IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.08.2023

DELIVERED ON: 25.09.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

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

W.A.Nos.1816 and 762 of 2011
and M.P.No.1 of 2011

W.A.No.1816 of 2011

1.The District Revenue Officer,
Namakkal.

2.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005. .. Appellants

Vs.

1.K.Kulanthaivel

2.Ayacutdhars of Echangadukuttai and
Agriculturalists of Singalanthapuram Village,
Bodinayakanpatti, Rasipuram,
Namakkal District. .. Respondents

W.A.No.762 of 2011

Ayacutdhars of Echangadukuttai and
Agriculturalists of Singalanthapuram Village,
Singalanthapuram Village,
Bodinayakanpatti, Rasipuram,
Namakkal District. .. Appellants

vs.

1.The District Revenue Officer,
Namakkal.

2.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

3.K.Kulanthaivel .. Respondents

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 03.12.2009 in W.P.No.68/2005.

For Appellant
in W.A.No.1816 of 2011 : Mr.Silambanan,
Additional Advocate General
assisted by
Mrs.Geetha Thamaraiselvan,
Special Govt. Pleader

in W.A.No.762 of 2011 : Mr.R.Nalliyappan

For Respondents
in W.A.No.1816 of 2011: Mr.R.Nalliyappan for R2
Mr.V.K.Vijayaraghavan for R1
in W.A.No.762 of 2011 : Mr.Silambanan,

Additional Advocate General
assisted by
Mrs.Geetha Thamaraiselvan,
Special Govt. Pleader for R1 and R2

Mr.V.K.Vijayaraghavan for R3

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

The respondents 1 & 2 in W.P.No.68 of 2005 are the appellants in W.A.No.1816 of 2011. The 3rd respondent in W.P.No.68 of 2005 is the appellant in W.A.No.762 of 2011. They aggrieved by the allowing of the aforesaid writ petition, in and by which the order of the second appellant dated 20.12.2004 was set aside, restoring the order of the first appellant dated 27.05.1998 granting ryotwari patta in favour of the writ petitioner / first respondent in W.A.No.1816 of 2011, had filed these writ appeals.

2. Facts leading to the filing of these writ appeals are as under. For the sake of brevity, the array of parties in W.A.No.1816 of 2011 is adopted.

2.1. The first respondent / petitioner's mother, one Pavayee Ammal, purchased an extent of 7.33 acres of land out of a total extent of

8.87 acres of land in Singalanthapuram Village in Rasipuram Taluk under Sale Deed dated 11.06.1995. The lands in question were sold by the legal heirs of one Palani Naickken. Ever since the purchase, the lands were cultivated continuously by raising punja crops. When the village had been taken over by the Government under the provisions of the Tamil Nadu Estate (Abolition and Conversion) Act, 1948 [Act No.26 of 1948] [hereinafter referred as "Act, 1948"], an extent of 6.40 acres in S.No.11 was classified as "Kuttai Poromboke" under the settlement proceedings introduced in the year 1950.

2.2. During the settlement proceedings, admittedly the petitioner's mother did not obtain patta for an extent of 02.84 cents in S.No.11, resultant being, in the settlement proceedings, the said area was marked as Tank Poromboke. The petitioner applied for grant of patta before the first respondent during 1998 and sought for re-classification of entries made in the Revenue Register and produced necessary documents of title before the District Revenue Officer / first appellant. By proceedings dated 27.05.1998 in Ref.Ni.Mu.17979/1998/L-2 the District Revenue

Officer, Namakkal granted patta to the petitioner for the lands comprised in S.No.11/2 & 11./3 admeasuring 0.25.0 Hectares and 0.90.0 Hectares respectively.

2.3. According to the petitioner / first respondent, the lands for which patta was granted by the first respondent was not "Tank Poromboke" at any point of time. In pursuant to the order passed by the first respondent, the Tahsildar, Rasipuram has granted patta bearing No.1291 to the petitioner.

2.4. While that being so, the second appellant has initiated suo motu proceedings by issuing a Show Cause Notice dated 09.09.2004 calling upon the writ petitioner to submit his objections, if any, on the ground that the patta granted by the first appellant was unsustainable, as the time limit prescribed for seeking patta under Act, 1948 was over and that the claim for patta was made only in the year 1998 and therefore, observed that the claim of the writ petitioner was time barred.

2.5. After receipt of show cause notice, the petitioner/first respondent submitted detailed objection to the second appellant. Some villagers, who are styled themselves as Ayacutdhars of Echangadu Kuttai and agriculturalists of Singalanthapuram village / second respondent herein, were also heard by the second appellant and ultimately has passed an order dated 20.12.2004, in and by which the patta was granted in favour of the first respondent was set aside. Challenging the order of the second appellant, the first respondent has filed the writ petition.

