

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 01.09.2022

ORDER PRONOUNCED ON : 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.19489 of 2014
and W.P(MD).Nos.821 & 190 of 2015
and**

MP(MD).Nos.2 of 2014, 3 of 2015 and 2 of 2015

W.P(MD).No.19489 of 2014

M.Palaniappan

.....Petitioner

Vs

1.The District Revenue Officer
Tiruchirappalli District

2.The Revenue Divisional Officer
Tiruchirappalli

3.The Tahsildar
Tiruverumbur Taluk
Tiruchirappalli

.....Respondents

W.P(MD).No.821 of 2015

1.D.Pandidurai

2.D.Karthikeyan

....Petitioners

Vs

1.The District Collector
Trichy
Trichy District

2.The District Revenue Officer
Tiruchirappalli District

3.The Revenue Divisional Officer
Tiruchirappalli

4.The Tahsildar
Tiruverumbur Taluk
Tiruchirappalli

5.M.Palaniappan

6.R.Annamalai

7.C.PeriyanayagiRespondents

W.P(MD).No.190 of 2015

R.AnnamalaiPetitioner

Vs

1.The District Revenue Officer
Tiruchirappalli District
Tiruchirappalli

2.The Revenue Divisional Officer
Tiruchirappalli District
Tiruchirappalli

3.The Tahsildar
Thiruvarambur Taluk
Tiruchirappalli

4.Bharathidasan University
Represented by its Registrar
TiruchirappalliRespondents

(4th Respondent is impleaded vide Court order dated 04.08.2022)

Prayer in W.P(MD).No.19489 of 2014: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing Na.Ka.No.Aa6/7360/2013 dated 21.11.2014 passed by the first respondent confirming the order of the second respondent bearing Na.Ka.No.A3-6407-2012 dated 31.01.2013 and quash the same and consequently direct the respondents to restore the petitioner's name in revenue records in Survey No.654/1 in Sooriyur Village, Tiruverumbur Taluk, Tiruchirappalli District.

Prayer in W.P(MD).No.821 of 2015 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing Na.Ka.No.Aa6/7360/2013 dated 21.11.2014 passed by the second respondent confirming the order of the third respondent bearing Na.Ka.No.A3-6407-2012 dated 31.01.2013 and quash the same and consequently direct the respondents 2 & 3 to issue patta in the petitioners' name in respect of survey No.654/2, Sooriyur Village, Tiruverumbur Taluk, Tiruchirappalli District.

Prayer in W.P(MD).No.190 of 2015 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 21.11.2014 of the first respondent in proceedings in Na.Ka.No.AA6/7360/2013 confirming the order dated 31.01.2013 of the second respondent made in Na.Ka.No.a3/6407/2012 and to quash the same and consequently restore the patta for Survey No.654 in Suriyoor Village, Thiruvarambur Taluk, Trichy District in the name of the petitioner.

W.P(MD).No.19489 of 2014

For Petitioner :Mr.S.Anwar Sameem
For Mr.T.Antony Arul Raj

For R1 to R3 : Mr.N.Muthuvijayan
Special Government Pleader

W.P(MD).No.821 of 2015

For Petitioner :Mr.G.Prabhu Rajadurai
For Mr.A.Rahul

For R1 to R4 : Mr.N.Muthuvijayan
Special Government Pleader

For R5 & R7 : No appearance

For R6 : Mr.G.Mathavan
For Mr.G.Sridharan

W.P(MD).No.190 of 2015

For Petitioners :Mr.G.Mathavan

For R1 to R3 : Mr.N.Muthuvijayan
Special Government Pleader

For R4 : Mr.VR.Shanmuganathan

COMMON ORDER

The petitioners in WP(MD).Nos.19489 of 2014 and 821 of 2015

have contended as follows:

(i).According to the petitioners, the properties originally belonged to

Azarath Nandhavalli Darga. The trustee of the said Darga had executed a registered Dargasth mortgage deed in favour of one Nagapillai and Sammanthapillai under a document dated 20.03.1957. The said Nagapillai and Sammanthapillai have executed a registered sale deed dated 15.05.1958 in favour of one Abdul Majith. The said Abdul Majith has approached the Assistant Settlement Officer under Tamil Nadu Act 23 of 1963 and a patta was granted in favour of Abdul Majith on 07.07.1988.

