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W.P.(MD).Nos.5394 and 8495 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 22.08.2022

ORDER PRONOUNDED ON : 21.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos.5394 and 8495 of 2012

and

MP(MD).No. 1 of 2012

1.A.Ranapitchai Naidu ...Petitioner in W.P.No.5394 of 2012

2.N.Chinnaraj

3.V.Sridhar ...Petitioners in W.P.No.8495 of 2012

Vs

1.The Commissioner of Tamil Nadu
Represented by its Secretary
Revenue Department
Chennai -9

2.The Principal Secretary and Commissioner
Land Administration
Chepauk
Chennai -5

3.The Director of Survey and Settlements
Chennai -5

4.The Assistant Settlement Officer
Madurai 625 002



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5.Narasimha Naidu

6.Manoharan Naidu

....Respondents in both petitions

Prayer in W.P(MD).No.5394 of 2012: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records and quash the order passed by the second respondent in his order dated 30.12.2011, Ref.No.K1/34483/2003-1 in respect of properties bearing Survey Numbers 434/6 and 435/2 in accordance with law.

Prayer in W.P(MD).No.8495 of 2012: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the second respondent in Ref.No.K1/34483/2003-1 dated 30.12.2011 and quash the same in respect of properties in Gurunathanaickanur Village, Dindigul Taluk, bearing Survey Nos.434/6 and 435/2.

For Petitioners : Mr.K.Goviganesan
for K.Rajeshwaran
in W.P.No.8495 of 2012

No appearance
in W.P.No.15394 of 2012

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader
For R1 to R3 and No appearance
for R4 to R6 in W.P.No.5394 of 2012

:Mr.S.Shanmugavel
Additional Government Pleader
for R1 to R3 and R4-died
and No appearance for R5 & R6
in WP.No.8495 of 2012



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COMMON ORDER

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The petitioners in both the writ petitions are challenging an order passed by the second respondent herein under which a patta has been granted in favour of the respondents 5 and 6.

2.The contentions of the petitioners are as follows:

(i).Survey Nos.435/2 and 434/6 in Gurunathanaikanur Village, Dindigul Taluk, Dindigul District have been classified as Ayyappa Naicken Kulam. The tank is the source of irrigation for the petitioners and others for their agricultural properties in Survey Nos. 426, 446 to 448, 670 and other survey numbers. The said lands originally belonged to Kannivadi Zamin.

(ii).The petitioners have further contended that the said Zamin was taken over by the Government of Tamil Nadu under Act 26 of 1948 and Patta was granted under Section 11 of the said Act in favour of the respondents 4 and 5 ignoring the fact that it is a tank.

(iii).Tamil Nadu Act 26 of 1948 was amended by way of amended Act 49 of 1974 and Section 14-A was inserted. As per Section 14-A, no ryotwari Patta could be granted for the private tank or Oorani. In case, if any ryotwari Patta has already been granted under Act 26 of 1948, the same shall stand automatically cancelled. The Assistant Settlement Officer, Madurai after hearing the respondents 4 and 5 had cancelled the patta granted to the



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respondents 4 and 5 by way of an order dated 10.05.1976. The respondents 4 and 5 have challenged the said order before the Board of Revenue and the Board of Revenue has confirmed the order on 03.11.1980. The order passed by the Board of Revenue was challenged in W.P.No.71 of 1981 which was allowed on 24.07.1987 remitting the matter back for fresh consideration.

(iv).After fresh consideration, the second respondent herein had confirmed the order of cancellation of patta on 07.01.2003 which was challenged in W.P.No.15199 of 2003 by the respondents 4 and 5 herein. Once again, the High Court was pleased to remit the matter back to the Commissioner of Land Administration by an order dated 22.06.2011. After the second remand, the Commissioner of Land Administration had passed an order granting patta in favour of the respondents 4 and 5 herein by an order dated 30.12.2011. The said order is being challenged in W.P(MD).Nos.8495 and 5394 of 2012.

