



W.P. No.8463/2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.06.2022	06.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 8463 OF 2009

AND

M.P. NO. 1 OF 2009

D.Lakshmanan

.. Petitioner

- Vs -

1. The Settlement Officer
Survey House, Chepauk
Chennai – 5.
2. The Assistant Settlement Officer
Survey House, Chepauk
Chennai – 5
(The Asst. Settlement Officer
Tiruvannamalai, since abolished
And merged with Asst. Settlement
Officer, Chennai)
3. The Tahsildar
Tambaram, Kanchipuram District.
4. Ramkumar Raja
5. Dhanalakshmi



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6. Selvi Ramamirtham
7. Balaji
8. E.Thangasamy
9. M.Vinoth Kannan

.. Respondents

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 comprised in R.P. No.1/2009(E) on the file of the Settlement Officer, Chennai – 5/1st respondent dated 23.3.2009 and to quash the same and consequently direct the official respondents (R-1 to R-3) to give effect to the order of Assistant Settlement Officer, Tiruvannamalai, dated 24.3.2001 by issuing patta to the petitioner.

For Petitioner : Mr. V.Ayyadurai, SC
For Mr. D.Rajagopal

For Respondents : Mr. P.Sathish, AGP for RR-1 to 3
Mr. M.Muthappan for RR-5 to 7
Mr. T.Srinivasa Raghavan for R-8
Mr. A.Selvendran for R-9

ORDER

The present writ petition assails the cancellation of patta, by the 1st respondent, issued by the Assistant Settlement Officer, Tiruvannamalai and a consequential direction to the 1st respondent to issue patta to the petitioner.



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2. It is the case of the petitioner that the subject lands, comprised in Survey No.657/1A measuring an extent of 66.70 acres situate in Pallikaranai Village was originally granted to Ettayapuram Jamin as early as in 1888, which was made at the request of Ettappan by the Chief Secretary to Government dated 15.3.1888, which culminated in the passing of Government Order in Ms. No.3741, Revenue Department dated 6.8.1888. It is the further case of the petitioner that the Governor in Council had granted certain items of land set out in Order No.763, Revenue, dated 9.12.1888 as free of assessment, which was followed by issuance of title deed dated 21.3.1911 by the Inam Commissioner as free hold land in perpetuity subject to payment of annual quit rent.

3. It is the further case of the petitioner that the said Ettayapuram Jamin, Raja Jagaveera Rama Venkateswara Ettappan, being the grantee to the said free hold inam, died on 24.4.1928 leaving behind his son and daughter and the son of the aforesaid Jamin, settled certain properties, including the subject property in favour of his sister Muthulakshmi Kannappan by virtue of settlement deed dated 4.10.1948 and since then the said Muthulakshmi Kannappan had been in



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exclusive possession and enjoyment of the property continuously beyond the statutorily prescribed period without interruption and as such became the absolute owner of the said property and also prescribed title by adverse possession.

4. It is the further case of the petitioner that the said Muthulakshmi Kannappan died on 25.8.1997 leaving behind her three daughters, viz., Dhanalakshmi Ammal, Santhanalakshmi and Ramamirtham. It is the further case of the petitioner that son of Ettappan, viz., Ettappa Naicker, had three wives and respondents 4, 8 and 9 are the legal heirs, who have set up rival claim over the subject lands by disputing the validity of the settlement deed executed by their father. The petitioner, being the Trustee of Boomibalaha Trust, purchased the subject lands from all the descendants of the original owner for valuable consideration by virtue of sale deed dated 13.10.2004. It is the further case of the petitioner that the said sale deed has been referred u/s 47-A of the Indian Stamp Act with regard to deficit stamp duty.



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5. It is the further case of the petitioner that Inam Commissioner was the competent authority to furnish inam holders with title deeds pursuant to the enactment of Madras Inams Act, 1869 and the said authority, in and by his proceeding dated 21.3.1911 issued title deeds in respect of Ettayapuram Jamin by way of free hold inams in perpetuity. It is the case of the petitioner that the Jamin and their legal heirs, having been granted free hold rights in perpetuity, the subject lands devolved upon them by grant of title deeds by the Inam Commissioner.

