



W.P.No.27727 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.12.2023

Orders Pronounced on : 08.04.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.27727 of 2015

and

W.M.P.No.1839 of 2015 and M.P.No.1 of 2015

1. Baskaran (died)
2. Tamilarasan
3. Stalin
4. Jeevanandam
5. Chandra
6. Selvam
7. Ezhilan
8. Anand
9. Sumithra

(Petitioners 5 to 9 substituted
as LRs of deceased first petitioner
vide order of Court, dated 13.12.2022
in W.M.P.No.27528 of 2022
in W.P.No.27727 of 2015).

.. Petitioners

Vs.

Page No.1/50



W.P.No.27727 of 2015

1. The Secretary to Govt. (Revenue)-cum-
Revisional Authority,
under the Puducherry Settlement Act, 1970
Govt. of Puducherry, Puducherry.
2. The Director of Settlement,
Directorate of Survey and Land Records,
Puducherry.
3. The Settlement Officer-I,
Directorate of Survey and Land Records,
Puducherry.
4. The Deputy Collector (Revenue),
North-cum-Estate Officer,
Office of the Deputy Collector (Revenue)-North,
Govt. of Puducherry,
Puducherry.

(Fourth respondent impleaded as per
order dated 03.02.2017 in
W.M.P.Nos.1838 and 1839 of 2017
in W.P.No.27727 of 2015)

.. 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 :

(i) the order bearing No.1986/S1-I/E-I/98, dated 27.05.2002 on the file of the third respondent,

(ii) the order dated 27.12.2013 made in Appeal No.2/2013 on the file of the second respondent;

(iii) the order bearing F.No.1311/DRDM/C2/RP/2014, dated 23.03.2015 on the file of the first respondent

and quash the same and consequently direct the respondents to rectify the mistake in the Settlement Register and Register of Rights in respect of their Absolute Private Agricultural Land bearing Pymash Nos.3686, 3688, 3689, 3690, 3693 & 3696, Cadstre No.726 and R.S.No.44/2 situated at Karuvadikuppam Revenue Village, Puducherry and measurinig 2 Kanis 95 Kuzhies & 8 Veasams, delete the entry of "Colony Poramboke" wrongly entered therein and enter their names as owners of the said Agricultural land.

Page No.2/50



W.P.No.27727 of 2015

WEB COPY

For petitioners : Mr.T.P.Manoharan, Senior Advocate for Mr.T.M.Naveen

For respondents : Mr.S.Raveekumar, Govt. Pleader (Puducherry)

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to : (i) the order bearing No.1986/S1-I/E-I/98, dated 27.05.2002 on the file of the third respondent, (ii) the order dated 27.12.2013 made in Appeal No.2/2013 on the file of the second respondent; (iii) the order bearing F.No.1311/DRDM/C2/RP/2014, dated 23.03.2015 on the file of the first respondent, and quash the same and consequently direct the respondents to rectify the mistake in the Settlement Register and Register of Rights in respect of their Absolute Private Agricultural Land bearing Pymash Nos.3686, 3688, 3689, 3690, 3693 & 3696, Cadstre No.726 and R.S.No.44/2 situated at Karuvadikuppam Revenue Village, Puducherry and measurinig 2 Kanis 95 Kuzhies & 8 Veesams, delete the entry of "Colony Poramboke" wrongly entered therein and enter their names as owners of the said Agricultural land.

2. It is the case of the petitioners that the agricultural land owned and possessed by the ancestors of the petitioners at Karuvadikuppam (earlier called



W.P.No.27727 of 2015

as Sarampakkam) Revenue Village, Oulgaret Commune from the year 1913, are in one block. Only due to the assignment of different Pymash Numbers and Cadastre Numbers by the then French Government to the said agricultural land, it had become 3 portions situated adjacent to each other and now, assigned 3 different R.S. Numbers. All the three portions of agricultural lands are Absolute Private Agricultural Lands, owned and possessed by the petitioners' ancestors and now, by the petitioners. Further, at the time of Re-Survey Settlement made by the second respondent in the year 1972 in respect of the first two portions of the Absolute Private Agricultural Lands, notice was rightly issued to the petitioners, referred to Registered Notarial Sale Deed, dated 18.04.1921 in their favour and the binding Journal Official dated 02.04.1932, published by the then French Government, assigned R.S.Nos.42/2 and 45/2 and entered the name of the petitioners' father Narayanasamy as the owner in the Settlement Register and Register of Rights and issued Patta bearing Patta No.355 in his name. Further, in respect of the third portion of the Absolute Private Agricultural Land bearing Pymash Nos.3686, 3688, 3689, 3690, 3693 and 3694 and Cadastre No.726. It is the further case of the petitioners that by virtue of the Registered Notarial Sale Deed, dated 28.05.1913 and Registered Notarial Partition Deed, dated 26.10.1915, the petitioners' great grand-father-Cathavarayan, had become the absolute owner and possessor of the same.