2.6. The Writ Court, taking into consideration the rival submissions, documentary evidences, has allowed the writ petition, vide order dated 03.12.2009, setting aside the order of the second appellant and restored the order of the first appellant, granting patta in favour of the first respondent/writ petitioner. Challenging the order of the writ Court, these writ appeals have been filed.

3. Mr.S.Silambanan, learned Additional Advocate General appearing for the appellants in W.A.No.1816 of 2011 made the following contentions:

(i) The Writ Court failed to note that even if patta can be granted treating the Kuttai as private tank or oorani and kist remitted over the property by the first respondent/writ petitioner, the same would become void with the introduction of Section 14A of the Amendment Act No.49 of 1974.

(ii) G.O.Ms.No.1300, Revenue dated 30.04.1971 was issued to enable persons, who would have got patta if they had applied in time under the Act, 1948. The Revenue Divisional Officer and District Revenue Officer were authorized to grant patta outside the scope of Act, 1948 and the concession given ended on 30.06.1975 by the issuance of G.O.Ms.No.589, Commercial Taxes and Religious Endowment Dated 14.05.1975. Therefore, the first appellant/District Revenue Officer has no authority to entertain application for grant of patta outside the scope of Act, 1948 after 30.06.1975.

(iii) The Writ Court failed to note that in the revenue records, the suit land was registered as "Kuttai Government Poromboke" even prior to the settlement.

4. Mr.V.K.Vijayaraghavan, learned counsel for the first respondent/writ petitioner submits that the petitioner is in cultivation of the lands continuously and the lands, being a ryotwari land, there was no tank at any point of time and the classification made originally in the settlement proceedings as "Kuttai Poromboke" does not, in any way, finally determine the character of the land to deny the petitioner's claim for ryotwari patta. It is further contended by the learned counsel for the first respondent/writ petitioner that the order of the District Revenue Officer dated 27.05.1998 had attained finality and having regard to the documents of title, which clearly point out that there was no kuttai, the title of the first respondent/writ petitioner to the lands cannot be in any manner denied and prayed for dismissal of these writ appeals.

5. Mr.R.Nalliyappan, learned counsel appearing for the second respondent would contend that the entire village originally availed irrigation facilities from the water derived from the tank and therefore, in such circumstances, they made a representation to the revenue officials to

restore the tank to its original position. The existence of tank even before the implementation of Act, 1948 is proved by the partition deed in the second respondent family in 1948 and the land purchased by the first respondent/writ petitioner's mother in S.No.10 was a Zamin land and patta was granted during the settlement proceedings in favour of the petitioner's mother and the land in S.No.11 was shown as Kuttai Poromboke. The first respondent/writ petitioner is only an encroacher on the Government land and consequently, the Special Commissioner for Land Administration had rightly initiated suo motu revision and the claim of the petitioner is outside the scope of G.O.Ms.No.1300, Revenue Department dated 30.04.1971 and prayed for setting aside the order of the Writ Court and confirming the order of the second appellant dated 20.12.2004.

6. Heard the learned counsel for the parties and perused the materials on record.

7. The purpose of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, XXVI of 1948 is to abolish Zamindari and Inam tenure and to introduce uniform Ryotwari System in State. Under this Act, the Ryotwari Settlement was completed 70 years ago. Against the decisions made under Section 11 of the said Act during the Final Settlement Enquiry, appeal can be preferred before the Assistant Settlement Officer, within 30 days from the date of such decision. However, the Government, vide G.O.Ms.No.1400, Commercial Taxes & Religious Endowment Departments dated 21.11.1975 amended the Rules framed to Act XXVI of 1948 to condone the delay and entertain the appeal. The Government have amended the Rules framed under the Act in exercise of powers conferred under Section 67(2)(d) of the Act by issuing a notification in G.O.Ms.No.714, Commercial Taxes & Religious Endowment Department dated 29.06.1987 in and by which the last date to apply for condonation of delay was fixed as 20.08.1987. Therefore, after 20.08.1987, the Assistant Settlement Officer or any other authority in the settlement hierarchy has no power to entertain appeal or application under Act, 1948.

8. In the case on hand, the petitioner's mother Tmt.Pavayammal purchased the lands in question, vide sale deed dated 11.06.1955 and she was in possession and enjoyment of the lands for almost 25 years and after her demise, the lands came to possession and enjoyment of the petitioner and his brother, who succeeded to the property. It is admitted by the petitioner in the affidavit filed in support of the writ petition that during settlement proceedings, an extent of 6.40 acres in S.No.11 was classified as Kuttai Poromboke and patta was not obtained for an extent of 2.84 cents by the petitioners mother and during settlement proceedings, it was recorded as Tank Poromboke. Either the petitioner's mother or the petitioner applied for ryotwari patta till the year 1998. The application for issuance of ryotwari patta dated Nil came to be filed only in the year 1998 before the first appellant, namely the District Revenue Officer, Namakkal. The first appellant, without any statutory powers and jurisdiction, has considered the time barred claim from the first respondent/writ petitioner and passed an order on 27.05.1998 granting ryotwari patta to the petitioner under Section 11(a) of Act, 1948 in

respect of lands in S.Nos.11/2 & 11/3 to an extent of 0.25.0 and 0.90.0 hectares.