6. It is the averment of the petitioner that Pallikaranai Village was notified as Inam Village in terms of Tamil Nadu Estates (Abolition & Conversion into Ryotwari) Act, 1948 (for short 'the Ryotwari Act') and land revenue assessment was brought in with effect from Fasli Year 1370 corresponding to English Calendar year 1960. It is the further averment of the petitioner that land owners or the ryots, who, due to inadvertence, had not applied for patta, based on their pre-existing right, and the lands being classified as Government poramboke lands, were provided with opportunity to apply for patta, even beyond the prescribed period and very many enactments were put in place and finally by



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circular dated 29.4.1991, power was delegated upon the Assistant Settlement Officer to consider and pass orders with respect of mistaken entries that had crept in the settlement records.

7. It is further averred that respondents 5 to 7, having obtained possessory certificate from the Tahildar, Tambaram, within whose jurisdiction the subject lands are situate, applied for patta before the Assistant Settlement Officer, Tiruvannamalai, for issuing patta after deleting the mistaken entry classifying the lands as Government Poramboke Kahuvali in the revenue records and as no order was passed on the claim petition dated 16.2.1998, one of the claimants, viz., Ramamirtham, filed W.P. No.12550/2000 in which this Court directed the Assistant Settlement Officer to dispose of the said petition vide order dated 27.7.2000, pursuant to which, the Assistant Settlement Officer, Tiruvannamalai, vide order dated 24.3.2001, directed issuance of joint patta in the name of the claimants after cancelling the classification of land, erroneously entered in the revenue records as "Government Poramboke Tharisu".



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8. It is further averred that one of the rival claimants, viz., the 4th respondent herein, filed a petition before the Settlement Officer dated 1.10.2004 against the order of the Assistant Settlement Officer dated 24.3.2001 and sought cancellation of patta. It is further averred that the said petition is not only hopelessly barred by limitation, but also does not satisfy the statutory requirements of appeal as provided under the Act. It is further averred that on the said petition, the Special Commissioner and Commissioner of Land Administration, in exercise of his revisional power, had cancelled the order of the Assistant Settlement Officer, *suo motu*, without any notice, which resulted in challenge being made to the said order before this Court by filing W.P. No.35227/2005, which was allowed against which W.A. No.430/06 was filed in which, on coming to know about the said appeal, the petitioner impleaded himself as party to the said proceeding, as he has got subsisting interest over the property by virtue of the sale deed and the Division Bench of this Court, while confirming the order made in W.P. No.35227/05, directed the appellate authority, viz., 1st respondent herein to decide the question whether patta was issued by the competent authority. It is further averred that except for the 4th



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respondent and the petitioner, none of the rival claimants were party to the said writ proceeding.

9. It is further averred by the petitioner that the appeal was taken on file and inspite of the fact that neither the 4th respondent nor any other rival claimants are necessary parties, as they have no subsisting rights or interest pursuant to the execution of the sale deed in favour of the petitioner, yet notices were sent to them and written objections having filed by the petitioner and rival claimants, inspite of granting opportunity of personal hearing, as ordered by the Division Bench of this Court, the 1st respondent, to the utter shock, surprise and dismay of the petitioner, in stark violation of the order of the Division Bench, set aside the order of the Assistant Settlement Officer on the sole ground that Pallikaranai Village is a revenue village and does not come within the purview of the Act and that the Assistant Settlement Officer has no jurisdiction with reference to the revenue village for granting patta u/s 11-A of the Act. It is averred by the petitioner that the order impugned herein is ex facie illegal, error apparent on the face of the record besides being passed in violation of principles



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of natural justice and aggrieved by the said order, the present petition has been filed.