Page No.4/50



W.P.No.27727 of 2015

WEB COPY

3. It is the further case of the petitioners that on 02.09.1950, based on the undisputed Registered Notarial Title Deeds, the Chief of the Revenue Department and Chief of Survey of the then French Government, had issued Matrice Cadastre (Patta) bearing Patta No.171 to this portion of agricultural land in the name of the petitioners' great grand-father - Cathavarayan and the above said portion is also an Absolute Private Agricultural Land, the then French Government cannot claim it as a Poramboke land vested with the Government and the same was not included in the list of Government Poramboke lands prepared and published by it in its Journal Official, dated 01.04.1910 and the same was not transferred to the Government of Puducherry at the time of Cession with Union of India in the year 1962 and hence, not vested with the Government of Puducherry as per Section 5 of the Pondicherry Administration Act, 1963.

4. Furthermore, as per Article III of the De-Facto Agreement, dated 21.10.1954 entered into between the Government of India and the Government of France, the actions, the Matrice Cadastre (Patta) and the Journal Official, dated 01.04.1910, containing the list of Poramboke lands prepared and issued/published by the then French Government, are binding on the

Page No.5/50



W.P.No.27727 of 2015

Government of Puducherry and its officers, including the respondents herein.

Hence, they are bound to accept and enforce the same and they are barred and estopped from claiming/entering anything contrary to the same.

5. It is the further claim of the petitioners that in the Gazette dated 30.09.1997, the Pondicherry Planning Authority of the Government of Puducherry itself, has classified the above said portion and also the other two portions of land owned and possessed by the petitioners as agricultural lands. The District Registrar, Government of Puducherry issued the Encumbrance Certificate, dated 02.09.2014 to the above said portion and also other two portions of absolute private agricultural land owned and possessed by the petitioners.

6. It is the further stand of the petitioners that the second respondent had made Re-survey settlement proceedings in the year 1972 itself and that, at the time of Cession in the year 1962, the then French Government had handed over all its Revenue and Settlement records, including the Mutation proceedings, the Matrice Cadastres (Pattas) and the list of Poramboke lands prepared and published by it in its Journal Official, dated 01.04.1910 etc., to the Government of Puducherry and available in the custody of the respondents 2 and 3. In the



W.P.No.27727 of 2015

Re-survey settlement proceedings made by the second respondent, the said binding French records are the only basis for making corresponding entries in the Settlement Register and Register of Rights. Further, in respect of the first two portions of the absolute private agricultural lands bearing Cadastre Nos.723, 727 owned and possessed by the great-grandfather of the petitioners, the second respondent had rightly issued notice to the petitioners, referred to in the Registered Notarial sale deed dated 18.04.1921 in their favour and the binding journal official, dated 02.04.1932, assigned R.S.Nos.42/2 and 45/2 to them and entered the name of the petitioners' father Narayanasamy as the owner in the Settlement Register and Register of rights and issued Patta bearing Patta No.355 in his name. Moreover, the third portion bearing Pymach Nos.3686, 3688, 3689, 3690, 3693 and 3694 and Cadastre No.726 is also an absolute private agricultural land owned and possessed by the great-grandfather of the petitioners. Hence, the then French Government cannot and it had also not claimed it as Poramboke land vested with it, and not included in the list of Government Poramboke lands prepared and published by it in its Journal Official, dated 01.04.1910 and they had not transferred to the Government of Puducherry at the time of Cession with Union of India in the year 1962 and hence, not vested with the Government of Puducherry as per Section 5 of the Pondicherry Administration Act, 1963.

Page No.7/50



W.P.No.27727 of 2015

WEB COPY

7. Furthermore, according to the petitioners, the above list of Government Poramboke lands, is the only basis for making entries as Government Poramboke lands in the Settlement Register and Register of Rights at the time of Re-survey settlement proceedings made in the year 1972 and this portion of absolute private agricultural land was not included in the above said list and it has also no power and authority to claim or treat this portion of the absolute private agricultural land as a Government Poramboke land vested with the Government of Puducherry and enter so for the first time in the Settlement Register and Register of Rights. This portion is also existing as an absolute private agricultural land prior to and also at the time of the Re-survey Settlement proceedings made by the second respondent in the year 1972 and the second respondent assigned R.S.No.44/2 to it and bound to enter so in the Settlement Register and Register of Rights, but by mistake, as stated by the petitioners in their affidavit filed in support of this writ petition, it has not issued notice and heard them, but the following documents were brushed aside, i.e. Registered Notarial Sale Deed dated 28.05.1913, the Registered Notarial Partition Deed, dated 26.10.1915, the binding Matrice Cadastre (Patta) bearing Patta No.171, dated 02.09.1950 and the binding list of Government Poramboke lands prepared and published in the Journal Official, dated 01.04.1910, and it was arbitrarily and wrongly entered it

Page No.8/50



W.P.No.27727 of 2015

as a Government Poramboke land in the Settlement Register and Register of Rights.

