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W.P.(MD)NO.4607 OF 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.4607 of 2019 AND
W.M.P.(MD)Nos.3685 & 3686 of 2019

V.K.S.A.Akbar Ali

... Petitioner

Vs.

1. The District Revenue Officer,
D.R.O.Office,
District Collector Office Campus,
Trichy -1,
Trichy District.

2. V.K.S.A.Mohammed Younus

3. V.K.S.A.Mohamed Ajeeb

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 04.02.2019 in Na.Ka.Aa6/29610/2014 of the first respondent and quash the same and direct the respondent to make necessary correction in respect of classification of land situated at old SF No.55, New S.No.154, Panjapur Village, Srirangam Taluk and grant patta.



For Petitioner : Mr.Sricharan Rangarajan,
Senior counsel,
for Mr.P.Mahendran.

For R-1 : Mr.R.Baskaran,
Additional Advocate General,
assisted by
Mr.M.Sidharthan,
Additional Government Pleader.

For R-2 & R-3 : Mr.H.Lakshmi Shankar

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for respondents 2 and 3.

2. The writ petitioner and respondents 2 and 3 are brothers. They purchased 1 acre of land vide sale deed dated 03.06.1991 (document No.2629/1991) on the file of II Joint Sub Registrar, Thiruchirappalli from one Rettamalai and his wife Azhagammal. The said Rettamalai who was the son of one Chidambaram Pillai applied to the District Revenue Officer,



Thiruchirappalli for mutating the revenue record. According to them, during UDR, the land purchased by them had been erroneously classified as Sarkar poramboke. Since their application dated 05.01.2012 was not considered, they filed W.P.(MD)No.4244 of 2012. Vide order dated 09.04.2012, the District Revenue Officer, Trichy was directed to consider their representation and pass order on merits and in accordance with law. Pursuant to the said direction, an enquiry was held and vide order dated 29.07.2013, the petitioner's request was rejected. Challenging the same the petitioner and respondents 2 and 3 filed W.P.(MD)No.13062 of 2014. The said writ petition was allowed and the impugned order therein was set aside. The matter was remanded to the file of the District Revenue Officer, Trichy for fresh consideration in the following terms:-

“ 7. It is seen that the petitioners claim that one acre out of the total extent of acre 25.32 cents has been wrongly classified as Government punja land. According to the petitioner, the land in question, at Innam Panchappur Village, has been taken by the Government as Ryotwari as



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per G.O.No.781 (Revenue) dated 12.03.1965 and as per the provisions of Inam Abolition and Ryotwari Act, 1963, the respondent has conducted re-survey operation in the year 1965 and after which, the Assistant Settlement Officer, published 'A' Register and the same was handed over to the District Administration on 24.04.1970. In the said 'A' Register, the details and character of the land were clearly mentioned. However, without considering the same, the impugned order was passed.

8. Further it is seen that the respondent without giving any opportunity for personal hearing to the petitioner and merely referring to the related documents as could be seen in the reference column in serial No.3, the impugned order has been passed. Hence, this Court is inclined to set aside the impugned order and remand the matter for fresh consideration to the respondent.

9. Accordingly, the writ petition is



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allowed and the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall issue notice to the petitioner and afford an opportunity of personal hearing to the petitioner to enable him to produce all records in his possession and thereafter, consider and pass reasoned order on merits and in accordance with law, as expeditiously as possible. No costs.”

3. Pursuant to the said direction, an enquiry was held afresh and vide order dated 13.01.2016, the petitioner's request was once again rejected. The petitioner moved this Court by filing W.P.(MD)No.16991 of 2017. The said writ petition was disposed of and the order impugned therein was set aside and the matter was remanded to the file of the District Revenue Officer, Trichy for fresh consideration in the following terms:-

“5.I have perused the pleading as well as the documents filed along with the writ petition. In the impugned order dated 13.01.2016, in the concluding paragraph the authority has stated as follows:-



□மேலும் மனுதாரர்கள் தாவா நிலம் அவருக்கோ அல்லது

மனுதாரருக்கோ விற்பனை செய்தவருக்கோ எவ்வகையில் சொந்தமானது என்பது குறித்து யாதொரு செல்லத்தக்க ஆவண ஆதாரங்களோ தாக்கல் செய்யவில்லை.□

On the other hand in the previous paragraph, it is stated as follows:-

□ திரு. V.K.S.A. அக்பர் அலி மற்றும் இருவரிடமிருந்து பெறப்பட்ட வாக்குமூலம், அவர்கள் தரப்பில் அளிக்கப்பட்ட ஆவணங்கள், கிராம நிர்வாக அலுவலர், நகர சார்-ஆய்வாளர் ஆகியோரது வாக்குமூலங்கள், இவ்வலுவலக முன்கோப்பு நிமு.ஆ.5-17120-2012, தொடர்புடைய ஆவணங்கள் மற்றும் வருவாய் ஆவணங்கள் ஆகியவை நன்கு கவனமுடன் பரிசீலனை செய்யப்பட்டது.□

From the above , it is apparent that the respondent did not apply his mind properly for consideration of the documents.