10. Learned senior counsel appearing for the petitioner submits that Pallikaranai Village is notified in terms of Tamil Nadu Act 26 of 1948 as referred to in the order of the Assistant Settlement Officer dated 15.6.2000, by issuance of G.O. Ms. No.2302, Revenue Department, dated 1.9.1951, which order remains unchallenged. It is the further submission of the learned senior counsel that pursuant to the grant granted by the British Government, the title deeds dated 21.3.1911 were issued along with patta No.512 in respect of the subject lands, which constitute as 'estate' as defined u/s 3 (2) (w) r/w Section 2 (d) and Explanation (1) of the Tamil Nadu Estate Land Act, 1908 (for short 'Act, 1908'). Therefore, the Act is very much applicable to the subject lands, as the petitioner has provided all documentary evidence to show his continuous enjoyment and pre-existing right, which has been appreciated by the Assistant Settlement Officer, while granting ryotwari patta and the contra finding of the Settlement Officer that Pallikaranai Village is a revenue village is an error apparent on the face of the records, as there is no documentary evidence to establish the same.



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11. It is the further submission of the learned senior counsel that the impugned order has been passed hurriedly without following the principles of natural justice, as no opportunity of hearing was granted to the petitioner before passing the impugned order, as mandated in the order of the Division Bench of this Court in W.A. No.430/2006. In the absence of proper hearing the finding recorded by the Settlement Officer that Pallikaranai Village is a revenue village and not an inam village attracting the T. N. Estates (Abolition & Conversion into Ryotwari) Act, 1948, is wholly flawed.

12. It is the further submission of the learned senior counsel that as per Section 23 of the Act, 1908, inam village are presumed to be 'estate' until the contrary is proved and, therefore, Pallikaranai village, which was granted as inam free hold land during the British regime under the Madras Inam Act comes under the purview of Act, 1908 and consequently the provisions of the Ryotwari Act would stand attracted.



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13. It is the further submission of the learned senior counsel that the order of the Assistant Settlement Officer relating to Pallikaranai Village being notified under the Ryotwari Act in G.O. Ms. No.2302 dated 1.9.1951 has not been challenged or cancelled and no reference has been made to the same in the impugned order passed by the Settlement Officer. That being the case, the presumption as provided u/s 114 (e) of the Evidence Act with regard to the said Government Order should be held to be valid and reliable.

14. It is the further submission of the learned senior counsel that the Asst. Settlement Officer has power and jurisdiction to pass the order, as the Circular No.Na.Ka.E/12970/90 dated 29.4.1991, on which reliance has been placed by the Assistant Settlement Officer clothes the said officer with power to change the classification of the land, which has been resorted to by the said authority, while reclassifying the land in the 'A' Register from '*Government Dry Tharisu*' to '*ryotwari lands*'. However, in the order impugned, the Settlement Officer, has not adverted to the said finding recorded by the Assistant Settlement Officer and, therefore, the finding that the Assistant Settlement Officer has no power or jurisdiction to pass the said order is wholly unsustainable.



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15. It is the further submission of the learned senior counsel that the right of hearing, which was directed to be given to the parties by the Division Bench of this Court in W.A. No.430/06 has not been adhered to, which is a glaring violation of principles of natural justice. Though the impugned order reveal that documentary evidence was filed and arguments were heard, however, the said observation is factually incorrect as the petitioners have not been heard and no written arguments have also been filed. Therefore, the hearing undertaken by the Settlement Officer is not only irregular, but is also violative of the order of the Division Bench of this Court, which deserves to be interfered with.

16. Learned senior counsel, to substantiate the aforesaid contentions, placed reliance on the following decisions :-

- i) *M/s.Angile Insulations – Vs – M/s. Davy Ashmore India Ltd. & Anr. (CDJ 1995 SC 379);*
- ii) *Krishna Kumari & Anr. – Vs – State of Haryana & Ors. (1999 (1) SCC 338);*
- iii) *Tulsi Ram, etc. – Vs – State of U.P. & Ors. (AIR 1963 SC 666)*
- iv) *Shri Madhava Perumal Devasthanam – Vs – Tmt. Dhanalakshmi & Ors. (1996 (1) LW 231); and*



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v) *State Bank of Travancore – Vs – Mohammed Mohammed Khan*
(1999 (1) SCC 338)

17. Though no written submissions have been filed on behalf of the official respondents, counter affidavit has been filed on behalf of respondents 1 and 2, wherein, the respondents have submitted that the evidence relating to prove that the land was originally granted to Ettayapuram Zamin was not produced and in the absence of the said document, the claim of the petitioner cannot be countenanced. It is the further stand of the respondents that a finding has been rendered in respect of the said documents produced by the petitioner to the effect that the said documents are fabricated as the original records in the Government Archives deals with alienation of a piece of land for charitable purpose to one Savalai Ramasami Mudaliar and in the absence of any material to substantiate the contention, the patta granted to the petitioner was cancelled.

