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W.P.No.6109 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.6109 of 2009

1. Mohammed Faiz Badsha
2. Mohammed Faud Basha
3. Mrs.Farida Begum

... Petitioners

Vs.

1. The Collector,
Tiruvallur District, Tiruvallur.
2. The Revenue Divisional Officer,
Ponneri Taluk, Ponneri.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the 1st Respondent connected with the orders in Mu.Mu.26238 of 2008 dated 3.12.2008, Mu.Mu.26238 of 2008 dated 3.12.2008, Mu.Mu.26238 of 2008 dated 3.12.2008 passed in respect of each of the Petitioners refusing the representation of the Petitioners dated 6.3.2008 to alter the revenue entries of Eri Poramboke in respect of properties belonging to the Petitioners in Survey Nos. 21/4, 22/4, 15/2, 21/6, 21/5 and 22/3, quash the same and direct the Respondents to effect correction of the entries of the properties described in Survey Nos. 21/4, 22/4, 15/2, 21/6, 21/5 and 22/3 as belonging to the Petitioners.



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For Petitioners : Mr.Sundar Narayan
For Respondents :
(R1 & R2) : Mr.D.Ravichander, Spl.Govt.Pleader

ORDER

The writ on hand has been instituted, questioning the validity of the order passed by the first respondent in proceeding dated 03.12.2008, rejecting the representation submitted by the writ petitioners for grant of patta and to direct the respondents to effect corrections of the entries of the properties in the revenue records.

2. The petitioners state that the land comprised in Survey Nos.21/4, 22/4, 15/2, 21/6 belonged to the father of the writ petitioners and the father of the petitioners derived title from the grandfather of the writ petitioners through a decree in a partition suit in C.S.No.256 of 1934.

3. The Madras Estate (Abolition and Conversion into Ryotwari) Act was enacted by the then Provincial Government to abolish the Zamindari system and by repealing the Madras Permanent Settlement Regulation of 1802, acquired the rights of land owners in the permanently settled and



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other estates, and introduced the Ryotwari system as a measure of agrarian reform.

4. The grievances of the writ petitioners are that the subject land has been erroneously classified as Eri Poramboke and therefore, the petitioner submitted a representation to reclassify the land and grant patta. Since the authorities have not considered the representation, the petitioner filed W.P.No.13444 of 2008 and this Court directed the authorities to consider the representation and pass appropriate orders. Pursuant to the directions issued by this Court, the impugned order has been passed.

5. The learned counsel for the petitioners mainly contended that the petitioners were holding patta for long years and the respondents have neither raised any objection nor cancelled the patta. When the patta has been originally granted in the name of the petitioner's family, petitioner's father and they were in possession and enjoyment of the property. The reclassification was made after several years, without giving any opportunity to the writ petitioner and without passing any appropriate orders is untenable and thus, the impugned order is to be set aside.



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6. The respondent District Collector, Tiruvallur filed a counter affidavit elaborating the sequence of facts and the manner in which the subject land was classified and entries are made in the revenue registers.

The following paragraphs would be relevant :

“4. Pondavakkam Village in the erstwhile Ponneri Taluk in the composite Chengalpattu District and now lies in Tiruvallur District originally was an Inam Village. This Village has been taken over by the Government under Section 1(4) of the Madras Estates Abolition Act XXVI of 1948 with effect from 01.04.1951 as per the Government order Ms.No.2302 Revenue Department dated 01.09.1951. The settlement was introduced in the Village in fasli 1368 corresponding to the calendar year of 1958. The Printed Settlement Register has been published on 29.04.1962 by the Special Settlement Officer, Settlement Party E.Madras, Chengalpattu.

5.It is submitted that the following survey numbers of Pondavakkam Village in Ponneri Taluk covered in this Writ Petition stood registered in the pre-updating Registry Scheme A-Register as follows.



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S.No	Classification	Extent (in Acre)	Patta No and Name of the Pattadars	Remarks
15/2	Manavari	1.20	119. on behalf of minors Mohammed Faiz Badsha(1) Mohammed Faud Badsha(2) Guardian father Nooullah Badsha	Tank (Eri)
21/4	Manavari	1.66	117. on behalf of minor Mohammed Faiz Badsha Guardian father Noorulla Badsha Sahib	Tank (Eri)
21/5	Manavari	0.58	85.on behalf of minor Mohammed Faud Badsha Guardian father Noorulla Badsha Sahib	Tank (Eri)
21/6	Manavari	2.52	122. on behalf of minors Farida Begum (1) Mohammed Faiz Badsha Guardian father Noorulla Badsha Sahib	Tank (Eri)
22/3	Poramboke	0.84	Tank Bed	
22/4	Manavari	0.78	117.on behalf of minor Mohammed Faiz Guardian father Noorulla Badsha Sahib	Tank (Eri)

6. A perusal of Fair Land Register handed over by the settlement authorities reveals that the Survey Nos.15/2, 21/4, 21/5, 21/6 and 22/4 of Pondavakkam Village for which ryotwari patta and had been allowed earlier in patta Nos.119, 117, 85 and 122 by the Assistant Settlement Officer under Section 15(a) of the Estate Abolish Act 1948 in S.r.195/Inam/52 and SR.241/PNI/52 were Settlement Officer,



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Thanjavur in 1222/1979/B1 dated 02.03.1979. Hence, the lands in Survey Nos.15/2, 21/4, 21/5,21/6 and 22/4 has lost the character of patta land and from 02.03.1979 onwards, the above lands have become tank poramboke lands.