8. It is the further claim made by the petitioners that only in October 1996, when the officers from the second respondent had attempted to measure the above portion of their absolute private agricultural land by referring to the said wrong entry as Government Poramboke land, the petitioners learnt about the same and submitted application, dated 09.10.1996 to the third respondent to rectify the said mistake and produced the certified photocopies of their title and the other documents in support of their title and possession. But no orders had been passed by the third respondent and hence, the petitioners have earlier filed W.P.No.18284 of 1998 before this Court for issuance of a Writ of Mandamus to direct the third respondent therein to dispose of the application for grant of Patta, dated 09.06.1998 in respect of the lands of an extent of two caunies, 95 kuzhies and 8 veesams in R.S.No.44/2 Karuvadikuppam Revenue Village, Uzhavarkarai Commune, Pondicherry, within a period to be specified by this Court. At the time of hearing the said writ petition, the third respondent has only stated as an excuse for his in-action that the petitioners have not produced the original title documents, and this Court, by order dated 23.07.2001, passed in the said W.P.No.18284 of 1998, directed the petitioners therein to submit the

Page No.9/50



W.P.No.27727 of 2015

original title documents to the authorities after prior intimation, within 10 days from the date of receipt of a copy of the order passed in the said Writ petition and on such production of the original documents to the satisfaction of the authorities, the authorities were directed to consider and pass orders in accordance with law, within a period of six weeks thereafter.

9. For deciding as to whether the above entry is correct or not, the third respondent has to verify only the list of Government Poramboke lands prepared and published by the then French Government in its Journal Official, dated 01.04.1910 and available in his custody and also in the Government Romain Rolland Library, Puducherry and he need not seek and consider any other documents, including the original title documents. Moreover, it is not a title dispute between private individuals, and hence, production of original title deeds are not necessary. Even then, as all their original ancient title and other documents were destroyed in fire, the petitioners have obtained certified photocopies of their title and other documents from the Registration Department of the Government of Puducherry and the National Archives of India, Record Centre, Puducherry and produced the same before him. Hence, the third respondent cannot dispute the genuineness, authenticity, correctness and validity of those certified originals available in his custody. All those documents



W.P.No.27727 of 2015

would clearly prove that the entry of Government Poramboke made in the Settlement Register and Register of Rights was wrong and had to be rectified.

10. The genuineness of the Matrice Cadastre (Patta), dated 02.09.1950 produced by the petitioners can be decided only by comparing it with the original Matrice Cadastre Register available in the custody of the respondents 2 and 3 and it cannot be done by any other method. Hence, the third respondent is bound to make such comparison and decide its genuineness. But, he has falsely claimed that those records are not available in his Directorate, suppressed the same and had not made such comparison. Hence, in view of Illustration-(g) of Section 114 of the Indian Evidence Act, the presumption is that if he makes such comparison or furnish photocopy of the said Matrice Cadastre to the petitioners, the same would prove that the said Matrice Cadastre is genuine and correct. However, in an attempt to circumvent, escape and defeat such legal presumption, he has made a very vague and incorrect statement that it is suspected as manipulated by combining the upper half page of one document and the lower half page of a different document to frame the same.

11. It is further stated by the petitioner that as the absolute private agricultural land is situated in the Oulgaret Commune, the first page of the said



W.P.No.27727 of 2015

Matrice Cadastre (Patta), it is mentioned as "Oulgaret Communie" and the respondents 2 and 3 are the Revenue Authorities and all the Revenue Records handed over by the then French Government to the Government of Puducherry are available in their custody. The Oulgaret Municipality is only a local body and has nothing to do with the Revenue actions and Records. As the intention of the then third respondent was mala-fide and bad, he strangely, within an ulterior motive, has claimed that he has sent a letter to the Oulgaret Municipality requesting it to furnish a copy of the Patta Record and the said Municipality has sent a reply that it has nothing to do with the same. Further, the Registered Notarial sale deed, dated 28.05.1913 and the Registered Notarial Partition Deed dated 26.10.1915 independently confers absolute title and possession over the land on the great-grandfather of the petitioners, and now, on the petitioners. As held by the Supreme Court, the entry of such ownership in the Revenue Records is only a consequence for payment of land Revenue. Therefore, even if it is taken that the Matrice Cadastre (Patta) dated 02.09.1950 was not issued by the then French Government and not in existence, the absolute title and possession of the great grand-father of the petitioners and now, the petitioners are legal, valid and enforceable and hence, the same is immaterial. However, the third respondent has simply and vaguely stated that the Matrice Cadastre (Patta) is suspected as manipulated and passed an order dated 27.05.2002, rejecting the application



W.P.No.27727 of 2015

and ordering to maintain the said mistaken and wrong entry made in the Settlement Register and the Register of Rights.

