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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.6707 of 2019

and

W.M.P.Nos.7519 & 7582 of 2019

R.Pachaiyappan

.. Petitioner

Vs.

1.Director of Land and Survey,
Chepauk,
Chennai – 5.

2.Settlement Officer,
Chepauk, Chennai – 5.

3.Assistant Settlement Officer,
Chepauk, Chennai – 5.

4.V.Chandra

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent pertaining to the order bearing No.Na.Ka.3/8219/2018 dated 10.01.2019 and to quash the same.



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For Petitioner

.. Mr.R.Viduthalai, Senior Counsel

For Ms.R.Revathi

For R1 to R3

.. Mr.U.Bharanidharan,

Additional Government Pleader

For R4

.. Mr.V.Ayyadurai, Senior Counsel

For Mr.B.Gurunathan

ORDER

This Writ Petition has been filed in the nature of a Certiorari seeking the records on the file of the 1st respondent, Director of Land and Survey, Chepauk, Chennai, relating to an order bearing No.Na.Ka.3/8219/2018 dated 10.01.2019 and quash the same.

2.Originally, an extent of 2.98 acres of land in S.No.778/1 in Wallajah Taluk, Arcot, belonged to one M.I.Mohammed Hussain Saheb. He had purchased the said land along with further land totally measuring 5.46 acres in S.No.778/1 in a Court auction sale held on 26.09.1936. This sale was later confirmed by the Court and sale certificate had been issued on 27.10.1936. The sale had taken place consequent to the execution of a



decreed passed in C.S.No.81 of 1934 on 22.10.1934. The purchaser M.I.Mohammed Hussain Saheb and his power agent Mohideen Saheb had entered into a Lease Agreement with P.Ramasamy Naicker on 05.06.1949 leasing the said lands measuring to an extent of 5.46 acres for cultivation. The lands had to be made fallow for cultivation. The lands were then transferred in the name of P.Ramasamy Naicker consequent to his continuous occupation. Patta was also issued to him. The land was originally an inam land. When there was settlement and survey conducted, there was a sub-division and S.No.778/1 was classified as 778/3B with patta No.811 in favour of P.Ramasamy Naicker.

3.The petitioner is the son of P.Ramasamy Naicker. He claims to be in possession and also claims to be cultivating the land which had been leased out to his father. It is therefore seen that the petitioner can claim only lease hold rights of the land. The lands were not purchased by his father, P.Ramasamy Naicker. His continuous possession had been recognized and consequently a patta in that regard recognizing possession alone had been granted to P.Ramasamy Naicker which was later transferred in the name of the petitioner R.Pachaiyappan. It is also stated that apart from an extent of



2.98 acres in S.No.778/3B, the father of the petitioner is also said to have been in possession and enjoyment of 0.52 acres in S.No.778/1F and 0.58 acres in S.No.778/1H. The petitioner has stated these facts on the basis of the patta No.811 which was a Ryotwari patta. There was a settlement relating to free hold land which was taken up for assessment under the Tamil Nadu Levy of Ryotwari Assessment on Free Hold Lands Act, 1972, (the Act).

4.The lands which were held by the petitioner herein were subjected to settlement and survey, which was undertaken by the Government. They were then classified as T.S.Nos.10/1, 10/2 and 10/3 measuring 0.168 acre, 0.555 acre and 2.070 acres respectively. A joint patta was then issued on 19.08.1986 in the names of Ramasamy Naicker and Kanniyammal, wife of Govindasamy and their legal heirs. The grant of patta in the joint names would indicate that the individuals whose names were found in the patta were in possession. There was also an obligation on those whose names were stated in the patta to pay taxes to the Government. If the taxes fell due, it would be pattathars who would be first called upon to pay the taxes and would be the individuals against whom steps can be initiated for recovery of



the land dues.

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5.It is the claim of the petitioner herein that the joint patta had been issued without knowledge or notice to his father Ramasamy Naicker. The proceedings questioning the same were then commenced and on the representation of his father, the Revenue Divisional Officer, Ranipet, by an order dated 18.04.1988 had interfered with the order of the Tahsildar who had originally issued the joint patta. Thereafter, since the patta signified only possession and not title, Ramasamy Naciker then filed a suit seeking declaration of title and also sought protection of possession. That suit was dismissed. The First Appeal was allowed. The Second Appeal was also allowed and the judgment of the first Appellate Court was set aside. This indicated that the dismissal of suit was upheld. The parties went back to square one, namely, holding joint patta in the names of Ramasamy Naicker and Kanniyammal. The petitioner herein who had by then stepped into the shoes of his father, then filed a Special Leave Petition before the Hon'ble Supreme Court. That petition was allowed and the matter was remitted back with a direction that the Second Appeal should be again heard.