7. The survey numbers now stand registered in the updating Registry Scheme A-Register as follows:

S.No.	Classification	Extent (in Hectare)	Patta No and Name of the Pattadhar
15/2	Tank (Eri)	0.48.5	-
21/4	Tank (Eri)	0.67.0	-
21/5	Tank (Eri)	0.23.5	-
21/6	Tank (Eri)	1.02.5	-
22/3A	Manavari	0.12.0	44.K.Kaaniyappa Reddiyar
22/3B	Manavari	0.22.0	190.Mahadevan
22/4	Tank Bed (Eri ulvoy)	0.31.5	-

8.As per para 151 under Serial No.45 of chapter -III of History of Land Revenue Settlement and Abolition of Intermediary Tenures in Tamil Nadu deals with the general powers of the Director of settlements and the Board of Revenue as to cancel or revise any of the orders or acts or proceedings of the lower settlement authorities by virtue of Section 5(2), Section 7(c) and Section 7(d) of the Estate



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Abolition Act 1948 other than those on which an appeal lies in Tribunal. Further the full bench of Hon'ble Court has held at para 13 as follows in the judgement delivered on 24.07.2007 in W.A.No.326 of 2007 reported in 2007 (4) CTC 538.

“13..... The provisions of Section 5 and 7 of the Act confer extremely broad powers on the Director and the Board respectively for correcting the mistakes committed by the lower authorities and for the purpose of effectuating the scheme of the Act and implementing the purpose behind the Act. We are inclined to agree with the view taken in David Pillai's case and M.Veerasingam case (supra) that the Director of Settlement as well as the Board of Revenue have suo motu powers to interfere with the orders passed by the lower authorities. The reference is answered accordingly'.

From the above, it may be inferred that the District Collectors are not vested with the powers of cancellation of revision on the orders passed by the settlement authorities.

7. With reference to the decree relied on by the petitioners, the respondents have stated that the petitioners have obtained ex-parte decrees of ownership of declaration in the orders passed on 25.01.1989 in respect of survey numbers 15/2, 21/4, 21/6 & 22/4 in O.S.No.648 of 1988, in



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respect of survey numbers 15/2, 21/3 & 21/5 in O.S.No.649 of 1988 and in respect of survey Nos.21/6 in O.S.No.650 of 1988, on the file of the District Munsiff Court, Ponneri. The District Collector of the erstwhile Chengalpattu District was alone arrayed as dependent, even though the District Collector is not competent to take decision on the orders passed by the settlement authorities under the relevant provisions of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act 1948.

8.In the context of the ex-parte decree passed against the District Collector who is not competent to take a decision on the orders passed by the Settlement Authorities under the provisions of the Estate Abolition Act, the learned Special Government Pleader relied on the orders passed in the case of ***The Commissioner, Salem City Municipal Corporation Vs. R.Mallika & Another***, reported in (2023) 2 CTC 443 which reads as under:

“17. The judgment, which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". Further the practice of writing a



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judgment indicating that the defendant called absent and set as ex-parte and as such the claim was proved and the suit was decreed, deserves to be condemned and it should not be followed by the trial Court.

18. The judgment passed by the Court below is not satisfactory and the unreasoned judgement passed by the Court below is cryptic and it is ex-facie illegal. The Court below, while considering the petition to condone delay in setting aside the ex-parte decree, must also take this into consideration. It is also relevant to refer the judgment reported in MANU/SC/0886/2019 : 2019 7 SCC 359 in the case of Robin Thopa Vs Rohit Dora and the relevant paragraph is extracted hereunder:-

8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

19. The Order XX Rule 4 CPC would clearly state that the judgement of the Court shall contain a concise statement of the case, the points for determination, the decision there on and the reasons for such decision. Therefore, the judgment passed by the Court below does



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not conform with these requirements as provided under Order XX Rule 4 CPC and does not reflect the issues involved in the present case. The judgment passed by the Court below is cryptic, without following the procedure as contemplated under Section 2(9) of CPC.”

9.That apart, the writ petitioners have subsequently, after the ex-parte decree, filed W.P.No.13444 of 2008. The High Court passed an order on 10.06.2008, directing the first respondent therein to consider the representation and dispose of the same. Accordingly, the first respondent verified the revenue registers and rejected the claim of the writ petitioners for grant of patta in respect of the Survey Nos.15/2, 21/4, 21/6 and 22/4 of Pondavakkam Village.

10.The Settlement Register filed by the respondents reveals that the subject properties are classified as "Eri" which is a water body. In respect of the water bodies, no patta can be granted by the authorities competent. The Hon'ble Supreme Court of India, time and again reiterated that the water bodies have to be protected in all respects and encroachments in water bodies are also to be removed by following the procedures. The Government of Tamil Nadu also enacted the law for eviction of encroachers



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in water bodies. Therefore, the question of reclassification of the water body as based on the request of the writ petitioner cannot be entertained and therefore, the petitioners are not entitled for the relief as sought for in the present writ petition.

11. Accordingly, the writ petition stands **dismissed**. No costs.

(sha)
19.07.2023
Index : Yes
Speaking Order
Neutral Citation : Yes

To

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S.M.SUBRAMANIAM. J.,

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