



W.A.No. 1748 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2023

Delivered on : 25 .09.2023

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

And

THE HON'BLE MR. JUSTICE P.B.BALAJI

W.A.No. 1748 of 2015

and

M.P. No. 1 of 2015

1. T.Giriraj (Deceased)

S/o. Thiruvengadasamy Mudaliar

2. Amsa alias Hamsaveni

(A2 was substitutes as Legal Representative
of the deceased vide order of this

Court dated 27.07.2021)

..Appellants

Vs.

1.The Special Commissioner and

Commissioner for Land Administration,
Ezhilagam, Chepauk, Chennai-600005.

2.The Settlement Officer,

Office of the Commissioner and Director
of Survey and Settlement,
Ezhilagam, Chepauk, Chennai-600005.



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3.The Assistant Settlement Officer (North)

Thiruvannamalai – 2

Thiruvannamalai Town and Panchayat.

4.The Tahsildar,

Thirukalukundram,

Thirukalukundram Taluk,

Kancheepuram District.

..Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Latters Patent to set aside the order passed by the Learned Single Judge in W.P.No. 39935 of 2002 dated 08.06.2015.

For appellant : Mr.K.Hariharan

For Respondents : Mr. J.Ravindran, AAG

Assisted by Mrs.Geetha Thamaraiselvan,
Spl.GP – R1 to R4

JUDGMENT

D. KRISHNAKUMAR, J.

Brief facts of the case is that the appellant's family has been in possession and cultivation of certain lands since 1929, supported by kist receipts and a registered Partition Deed from 1967. Despite the government's takeover of the estate following the Estate



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Abolition Act of 1948, the appellant's family continued to hold and cultivate the land. However, the authorities incorrectly classified the land as unclaimed poramboke ('Anadheenam') after the takeover, without issuing any notice to the appellant's family. Section 11 of the Abolition Act entitles individuals holding land as Ryots before July 1, 1945, to receive a Ryotwari patta without the need for an application. The appellant's request for a patta in the year 2000 was granted by the Assistant Settlement Officer, but later the Commissioner, suomotu, has set aside the order passed by the Assistant Settlement Officer. The appellant has challenged this decision through a writ petition in W.P.No. 39935 of 2002 and the same was dismissed by the Single Judge by order dated 08.06.2015. Challenging the same, present writ appeal is filed by the appellant.

2. The learned counsel for the appellant has submitted that from the year 1929, the kist receipts available were produced from the appellant's family. By virtue of registered Partition Deed dated 06.09.1967 the appellant became owner holding in possession and



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enjoyment by tilling the soil, raising the crops and cultivating the lands. Rokka patta was issued by Shrodhriamdhars erstwhile Zamin Valipuram Zamin, viz., V.K.Ramasamy Mudaliar, V.K. Kandasamy Mudaliar and V.K.Srinivasa Mudaliar. Old Patta No. 126 was issued to the appellant in 220, Mangalam Village, kist and land revenue was collected.

3. The learned counsel for the appellant has further submitted that after the Estate Abolition Act 26 of 1948 came into force, the estate alone was taken over by the Government but the possession and enjoyment remained with the appellant's family. All these documents are produced before the Assistant Settlement Officer. After taking over of the Estate, the lands were falsely classified as unclaimed poramboke as 'Anadheenam'. When the Abolition Act does not contemplate any application by a Ryot for getting patta, under Section 11 of the Act, the authorities to enquire and determine the persons entitled to Ryotwari patta and issue Ryotwari Patta in their names. Irrespective of any application, the Settlement Officers shall issue ryotwari patta after giving notice to the



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concerned persons. But no notice was issued to the appellant's family by the settlement officer.

4. The learned counsel for the appellant has further submitted that any person holding the land as Ryot prior to 01.07.1945 will be entitled to get the patta under Section 11 of the Act. When no application is contemplated, there cannot be any question of limitation for making application. When the appellant requested patta in the year 2000, the Assistant Settlement Officer, after enquiry, had granted Ryotwari patta which had become final.

5. The learned counsel for the appellant has further submitted that the Commissioner had set aside the order of the Assistant Settlement Officer, on the ground that the appellant's application was not made in time and was beyond time limit, without taking into consideration the volume of records to prove the cultivation done by the appellants from the year 1929. Challenging the said order, the appellant has filed a writ petition before this Court, the



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learned Single Judge merely on the ground that the revisional authority has power to pass order on suo-moto revision, confirming the order passed by the Commissioner. Hence the present writ appeal to set aside the order of the learned Single Judge.