(ii).The petitioners have further contended that the said Abdul Majith had executed a registered sale deed in favour of one Palanisamy Pathiriyar for an extent of 5 ½ cents in the north-west corner of the property having a total extent of 9.93 acres. The said Palanisamy Pathiriyar has executed a registered power deed in favour of his vendor Abdul Majith on 25.12.1995. Based upon the said power deed and being the owner of the balance of the property, the said Abdul Majith has executed a registered sale deed on 05.06.2000 in favour of S.K.R.Durairaj and Palaniappan who is the fifth respondent in WP(MD).No.821 of 2015 and the petitioner in WP(MD).No.19489 of 2014. Thus the said S.K.R.Durairaj and Palaniappan became the joint owners of 9.93 acres.

(iii).The petitioners had further contended that there was a dispute among the legal heirs of the said Durairaj and Palaniappan and hence, a suit for partition was filed by Palaniappan in O.S.No.8 of 2009 on the file of the I Additional District Court at Tiruchirappalli, in which, the final decree was passed on 08.01.2010 allotting northern $\frac{1}{2}$ cents to Palaniappan and southern $\frac{1}{2}$ cent to the petitioners.

(iv).The petitioners had further submitted that a patta was issued in the name of their father S.K.R.Durairaj and a Patta Pass Book was also issued in the name of their father Durairaj for Survey No.654 for an extent of 4.02.0 Hectare. They had further contended that the seventh respondent in WP(MD).No.821 of 2015 namely C.Periyanayagi did not have a right over the property, but she has chosen to execute a sale deed in favour of the sixth respondent namely R.Annamalai under a sale deed dated 11.07.2009.

(v).The petitioners had further contended that they filed O.S.No.195 of 2013 on the file of the District Munsif Court, Tiruchirappalli as against the said Periyanayagi and Annamali for the relief of declaration of title and consequential permanent injunction. According to the petitioners, the said suit ended into a compromise on 23.10.2013 whereunder the said Annamalai and Periyanayagi have admitted the title of the writ petitioners herein. Hence,

according to the petitioners, they are the absolute owners of the property based upon the various documents and final decree passed in O.S.No.8 of 2009. According to the petitioners, suddenly the third respondent herein has initiated suo moto proceedings for cancellation of patta. In the said proceedings, it is stated that a notice was issued to their vendor namely Abdul Majith. The suo moto proceedings have been initiated in the year 2013. In the order, it is stated that notice has been issued to Abdul Majith and after enquiry and getting statement from him, the order is being passed. In fact, the said Abdul Majith had died way back on 19.04.2004 itself. Hence, the said order of the Revenue Divisional Officer has been passed without hearing the petitioners or their vendors.

(vi).The petitioners had further contended that the order passed by the Revenue Divisional Officer was challenged before the second respondent by way of revision. In the said revision, the petitioners got themselves impleaded. After hearing the parties, the second respondent herein had confirmed the order passed by the third respondent on the ground that 'A' Register of Sooriyur Village of the year 1988 clearly points out that Survey No.654 is a Government poramboke. Hence under G.O.Ms.No.541, Education, Science and Technology Department dated 29.03.1982, the said survey number was allotted to Bharathidasan University. Therefore, without

any proper order, patta has been granted in favour of the private parties and entries have been made in the Village and Taluk accounts erroneously. Hence, the second respondent has directed to cancel the patta and effect mutation in the Village and Taluk accounts as Government poramboke/Bharathidasan University and dismissed the revision. As against the said order, the petitioners have filed the above writ petitions.

3.The petitioner in WP(MD).No.190 of 2015 namely Annamalai has contended as follows:

(i)According to Annamalai, one Durairaj who was the owner of $\frac{1}{2}$ share had died instate on 24.12.2007 and he had purchased an undivided $\frac{1}{2}$ share namely southern $\frac{1}{2}$ from the widow of Durairaj namely Periyamayagi through a registered sale deed dated 11.12.2009 and since then she is in possession and enjoyment of the same. According to the petitioner, the sale deed dated 11.12.2009 clearly shows that the land of Bharathidasan University as the northern boundary.

(ii). The petitioner had further contended that without any notice to him, the second respondent has cancelled the patta on the ground that it has been allotted to Bharathidasan University under G.O.Ms.No.541 dated 29.03.1982.