12. It is also stated by the petitioners that as against the above said order dated 27.05.2022, the petitioners have filed W.P.No.37337 of 2002 before this Court to quash the said order and to direct the third respondent to restore the Revenue Records in their names. By order dated 13.08.2012, this Court dismissed the said Writ Petition, against which, W.A.No.149 of 2013 was filed and by judgment dated 11.01.2013, the Division Bench of this Court accepted the representation made by the Government Advocate that against the order of the third respondent, an appeal lies before the competent authority and without exhausting the said statutory and efficacious alternative remedy, the said Writ petition was filed and the Writ Appeal was also dismissed.

13. Based on the observations made in said Writ Appeal, as against the order dated 27.05.2022, the petitioners have filed an appeal under Section 19(1) of the Pondicherry Settlement Act, before the first respondent, which was later transferred to the second respondent and numbered as Appeal No.2 of 2013 and he brushed aside all the above facts, documents and position of law and rendered incorrect, faulty, untenable and perverse reasons and finding, referred



W.P.No.27727 of 2015

to the actions, including the one under the Pondicherry Land Encroachment Rules, taken solely based on the impugned wrong entry and by order dated 27.12.2023 and the appeal was dismissed. As against the said order dated 27.12.2023, the petitioners have filed Revision Petition No.3 of 2014 under Section 22 of the Pondicherry Settlement Act, before the first respondent, who also brushed aside all the above facts, documents and position of law, recorded incorrect, faulty, untenable and perverse reasons and the findings and by order dated 23.03.2015, dismissed the Revision Petition, against which, the present Writ Petition is filed for the relief stated supra.

14. The first respondent has filed counter affidavit, which was adopted by the second and third respondents, stating as follows:

(a) The Writ Petition is not maintainable in law or on facts and hence, the same is liable to be rejected. The petitioners have not approached this Court with clean hands. Many material facts have been suppressed and misleading facts have been stated in the affidavit filed in support of the Writ Petition. Further, the question of prescriptive right or adverse possession, ought to be the subject matter of the Writ Petition. The petitioners, if at all have any right, the Company to approach the Civil Court to establish their right over the property which is classified as Government land/Tharisu and it requires factual evaluation. The



W.P.No.27727 of 2015

petitioners are misleading the Court with regard to the Cadastre number, serial number and the extent of the land. So, the actual extent of the land in Cadastre No.7271 is only 5.30 acres and it forms part of Rs.45/- along with the Cadastre No.728 which is measuring about 28.10 ares. Together, they constituted 33.0 ares or thereabouts. Though the petitioners have mentioned about 28.0 ares in their affidavit filed in support of the Writ Petition, they have not mentioned the Cadastre No.728. The very extent with Cadastre No.727 and the extent mentioned in the alleged French Gazette, are contrary to the claim made by the petitioners. The corresponding R.S.No. is 45/2. The extent of 1.37.00 hectares, which is classified as Government land/Tharisu, forms part of Cadastre No.726 with R.S.No.44/2. Neither the petitioners, nor their ancestors have any right over the property and now a picture is projected as if the Cadastre No.727 is 1.37.00 hectares and wrongly classified, which is incorrect. There is no tampering or correction in the settlement register. The allegation is wrong and misleading only to project the mind of this Court.

(b) A survey was conducted from 1971 onwards and also published in the Gazette in the year 1972. No objection was raised either by the petitioners or their ancestors including the father of the petitioners, i.e. Mr.Narayanasamy. The publication in the Gazette is a conclusive proof and the public are deemed to be put to knowledge. Mr.Narayanasamy, through whom the petitioners derive title,

Page No.15/50



W.P.No.27727 of 2015

was a Mayor of Oulgaret Commune of Puducherry till 1968. He was very much alive when the Re-survey was conducted and neither Mr.Narayanasamy nor any family members of the petitioners raised any objection regarding classification of Cadastre No.726, R.S.No.44/2 as Government land/Tharisu and the particulars in the Settlement Register are final and binding unless modified by any order of Civil Court. In the present case, the petitioners and their family members who occupied high and responsible post in the Government are attempting to grab the Government land.

(c) The petitioners have, for the purpose of this Writ Petition, and for the first time, has come up with a stand that the original documents were destroyed during fire when Mr.Narayanasamy was under imprisonment. There is no evidence to that effect. Mr.Narayanaamy who was the Mayor of Oulgaret Commune, Pondicherry, never took such plea during his life time and never objected to the classification after re-survey. The petitioners who earlier undertook to produce the original documents before this Court in W.P.No.18284 of 1998 have now taken complete different stand. The petitioners in the earlier affidavit, did not claim that the documents were lost in fire. Further, they also did not have any Patta in their name with regard to the extent of land, which is clearly evident from their affidavit. The Writ Petition was disposed of and the petitioners were directed to produce the original documents of title to the



W.P.No.27727 of 2015

satisfaction of the authorities, which has never been produced. The application was rejected by order dated 27.05.2022. No originals were produced and only certified copies and photocopies were produced and they had claimed that originals were available. The Patta produced by them was found to be forged and fabricated.