6.S.A.No.1195 of 1995, the second appeal was then heard by a learned Single Judge and by judgment dated 19.08.2011, the entire civil proceedings were set at nought. The learned Single Judge came to a definite opinion that the civil court had no jurisdiction to enter into any discussion on either title or possession or to grant injunction to protect possession.

7.This necessitated the parties to move forward to knock the doors of the revenue officials. Since the entire holding of the lands were governed by the provisions of the Tamil Nadu Levy of Ryotwari Assessment on Free Hold Land Act, 1972, the officials who now had to take a decision on the issues raised among Ramasamy Naicker, Kanniyammal, the Revenue Officials was in the first instance the Assistant Settlement Officer and thereafter, the Settlement Officer. These two officials are primarily fact finding officials. The matter then moved before the Assistant Settlement Officer under Section 5 of the Act.

8.The Assistant Settlement Officer by an order dated 18.12.2013, held that none of the two parties namely, the petitioner R.Pachaiyappan and the predecessor in title of the 4th respondent, Kanniyammal / V.Chandra, 4th



respondent could establish their respective rights relating to the free hold lands. It was stated that there was no scope for either cancelling or revising the existing possession and therefore, passed an order stating that the lands can be held over indicating that the possession can be retained.

9.The petitioner herein then moved the Settlement Officer under Section 4 of the said Act. Thereafter, the matter move before the Director of Land and Survey under Section 3 of the Act. The 1st respondent, according to the petitioner can only decide the rate of assessment and the holding of the land and who has to pay the levy, but had classified the lands as Government Anathinam land. This is the grievance of the petitioner herein.

10.The petitioner's case is that the Director of Land and Survey, before whom the matter finally came up after travelling through the hierarchy of officials should have accepted the findings that the lands are free hold lands and should have therefore determined the assessment which should be levied and the individuals who should so pay such assessment. However, the Director of Land and Survey had classified the lands as Government Anathinam lands. This classification would indicate that the



lands vested in the Government and that the lands could be assisted by the Government to any individual. The possession or recognition of possession of the petitioner and the 4th respondent could also be ignored by the Government. They could assign the lands. They could utilize the lands. In effect, the lands stood vested with the Revenue Department. It is under these circumstances, questioning this particular order and more particularly questioning the classification of the land as aforementioned that the writ petition has been filed.

11. In the meanwhile, the 4th respondent who is also in possession of the lands, but who had made a lateral entry consequent to the introduction of the name of Kanniyammal in the joint patta along with the father of the petitioner herein, had preferred a further appeal before the Commissioner of Land Administration at Chennai. This was so because even in the order now impugned and passed by the Director of Land and Survey, it had been stated that there is an appellate remedy available.

12. It is thus seen questioning the very same order namely, the order of the Director of Land and Survey dated 10.01.2019, the two aggrieved



parties who are locked in an *inter se* quarrel between themselves, have approached two separate forums. The petitioner has come to the High Court by way of filing this Writ Petition under Article 226 of the Constitution of India. The 4th respondent had filed an Appeal before the Commissioner of Land Administration under Section 11 of the Tamil Nadu Levy of Ryotwari Assessment on Freehold Lands Act, 1972.

13. Heard arguments advanced by Mr.R.Viduthalai, learned Senior Counsel assisted by by Ms.R.Revathi, for the petitioner and by Mr.U.Bharanidharan, learned Additional Government Pleader for the 1st, 2nd and 3rd respondents and by Mr.V.Ayyadurai, learned Senior Counsel, assisted by Mr.B.Gurunathan, for the 4th respondent.

14. Mr.R.Viduthalai, learned Senior Counsel for the petitioner justified the filing of the writ petition and stated that an appeal before the Commissioner of Land Administration is not maintainable. The learned Senior Counsel argued this particular point by relying on the provisions of the Act itself. The learned Senior Counsel took the Court through the following provisions of the Act:



“2. In this Act, unless the context otherwise requires-

(d) “free-hold land” means any land held-

(i) free from demand of land revenue.”

“2(f). “owner of free-hold land” includes his heirs, assignees, legal representatives or persons deriving rights through him;

“11. Power of revision by Board or Revenue:

“(1) The Board of Revenue may -

(i) on its own motion call for and examine the records of any proceedings under this Act; or

(ii) on application made by the owner of free-hold land in this behalf, call for and examine the records of any proceeding under this Act not being a proceeding in respect of which an appeal lies to the Director under sub-section (2) of section 10.

To satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein, and if, in any case, it appears to the Board of



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Revenue that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly;

Provided that the Board of revenue shall not pass any order under this section prejudicial to any party unless he has had a reasonable opportunity of making his representation.”

