



WP.No.36767/2004

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N.MALA

WP.No.36767/2004 & WMP.Nos.44137/2004 & 863/2008

Ramanathapuram Periya Mohallam
Muslim Jamath Nirvaaha Mandram
rep.by its President Haji H.V.Abdul Rahman

.. Petitioner

Vs.

- 1.The State of Tamil Nadu rep.by
Secretary to Government,
Revenue Department
Fort St George, Chennai 600 009.
- 2.The Special Commissioner & Commissioner
Land Administration
Chepauk, Chennai 600 005.
- 3.The Director of Survey & Settlement
Chennai 600 005.
- 4.The Assistant Settlement Officer
Madurai, now at Office of the
Directorate of Survey & Settlement
Chennai.



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5.The District Collector
Ramanathapuram.

6.The Commissioner
Ramanathapuram Municipality
Ramanathapuram.

7.The Tahsildar
Ramanathapuram.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 2nd respondent in R.Dis [K1] No.8856/96 and to quash the order dated 05.05.2004 made therein.

For Petitioner : Mr.K.Sivasubramanian
For Respondents : Mrs.M.Geetha Thamaraiselvan
Special Government Pleader

ORDER

[Order of the Court was made by S.S.SUNDAR, J..]

(1) This writ petition is filed for issuance of a writ of certiorari to quash the order passed by the 2nd respondent dated 05.05.2004.



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(2) Brief facts that are necessary for the disposal of this writ petition are as follows.

(3) The petitioner is the Wakf known as Ramanathapuram Periya Mohallam Muslim Jamath Nirvaaha Mandram. It is the case of the petitioner that the petitioner is a surveyed Wakf and it owns an extent of 3.26 acres in Old S.No.318, Soorankottai Village, Ramanathapuram District. It is admitted by the petitioner Wakf that the property is a water body, namely, Oorani on ground, and public are washing their hands and feet in the Oorani before entering the Pallivasal. Since the said land is situate immediately adjacent to the Pallivasal and there are steps leading the public from Oorani to Pallivasal, it is contended by the petitioner that the petitioner Wakf is always using the lands as part of Pallivasal lands.

(4) It is admitted that the entire Village, namely, Soorankottai Village in Ramanathapuram District was taken over under the provisions of the Act 26 of 1948, namely, the Tamil Nadu Estates [Abolition and Conversion into Ryotwari] Act, 1948. It is not thae case that the



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petitioner was given ryotwari patta as a land holder under the Act. Stating that the land measuring an extent of 3.26 acres in S.No.318 in the Village belongs to Pallivasal and that petitioner's possession and enjoyment of Oorani is recognised by the respondents, the petitioner claims title to the property. It is stated that the petitioner filed a petition before the 2nd respondent to revest the extent of 3.26 acres in Old S.No.318 in favour of Pallivasal. It is also admitted that on the representation of the petitioner earlier, the 3rd respondent, namely, the Director of Survey and Settlement, by his proceedings dated 15.10.1986, advised the petitioner to file a revision before the appropriate authority and therefore, the petitioner through the then Muthavalli of the Wakf, filed a petition before the 2nd respondent. The 2nd respondent rejected the petition on the ground that the land once taken over under the Act, cannot be revested and the petitioner may move the competent Civil Court for appropriate remedy if so advised. Thereafter, the petitioner file a revision petition in RP.No.10/1992 before the Settlement Officer, Tanjore, claiming patta for the lands which are admittedly



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classified as "Oorani" under Section 19-A of the Act 26 of 1948.

The Settlement Officer, by order dated 28.08.1992, dismissed the revision petition. Thereafter, the petitioner moved the Director of Survey and Settlement, namely, the 3rd respondent herein, in RP.No.2/1993. By order dated 22.06.1995, the 3rd respondent, in exercise of his power under Section 19-A of the Tamil Nadu Act 26 of 1948, directed grant of patta for an extent of 0.95.0 Hectares in TS.No.57 [Old S.No.318] out of total extent of 1.25.0 Hectares on the ground that petitioner is in possession of the land. The 3rd respondent directed the Assistant Settlement Officer, namely, the 4th respondent herein, to fix the ground rent. Thereafter, the petitioner filed a writ petition in WP.No.4092/1996 before this Court for a direction to the official respondents to grant patta to the petitioner. The said writ petition was dismissed as infructuous as the 7th respondent, namely, the Tahsildar, has made necessary changes in the revenue accounts by order dated 15.11.2002 as per the order of 3rd respondent.