18. It is the further stand of respondents 1 and 2 that Pallikaranai village is a revenue village and not a ryotwari village as claimed by the petitioner and the Ryotwari Act was not introduced in the said village and the descriptive memoir appended to the 'A' Register would reveal the said fact. It is the further stand of



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respondents 1 and 2 that in the absence of the village being brought under the Ryotwari Act, the Assistant Settlement Officer has no power to go into the records of the village to carry out any correction in the revenue records pertaining to classification of lands and the communication and circular, which have been relied on by the Assistant Settlement Officer to reclassify the land as ryotwari land are not at all applicable to ryotwari settlements and the reliance placed on the said documents for carrying out the reclassification is wholly misplaced.

19. It is the further stand of respondents 1 and 2 that the violation of principles of natural justice pleaded by the petitioner would not stand the test of judicial scrutiny for the simple reason that the Division Bench of this Court had only directed the settlement authority to dispose of the petition in accordance with law within a particular period. The petitioner and all the other parties to the *lis* were granted opportunity to place documentary evidence and written submission and in view of the fact that the proceedings were unnecessarily sought to be protracted, inspite of grant of sufficient time, the Settlement Officer, based on the materials available before it, had decided the issue, which cannot



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be said to be a violation of principles of natural justice. Therefore, it is prayed that this Court may dismiss the present petition.

20. In spite of this Court granting time to the counsel for the parties to file written submissions, except for the petitioner, no written submissions have been filed on behalf of the other respondents, except for the counter filed on behalf of the official respondents. Therefore, this Court, on the basis of the materials available on record, would proceed with analyzing the submissions.

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

22. The points that require determination by this Court in the present petitions are :-

- i) *Whether the lands are ryoti lands, as pleaded by the petitioner and whether the petitioner has established the same through materials;*



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- ii) *Whether the petitioner has established and proved that Pallikaranai Village is covered under Ryotwari Act as a royti village; and*
- iii) *Whether the grant given by the British regime to the Ettayapuram Jamin has been proved through documentary evidence;*

23. Since the all the issues are interconnected, all the issues are taken up together for being dealt with in unison.

24. The thrust of the submissions advanced on behalf of the petitioner is that the subject lands fall under the Ryotwari Act as the subject lands were given as free hold inams to the Jamin in perpetuity and pursuant to the enactment of the Act, 1908 and the Ryotwari Act the lands would partake the character of ryoti lands and, therefore, the patta granted by the Assistant Settlement Officer by reclassifying the lands as Ryotwari Lands, from its erroneous classification is sustainable. To substantiate his case, the petitioner has relied on the extract of SLR, enjoyment certificates, kist receipts, etc., which, according to the petitioner,



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prove that the lands are ryoti lands and the petitioner is entitled to a ryotwari patta.

25. The Assistant Settlement Officer has granted the patta in favour of the petitioner after reclassifying the lands as '*Ryotwari Lands*' from the initial classification shown as '*Government Poramboke – Tharisu*'. The Assistant Settlement Officer, to make the `reclassification has relied on a circular No.Na.Ka.E/12970/90 dated 29.4.1991, wherein, according to the petitioner, power has been conferred on the Assistant Settlement Officer to change entries in the 'A' Register.

26. It is to be pointed out that only if the lands are taken over by the Government under the Ryotwari Act, then the power would vest on the Assistant Settlement Officer by virtue of the aforesaid circular. However, it is the case of the respondents 1 and 2 that the lands have not been taken over by the Government under the Ryotwari Act, which is countered by the petitioner by pointing out the reliance placed on G.O. Ms. No.2302, Revenue Department,



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dated 1.9.1951 in and by which the Assistant Settlement Officer has held that by the said Government Order the lands have been taken over.