4.The learned counsel for the petitioners in all the three writ petitions made the following submissions:

(i). An extent of 9.93 acres in Survey No.654 is a private patta land which was originally owned by one Abdul Majith under a registered sale deed dated 15.05.1958. The Abdul Majith has approached the Assistant Settlement Officer for grant of patta under Tamil Nadu Act 26 of 1963 and patta has been granted in his favour by an order dated 07.07.1988. Pursuant to the order passed by the Assistant Settlement Officer, the revenue patta has also been granted by the revenue authorities. Hence, the order granting patta by a Settlement Officer can never be cancelled by the revenue authorities. The learned counsel for the petitioners had further contended that though initially an order was passed by the Settlement Officer as against the said Abdul Majith, he filed CMA.Nos.4 to 13 of 1984 before the Inam Abolition Tribunal, Trichy. The said Tribunal had passed an order on 09.08.1985 setting aside the order of Assistant Settlement Officer and remitted the matter back to the Assistant Settlement Officer. Thereafter, a fresh enquiry was conducted by the Assistant Settlement Officer and he had issued patta in favour of Abdul Majith for Survey No.654 for an extent of 4.02.0 Hectare under Act 26 of 1963. Thereafter, the said order was not challenged by any party. Hence, the said order has become final.

(ii). The learned counsel had further contended that Bharathidasan university claims title and possession over Survey No.654 only based upon G.O.Ms.No.541 dated 29.03.1982. As per the said notification, the District Collector, Trichy was requested to sent necessary 4(1) Notification proposals in respect of the patta lands and transfer proposals in respect of poramboke land and assessed waste and dry lands to Government for their approval. In the said Government order, Survey No.654 was shown as assessed waste and dry lands. Thereafter, G.O.Ms.No.229, dated 09.02.1990 was passed by the Government under which the assessed waste and dry lands and poramboke lands were leased out to Bharathidasan University. The said Government order does not indicate Survey No.654 was leased out to Bharathidasan University. Therefore, according to the learned counsel for the petitioner, the District Collector, Trichy was directed to send transfer proposal with regard to the assessed waste and dry lands by way of G.O.Ms.No.541 dated 29.03.1982. However, no such proposal could have been received by the Government with regard to Survey No.654. Hence, Survey No.654 was not leased out in favour of Bharathidasan University.

(iii). According to the learned counsel for the petitioners, the second and third respondents have erroneously relied upon G.O.Ms.No.541 dated 29.03.1982 to arrive at a finding that Survey No.654 has already been allotted

to Bharathidasan University. However, the District Collector was directed to send transfer proposal for transferring the said survey number along with other survey number falling under classification of Assessed Waste and Dry (AWD). Hence, unless the transfer proposal is sent by the District Collector, Trichy and the Government accepts the said proposal and transferred the land to Bharathidasan University, it cannot be contended that Survey No.564 was allotted to Bharathidasan University. This is very clear in view of the fact that G.O.Ms.No.229 dated 09.02.1990 under which various survey numbers and AWD lands were transferred to Bharathidasan University without mentioning Survey No.654.

(iv).The learned counsel had further contended that only ground on which the revenue authorities have cancelled the patta standing in the name of the writ petitioners is that the land is classified as a Government poramboke and it has already been leased in favour of Bharathidasan University. He had further contended that since Survey No.654 was not leased out to Bharathidasan University, the University has no locus standi to question the grant of patta in favour of the writ petitioners.

(v).Originally, the Assistant Settlement Officer has rejected the patta in favour of Abdul Majith. He had filed an appeal before the Inam Abolition

Tribunal. The order of the Assistant Settlement Officer was set aside by the Tribunal and it was remitted back to the Assistant Settlement Officer for fresh consideration. This order was not challenged by the Government. Only because of the said fact, the Collector has not sent transfer proposal for Survey No.654 to the Government and consequently, G.O.Ms.No.229 dated 09.02.1990 does not reflect the said survey number. Hence, he prayed for allowing the writ petitions.

5.The learned Counsel appearing for the Bharathidasan University has made the following submissions:

(i). Bharathidasan University was established in the year 1981. The Village Account of Sooriyur Village after settlement proceedings was closed on 28.07.1972. Thereafter, the petitioners are not entitled to make any application for grant of patta under Act 26 of 1963 before the Assistant Settlement Officer. The said Assistant Settlement Officer will not have any jurisdiction whatsoever to entertain an application for grant of patta after the accounts were closed on 28.07.1972. As per G.O.Ms.No.370, the time was extended for requesting of patta under Act 26 of 1963 till 31.03.1977.

(ii). A perusal of the order of Assistant Settlement Officer granting patta in favour of the writ petitioners on 07.07.1988 will clearly indicate that the Assistant Settlement Officer was not approached on or before 31.03.1977 and hence, the entire proceedings are initiated by fraud.

