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W.P.No.19523 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.P.No.19523 of 2002

Mahakavi Bharathiyar Nagar
Residents Welfare Association
rep.by its Secretary P.Chinnasamy
No.156, M.G.R.Nagar, Karaikudi
Sivagangai District

.. Petitioner

v.

1. The Special Commissioner and
Commissioner of Land Administration
Chepauk, Chennai 600 005
2. The Commissioner and Director of
Survey and Settlement
Chepauk, Chennai
3. The Assistant Settlement Officer
South, Office of the Commissioner
and Director of Survey and Settlement
Chepauk, Chennai



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4. The Settlement Officer
Tanjavoor

5. The Assistant Settlement Officer
Karaikudi, Madurai
Sivagangai District

6. The Tahsildar
Karaikudi Taluk
Sivagangai District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to proceedings R.Dis (K1) 53178/95 dated 14.03.2002 of the Special Commissioner and Commissioner for Land Administration, Chepauk, Chennai 600 005, the first respondent herein and quash the same and confirm the order passed by the Director of Survey and Settlement passed in his proceedings No.D2/12742/95 dated 03.08.1995 granting ground-rent patta under Section 19A of the Act 26/1948 and consequential proceedings of Assistant Commissioner, Madurai in S.R.63 Karaikudi/95 dated 09.08.1995.

For Petitioner :: Mr.D.Govinda Reddy

For Respondents :: Mr.V.Selvendran
Special Government Pleader



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ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

This writ petition is filed by a welfare association by name Mahakavi Bharathiyar Nagar Residents Welfare Association praying to quash the impugned order dated 14.03.2002 of the Special Commissioner and Commissioner for Land Administration, the first respondent herein and to confirm the order passed by the Director of Survey and Settlement dated 03.08.1995 and the consequential proceedings of the Assistant Settlement Officer, Madurai granting ground rent patta under Section 19-A of the Tamil Nadu Act 26 of 1948 to the members of the petitioner Association.

2. It is the case of the petitioner that the Assistant Settlement Officer, Madurai, on the basis of a letter of Director of Survey and Settlement dated 27.06.1995 and on the basis of a petition given by Mahakavi Bharathiyar Nagar Committee represented by its Secretary, has recommended the grant of ground rent patta accepting their case that 200 houses are located at Mahakavi Bharathiyar Nagar in Town Survey No.297. It is the further case



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of the petitioner that the members are entitled to get patta, as the members are living in that area for more than 70 years. They also challenge the classification of the said land as “Veerian Kanmoi”, by referring to the recommendation dated 03.08.1995 made by the Director of Survey and Settlement permitting the members of the petitioner Association to remain in possession of the land measuring about 25 acres occupied by them on payment of ground rent to be fixed by the Assistant Settlement Officer under Section 19-A of the Tamil Nadu Act 26 of 1948. On the basis of recommendation made by the Director of Survey and Settlement, the Assistant Settlement Officer, Madurai, by order dated 09.08.1995, granted ground rent patta to the persons who were in occupation of the dwelling houses. The grievance of the petitioner in the writ petition is that the Tahsildar, Karaikudi filed a revision petition before the Special Commissioner of Land Administration, Chennai challenging the grant of patta to the individuals and that by the impugned order, the Special Commissioner set aside the order of the Assistant Settlement Officer granting ground rent patta in favour of the members of the petitioner.



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3. The learned counsel appearing for the petitioner submitted that the Special Commissioner failed to go through the records perused by the Director of Survey and Settlement and ought to have confirmed the order of the Director of Survey and Settlement. The counsel further stated that the Special Commissioner erroneously held that the members of the petitioner Association have encroached the land which is part of Veerian Kanmoi and that the findings are against the principles of natural justice and common law principles. It is contended by the counsel that the members are entitled to patta on the basis of their long possession and enjoyment by putting up construction, even if they are not eligible to ground rent patta under Section 19-A of the Tamil Nadu Act 26 of 1948. The learned counsel then submitted that the decision of the first respondent is contrary to the well settled principles.

4. We have heard the learned Special Government Pleader appearing for the respondents.

5. It is not in dispute that the land in Survey No.297 in Ward No.16,



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Block No.VII of Karaikudi Town is a water body and registered as “Veerian Kanmoi” and the entire land was taken over by the Government under Act 26 of 1948, namely, Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 on 01.07.1949. After a survey was conducted, an extent of 47 acres and 65 cents was registered as “Kanmoi Poramboke”, on the basis of the previous record, where the entire land is shown as “Veerian Kanmoi”. However, the Assistant Settlement Officer, Madurai appears to have granted ground rent patta under Section 19-A of Act 26 of 1948, on the basis of proceedings of the Director of Survey and Settlement dated 03.08.1995. By proceedings dated 03.08.1995, the Director of Survey and Settlement has noted the fact that the land in T.S.No.297 is “Government Poramboke – Veerian Kanmoi”. Based on the representation of the encroachers, the Director of Survey and Settlement recorded that such encroachers are in physical possession and enjoyment of a substantial portion of the land by constructing houses and that it is not possible to change the classification after a lapse of nearly 50 years from the date of introduction of settlement. Referring to a few facts, which are not borne out from records, the Assistant Settlement Officer, in exercise of the power



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vested in him under Section 19-A of the Tamil Nadu Act 26 of 1948, permitted the members of the petitioner Association to be in possession of the land on payment of ground rent. It is on that basis, later, the Assistant Settlement Officer passed an order on 09.08.1995 granting ground rent patta under Section 19A of the Tamil Nadu Act 26 of 1948.