6. On the other hand, the learned Additional Advocate General appearing for the respondents has submitted that the appellant had preferred a petition dated 5.3.2001 before the Assistant Settlement Officer, Tiruvannamalai for the grant of ryotwari patta under section 11(a) of the T.N. Act XXVI/1948 for the lands in S.Nos. 54/1 & 54/2 measuring an extent of 3.66 acres and 1.26 acres respectively in Mangalam Village of Thirukazhukundram Taluk of Erstwhile Kancheepuram District. The Assistant Settlement Officer, Tiruvannamalai/ 3rd Respondent herein without any statutory powers and jurisdiction, considered a time barred claim made by the appellant and passed an order S.R.No.10/2001, dated 23.3.2001 granting ryotwari patta under section 11(a) of the Tamil Nadu Estates (Abolition and Conversion



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into Ryotwari) Act, XXVI of 1948 in favour of the appellant for the above said lands.

7. The learned Additional Advocate General has further submitted that since the said order dated 23.3.2001 passed by the Assistant Settlement Officer, Tiruvannamalai was against the settled principles and the provisions of T.N. Act XXVI of 1948, the Settlement Officer, Chennai/ 2nd Respondent herein, in his letter Rc.C1/3251/2001, dated 27.6.2001, has reported the irregularities found in the Assistant Settlement Officer's order and requested the Commissioner of Land Administration to cancel the irregular order passed by the Assistant Settlement Officer, Tiruvannamalai. Accordingly, invoking suo-motu powers conferred with Section 7(c) of the T.N. Act XXVI/1948, after making a detailed enquiry and careful consideration of the records and prevailing Acts/Rules in force, the Special Commissioner and Commissioner of Land Administration/ 1st Respondent herein had passed an order vide proceedings in R.Dis. (K1)/51527/2001 dated 24.9.2002 setting



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aside the orders passed by the ASO, Tiruvannamalai, dated 23.03.2001 granting ryotwari patta u/s 11(a) of Tamil Nadu Act XXVI of 1948 in respect of the lands in S.Nos. 54/1 & 54/2 measuring an extent of 3.66 acres and 1.26 acres respectively in Mangalam Village, Thirukazhukundram Taluk of Chengalpattu District (Erstwhile Kancheepuram District) and directed the District Revenue Officer, Kancheepuram to restore the lands back as “Sarkar Poramboke-Anadheenam and Kundru” in the relevant Government records.

8. The learned Additional Advocate General has further submitted that aggrieved by the above order of the Special Commissioner/1st respondent, the appellant has filed a Writ Petition No.39935 of 2002 before this Court. The learned Single Judge by order dated 8.6.2015 had dismissed the writ petition and confirmed the orders passed by the Special Commissioner and Commissioner of Land Administration vide the proceedings dated 24.9.2002. According to the learned Additional Advocate General, the order of the 1st respondent is perfectly valid and in accordance



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with the relevant Act in force. Therefore, the order of the learned Single Judge confirming the said order of the 1st respondent does not require any interference by this Court and the present writ appeal is liable to be set aside.

9. Heard Mr.K.Hariharan, learned counsel appearing for the appellant and Mr.J.Ravindran, learned Additional Advocate General appearing for the respondents and perused the documents available on record.

10. The main contentions of the learned counsel for the appellant are as follows;

- i. As Section 3 of the Abolition Act, only those estate and the properties handled by Zamindhars alone vest in the Government but even the Government is not empowered to take possession from a ryot or any person in possession being entitled to be held as a ryot.
- ii. The Act does not require ryots to apply for a patta, as the Government does not claim ownership of the ryot's property and recognizes their rightful possession. Any charges, penal



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assessments, or collections for possession must be substantiated by kist receipts and penal receipts. Therefore, the respondents should conduct an inquiry by issuing a notice to the ryot in possession under Section 11 of the Act, rather than requiring the ryot to apply for a patta.