27. Before analyzing the applicability and the veracity of the order passed by the Assistant Settlement Officer placing reliance on the aforesaid circular, classification of the lands having been changed and patta having been granted to lands classifying them as ryoti lands, therefore, the lands should satisfy the character of ryoti lands to be eligible for ryotwari patta by the competent authority. To appreciate the case better, it is necessary to refer to the meaning of the expression 'ryot' and 'ryoti land' as defined under Sections 3 (15) and (16) of the Tamil Nadu Estate Land Act, 1908, which expression has been adopted in the Tamil Nadu Inam Estates (Abolition & Conversion into Ryotwari) Act, 1948 as well as 1963 and for better appreciation, the same is quoted hereunder :-

"3.

(15) **"Ryot"** – **"Ryot"** means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

Explanation. - A person who has occupied ryoti land for a continuous period of twelve years shall be deemed to be a ryot for all the purposes of this Act.



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(16) “Ryoti Land”- “Ryoti Land” means cultivable land in an estate other than private land but does not include :

(a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels;

(b) threshing-floor, cattle-stands, village-sites and other lands situated in any estate which are set apart for the common use of the villagers;

(c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent or granted after the date, so long as the services tenure subsist.”

28. From the above definition of *ryoti land* what transpires is the fact that the lands should be cultivable land within the estate. Respective rights would accrue to the individuals only on the lands being classified as ryoti lands. From the above, it is amply evident that the land should not only have the character of cultivable lands and should be cultivable. Therefore, it is not only incumbent on the part of the petitioner to prove title to the property, but in addition to title, the parties ought to prove that the said lands have been under cultivation or are cultivable lands and that there exists pre-existing right on the vendor, which stood passed on to the petitioner. In essence, the petitioner has to have title to



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the property and also prove that the lands are agricultural lands and that his vendors had pre-existing rights.

29. For grant of ryotwari patta, four conditions need to be satisfied for the lands to partake the character of ryoti lands, which are –

- i) *That the lands should belong to a larger parcel, which has been taken over by the Government under the Ryotwari Act;*
- ii) *That the lands should be agricultural lands;*
- iii) *That cultivation was carried on in the said lands; and*
- iv) *That the person claiming patta over the said lands should have pre-existing right over the said lands.*

30. Further, the person, who claims patta for the ryoti lands should establish that the lands are being used for agriculture. It is further to be pointed out that the Hon'ble Supreme Court in ***P.Venkataswami & Anr. – Vs – D.S.Ramireddy & Anr. (1976 (3) SCC 665)*** has held that a landholder claiming ryotwari patta must prove that he has been cultivating the land by himself or by



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his own servants from July, 1945 and is in continuous possession of the said lands. The above view has been followed by this Court in the case of ***Tahsildar, Mambalam-Guindy Taluk & anr. – Vs – Kaneez Fathima & Ors. (2013 (5) MLJ 263)***.

31. In the above backdrop, the petitioner has to sustain the patta granted by the Assistant Settlement Officer necessarily by satisfying the Court that all the conditions have been fulfilled and that the lands have been used for agricultural purposes and that cultivation is being carried on in the said lands.

32. It is the claim of the petitioner that the lands were given as free hold inam to the Ettayapuram Jamin by the British regime and title deeds were granted by the Inam Commissioner based on the said order and subsequently the lands were taken over under the Ryotwari Act vide G.O. Ms. No.2302, Revenue Department dated 1.9.1951. The mainstay of the argument of the petitioner is that though reference had been taken by the Assistant Settlement Officer to G.O. Ms. No.2302, Revenue Department dated 1.9.1951, in and by which the said authority has held that the lands were taken over under the Ryotwari Act, however, the said aspect has not been deliberated by the Settlement Officer



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anywhere in the order, which only means that the said authority has accepted the said Government Order to be valid and, therefore, the taken over of the lands under the Ryotwari Act stood established.