(iii).The learned counsel for the respondent had further contended that Bharathidasan University has been established in the year 1981 and as per G.O.Ms.No.541dated 29.03.1982, Survey No.654 has been allotted to the University by the Government. Hence, from the year 1982 onwards, the Bharathidasan University has got right title or interest over the said survey number. However, without issuing any notice to the University, an order has been passed by the Assistant Settlement Officer on 07.07.1988. Hence, the order passed by the Assistant Settlement Officer is not valid in the eye of law and it will not bind the University.

(iv). The learned counsel had further contended that under G.O.Ms.No. 541 dated 29.03.1982, Survey No.654 has already been allotted by the Government in favour of the University. The request made to the District Collector to transfer proposal is only formal in nature. Any omission of Survey No.654 in G.O.Ms.No.229 is only a mistake. Therefore, it could not be contended that Survey No.654 was not at all leased out to Bharathidasan University. He had further contended that the same Assistant Settlement

Officer had granted Ryotwari Patta in respect of S.F.No.697/1 which was allotted to the respondent University by his proceedings dated 01.02.1988. The said order was suo-moto revised by the commissioner Land Administration vide proceedings dated 07.07.2006. The aggrieved persons have filed two suits in O.S.Nos. 835 and 962 of 2018 on the file of the District Munsif Court, Trichy and the same are pending.

(v). The learned counsel had further submitted that the similar bogus claims were raised by several persons. One of the cases is a suit in O.S.No.2060 of 1983 on the file of the I Additional District Munsif, Trichy and the plaintiffs have managed to obtain an exparte decree. He had further pointed out that W.P.Nos. 1869 and 2426 of 2005 had challenged G.O.Ms.No. 541 and they were heard together and it was disposed of by way of a common order dated 22.02.2007 and both the writ petitions were dismissed along with CRP.Nos.402 and 417 of 2004. In the said proceedings, the Hon'ble High Court has upheld G.O.Ms.No.541 and set aside the exparte decree. He had further contended that the order of the Hon'ble Division Bench was also confirmed by the Hon'ble Supreme Court and later the suit was dismissed on 25.06.2019.

(vi). The learned counsel had further contended that in view of various bogus claims, the University had conducted a survey and came to know that Survey No.654 is under encroachment of private persons in the year 2005. Immediately, they have written a letter to revenue officials for removal of the encroachment. Only because of the said proceedings, the revenue authorities have now cancelled the patta standing in the name of the private persons. The civil suit referred to by the writ petitioners will not bind the University in view of the fact that the University is not a party in any one of the Civil suits. Hence, he prayed for dismissal of the writ petitioners and to confirm the cancellation of patta in favour of the writ petitioners.

6.I have considered the submissions made on either side and perused the records.

7.The petitioners claim that the survey number in dispute namely Survey No.654 belongs to one Abdul Majith and a settlement patta was granted in favour of the said Abdul Majith on 07.07.1988 by the Assistant Settlement Officer, Thanjavur. On the other hand, the University claims that the said survey number was allotted to them under G.O.Ms.No.541 dated 29.03.1982. Hence, they have got title, possession and interest over the said survey number.

8.A perusal of G.O.Ms.No.541 dated 29.03.1982 clearly indicates that the Survey No.654 is shown as Assessed Waste and Dry land. The Government has requested the District Collector to send transfer proposal for the said survey number so as to get it transferred in favour of the University. Hence, it is clear that the Government was expecting a transfer proposal from the Collector to transfer, Survey No.654 and other survey numbers falling under the notification for Assessed Waste and Dry lands so that it could be transferred in favour of Bharathidasan University. The Government has passed G.O.Ms.No.229 dated 09.02.1990 transferring various survey numbers falling under the classification of Assessed Waste Dry lands and poramboke lands in favour of Bharathidasan University. In the list of survey numbers, Survey No. 654 is not found. Therefore, there is substance in the submissions made by the writ petitioners that this survey number though originally was proposed to be transferred to University, at the time of final order, the Government has not chosen to transfer, Survey No.654 in favour of the University. The University authorities have only contended that by mistake this Survey No.654 is not included in G.O.Ms.229 dated 09.02.1990. Dehors of G.O.Ms.No.229, they are having right title and possession over Survey No.654. In view of allotment of the said survey number in G.O.Ms.No.541 dated 29.03.1982. This contention is not legally sustainable.