- iii. The Act specifies limitations under Section 64(B), which are related to Sections 12 to 15 and do not apply to applications made under Section 11 of the Act. The Government Orders (G.Os) referred to in this context pertain to landholders' applications and revisions, which are not applicable to ryots who are not expected to make any application under the Act and the Act does not impose a limitation on ryots applying for patta under Section 11.
- iv. The 1st respondent cannot rely on powers under Section 7(c) of the Act, but to insist the settlement officers to issue patta and finding the rightful ryot.

11. Before answering the above points with regard to issuance of Ryotwari patta, it is important to verify whether the appellant has proved himself as Ryot based on the records as required under Section 11(a) of the Act, XXVI of 1948.



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12. In terms with section 11(a) of the Act, XXVI/1948, every “Ryot” seeking ryotwari patta should have possession and enjoyment of such “Ryoti Land” immediately before the notified date, i.e. on 1.7.1945. The term “Ryot” and “Ryoti Land” are defined as follows in the Tamil Nadu Estates Land Act, 1908 as follows;

Sec.3(15): "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.

Sec.3(16): "Ryoti land" means cultivatable 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 if granted after that date, so long as the service tenure subsists;*



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13. It is to be noted that Sec.11 applies only to a “Ryot” in an Inam Estate. In order to make an application under Sec.11, the applicant will first have to establish that he/she 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.** Further, Section 11(a) of the Act XXVI of 1948 stipulates that a “Ryot” who seeks ryotwari patta under this section should have in possession and enjoyment of such lands on the notified date i.e. on 1.7.1945.

14. On the case of hand, as per records, the Rokka patta was issued only for three Fasli years i.e. 1353 (1943-1944), 1356 (1946-1947) and 1357 (1947-1948). Thereupon, there was no renewal of such pattas by the Inamdar. It is further submitted that the patta issued by Shrotriumdar is not a conveyance of title. The patta issued by the Shrotriumdar was only to collect land revenue. This particular patta was issued only for the period of three years only i.e. 1943, 1946 and 1947 respectively. It is also seen from the records that the Appellant has not produced any valid records to



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prove that the subject land is ryoti and properly included in his holding immediately prior to the notified date to satisfy the requirements of the Section 11(a) of Act XXVI/48. Some B. Memos which are mainly relied on by the appellant relates to the period subsequent to the notification and he has no other records in support of his claim. As the appellant's predecessor had not substantiated his claim with clean records to prove that he was a "Ryot" under possession and enjoyment of the land for which patta was required before the settlement authority, the classification of the land for which patta requested by the appellant had been classified as "Government poramboke-Anadheenam and Kundru" respectively based on the prevailing ground realistic i.e. 50 years ago and vested with the Government.

15. Limitation period for filing the appeal under the Act and extention of time granted outside the scope of the Act;

After the enactment of Tamil Nadu Act No. XXVI of 1948, the Governor of Tamil Nadu, in exercise of the powers conferred by



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Section 67(2)(d) of the Tamil Nadu (Abolition and Conversion into Ryotwari) Act 1948 made the following rules prescribing the period of limitation for filing the appeal, vide G.O.Ms. No. 3190 Revenue dated 17.10.1955, which reads as follows:-

“Revision petitions against the orders of the Assistant Settlement Officer under section 11 of the said Act shall be presented to the Settlement Officer concerned within fifteen days from the date of conduct of Rough Patta Hearing or the date of publication of this notification, whichever is later, in the areas where section 11, enquires have already been conducted separately under the old procedure and within thirty days of the conduct of final settlement Enquiry or within fifteen days of the date of publication of this notification whichever is later, in areas where section 11 enquires are conducted with the Rough Patta Objection Hearing under the new procedure. Further, the revision petitions shall lie to the Director of Settlements and the (Board of Revenue) against the orders of the Settlement Officer and the Director of Settlements, respectively within thirty days of the date of their respective orders.”

16. On the case of hand, since the appellant herein claimed himself as a “Ryot” as discussed above, an application seeking ryotwari patta under the Act is required to be filed within 30 days



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from the date of the final settlement enquiry as provided in the above G.O.Ms. No. 3190 Revenue dated 17.10.1955. **As such, the limitation of 30 days from the date (01.10.1951) of taking over the village expired on 01.11.1951.** The appellant or his predecessor in title had not applied for patta within the time limit as prescribed by the Government Order. After Abolition of the Zamini land holding and completion of effecting Ryotwari settlement, orders have been passed in the form of the Settlement Register and the same has not been challenged by way of appeal.