15.Though it is stated Board of Revenue, subsequently there has been an amendment introduced in the year 1980, that the Board of Revenue would indicate the State Government and it is the common platform of all the parties that the State Government would now imply the Commissioner of Land Administration.

16.Much emphasis has been made on interpretation of Section 11(i)(ii) of the Act. For the sake of convenience, let me extract that particular portion alone again.

11.Power of revision by Board or Revenue:

“(I)The Board of Revenue may -

(i)on its own motion call for and examine the records of any



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(ii).on application made by the owner of free-hold land in this behalf, call for and examine the records of any proceeding under this Act not being a proceeding in respect of which an appeal lies to the Director under sub-section (2) of section 10. To satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein, and if, in any case, it appears to the Board of Revenue that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly;

Provided that the Board of revenue shall not pass any order under this section prejudicial to any party unless he has had a reasonable opportunity of making his representation.”

17.Mr.R.Viduthalai, learned Senior Counsel read the above provision to imply that if an application is made by the possessor of free hold land, the the Commissioner of Land Administration may call for and examine the



records of any proceeding in this Act. But this power cannot be exercised in a matter over over which an Appeal would lie to the Director under Sub Section (2) Section 10 of the Act. Before proceeding further Sub Section (2) Section 10 of the Act, must be examined. It is as follows:

*“Sec.10(2):**Decision of certain disputes:-***

(2)From every decision of the Settlement Officer under sub-section (1) an appeal shall, within such time as may be prescribed, lie to the Director.

Explanation:Nothing in this Section shall be construed as conferring any right on any person to dispute the rates of ryotwari assessment imposed at a ryotwari settlement under Section 8.”

18.Sub section (2) of Section 10 of the Act, relates to an appeal filed from a decision of the Settlement Officer.

19.In the instant case, an Appeal was filed from the decision of the Settlement Officer before the Director.



20. A re-reading of Section 11(i)(ii) of the Act, would indicate that the Commissioner of Land Administration can examine and call for records of any proceedings, but such proceedings should not be proceedings with respect to which an appeal would lie to the Director under Section 10(2) of the Act.

21. This provision has to be further broken down to interpret that the Commissioner of Land Administration can call for the records and examine such records of any proceedings under this Act, which would include the proceedings of the Assistant Settlement Officer, the proceedings of the Settlement Officer and also the proceedings of the Director, but care should be taken that if an appeal lies before the Director, then that matter cannot be examined by the Commissioner of Land Administration. This is so because when a statutory appeal is provided against the order of the Settlement Officer to the Director, then that appeal provision cannot be interfered with or frustrated by the Commissioner of Land Administration. That appeal proceedings will have to continue.

22. It is common knowledge that an appeal is an extension of the



original proceedings to determine the facts and the law applicable on such facts. A revision lies however, to examine whether an authority had exercised jurisdiction vested or had not exercised jurisdiction vested or had exercised excess jurisdiction not so vested. Thus, when an appeal lies before the Director, the Commissioner of Land Administration should not interfere with that appeal proceedings. The appellate authority should be given an opportunity to examine the issues raised and then pass an order.

23.This provision only implies that the Commissioner of Land Administration should not over reach and take over the jurisdiction of the Director. That jurisdiction is that of an appellate authority. The nature of authority exercised by the Commissioner of Land Administration is as a revisional authority.

24.Though in the impugned order it had been stated that a further appeal could be filed, it is a revision, which can be filed before the Government implying the Commissioner of Land Administration.

25.In view of this reasoning, the 4th respondent, who has now preferred an appeal which can be termed as an appeal only in nomenclature,



but has to be examined in the nature of a revision and will have to be so examined by the Commissioner of Land Administration.

26.The learned Senior Counsel stated that this Court can interfere with the order of the Director only because he had exceeded his jurisdiction by classifying the land by Government Anathinam Land. It is stated that this particular classification is beyond the powers or scope of the Director. The learned Senior Counsel stated that the Writ Court should interfere with particular finding.

27.It is however contended by Mr.V.Ayyadurai, learned Senior Counsel for the 4th respondent that since regular proceedings has been initiated before the Commissioner of Land Administration, those proceedings should continue.

28.Mr.U.Bharanidharan, learned Additional Government Pleader, sought to justify the order impugned and stated that the impugned order cannot be interfered with by this Court and also relied on Rule 6 of Tamil Nadu Levy of Ryotwari Assessment on Freehold Lands Rules, 1980, which



relates to filing of a Revision petition to the Board of Revenue:

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*“Rule 6.Revision petition to the [Board of Revenue]-
Every application for revision under clause (ii) of sub-section
(1) of section 11 shall be made in Form I to the [Board of
Revenue] within sixty days from the date of communication of
the order.”*

The Board of Revenue should now be read as the Commissioner of Land Administration.