(d) The petitioners again filed W.P.No.37337 of 2002 challenging the order of the Settlement Officer, dated 27.05.2002. Even in the affidavit, they had not mentioned that the original documents got destroyed in fire. The said Writ petition was dismissed with observation that the originals have not been produced and the alleged certified copy of Patta is also suspicious and hence, reasons in the impugned order cannot be found fault with. Writ Appeal No.149 of 2013 filed by them was also dismissed. No liberty was also granted.

(e) The petitioners filed third Writ Petition in W.P.No.1399 of 2013 and again in that Writ Petition, it was not mentioned that the original documents were lost in fire. The relief that is to be sought in the suit, was sought in the Writ Petition. They had once again misleadingly pleaded as if original was produced, though they had only filed the alleged certified copies. During the course of hearing, this Court, on 24.11.2016, referred to the order of the Apex Court in Civil Appeal No.1132 of 2011, in which, directions were issued to remove the illegal occupants from the common village land. The above Writ Petition was



W.P.No.27727 of 2015

dismissed as withdrawn. This is the fourth Writ petition on the same subject.

WEB COPY

(f) Mr.Narayanasamy had accepted his position as an encroacher of R.S.No.44/2, Cadastre No.726 and also paid appropriate tax as an encroacher. It implies that the title of the Government has been accepted and during his lifetime, he has not claimed any title over the property to claim any right. The fact that he has accepted his position as an encroacher, is not disputed. An encroacher cannot claim any prescriptive right and he would not pay any charges/tax if Patta was already there in his name. Hence, the petitioners are also not entitled to claim any right over the property. The Gazette publication in 1997 was only with regard to classification of lands for the purpose of declaring the development zone by the planning authority under the Town and Country Planning Act and not with regard to ownership of the property. The petitioners are again attempting to mislead this Court, as the survey was completed and published in the Gazette in 1972.

(g) The petitioners have approached this Court with unclean hands and in suppression of material facts and particulars and hence, the Writ Petition is liable to be dismissed. Therefore, the impugned order passed by the third respondent is in order, considering all the materials and the petitioners have been given opportunity. Challenging the order of the third respondent, the petitioners have filed a Writ Petition and the same was dismissed, as the petitioners are having



W.P.No.27727 of 2015

Revenue. Therefore, even if it is taken that the Matrice Cadastre (Patta) dated 02.09.1950 was not issued by the then Fench Government and not in existence and the absolute title and possession of the great grandfather of the petitioners, and now, the petitioners are legal, valid and enforceable and hence, immaterial. However, the third respondent has simply and vaguely stated that the Matrice Cadastre (Patta) is suspected as manipulated and passed an order dated 27.05.2002, rejecting the application and ordering to maintain the said mistake and wrong entry made in the Settlement Register and the Register of Rights. Against the said order dated 27.05.2002, without availing the alternative remedy, the petitioners have straightaway filed W.P.No.37337 of 2002 before this Court, to quash the said order and direct the third respondent to restore the Revenue Records in their names. By order dated 13.08.2012, this Court dismissed the said Writ Petition, against which, they have filed Writ Appeal No.149 of 2013 and by judgment dated 11.01.2013, the Division Bench of this Court accepted the representation made by the Government Advocate that against the order of third respondent, an appeal lies before the competent authority and without exhausting the said statutory and more efficacious alternative remedy, the writ petition was filed before this Court and dismissed the Writ Appeal.

16. Based on the observation made in the judgment in the above said Writ

Page No.20/50



W.P.No.27727 of 2015

Appeal, as against the order dated 27.05.2022, the petitioners have filed an appeal under Section 19(1) of the Pondicherry Settlement Act, 1970, before the first respondent and the said appeal was transferred to the second respondent and numbered as Appeal No.2 of 2013. The second respondent, without considering all the documents, and the position of law, recorded incorrect, faulty, untenable and perverse reasons and findings, referred to the actions, including under the Pondicherry Land Encroachment Rules, taken solely based on the impugned wrong entry and by order dated 27.12.2013, dismissed the appeal. As against the said order dated 27.12.2023, the petitioners have filed Revision Petition No.3 of 2014 under Section 22 of the Pondicherry Settlement Act of 1970 before the first respondent. The first respondent, while passing the order, had not considered the documents and the position of law, recorded incorrect, faulty, untenable and perverse reasons and findings and by order dated 23.03.2015, dismissed the said Revision Petition. Therefore, the present Writ Petition has been filed by the petitioners challenging the above orders on the ground that the same are arbitrary, incorrect, misconceived and illegal and untenable and perverse and hence, the same is liable to be quashed. Consequential direction has to be issued to them to rectify the mistake, etc.