9. As the order passed by the first appellant was against the settlement principles and the provisions of Act, 1948, the second appellant, namely the Special Commissioner and Commissioner of Land Administration, Chennai, in exercise of his suo moto revisional power has issued a show cause notice dated 09.09.2004 to the first respondent/writ petitioner. After hearing the objections of the first respondent/writ petitioner and the second respondent Ayacutdars, the second appellant had cancelled the ryotwari patta granted by the first appellant in favour of the first respondent/writ petitioner, on the ground that it was time barred application, vide order dated 20.12.2004. Challenging the same, the writ petition came to be filed and aggrieved by the allowing of the writ petition upholding the order of the first appellant, the instant writ appeals are filed.

10. It is imperative to point out here that after the enactment of Act, 1948, His Excellency the Governor of Tamil Nadu, in exercise of powers conferred under Section 67(2) of 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 under:

> *"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, enquiries 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 where Section 11 enquiries 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."*

11. It is also pertinent to mention here that after the enactment of Act, 1948, His Excellency the Governor of Tamil Nadu, in exercise of powers conferred under Section 67(2) r/w. Section 15 of Act, 1948, made rules prescribing the period of limitation for filing the original

application seeking ryotwari patta and the same was published in "Rule Supplement to Part I of the Fort St.George Gazette" dated 31.10.1950. In the said Rules, Rule 2 concerning the period of limitation reads as follows:

> *"Every landholder claiming a ryotwari patta under Sections 12, 13 or 14, as the case may be, shall apply in writing to the Settlement Officer, within six months from the notified date or within two months from the date of publication of this notification whichever is later.*
>
> *Subject to the provisions of the Act and these rules, every application made to the Settlement Officer, under this rule, after the period of limitation prescribed thereof, shall be dismissed although limitation has not been set up as a defence.*
>
> *No application made shall be admitted after the period of limitation prescribed thereof in this rule on the ground that the application has sufficient cause for not preferring the application within such period."*

12. In the case on hand, the land belonging to the first respondent/writ petitioner coming under the catogery of "ryot", the application seeking ryotwari patta under the Act is required to be filed within 30 days from the date of Final Settlement Enquiry, as provided under G.O.Ms.No.3190, Revenue dated 17.10.1955.

13. After the conversion of Zamin and Inam Village into ryotwari villages by effecting ryotwari settlement in terms of Act, 1948, the Government passed various government orders for the benefit of landholders and ryots who could not apply for issuance of patta within the time frame prescribed under the Act and Rules framed in exercise of powers conferred by Section 67 r/w. 15 of the Act, 1948. The first respondent/writ petitioner not only failed to apply to apply for ryotwari patta within the prescribed time under the Rules, but also under the below Government Orders:

Sl. No.	Date	G.O.No.	Applicability	Limitation Period after last Extention of Time
1	08.07.1958	G.O.Ms.No.2502, Revenue Department	Landholders	30.06.1972 As per G.O.Ms. No.690, Revenue Department dated 02.03.1972
2	26.07.1967	G.O.Ms.No.1313, 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.

14. In the case on hand, if the writ petitioner/first respondent predecessors really had any right/entitlement over the subject land, they would have approached the Settlement Authorities under the Act or Government Orders and obtained ryotwari patta during the currency of ryotwari settlement itself. It is not explained as to why the writ petitioner's predecessors did not raise any objection during the settlement or even after the completion of Final Settlement Enquiry. They have not filed any appeal before the Settlement Authority / Board of Revenue as contemplated under the Act within the stipulated time. The writ petitioner/first respondent had failed to avail the concession given by the Government Order.

15. It is also imperative to mention here that Section 7 of the Act deals with "Powers of Control of the Board of Revenue". Section 7(c) reads 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 service of the order*.

16. Section 7(c) confers powers on the Board, namely the 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 of 2007, dated 24.07.2007, in the case of ***"The Special Commissioner and Director of Survey and Settlement v. M.Arumugam [2007 (4) CTC 538]*** holding that suo motu power can be exercised whenever found necessary.