3.According to the learned counsel for the petitioners, the Survey numbers in dispute are tank poramboke and patta was originally granted in favour of the respondents 4 and 5 under Tamil Nadu Act 26 of 1948 . After introduction of Section 14-A, the proceedings were initiated by the Assistant Settlement Officer and patta were cancelled. During the first round of



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litigation in W.P.No.71 of 1981, this Court was pleased to remit the matter back with a specific direction that the Board of Revenue should find out how the lands in question stood registered in the revenue records on the date of vesting under Act 26 of 1948. In the second round of litigation, in W.P.No. 15299 of 2003, this Court had again set aside the order passed by the Commissioner of Land Administration on the ground that the direction issued in the previous round of litigation has not been complied with by the Board of Revenue.

4.The learned counsel for the petitioners had contended that in the impugned order, the second respondent herein has stated that he has considered the SLR prepared during the settlement. From the SLR records it could be seen that only survey numbers are classified as ryotwari punjai are in the name of the respondents 4 and 5 herein. During the settlement proceedings also the lands were classified only as ryotwari punjai and patta was granted in favour of the respondents 4 and 5. There was no remarks prior to the settlement or during the settlement that there was a waterbody on these lands. Hence, the Commissioner of Land Administration found that there was no action for invocation of Section 14-A by the Assistant Settlement Officer. The second respondent further found that only during UDR proceedings, the concerned survey numbers were classified as Ayyappa Naicken Kulam in 'A'



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register. Based upon the said findings, the second respondent has granted patta.

5.The learned counsel for the petitioners had relied upon the documents obtained by him under Right to Information Act to contend that during the settlement proceedings, the concerned survey was classified as Ayyappa Naicken Kulam and only after the settlement proceedings, patta was granted to the respondents 4 and 5 herein during the settlement proceedings under Tamil Nadu Act 26 of 1948.

6.The learned counsel for the petitioners has also relied upon FMB sketch in Survey Nos.434 and 435 to contend that the relevant sub-divisions are shown as water bodies. He had also relied upon a Division Bench judgement of our High Court reported *in 1986 WLR 242 (M.subbakannu Vs. P.L.Ramanathan Chettiar and others)* in Paragraph No.4 to contend that Section 14-A will appear in respect of a survey number which is registered in the revenue records as a tank, whatever may be the quantity of water in the tank or whatever may be the area underwater in the tank. Hence, he prayed for allowing the writ petitions.

7.Per contra, the learned Government Pleader had contended that the village 'A' register of the Zamin period 1920 will not disclose the existence of



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any Kulam and SLR register will also disclose that the concerned survey numbers are only ryotwari punjai and not tank poramboke. The learned Government Pleader had also relied some FMB sketch, adangal and contended that the second respondent has rightly passed the impugned order.

8.Though notice has been served upon the private respondents, there is no representation.

9.I have considered the submissions made on either side and perused the materials available on record.

10.The respondents 4 and 5 have been granted patta under Section 11 of Tamil Nadu Act 26 of 1948 for Survey Nos.434/6 and 435/2. Later, after introduction of Section 14-A, Patta granted to the above said survey numbers have been cancelled by the Assistant Settlement Officer by his proceedings dated 11.10.1976 on the ground that it is Ayyappa Naicken Kulam. The appeal preferred by the respondents 4 and 5 before the Board of Revenue has also been dismissed. The Commissioner of Land Administration has twice confirmed the order that it is a water body and cancellation of patta is correct.



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11. In the first round of litigation, this Court in W.P.No.71 of 1981 by its order dated 24.07.1987 in Paragraph No.5 has held as follows:

“5..... The Board of Revenue shall find out as to how the lands in question stood-registered in the revenue records at the relevant point of time, namely, the date of vesting put the petitioners on notice of all the materials sought to be taken into consideration while deciding the question; afford an opportunity to the petitioners to make their say over them and then decide the question on merits as to whether there is a ground for cancellation of the ryotwari pattas granted in favour of the petitioners.....”.

12. In the second round of litigation in W.P.No.15199 of 2003, this Court has remitted the matter back to the Commissioner of Land Administration on the ground that the order passed by this Court in W.P.No.71 of 1981 has not been complied with.