33. Though the aforesaid argument looks attractive, but it has no legs to stand. It is to be pointed out that it has been the consistent case of respondents 1 and 2 that the lands were never taken over by the Government under the Ryotwari Act. Merely because the Assistant Settlement Officer has drawn reference to a Government Order in his proceedings, the same cannot be stated to be gospel truth and it is for the petitioner to produce the said Government Order on which he stakes his claim. No advertence is drawn to the said Government Order, relied on by the Assistant Settlement Officer, by the Settlement Officer in the impugned proceedings cannot be a ground to hold that the Settlement Officer has accepted the said Government Order as valid as evidence u/s 114 (e) of the Evidence Act.

34. The petitioner has approached the Assistant Settlement Officer seeking ryotwari patta. If at all the Assistant Settlement Officer has drawn reference to a



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Government Order, the petitioner was bound to place the said Government Order, on which he places reliance, to sustain the patta issued by the Assistant Settlement Officer. It is even the case of the petitioner in the writ petition that inspite of his best efforts to obtain G.O. Ms. No.2302, Revenue Department dated 1.9.1951, he could not secure the same. If really there existed such a Government Order, which has been placed reliance upon by the Assistant Settlement Officer, nothing prevented the petitioner from approaching the office of the Assistant Settlement Officer to obtain a copy of the said Government Order and place the same before the Settlement Officer. However, the petitioner has not taken any efforts to take such a course, but has, merely, on affidavit, stated that inspite of his best efforts, he could not obtain a copy of the Government Order. A non-existent Government Order would not be available and it is only in that backdrop, the Settlement Officer has come to a conclusion that the lands in Pallikaranai Village have not been taken over by the Government under the Ryotwari Act. Therefore, the claim of the petitioner, basing his case on a Government Order, relied on by the Assistant Settlement Officer, when such a Government Order, is non-existent, cannot be presumed to be accepted as valid by invoking Section 114 (e) of the Evidence Act.



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35. Further, the decision in *Tulsi Ram's case (supra)*, would aid the case of the respondents more than the petitioner. In the said case, an official communication had formed the basis for a particular act. However, in the case on hand, it is only the petitioner who had gone before the Assistant Settlement Officer for grant of ryotwari patta. Such being the case, a duty is cast upon the petitioner to prove as to how he is entitled to grant of ryotwari patta which could be done only by proving that the subject lands are ryoti lands. In the absence of any material to establish his case, the said decisions relied on by the petitioner would not in any way stand attracted, as the facts in the present case stand on a totally different footing and the ratio laid in the said decisions would not stand applicable to the case on hand.

36. Be that as it may. The definition of 'ryot' and 'ryoti lands' have been extracted above, which clearly show that the person should be holding lands for agriculture and that the lands so held should be cultivable lands and that cultivation should have been carried on in the said lands. Are the lands, which are the subject matter of the present petition, ryoti lands, and has the village



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'Pallikaranai' vested with the Government upon the enactment of the Ryotwari Act.

37. To address the aforesaid issue, a perusal of the alleged grant of inam by the British regime to Ettayapuram Jamin reveals that the subject lands have been given to the Ettayapuram Jamin for the purpose of putting up a building to be used as choultry to be made available for free use of railway travelers. Further condition has also been put that the lands would be liable for consumption, without compensation, if it ceases to be employed for the purpose for which it is granted or is used for any other purpose without the permission of the Government.

38. From the above alleged grant, it is evident that apart from the purpose shown in the alleged grant, the building could not be used for any other purpose, as otherwise, the lands would stand resumed back to the Government. Therefore, the said lands could have never been used as agricultural lands for it to partake the character of ryoti lands so as to vest with the Government upon enactment of the Ryotwari Act. The above makes it clear that the subject lands



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are not agricultural lands and could have never been used for agriculture without violating the conditions of grant. Even if it is granted as free hold inam at a later point of time, it is incumbent on the part of the petitioner to establish that the subject lands were used for agricultural purposes after the alleged grant of free hold inam so that it would vest with the Government upon enactment of the Ryotwari Act. However, no material whatsoever has been placed before this Court to show that the lands were ever used for agricultural purposes and that agricultural activity was carried on in the said lands at any point of time. Such being the case, the stand of the petitioners that the subject lands had vested with the Government upon enactment of the Ryotwari Act does not stand of judicial scrutiny, as it traverses against the provisions of the Ryotwari Act for the lands to vest with the Government.