17. There is no time limit to exercise the suo motu powers under the Act. The corrective measures can be taken whenever fraudulent or irregular order is brought to the notice of the Commissioner of Land Administration. The Act does not provide for any specific time frame. The time limit of sixty days mentioned in Clause 9 of G.O.Ms.No.1300, Revenue Date 30.04.1971 is only for an application to be filed by the aggrieved party for granting patta but not for suo motu action by the authority. Further, as per G.O.Ms.No.589, Commercial Taxes and Religious Endowments Department dated 14.05.1975, the Government directed that the time limit for preferring applications outside the scope of Act, 1948 under G.O.Ms.No.1300, Revenue Dated 30.04.1971, be further extended by 30.06.1975.

18. Admittedly, in the case on hand, the writ petitioner/first respondent has neither failed to comply with Clause 9 of G.O.Ms.No.1300 dated 30.04.1971 nor the extended time limit granted as per G.O.Ms.No.589 dated 14.05.1975. Here the application for grant of ryotwari patta came to be filed only in the year 1998 and it was

considered in favour of the writ petitioner / first respondent, vide order dated 27.05.1998, despite the fact that it was time barred. The second appellant/Special Commissioner has exercised its suo motu power under Section 7(c) of the Act, 1948 and after hearing the objections of the writ petitioner and the ayacutdhars, has passed a reasoned order dated 20.12.2004, setting aside the order of the first appellant dated 27.05.1998 and directed the Tahsildar to restore the original entries in the 'A' Register prior to the orders of the District Officer and sent a confirmation report to that effect.

19. It is the case of the first respondent/writ petitioner that during the settlement proceedings under Act, 1948, the land was wrongly classified as "Kuttai Poromboke". However, it is the contention of the ayacutdars that during the settlement, the land in S.No.11, measuring an extent of 6.40 acres was classified as "Kuttai Poromboke". Even assuming if patta was allowed, treating the said kuttai as Private Tank or Oorani, it has become void with the introduction of Section 14A of the Amendment Act 49 of 1974. At this juncture, it is useful to refer to the findings given by the Special Commissioner and Commissioner of Land Administration, Chennai, in his order dated 20.12.2004:

> *"7....Further it is verified from the SLR that the suit land was registered as "Kuttai"- Government Poromboke" even prior to settlement.*
>
> *8. Thirdly, the insertion of Section 14A by the Amendment act 49/74 prohibited grant of ryotwari patta in respect of private Tank or Oorani and even the patta granted in respect of the private Tank or Oorani under the Act stood cancelled by the publication of the Amendment Act, 1974 in the T.N.Govt. Gazette. As such, when the private tanks, Oorani were vested with the Govt., by the introduction of the Amendment Act, the objector has no locus standi to claim patta for the land classified as "Kuttai Poromboke" during the settlement. The Revenue authorities other than settlement hierarchy have no powers to change the classification of the land made at the time of settlement. The Amendment Act provisions have also been upheld in judicial scrutiny.*
>
> *9. Further, in this case, the objector's claim is based on the document for the year 1955. It is found from the document that the objector's mother Tmt.Pavayammal purchased lands measuring and total extent of 7.33 acres. At the time of settlement itself, the objector's mother get patta for an extent of 9.75 acres in S.No.10/1, 2, 3 and 4. Further, it is verified from the schedule of the document for the suit land that Echankadu Kuttai is mentioned as one of the four boundaries. It is therefore, evident that the suit land has all along registered as "Kuttai" prior to settlement and the objector has no right over the suit land. It is also seen from the village records that the kuttai is having an ayacut of 26.12 acres of land. Hence, the claim of the objector Thiru Kulandaivelu is baseless and contrary to facts and rights of ayacutdars and general public."*

20. The Hon'ble Supreme Court in ***Sarvepalli Ramesh (died) as per L.Rs. and Ors. v. District Collector, Chittoor District and Ors. [2019 (4) SCC 500]*** has held as under:

> *"**48.** The Single Bench as also the Division Bench of the High Court rightly held that it was well settled that poramboke (tank) cannot be alienated. No patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse...."*

The aforesaid judgment of the Hon'ble Supreme Court squarely applies to the facts of the instant case.

21. The petitioner neither availed of remedy available under Clause 9 of G.O.Ms.No.1300, Revenue Department dated 30.04.1971, nor applied for ryotwari patta within the extended time limit as prescribed under G.O.Ms.No.589, Commercial Taxes and Religious Endowments Department dated 14.05.1975. The second appellant has rightly exercised its suo motu revisional power under Section 7(c) of the Act, 1948 and set aside the order of the first appellant granting ryotwari patta to the first respondent/writ petitioner. The Writ Court, having failed to consider these aspects in proper perspective, has erroneously confirmed the order of the District Revenue Officer, Namakkal dated

27.05.1998 and therefore, the order of the writ Court warrants interference.

22. In the light of the reasons assigned above, these writ appeals are allowed and the order of the Writ Court dated 03.12.2009 made in W.P.No.68/2005 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.,] [P.B.B., J.]
25.09.2023

Index :yes
Internet:yes
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