Unless a particular Survey number falling under classification of AWD is specifically leased out in favour of Bharathidasan University, the University cannot make a claim over the said survey number

9.The Public Information Officer of Bharathidasan University by his communication dated 03.01.2017 informed that after Patta was granted in favour of Abdul Majith by way of an order dated 07.07.1988 by the Assistant Settlement Officer, Thanjavur, the said land was not acquired and handed over to the University.

10.The order passed by the third respondent reveals that it was passed after hearing one Abadul Majith. However, the said Abdul Majith died way back on 19.04.2004. Hence, the order of the third respondent has been passed without hearing the parties in whose name the settlement patta was standing. The appellate authority namely the first respondent has passed an order on 21.11.2014 mainly relying upon G.O.Ms.No.541 dated 29.03.1982 without even considering G.O.Ms.No.229 dated 09.02.1990 under which AWD land and poramboke land were leased out in favour of Bharathidasan University. Hence, the original order as well as the order passed by the revisional authority suffers from violation of principles of natural justice and

non-application of mind. The learned counsel for the petitioners have also raised a plea that patta granted during the settlement proceedings cannot be disturbed by the revenue authorities and the revenue authorities do not have any jurisdiction whatsoever to cancel the patta granted by the Assistant Settlement Officer under Act 26 of 1963.

11.The learned counsel for the petitioners had relied upon a judgment of this Court reported ***in 2019 (4) CTC 341 (Sennimalai Gounder (died) and 12 others-vs- The Additional District Magistrate & District Revenue Officer, Coimbatore and others)*** in which Paragraph No. 20 is extracted as follows:

“20.On examining the aforementioned judgments of the Hon'ble Supreme Court, it is very evident that the Second Respondent herein, namely, the Sub Collector, Pollachi does not have jurisdiction under the Tamil Nadu Minor Inams Act to initiate proceedings and cancel the Ryotwari pattas issued under the statute because the power and jurisdiction, in this regard, is expressly conferred on the Tribunal, namely, the designated Sub Court concerned. In view of the fact that there is complete lack of jurisdiction and not merely a pecuniary or territorial limitation, the principles laid down in the case in Harshad chiman Lal Modi Vs.D.L.F Universal Ltd. And another, 2005 (5) CTC 133 (SC) : 2005 (7) SCC 791 (cited supra) are squarely applicable and this would be a case where neither acquiescence nor consent can confer jurisdiction.”

12.The Settlement Officer has not passed an order on a mere application of the said Abdul Majith. The Settlement Officer has originally rejected the application on 07.02.1983 which was set aside by the Inam Abolition Tribunal on 29.08.1983. Thereafter, again the Assistant Settlement Officer has rejected the patta by his order dated 17.02.1984 which was again set aside by the Inam Abolition Tribunal in CMA.Nos. 4 to 13 of 1984 on 09.08.1985. Only thereafter, the Assistant Settlement Officer has conducted a detailed enquiry and granted patta in favour of the said Abdul Majith.

13.The narration of the above said events will clearly disclose that only after due enquiry, patta has been granted by the Assistant Settlement Officer on 07.07.1988. In fact, in the said Settlement Proceedings, the first respondent was the Tamil Nadu Wakf Board. A perusal of the pleadings of the petitioners will also disclose that originally property belonged to one Azarath Nandhavalli Darga. The Tahsildar, Trichy was also one of the respondents in the said proceedings before the Assistant Settlement Officer, Thanjavur. Neither the Wakf Board nor the Tahsildar, Trichy who were parties to the said proceedings have chosen to challenge the order of Settlement Officer before the Inam Abolition Tribunal. Once the order of the Settlement Officer has become final, thereafter, the same cannot be disturbed by the revenue

authorities. In the present case, the respondents 2 and 3 have chosen to cancel the revenue patta dis-regarding the settlement patta granted in favour of Abdul Majith on 07.07.1988. Hence, the order passed by the respondents 2 and 3 are clearly without jurisdiction and hence, they are liable to be set aside.

14.The writ petitions are allowed. If there are any interse disputes between the petitioners in these petitions, the same has to be resolved before the competent Civil Court. No costs. Consequently, connected miscellaneous petitions are closed.

14.09.2022

Internet : Yes/No
Index : Yes/No
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To

1.The District Collector
Trichy
Trichy District

2.The District Revenue Officer
Tiruchirappalli District

3.The Revenue Divisional Officer
Tiruchirappalli

4.The Tahsildar
Tiruverumbur Taluk
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.19489 of 2014
and W.P(MD).Nos.821 & 190 of 2015
and
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14.09.2022