6. Section 19-A of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 reads as follows:-

“S.19-A. (1) Except where the Government otherwise direct, no person admitted by a landholder into possession of any communal land or forest or other land which is not a ryot land, shall be entitled to any rights in, or to remain in possession of such land:

Provided that nothing contained herein shall apply to lands for which the landholder is entitled to ryotwari patta under section 12, 13 or 14.

(2) A direction under sub-section (1) allowing any person to remain in possession of any such land may specify--

(i) the assessment or ground-rent payable to the Government on the land for each fasli year commencing with the fasli year in which the estate is notified, and



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(ii) such special terms and conditions including the period for which such person may remain in possession of the land as the Government may consider necessary in the public interest.

Explanation.--In this section, 'communal land' means any land of the description mentioned in section 3, clause (16), sub-clause (a) or sub-clause (b) of the Estates Land Act.”

7. As per Section 19-A, no person admitted by a landholder into possession of any communal land shall be entitled to any rights or to remain in possession of such land. Communal land for the purpose of Section 19-A of the Act means any land of the description mentioned in Section 3, clause (16), sub-clause (a) or sub-clause (b) of the Estates Land Act. Beds and bunds of tank and irrigation channels are specified in sub-clause (a) of clause (16) of Section 3 of the Estates Land Act. Even though Section 19 enables a person who was admitted into possession of any ryoti land by a landholder for a non-agricultural purpose can remain in possession of a ryoti land on payment of ground rent, Section 19-A specifically states that no one shall remain in possession of tank. However, this provision is not applicable



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to a land for which the landholder is entitled to ryotwari patta under Sections 12, 13 or 14. The power conferred on the Government under Section 19-A in certain cases cannot be exercised by the Director of Survey and Settlement or the Assistant Settlement Officer. It is to be noted that Section 19-A can be invoked only when a person is admitted by a landholder into possession of any communal land. In this case, it is not the case of the petitioner that they got the right from the landholder from whom the lands were taken under the Inam Abolition Act. Under Section 3 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, the entire estate including all communal lands; porambokes; other non-ryoti lands; waste lands; pasture lands; lanka lands; forests; mines and minerals; quarries; rivers and streams, vest with the Government free from all encumbrances.

8. It is not in dispute that the land was taken over by the Government by a notification on 01.07.1949 and therefore the entire land vest with the Government. The petitioner has no semblance of right derived from the landholder. First of all, the land classified as river or stream, cannot be part



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of lands, which could be in the hands of landholder to be transferred or assigned in favour of anyone. Secondly, though the case of the petitioner is that the members are in possession of the lands for 40 years, they have not produced any records to show that they were in enjoyment of those lands at the time of settlement. The Settlement Officer has no jurisdiction or power to issue patta in respect of lands which are classified as tank or oorani. Even a private tank cannot be assigned. After Tamil Nadu Act 26 of 1948 was enacted in the year 1948, an amendment was introduced by way of Section 14-A, which specifically prohibits patta being granted even in respect of private tank or oorani. Even in case where ryotwari patta is granted in respect of private tank or oorani, sub-section (2) of Section 14-A mandates cancellation of such patta. Therefore, from the object behind the enactment and the subsequent amendment under Section 14-A, this Court finds that the scheme of the Act does not contemplate grant of patta in respect of tank or tank poramboke.

9. The Hon'ble Supreme Court and this Court in several judgments have repeatedly held the responsibility of a welfare State to protect the



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tanks. Therefore, this Court is of the view that the petitioner's claim is neither justified nor acceptable. The Director of Survey and Settlement, who has no power under the Act to permit encroachments in a water body, has passed the order permitting the encroachers to be in possession of the property in 1995. This Court finds no material to show that the enjoyment by the members of the petitioner Association was anytime prior to their claim that was registered in 1990's. Therefore, this Court is unable to find any merit in any of the submissions of the petitioner's counsel. In the affidavit filed in support of the writ petition, the petitioner has come forward with a false case without any materials. Assuming that the members of the petitioner Association are in possession for few decades prior to the impugned order, that does not confer any right as against the public and the State.

10. In view of the above conclusions which we have reached, this Court finds no merits in the writ petition. Accordingly, the writ petition is dismissed. Since the petitioner has now come forward on the basis of the proceedings of the Director of Survey and Settlement, who has passed the



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order by assuming jurisdiction erroneously and the petitioner has made an attempt to encroach the water body consciously, this Court further directs the respondents to initiate appropriate action either under the Tamil Nadu Land Encroachment Act, 1905 or under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, as the case may be, within a period of six months from the date of receipt of a copy of this order. No costs.

(S.S.S.R.,J.) (K.R.S,J.)
05.07.2023

Index : yes/no
Neutral citation : yes/no

SS

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