17. The learned Senior Counsel appearing for the petitioners further

Page No.21/50



W.P.No.27727 of 2015

contended that the respondents as Governmental authorities, have to act justly, fairly and reasonably in dealing with the citizens including the petitioners and State and produce only true, correct, relevant, legal and tenable facts and documents and leave it to the decision of the Court. But the facts stated above show that they have not acted or done so. It is further submitted by the learned Senior Counsel that the second respondent has made the impugned wrong entry in the Settlement Register and the Register of Rights without any power and authority and that too, directly contrary to the binding list of Government poramboke lands prepared and published by the then French Government in its Journal Official, dated 01.04.1910. Even then, it is attempting to sustain such wrong entry and hence, it is bound to state the basis of the said entry and produce documents in support of the same.

18. In support of his submissions, learned Senior Counsel appearing for the petitioners relied upon a decision of the Supreme Court reported in 2012 (12) SCC 170 (Real Estate Agencies Vs. State of Goa and others), wherein the Honourable Supreme Court held as follows:

"20. The Housing Society (defendant No.5), on the other hand, claim easementary right of enjoyment of the open space. It is only the Municipal Corporation, Panaji (defendant No.2), who had claimed that the



land has vested in it. How and in what manner such vesting had occurred, however, had not been stated in support of the claim of the Corporation. There is complete silence in this regard. In such circumstances, it was incumbent on the High Court to undertake a deeper probe in the matter in order to find out whether the claim of the Corporation had any substance or had been so raised merely to relegate the Petitioner to a more "lengthy, dilatory and expensive process" that is inherent in a civil suit."

19. Learned Senior Counsel appearing for the petitioners submitted that the impugned orders passed by the respondents 1 and 3, have specifically claimed as follows:

"the Settlement Registers were prepared with reference to the survey registers which correlates to the entries of Revenue Records existing prior to the introduction of resurvey."

"Even prior to resurvey operations, the land has been classified as Government Poramboke."

20. Further, in the counter affidavit filed by the respondents, they have



W.P.No.27727 of 2015

also specifically claimed as follows:

WEB COPY

"9. the settlement registers were prepared with reference to the survey registers correlated to the entires of revenue records existing prior to the introduction of the Resurvey and Resurvey operations was conducted during the year 1971 and 1972.

11. the settlement registers were prepared with reference to the survey registers which correlated to the entries of revenue records existing prior to the introduction of the Resurvey.

13. the said land was earmarked as "Colony Poramboke" during the cadastral survey operations which was done during the French Administrative period in Puducherry."

15. In fact, the property that earlier stood with the French Government would now vest with the Union"

21. Along with the counter affidavit, the respondents have filed typed set of papers, dated 04.09.2023, but they have not produced those Revenue Records claimed by them as the basis for the impugned wrong entry in it. The respondents have not produced those Revenue Records before this Court and they have also not produced copy of the records to the petitioners. As stated above, in respect of the first two portions of the absolute private agricultural

Page No.24/50



W.P.No.27727 of 2015

lands, bearing Cadastre Nos.723 and 737 owned and possessed by the great grandfather of the petitioners. The second respondent has issued notice to them referring to the Register Notarial Sale dated 18.04.1921 and binding Journal Official, dated 02.04.1932, assigned R.S.No.42/2 and 45/2 and entered the name of the father of the petitioners Mr.Narayanasamy as the owner in the Settlement Register and Register of Rights and issued Patta bearing Patta No.355 in his name. Therefore, the said Journal Official dated 02.04.1932 is irrelevant and immediately to decide the correctness of the impugned wrong entry of the Government land made in respect of the present third portion of the absolute private agricultural land bearing Cadastre No.726 owned and possessed by the petitioners.

22. Learned Senior Counsel appearing for the petitioners further submitted that at the time of re-survey proceedings made in the year 1972, the second respondent came and it has power and authority to enter only the Poramboke lands included by the then French Government in the list of Government Poramboke lands prepared and published by it in its Journal Official, dated 01.04.1910 as the Government Poramboke lands in the Settlement Register and Register of Rights. The learned Senior Counsel further submitted that the respondents are fully aware of the above facts, but they have produced

Page No.25/50



W.P.No.27727 of 2015

the said irrelevant and immaterial Journal Official dated 02.04.1932 relating to the petitioners' first two portions of the absolute private agricultural lands bearing Cadastre Nos.723 and 727 and now assigned R.S.Nos.42/2 and 45/2 and Patta No.355 and made incorrect, misleading and untenable representation before this Court, which is contrary to the binding Journal Official, dated 01.04.2010. That non-inclusion of this third portion of the absolute private agricultural lands bearing Cadastre No.726 in the said Journal Official, dated 02.04.1932 proves that it is a Government Poramboke land. Therefore, it is obvious that the intention of the respondents to create confusion, misleading this Court and benefit of the same. He has also placed reliance on the judgment of the Supreme Court in the case of S.P.Chengalvaraya Naidu Vs. Jagannath and others, reported in 1994 (1) SCC 1, in which the Apex Court observed as follows:

"5. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

23. Therefore, the contentions of the respondents at the time of



W.P.No.27727 of 2015

arguments on 22.12.2023 are incorrect and untenable and liable to be rejected.