13. A perusal of both the judgments of this Court will clearly indicate that the Board of Revenue was directed to find out, the revenue records as they stood on the date of vesting under Act 26 of 1948. The typed set of papers filed by the learned Additional Government Pleader will clearly show the presence of Ayyappa Naicken Kulam during the notification under Act 26 of 1948. The SLR register produced on the side of the respondents relates to the year 1964. The lands have been taken over by the Government of Tamil



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under under Act 26 of 1948 and admittedly, the ryotwari patta has been granted to the respondents 4 and 5 under the said Act. Hence, the SLR register of the year 1964 will naturally reflect the name of the respondents 4 and 5. Therefore, SLR register of the year 1964 does not help the case of the respondents.

14.The learned Additional Government Pleader in his typed set of papers has filed FMB sketch for Survey Nos.434 and 435 of the year 1959. Those FMB sketches will clearly establish that Survey Nos.435/2 and 434/6 are Ayyappa Naicken Kulam. This has been recorded during the UDR proceedings and 'A' register. After UDR proceedings, the records reflect the concerned survey numbers as waterbodies. The FMB sketch after UDR proceedings also reflects that the concerned survey numbers are waterbodies. The recent adangal extract produced by the learned Additional Government Pleader also reflects that these two survey numbers continue to be a waterbody.

15.As directed by this Court in W.P.No.71 of 1981, the Commissioner of Land Administration should have looked into the documents which are available on the date of vesting of the lands under Tamil Nadu Act 26 of 1948. As could be seen from the records produced by the learned Additional



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Government Pleader, the second respondent has relied upon a SLR register of the year 1964 (After settlement proceedings) to arrive at a finding that the concerned survey number has been classified as ryotwari punjai and registered in the name of the respondents 4 and 5. The error that has been crept in during the settlement proceedings has been carrying forwarded in 'A' register after settlement proceedings. Hence, the findings of the second respondent herein with regard to the fact that the survey numbers in dispute were classified as ryotwari punjai prior to the settlement proceedings are not factually correct ('A' register during the Zamin period of the year 1920 produced on the side of the Additional Government Pleader).

16.Serial No.9 in the notification under Tamil Nadu Act 26 of 1948 refers to irrigation. Under the said Serial Number, Item No.4 is shown as Paraikulam Kanmai and the source of irrigation for Paraikulam has been mentioned as Ayyappa Naicken Kulam and other kanmais. Hence, it is clear that on the date of vesting, Ayyappa Naicken Kulam was available and the second respondent has not properly appreciated the said notification under Act 26 of 1948 as directed by this Court in W.P.No.71 of 1981. Therefore, on the date of vesting, under Tamil Nadu Act 26 of 1948, survey numbers namely 435/2 and 434/6 were only treated as waterbodies. That apart, the respondents 4 and 5 have filed an appeal before before the Board of Revenue



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challenging an order of Assistant Settlement Officer dated 11.10.1976. A copy of the grounds in the said appeal memorandum has been produced on the side of the petitioners. In the said appeal ground, in para No.2, the respondents 4 and 5 have contended that the Kulam was dug by their grandfather in the year 1890 for their personal use only. Hence, it is clear that even as per the contention of the respondents 4 and 5, the tank in question is a private Orani for which Patta was granted to them under Tamil Nadu Act 26 of 1948. Hence, invocation of Section 14-A of the said Act by the Assistant Settlement Officer cannot be faulted with.

17.In view of the above said discussion, the order impugned in the writ petitions are set aside. The writ petitions are allowed. The order of the Assistant Settlement Officer dated 11.10.1976 classifying Survey Nos. 434/6 and 435/2 as Ayyappa Naicken Kulam in Gurunathanaickanur Village, Dindigul Taluk, Dindigul District is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

21.09.2022

Internet : Yes/No
Index : Yes/No
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To

1. The Secretary
Commissioner of Tamil Nadu
Revenue Department
Chennai -9

2. The Principal Secretary and Commissioner
Land Administration
Chepauk
Chennai -5

3. The Director of Survey and Settlements
Chennai -5



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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and
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