39. It is incumbent upon the petitioner to prove that the subject lands were utilized for agricultural purposes and that the vendors of the petitioner were carrying on agricultural activity in the said lands and that the vendors of the petitioner had pre-existing right over the subject lands to seek patta under the Ryotwari Act. However, the petitioner has miserably failed to substantiate that



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the subject lands are agricultural lands and that the vendors of the petitioner had been carrying on agricultural activities in the said lands. No material whatsoever has been adduced by the petitioner and, therefore, the claim of the petitioner that the lands have vested with the Government under the Ryotwari Act does not merit acceptance.

40. From the above, it is evident that the petitioner has neither proved that the lands are agricultural lands and that agricultural activity was carried nor has placed any materials before this Court, more especially G.O. Ms. No.2302, Revenue Department, dated 1.9.1951 to substantiate that Pallikaranai village stood vested with the Government upon enactment of Ryotwari Act. Therefore, out of the four conditions aforesaid, three of the conditions have not been satisfied with respect to the subject lands. Further, when the subject lands are not ryoti lands, which are alleged to have been vested with the Government under the Ryotwari Act, the reliance placed on Circular No. Na.Ka.E/12970/90 dated 29.04.1991 would have no application and the Assistant Settlement Officer, based on the aforesaid circular, cannot change the classification of the land from '*Government Dry – Tharisu*' to '*Ryotwari*'.



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41. Further, as noted above, three of the conditions having not been satisfied, which are mandatory for a land to be classified as a '*ryoti land*', the last condition of existence of pre-existing right of the land owner is not required to be looked into, as all the aforesaid four conditions have to be satisfied in order to enable the competent authority to grant ryotwari patta.

42. However, even otherwise, to establish pre-existing right, it is necessary on the part of the petitioner to prove that his vendors had right and title over the property. In this regard, copy of materials, alleged to have been documents which were issued during the British regime, have been placed in the typed set of documents. The said documents had been placed before the Settlement Officer, while considering the reclassification order of the Assistant Settlement Officer and also the grant of ryotwari patta in favour of the petitioner. However, vide a detailed order, the Settlement Officer had rejected the said documents as fabricated, while rendering a categorical finding that none of the original documents have been placed to substantiate the case of the petitioner. Further, it is also the stand of the respondents 1 and 2 that the Tahsildar had not been



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impleaded as party before the Assistant Settlement Officer, when the issue of reclassification and issuance of patta was taken up. The petitioner has also taken a stand that in the proceedings before the Settlement Officer, the Tahsildar had not been called upon and enquired.

43. In this background, a careful analysis of the order passed by the Assistant Settlement Officer reveals that the revenue authorities have not appeared before the Assistant Settlement Officer to counter the claim of the petitioner pertaining to reclassification and issuance of ryotwari patta. However, a perusal of the said order reveals that while the facts, as narrated by the petitioner have been summarized both in the order relating to reclassification and also the order relating to grant of ryotwari patta, except for the operative portion of the order granting the relief, the orders are bereft of any material particulars on the basis of which such orders are being passed. An order should reflect the documents, which form the basis of arriving at the said conclusion. However, in the aforesaid orders, there is nothing to point out any discussion, which led to the irrefutable conclusion that reclassification is to be ordered and that ryotwari patta has to be granted to the petitioner.



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44. What is further more baffling is the fact that in the order wherein reclassification has been ordered to be made by changing the classification from 'Government Dry – Tharisu' to 'ryotwari land', the Assistant Settlement Officer has stated the exhibits, which have been produced before the Court to substantiate such reclassification. Therein it is found that a recording has been made that while copies of documents, which are filed as exhibits have been shown, a note has been appended to the said order that in respect of all the exhibits placed before the Assistant Settlement Officer, the originals of all the documents were placed, which have been duly verified. Further Ex.A-4 to A-7 pertain to certain documents issued by the Tahsildar, Mambalam-Guindy Taluk, Village Administrative Officer and Tahsildar, Tambaram. In this regard, it is to be pointed out that the said order no where speaks about issuance of notice to the aforesaid officials and their presence. In fact, there is a finding in the said order that the Revenue Divisional Officer or his subordinates were not present. That being the admitted case, this Court is at a loss to understand as to how without the presence of the Revenue Divisional Officer or his subordinates, the original of



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the revenue records were placed before the Assistant Settlement Officer for verification.