WEB COPY

24. The learned Senior Counsel appearing for the petitioners further submitted that in view of the facts, documents, reasons and position of law stated above, the impugned wrong entry of Government Poramboke land made for the first time by the second respondent in the Settlement Register and Register of Rights, is unlawful and bad at the inception itself. All the subsequent actions, claims and orders were taken/made by the respondents only based on such wrong entry.

25. The learned Senior Counsel appearing for the petitioners also placed reliance on the judgment of the Supreme Court reported in 2011 (13) SCC 436 (State of Orissa and another Vs. Mamata Mohanty), in which the Apex Court held as follows:

"Order bad in inception

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an



WEB COPY



W.P.No.27727 of 2015

order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide: Upen Chandra Gogoi Vs. State of Assam (1998 (3) SCC 381 : 1998 SCC (L & S) 872 : AIR 1998 SC 1289), Mangal Prasad Tamoli Vs. Narvadeshwar Mishra (2005 (3) SCC 422 : AIR 2005 SC 1964, and Ritesh Tiwari Vs. State of U.P. (2010 (10) SCC 677 : 2010 (2) SCC (L & S) 785 : AIR 2010 SC 3783").

26. Therefore, learned Senior Counsel appearing for the petitioners claim that all such subsequent actions, claims and orders including the action taken under the Pondicherry Land Encroachment Act, 1970, the eviction action taken by the fourth respondent under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the representations made by the respondents before this Court in W.P.No.18284 of 1998, W.P.No.37337 of 2002, W.A.No.149 of 2013 and W.P.No.1399 of 2013, the reasons and findings recorded in the impugned orders and the incorrect, irrelevant and immaterial contentions made in the counter affidavit filed by the respondents to this Writ Petition, are non-est and cannot



W.P.No.27727 of 2015

validate the impugned entry, which was unlawful and bad at the inception itself.

Hence, the learned Senior Counsel appearing for the petitioners prayed to allow this Writ Petition and issue suitable direction to correct the impugned entry.

27. The learned Government Advocate (Pondicherry) appearing for the respondents submitted that a perusal of the alleged registered document of French and in translation in English made before the Notaire Vide RV.123 No.345, Registered at Puducherry on 05.06.1913, a private sale deed, is executed by Coundar, S/o Manjini Coundar in respect of the property comprised in Paimache Nos.3686, 3688, 3689, 3690, 3693 and 3694 ad-measuring 98-1/2 Kuzhis only. The original has not been produced. The sale deed is based on an earlier partition. The particulars of the previous owners are not mentioned. A partition is claimed to be entered based on mere possession. On a further perusal of the records, it is seen that another alleged registered document in French and its translation in English made before the Notaire, vide RV.94 No.83, dated 27.10.1915, allegedly 7 prominent members had affirmed that the properties of 11 items were possessed and enjoyed by the deceased Ramu Coundar and then by his descendants. Then there was allegedly partitioning of 11 items of land which was said to be under enjoyment of the legal heirs of the deceased Ramu Coundar, out of which, the first 6 items bearing the Paimache



W.P.No.27727 of 2015

Nos.3686, 3688, 3689, 3690, 3693 and 3694 ad-measuring 2 Kanis 95 kuzhi and 8 Veesams are the property for which the petitioners requested for grant of Patta. Again, the particulars of the original owners are not mentioned and a claim seems to be made based on possession and the petitioners have failed to prove that the above said 6 Paimach numbers correlate to Cadastre No.726 of Karuvadikuppam Revenue Village, as the records produced by the respondents proved that Cadastre No.726 never stood in the name of the ancestors of the petitioners. The petitioners have not produced the originals of the documents to prove the genuineness of the documents.