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- (5) It is in the said circumstances, the District Collector and the Municipal Commissioner who are respondents 5 and 6 in this writ petition, filed revision petitions before the 2nd respondent against the order of the 3rd respondent dated 22.06.1995. The 2nd respondent by the impugned order, allowed the revision petition. Aggrieved by the same, the above writ petition is filed.
- (6) This Court considered the submissions of the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and also perused the materials placed before it.
- (7) Taking note of the fact that the land is classified as Oorani and it lie on ground as Oorani, the 2nd respondent has held that a direction cannot be issued under Section 19-A of the Act 26/1948 and that therefore, the order of the Director of Survey and Settlement/3rd respondent herein, is liable to be set aside. The 2nd respondent also on the basis of the revenue records, found that the entire land which is stated to be in possession of the petitioner is a Oorani before and after settlement. Since it is not even the case of



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petitioner that the petitioner was admitted into possession of the land by the land holder, it is concluded that the claim of petitioner cannot be considered under Section 19-A of the Act as the land which is classified as Oorani and exist on ground as Oorani, cannot be treated as one in enjoyment of the petitioner. Based on the finding that the land in issue will be required for Ramanathapuram Municipality for public purposes, the 2nd respondent rejected all the contentions of the petitioner to sustain the order of the 3rd respondent.

- (8) Even in the affidavit filed in support of this writ petition, the petitioner has stated that the land in the Old S.No.318 in Soorankottai Village is Oorani and it is being enjoyed by the petitioner for the purpose of members of Jamath who are expected to wash their hands and feet in the Oorani before entering Pallivasal for offering worship. It is to be noted that after the Ryotwari Settlement under Act 26 of 1948, an amendment was introduced by inserting Section 14-A of the Act.



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(9) Section 14-A of the Act reads as follows:-

14A. Ryotwari patta not to be granted in respect of private tank or oorani. - (1) Notwithstanding anything contained in this Act, no ryotwari patta shall be granted in respect of any private tank or oorani.

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

(10) From the above provision, it is clear that no Ryotwari patta can be granted in respect of any private land or Oorani. Even if patta had been granted in favour of anyone after the commencement of the Act, such patta is liable to be cancelled as per sub-section [2] of Section 14-A of the Act. Therefore, there is no scope for grant of patta in favour of any private individual or a land holder. It is to be



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noted that the petitioner is not even a land holder who had title to the land which is classified as Oorani. The case of the petitioner is that the petitioner is in enjoyment of the land which is classified as Oorani. In this case, the finding of 2nd respondent based on records is otherwise. Assuming that the petitioner is in possession, it should be treated as an encroachment.

- (11) Even in respect of the land which is a private tank or Oorani, there cannot be patta and there is no question of revesting in the present case, as it is admitted that the petitioner is claiming patta only on the basis of his enjoyment. Section 19-A of the Act 26/1948 specifically prohibit any person to claim Ryotwari patta in respect of any other land which is classified as a commercial land and not a Ryot land or can remain in possession unlessr the Government direct by order. First of all, Section 19-A cannot be applied in the case of a tank or Oorani or a private tank or Oorani by virtue of Section 14-A of the Act. In the instant case, Section 19-A cannot be applied to the land in question. In the absence of any order from the Government, the 3rd respondent has no right to grant Ryotwari



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patta by holding that the petitioner is in possession of the land.

(12) Therefore, this Court is unable to find any irregularity in the order of the 2nd respondent setting aside the order of the 3rd respondent dated 05.05.2004.

(13) In the result, the writ petition is **dismissed as devoid of merits**. No costs. Consequently, connected miscellaneous petitions are closed.

[SSSRJ] [NMJ]

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AP

Internet : Yes



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AND
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