17. The learned Special Government Pleader has brought to the notice of this Court the Government orders issued by the Government by extending the time limit to grant patta to the landholders/ryots which is outside the scope of the 26 of the Act 1948. The G.Os are mentioned below;

S.No	Date	G.O. No.	Applicability	Limitation Period after last Extension of time
1	08.07.1958	G.O.Ms.No.2502 , Revenue Department	Land holders	30.06.1972 As per G.O.Ms.No.690,



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				Revenue Department, dated 02.03.1972
2	26.07.1967	G.O.Ms.No.1312 Revenue Department	Ryots	30.06.1972 As per G.O.Ms.No.690, Revenue Department, dated 02.03.1972
3	30.04.1971	G.O.Ms.No.1300 Revenue Department	All persons in continuous possession and enjoyment	30.06.1975 As per G.O.Ms.No.589, Commercial Taxes and Religious Endowment Department, dated 14.05.1975

18. It reveals from the records that the appellant's predecessors have not approached the settlement authorities under the Act and failed to avail the concession given by the Government to make any application under the said GO's. Further they have not raised any claim or objection during the settlement or even after the completion of final settlement enquiry and they have also not filed an appeal before the Settlement Authority/Board of Revenue as contemplated under the Act within the stipulated time. It is responsibility of the predecessors-in-title of the subject property to



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prove that the land belongs to them before the Settlement Forum in time. In view of the above procedural lapse on the part of the appellant which is imperative to prove the title over the property before the appropriate Forum, we are not inclined to accept the contention of the learned counsel appearing for the appellant with regard to the claim of title over the subject property by the appellant and by his predecessors and the same is liable to be rejected.

19. Powers of control of the Board of Revenue:

Section 7 (c) reads *“to the effect that "The Board of Revenue shall have power to cancel or revise any of the orders, acts or proceedings of any Settlement Officer other than those in respect of which an appeal lies to the Tribunal or of any managers".* Further, Clause 9 of G.O.Ms.No.1300, Revenue Department, dated 30.04.1971 is categoric to the effect that the orders of the Revenue Divisional Officer/Collector as the case may be granted or refusing to grant patta are subject to revision by the Board of Revenue (Settlement of Estates) Madras either suo motu or on an application to be filed within sixty days of services of the order.



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20. Section 7 (c) confers power on the Board, namely, Special Commissioner, to cancel or set aside any order passed by the lower authority and the Board can exercise the power suo motu without an application for revising the order of the lower authority. The suo motu power of the Special Commissioner and Commissioner of Land Administration has been confirmed by a Full Bench decision of this Court in *W.A.No.326/2007, dated 24.07.2007, in the case of The Special Commissioner and Director of Survey and Settlement v. M.Arumugam, reported in 2007 (4) CTC 538*, holding that the suo motu power can be exercised whenever found necessary.

21. It is also to be noted that subsequently, the Government has issued orders in G.O. Ms. No. 714, Commercial Taxes and Religious Endowmnet Department, dated 29.06.1987 amending the earlier rules published with the Revenue Department Notification dated 17.10.1955 and 19.10.1955, which reads as follows;

AMENDMENT

12. In the said rule, for the proviso, the following provisos shall be substituted namely,



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"Provided that the Settlement Officer or the Director or the Commissioner of Land Administration may condone delay up to a period of thirty days beyond the period aforesaid, if he is satisfied that the petitioner had sufficient cause for not presenting the petition within the prescribed time.

Provided further that in respect of cases disposed of prior to the date of publication of this amendment in the Tamil Nadu Government Gazette, the period of thirty days shall be counted from the date of such publication.

Provided also that suo motu powers of the Commissioner of Land Administration under Section 7 of the Act shall not be barred in any case."

22. The third amended proviso above, categorically speaks to the effect that suo motu powers of the Commissioner of Land Administration under Section 7 of the Act shall not be barred in any case, which means the Commissioner of Land Administration can exercise his suo motu powers in any case. The above amendment does not mandates the time limit to exercise the suo motu powers under the Act. The corrective measures can be taken whenever the fraudulent and irregular order is brought to the notice of the Commissioner of Land Administration. The time limit of sixty days mentioned in Clause 9 of G.O.Ms.No.1300, dated 30.04.1971, is



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only for an application to be filed by the aggrieved party for granting patta but not for the suo motu action by the authority.