45. Further, a perusal of the order impugned, passed by the Settlement Officer reveals that none of the original documents, on which reliance has been placed by the petitioner, has been brought to the attention of the Settlement Officer. In fact, after verification of the copies of the documents placed with the materials in the Government archives, the Settlement Officer has rendered a categorical finding that the documents placed by the petitioner are fabricated. Further, the petitioner claims that the Tahsildar had not been put on notice to be present at the time of enquiry by the Settlement Officer and the non-appearance of the Tahsildar is detrimental to the case of the respondents, yet, without any notice having been served on the revenue authorities, asking them to produce the records, a finding has been recorded by the Assistant Settlement Officer that the originals of the documents on which reliance has been placed by the petitioner by producing copies have been verified and found to be true.



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46. The non-appearance of the Tahsildar before the Settlement Officer would in no way be detrimental to the case of the respondents as it is for the petitioner to prove that the lands have been taken over by the Government under the Ryotwari Act and that the said lands are ryoti lands, which would result in grant of ryotwari patta. For grant of ryotwari patta, the presence of the Tahsildar is not at all required. No doubt, the Division Bench of this Court, in W.A. No.430/06, had affirmed the order of the learned single Judge to the extent of setting aside the impugned order therein for want of opportunity to the aggrieved party to ventilate its grievance. The Division Bench, while affirming the order of the learned single Judge relating to remand, further directed the appellate authority to decide the question as to whether patta was issued by the competent authority or not. In such a backdrop, in compliance of the order passed by the Division Bench, the appellate authority has rendered a finding that the patta has been wrongly granted as the subject lands are not ryotwari lands. Such being the case, the stand of the petitioner that the order has been passed beyond the jurisdiction of the appellate authority is wholly misconceived.



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47. The further contention of the petitioner that no opportunity was granted to submit oral arguments and, therefore, there is violation of principles of natural justice also does not merit acceptance. A careful perusal of the impugned order reveals that requisite time was granted during which time there was scant co-operation from the parties and without submitting oral arguments, mere adjournments were being taken after submitting documents and written arguments. Therefore, in the wake of the non-cooperation of the parties, based on the documents and written arguments, the appellate authority has rendered a finding, which cannot be found fault with. Further, the order of the Division Bench has not spelt out that an opportunity of personal hearing to be granted to each and every party to the proceedings before passing final order. The Division Bench has merely observed that opportunity has not been granted and such being the case, the appellate authority having put the parties on notice, entertained receipt of documents and written arguments, due to non-cooperation of the parties, had proceeded with the proceedings and passed the impugned order, the said order cannot be found fault with and violation of principles of natural justice raised by the petitioner cannot be countenanced.



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48. For all the reasons aforesaid, this Court is of the considered view that the petitioner has not made out a case for interfering with the order impugned herein. Rather, the impugned order has been passed, not only in due compliance of the directions of this Court, but after properly appreciating the materials available on record and in the aforesaid backdrop, no interference is warranted with the order impugned herein.

49. Accordingly, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, in the circumstances, there shall be no order as to costs.

06.07.2022

Index : Yes / No

Internet : Yes / No

GLN



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To

1. The Settlement Officer
Survey House, Chepauk
Chennai – 5.
2. The Assistant Settlement Officer
Survey House, Chepauk
Chennai – 5
(The Asst. Settlement Officer
Tiruvannamalai, since abolished
And merged with Asst. Settlement
Officer, Chennai)
3. The Tahsildar
Tambaram, Kanchipuram District.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.8463 OF 2009**

**Pronounced on
06.07.2022**