6.Under such circumstances, this Court finds no other way except to set aside the impugned order for non consideration of the required documents. Accordingly, the impugned order dated 13.01.2016 passed by the respondent is set aside and the matter is remitted to the respondent for fresh consideration of the documents and for passing appropriate orders on merits and in accordance with law, after affording due opportunity to the petitioner as well as to all other interested parties, if any within a period of six weeks



from the date of receipt of a copy of this order. "

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4. Thereafter, enquiry notices were issued to the petitioner and after hearing the petitioner and consider the materials on record, the rejection order dated 04.02.2019 came to be passed. Challenging the same, the present writ petition came to be filed.

5. The learned Senior counsel appearing for the petitioner and the learned counsel appearing for respondents 2 and 3 reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

6. The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents. The learned Additional Advocate General submitted that the petition-mentioned land was a part of Inam village. It was taken over as early as on 12.03.1965. The settlement proceedings were laid. When the settlement proceedings were concluded, "A" Register was prepared for Panjappur Village



and issued on 24.04.1970. In the said "A" Register, survey No.154/1 has been classified as Sarkar Punjai Tharisu. This classification is sought to be corrected by the writ petitioner and his brothers. The learned Additional Advocate General would point out that the petitioner's vendors failed to array their predecessor in title and failed to attend settlement enquiry. The challenge was not mounted in time. It is seen that "B" memo was issued for the petition-mentioned land and it was also paid. The learned Additional Advocate General would point out that once "B" memo charges have been levied, the occupant is obliged to vacate the same on being demanded by the authorities. According to the respondents, the classification of the land as Government Tharisu was justified and that no case for interference has been made out. The first respondent prayed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The objection mounted on the basis of levy of "B" memo charges does not impress me. "B" memo charges are



levied under Section 3 of the Tamil Nadu Land Encroachment Act 1905. It only means that if a person occupies Government property unauthorisedly, he will have to pay penalty for occupation and he is liable to be evicted subject to the procedure set out in the Tamil Nadu Land Encroachment Act 1905. Payment of “B” memo charges by itself cannot operate as an estoppel against the occupant. The burden is on the authority to show that the property belongs to the Government. The moot question that calls for consideration is whether the property in question is a Government land or a private land.

9. The petitioner and respondents 2 and 3 have traced their title to one Krishnaswamy Iyengar. The sons of Krishnaswamy Iyengar had sold about 400 acres vide sale deed dated 19.06.1936 (document No.2064/1936) in favour of V.T.Krishnamachari. The said V.T.Krishnamachari settled the same in favour of his daughter Jayammal vide settlement deed dated 14.05.1955 (document No.1584/1955). Jayammal had parcelled her land and alienated the same in various parcels. She had sold 3.16 acres vide sale deed 24.11.1958 (document



No.5544/1958) in favour of Chidambaram Pillai. Chidambaram Pillai had one son by name Rettamalai. The said Rettamalai and his wife Azhagammal sold 1 acre and 3.16 acres in favour of the writ petitioner Akbar Ali and respondents 2 and 3 (Mohammed Younus and Mohammed Ajeeb) (document No. 2629/1991).

10. My attention has been drawn to the settlement proceedings dated 15.09.1975 issued by the settlement Tahsildar, Trichy. The applicant before the settlement authority was one N.Palani Gounder. "A" Register prepared by the Assistant Settlement Officer, Thiruchirappalli on 24.04.1970 describes survey No.146/4 as "Sarkar Punjai Tharisu". It measures an extent of 1-27.5 Hectare. The said Palani Gounder had sought issuance of patta. Paragraph Nos.7 to 9 of the said proceedings of the settlement officer, Thiruchirappalli dated 15.09.1975 read as follows:-

"7. Thiru.V.K.Subban examined as P.W.1. deposed to the following effect. He is a native of Panchappur. The suit land measuring about 3 acres is owned by Palani Gounder. This was previously owned by V.T.Krishnamachariar. He



executed a settlement deed settling the suit property in favour of his daughter Jayammal. She enjoyed the suit land by cultivating it with dry crops such as Cholan and Cumbu. He purchased one acre in O.S.55 measuring 25.32 acres as per Ex.P.1. Thiru.Vaidilingam Pillai purchased from Jayammal 2 acres in O.S.55 as per sale deed dated 13.08.1958 Ex.P.2. Both these lands have been cultivated with wet crops. Thiru.N.Palani Gounder purchased from V.K.Subban 1.00 in O.S.55 as per sale deed dated 18.08.1965 Ex.P.3. Thiru.Vaidyalingam also sold 2.00 acres in O.S.55 to N.Palani Gounder through sale deed dated 19.04.1963 Ex.P.4. Thiru.Thailam Pillai purchased the above said 3 acres in O.S. 55 from the son and heirs of N.Palani Gounder as per sale deed dated 24.05.1973 Ex.P.5. Ex.P.6 is the registered partition deed dated 21.03.1967. Thiru.Thailam Pillai, examined as P.W.2 spoke to the following effect. He purchased the suit land 3.00 as per sale deed in Ex.P.4. He got Ex.P.6 and other records in support of the sale. This land once belonged to Jayammal. By successive sale he purchased it at last. The suit land was previously cultivated with dry crops. After the excavation of the channel wet cultivation is being



resorted to in this land. He requests patta for the suit land.