29.Both sides placed reliance on the judgment of a learned Single Judge of this Court reported in **1993 1 MLJ 527, Sri Mahalingaswami Devasthanam and Ors. Vs. The State of Tamil Nadu and Ors.**

30.Let me extract the relevant portion, which is paragraph Nos.16, 17 and 18.

“16. From the very conspectus of various provisions, as extracted above, it is thus clear that the object of the Act is only to provide for the levy of ryotwari assessment on freehold land in the State of Tamil Nadu. It does not purport to affect or alter in any manner other rights in the freehold land. Ryotwari settlement of freehold land can be effected in accordance with the settlement notification framed and published by the Government



for the purpose. The notification shall embody the principles adopted in making ryotwari settlements in ryotwari areas and it shall adopt the rates of assessment in force in the district, in which the freehold land is situate. All rates of assessments imposed at ryotwari settlement shall be liable to revision from time to time.

17. Any settlement notification published shall have effect in supersession of any settlement or re-settlement notification already in force in respect of the freehold land concerned. Neither such settlement notification nor any order passed in pursuance thereof shall be liable to be questioned in any court of law. Every owner of freehold land shall for the fasli year commencing from 1st July, 1972 and for subsequent fasli year, be liable to pay to Government in respect of freehold land the assessment under ryotwari settlement. If any dispute arises as to liability to pay ryotwari assessment, such a dispute shall be decided by the Settlement Officer. The order of the Settlement Officer is liable to be challenged in appeal before the Director. The order of the Director in appeal is challengeable by way of revision before the Board of Revenue. Top of all, the provisions of the Act shall override any contract, grant or order or any law for the time being in force with effect from 1st July, 1972, thereby indicating the Government's right to future increments to revenue in respect of freehold lands.

18. The object of various notices now under challenge is not only to bring the lands in question on par with similarly situated ryotwari lands for the purpose of assessment, but also for the purpose of deciding the question as to the entitlement of rough patta of those lands by the occupiers. It is, therefore, clear that the rights of the petitioners-Devasthanams in the lands in question are likely to be interfered with as a result of those



notices under challenge and therefore, it goes without saying that any action taken therefor by the Government is without jurisdiction, as rightly contended by learned Counsel for the petitioners-Devasthanams and in that view of the matter, the impugned notices deserve to be quashed in so far as they relate to deciding the question as to the entitlement of rough patta by the occupiers of those lands and the same are ordered accordingly.

31.Paragraph Nos.16 and 18 had been relied on by Mr.R.Viduthalai, learned Senior Counsel and Mr.U.Bharanidharan, learned Additional Government Pleader placed reliance on paragraph No.17.

32.In effect, since the issues are still nebulous before the Commissioner of Land Administration, it would be extremely inappropriate if two separate forums were to examine the correctness or otherwise of the finding of one single authority. There would hardly be consensus, if the Commissioner of Land Administration were to examine that particular order and view it as a revision and this Court examine it, exercising plenary power under Article 226 of the Constitution of India.

33.Let me therefore refrain from passing orders either way and issue



the following directions:

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(i).The Commissioner of Land Administration is directed to proceed further with the appeal filed by the 4th respondent.

(ii).Even though the 4th respondent had filed an appeal, the nature of its examination should be in the form of revision to determine whether the Director had exercised jurisdiction vested or had not exercised jurisdiction vested or had exercised excess jurisdiction.

(iii).The maintainability of the revision may also be argued by the petitioner herein who is the respondent in the said revision.

(iv).The petitioner herein who is the respondent may also question the classification of the land as Government Anathinam Lands by the Director and that particular aspect may be examined by the Commissioner of Land Administration and a specific finding be given by the Commissioner of Land Administration.

34.Let me respect the jurisdiction of the Commissioner of Land Administration and refrain from entering into any detailed discussion on the facts. The discussion above only related to the limited issue whether such a



revision would actually lie before the Commissioner of Land Administration. The views expressed were only for the limited purpose of determining that particular aspect and I am confident that the Commissioner of Land Administration would examine the issues raised only on the basis of the materials produced.

35.I am afraid that the relief sought by the petitioner to quash the impugned order cannot be granted, since the same order is also under the consideration of the Commissioner of Land Administration. But since directions have been given to the nature of disposal by the Commissioner of Land Administration, I would record that the Writ Petition stands disposed of, with those directions. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

03.03.2023

Index:Yes/No
Internet:Yes/No
Speaking Order / Non-Speaking Order
smv

To

1.Director of Land and Survey,



Chepauk,
Chennai – 5.

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2.Settlement Officer,
Chepauk, Chennai – 5.

3.Assistant Settlement Officer,
Chepauk, Chennai – 5.



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C.V.KARTHIKEYAN,J.

smv

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