23. In the instant case, as per Section 67(2)(d) of the Tamil Nadu (Abolition and Conversion into Ryotwari) Act 1948, the last date to apply for appeal against the settlement proceedings was already lapsed and the appellants' claim is belated one. Without considering the above proviso, the Asistant Settlement Officer, Tiruvannamalai had entertained the application made by the appellants and granted ryotwari patta u/s 11(a) of the Act XXVI of 1948 which is illegal.

24. On a careful consideration of the submissions made by the learned counsels appearing either side and in view of the detailed dicusssion in paragraph Nos.11 to 23 above, which based on the doucments and the relvant Act, we conclude as follows;

i. Appellant failed to prove Ryot Status Under the Act

The appellant's claim is fundamentally flawed as his predecessors failed to establish themselves as ryots under the



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provisions of the Act. Their assertion of pre-existing rights over the subject lands, made more than 50 years after the ryotwari settlement on 01.10.1951, lacks the necessary substantiation. Furthermore, their claim was made after a lapse of 50 years from the expiration of the opportunity to apply for patta, as outlined in the relevant Government Orders. Despite ample opportunities provided by the government to obtain patta, not only within the Act's provisions but also beyond its scope, the Appellants and their predecessors in title did not make any effort to secure ryotwari patta within the prescribed time frame. As per Section 3(c) of the Tamil Nadu Abolition Act 26 of 1948 the person who proves as ryot can claim for patta within the prescribed time period is maintainable and here the petitioner failed to prove himself as ryot and possession over the suit land.

Further, the appellant admitted before the Civil Court in the suit filed by him in O.S.No. 28 of 1996 that he had been in possession of the subject property for the past 30 years. That being the position, we are not inclined to accept the contention of the



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appellant that the appellant and his predecessors had been in possession of the subject property prior to the commencement of Act. A perusal of the Judgment and decree passed by the civil court would also reveal that the appellant had produced only a copy of the documents relating to the suit property to substantiate his claim. In view of the above, the contention of the learned counsel for the appellant with regard to possession and claim over the title of the property is rejected.

ii. The Assistant Settlement Officer/3rd respondent's Failure to Adhere to Due Procedure Under the Act:

Another vital aspect of this case is the 3rd respondent's failure to adhere to the due procedure established under the Act. Although the appellant holds a ownership enjoyment certificate in his favour dated 16.12.1988, the time limit for filing the application for getting patta was closed on 29.07.1986, the next period of 30 days, which should be condonable (as per the amendment in G.O.714) ended by 20.08.1987. The appellant made application for grant of patta only on 05.03.2001, much after a delay of 14 years,



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which delay is not provided for condonation in the rules. The 3rd respondent, acting as the statutory enquiring authority, neglected to consider the time limitations specified in G.O.714 and improperly proceeded with the issuance of patta. Further, the Assistant Settlement Officer/3rd respondent, has no authority to change land classification without the approval of the 1st and 2nd respondents, hence he acted beyond his jurisdiction and the ryotwari patta granted by him is unsustainable and liable to be cancelled.

iii. Validity of the 1st Respondent's Order:

In view of Section 7 of the Act, the suo motu powers shall not be barred and the Commissioner of Land Administration can exercise his suo motu powers in any case and there is no time limit to exercise the suo motu powers under the Act.

On facts, the 4th respondent, the tahsildar, was not afforded any opportunity to present their case, as the 3rd respondent issued ex-parte orders. Despite the appellant's submission of numerous documents to substantiate their title, these documents were deemed invalid after careful verification by the village administrative officer and relevant authorities. Therefore, the suomotu proceeding



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conducted by the 1st respondent is considered valid and in accordance with the applicable legal framework.

25. In conclusion, the Appellants' claim for ryotwari patta is rejected due to their failure to establish ryot status under the Act and their belated assertion of pre-existing rights. The 3rd respondent's lapses in adhering to due procedure further undermine their case, while the actions of the 1st respondents are deemed legally sound.

26. In the result, the intra-Court appeal fails and is accordingly dismissed. No costs. Connected Miscellenous Petition is closed.

[D.K.K., J.] [P.B.B., J.]
25 .09.2023

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To

1.The Special Commissioner and
Commissioner for Land Administration,
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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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**Pre-Delivery Judgement in
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and
M.P. No. 1 of 2015**

25.09.2023