Thiru.Rengasamy Iyengar, examined as P.W.3, deposed to the following effect. His father Krishnasamy Iyengar purchased 800 acres in Panchappur. In 1936 he died. The lands were enjoyed by himself and his brothers. Thiru.V.T.Krishnamachari purchased 400 acres from them. He enjoyed the suit property along with other lands. He executed a settlement deed in favour of Jayammal his daughter through which she obtained right over the suit land with other lands. By successive sales P.W.2 is now enjoying the suit land at present. The suit land was continuously cultivated personally by the land holders with dry crops till 1962 and wet crops thereafter. The advocate for the claimant filed the sale deed purchased by Thiru.V.T.Krishnamachariar document 2064 dated 29.06.1936 Ex.P.7.

8. Thiru.Manicka Vasagam, Karnam examined as C.W.1, stated as follows: The suit land comprised in N.S.146/4 measuring 1.27.05 is a private land and inam assessment has iruwaram been paid for this land. This is not a ryoti land. This is in the possession and enjoyment of Palani Gounder. Paddy is being cultivated in it. This is not required for communal use.



9. The evidences of PW1, PW2 and PW3 corroborated by CW1 prove that the suit land is an iruwaram private land. Under the personal cultivation of the land holders during the statutory period without interruption. Ex.P1 to P7 prove that PW2 derived valid title over the suit property comprised in N.S.146/4 measuring 3.15 acres correlating to O.S.55 of Panchappur Village of the Act 26/63 are satisfied. There are no rival claimants and no evidence was let into the contrary. I therefore hold that the person mentioned in the schedule is eligible for the grant of ryotwari patta for the suit land comprised in N.S.146/4 and accordingly order u/s 12(i) r/w. Section 9(i)(a) of the Act 26/63 the issue of ryotwari patta in respect of the suit land to the individual with effect on and from the notified date as per schedule below.”

11. The said Palani Gounder is a purchaser from the alienees of Jeyammal. The categorical finding of the settlement Tahsildar is that the land owned and enjoyed by Krishnaswamy Iyengar comprised in survey No.146/4 was a private land and not a ryot land and that therefore, the claimant was entitled to ryotwari patta. The logic which led



the settlement Tahsildar, Trichy to grant patta in respect of survey No.146/4 ought to have been applied in the present case also. The old survey number was 55. It had been bifurcated into various survey numbers. Survey Nos.154/1 and 146/4 etc. were subdivided survey numbers. The petitioner has enclosed in the typed set of papers, the certificate issued by the Tahsildar, Trichy indicating that survey No.154 was part of old survey No.55. It is having the total extent of the land as mentioned. It is true that the Inam Abolition Laws stipulated certain time limit for applying settlement patta. Merely because, the claimant failed to apply for patta before the settlement authority that would not result in extinguishing of title or right. That is why, G.O.Ms.No.1350 dated 30.04.1971 was issued enabling the persons to apply for patta even outside the scope of the Act. A learned Judge of this Court held that it is the duty of the authorities to acknowledge a pre-existing right or claim. As rightly pointed out by the learned Senior counsel appearing for the writ petitioner and endorsed by the respondents 2 and 3, the authorities have been bent on rejecting the request of the claimants. In fact all the three rejection orders read alike.



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12. I have found that the reasons set out in the impugned order are incorrect. But no purpose will be served in remanding the matter once again to the first respondent. I do not propose to remit the matter again for fresh consideration. I am of the view that the respondents cannot go back from the stand set out in the proceedings of the Settlement Tahsildar dated 15.09.1975. The petitioner has established that they are tracing title to Jeyammal who traced her title from V.T.Krishnamachari and Krishnaswamy Iyengar. When the similarly placed alienees have been issued with ryotwari patta, the petitioner cannot be discriminated. Classifying the land as "Sarkar Punjai Tharisu" was patently erroneous.

13. The learned Additional Advocate General contended that the petition deserves to be dismissed for non-exhausting the revision remedy before the Commissioner of Land Administration. I do not want to non-suit the petitioner at the final hearing stage on this technical ground. The writ petition has been pending for more than four years.



That apart, it is not as if the petitioner is knocking the doors of the Court for the first time. This is the fourth round of litigation. Hence, I examined the facts on merits. V.T.Krishnamachari settled the properties to five children. Jeyammal was one of them. The petition-mentioned property formed part of the schedule of property settled in favour of Jeyammal. Some of the alienees of Jeyammal had been granted ryotwari patta. There is absolutely no justification to deny relief to the petitioner's family. This writ petition stands allowed. The first respondent is directed to recognise the pre-existing rights obtaining in this case by issuing patta to the petitioner and respondents 2 and 3. Appropriate correction will be made in the revenue record immediately and without any delay. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

The District Revenue Officer,
D.R.O.Office,
District Collector Office Campus,
Trichy -1,
Trichy District.



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W.P.(MD)NO.4607 OF 2019

G.R.SWAMINATHAN,J.

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