obtained from the Cantonment authorities. Further, Section 354 of the Cantonment Act is pressed into service by the 6^{th} respondent to contend that with regard to any alienation of immovable property the Registrar or Sub Registrar of the District or Sub-District has to inform the Chief Executive Officer

and the Defence Estates Officer about the alienations made. However, no such intimation has been given by the respective Registrar or Sub-Registrar and, therefore, the authenticity of the sale deeds itself is put in question. However, this Court cannot venture into the said domain, as it pertains to disputes, which arise on the very title of the petitioners and their vendors, which cannot be the subject matter of adjudication under Article 226.

81. It further transpires from the materials available in the typed set that communication has emanated between the petitioners and the respondents 1 to 5 since the purchase of the subject property in the year 2004. However, barring the suit filed by Sabesan, viz., one of the son of T.S.Swaminatha Iyer, there seems to be no material claiming patta by the legal heirs of T.S.Swaminatha Iyer. Even the action taken by the other legal heirs in respect of the dismissal of the suit is also not available before this Court. For the first time, after 1974, when T.S.Swaminatha Iyer had filed an application seeking patta, the next in line seeking patta has been filed by the petitioners in the year 2004. Further, it is to be pointed out that though the petitioners claim uninterrupted title to the subject property through their predecesors-in-title claiming the subject property

as private property, yet receipts evidencing statutory payments have not been filed, barring the urban land ceiling notice and the tax demand made on Krishnaswamy Chettiar. On the basis of the sole document, when many of the other facts are disputed and there are no conclusive admitted materials, which could be inferred against one party or the other, this Court cannot give any affirmative finding with regard to the grant of patta for the subject property.

82. Coming to the impugned order, the facts, which have weighed with the 1st respondent in passing the said impugned order have been tabulated in para-8 of the impugned order, which reveals that not only the petitioners, but Alosius Mathaias and other persons had claimed patta for the very same property, though the subject property has been classified as 'Government Poramboke' as early as in the Resettlement Survey done in the year 1912, which has not been questioned by any of the predecessors-in-title of the petitioners till the year 1968 and for the first time, in the year 1968, after a lapse of more than six and half decades, T.S.Swaminatha Iyer had filed representation for issuance of patta and also sought for the lease deed on which action has been taken by the Special Tahsildar (Resumption of Time Expired Lease Lands). It has been

further held in the impugned order that a claim has been made by Alosius Mathaias and others that they had encroached the land and building only 35 years back and that this particular land does not come under time expired lease and that the said Alosius Mathaias had paid the 'B' memo charges for the said encroachment. It has also been further held in the said order that in the sale deed alleged to have been executed by the vendors of the petitioners, viz., the legal heirs of T.S.Swaminatha Iyer, the said Alosius Mathaias and others are shown as authenticated parties, which has a bearing on the title to the property and that even as early as on 9.8.2006, the request of the petitioners have been rejected by the Principal Secretary and Commissioner of Land Administration on the basis of the reports of the District Collector and in such a backdrop, the impugned order has come to be passed.

83. Precisely, the above disputes and contentions, which have been discussed by this Court in the preceding portion of the order, has been addressed by the respondents in the impugned order, while rejecting the claim of the petitioners. A careful perusal and appreciation of the materials at the hands of the 1st respondent has necessitated in passing the present impugned, which

cannot be said to be flawed, as, as pointed above, the devolution of title, which has been placed by the petitioner does not reveal as to how the vendor of Susan Pembertan derived title to the said property. Further, the document on the basis of which Susan Pembertan derived title to the said property is also not evident from Doc. No.1439/1905. That being the case, in the absence of any materials, the first of the document, which casts a light on the nature of the classification of lands is the resettlement register of the year 1912, which has classified the subject property as 'Government Poramboke'. In the wake of certain overwhelming materials, as pointed out above, and no controverting materials having been placed before this Court by the petitioners, the findings arrived at by the 1st respondent cannot be interfered with merely on the basis of certain documents, which show title upon the purchasers, more so, in the wake of disputed claims having been made on the said property.

84. Very many entries in the records are disputed by the respondents and the errors in the records raise more disputes than clearing the confusion with regard to the character of the subject property. Disputes, as pointed out above, galore in the whole case and certain materials put the subject property as

'Government Poramboke', which has not been repudiated in any manner by the petitioners by establishing their title from the earliest point of time. Therefore, the order passed by the respondents rejecting the claim of the petitioners for grant of patta cannot be interfered with on the strength of certain documents, which are placed before this Court.

85. For the reasons aforesaid, this Court is of the considered view that the petitioners have failed to establish before this Court the manner in which the impugned order is unsustainable and such being the case, this Court has no hesitation to hold that the impugned order does not warrant any interference and this writ petition is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

17.10.2022

Index : Yes / No

Internet : Yes / No

GLN

To

1. The Secretary to Government
Revenue Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009.

2. The Special Commissioner &
Commissioner of Land Administration
Chepauk, Chennai 600 005.

3. The Collector
Kancheepuram District
Kancheepuram.

4. The District Revenue Officer
Kancheepuram District.

5. The Tahsildar
Alandur Taluk, Kancheepuram Dt.

6. The Chief Executive Officer
Cantonment Board
St. Thomas Mount-cum-Pallavaram
Chennai.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO.10423 OF 2013

Pronounced on
17.10.2022