28. The learned Government Advocate (Pondicherry) further contended that the petitioners, in their affidavit, have admitted that in the suo-motu transfer proceedings initiated by the Mutation Office under the then Revenue Department under Article 2 of the Deliberation of the General Council, dated 24.12.1928 and approved by the decree dated 10.07.1929, the then Revenue Department has transferred the registration of the lands standing in the names of the erstwhile land owners to the names of new land owners taken place till that date, wherein, land under Cadastre Nos.723 1/3, 2/3 and 3/3 corresponding to Pimache Nos.3679, 3680 and 3681 had been transferred from the erstwhile land owner Coumarane, S/o Narayanane to the new ownes, viz., (i) Govindammal, W/o



W.P.No.27727 of 2015

Periasamy Countdar, (ii) Rangasamy Countdar, S/o Ramu Countdar and (iii) Sinnammal, W/o Souprayan Countdar. However, no such entry is published in the Official Journal, dated 02.04.1932 in respect of the land under Cadastre No.726 which clearly indicates that the land under Cadastre No.726 is a Government land and not a private land.

29. The learned Government Advocate (Pondicherry) appearing for the respondents further contended that now, the petitioners having failed in three rounds of litigation before this Court, are attempting to grab the Government land with new contentions. The petitioners have not produced any document to correlate Cadastre number with Pymash number. Further, the reliance upon adjacent property, sale and re-sale of certain properties, have nothing to do with the case on hand. In fact, there is no clarity in the claim of the petitioners.

30. The learned Government Advocate (Pondicherry) further submitted that the settlement registers were prepared with reference to the survey registers which correlated to the entries of Revenue Records existing prior to the introduction of survey. After completion of re-survey operations, before finalisation of Register of Rights, individual rough Patta notices were issued to all the Patta holders calling for objections, if any. After lapse of specified period of



W.P.No.27727 of 2015

time of three months, when no objections were received in respect of the land, Register of Rights were finalised, notified and subsequently settlement records were prepared accordingly.

31. Learned Government Advocate (Pondicherry) appearing for the respondents also contended that the entry in the Settlement Register pertaining to 39-Karuvadikuppam Revenue Village, in respect of R.S.No.44/2 stands as such without any modification from the time of Re-Survey and Settlement, and as per the provisions of the scheme report of the settlement officer, issued, vide G.O.Ms.No.41, dated 01.11.1971 of the Revenue and Finance Department, Pondicherry and published in the supplement to Gazette No.6 of 08.02.1972 Para XVI of the Scheme Report states as follows:

"the settlement, Patta will be issued on the basis of the existing Revenue Records showing their enjoyment as verified on ground by the settlement filed staff and supported by documents of title, wherever, they are produced or are available."

32. The learned Government Advocate (Pondicherry) appearing for the respondents further submitted that the settlement registers to the entries of the Revenue Records are existing prior to the introduction of re-survey. As per the



W.P.No.27727 of 2015

survey register of Karuvadikuppam Revenue Village, prepared during the survey operations the lands comprised under R.S.No.44/2 correlates to Cadastre No.726 with remarks as "Colony Poramboke". At this juncture, the father of the petitioners, i.e Mr.Narayanasamy, was a renowned freedom fighter and was Mayor of Oulgarent Commune Panchayat till 1968, expired only in the year 1993. In this regard, after completion of re-survey operations, the individual rough Patta notice copy under Section 8(2) of the Pondicherry Survey and Boundaries Act, 1967, was issued to the petitioners' father (Naraynasamy), vide Patta No355, correlating to R.S.No.45/2, Cadastre Nos.727, 728 of Karuvadikuppam Revenue Village.

33. The learned Government Advocate (Pondicherry) further contended that the father of the writ petitioners being a renowned person in the society, without preferring an appeal against non-inclusion of Cadastre No.726 before the then Director-cum-Appellate Authority for the land in question, instead, agreed that the said land is a Government Poramboke land at R.S.No.44/2, Cadastre No.726 of 39-Karuvadikuppam Revenue Village, had paid the encroachment tax and penalty for the portion of encroachment, which was booked under Section 7 of the Pondicherry Land Encroachment Act, 1970. As per the survey register of Karuvadikuppam Revenue Village prepared during the re-survey operations, the



W.P.No.27727 of 2015

lands comprised in R.S.No.44/2 correlates to Cadastre No.726, with remarks as "Colony Poramboke", which clearly indicates that the land under Cadastre No.726 is a Government land and not a private land.

34. Learned Government Advocate (Pondicherry) further submitted that if the petitioners claim title, they must prove the same by producing the documents, as held by the Supreme Court in the case of State of M.P. Vs. Nomi Singh, reported in 2015 (14) SCC 450 : 2015 SCC OnLine SC 251 at page 452. The relevant portion of the above decision of the Supreme Court reads as follows:

"11. It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case. On perusal of the impugned order passed by the High Court, this Court finds that the High Court has wrongly shifted burden of proof on the defendants. In the middle of para 12, while giving its reasons to disagree with the decree passed by the courts below, the High Court has observed as under:

“It was the respondent-defendant who has challenged the possession of the plaintiff and his father on the ground of khasra entries, therefore, burden of proving the fact that allegations made by the defendant are correct, is on the defendant, in which the defendant has failed. Further, it has been



WEB COPY



W.P.No.27727 of 2015

admitted before the Court that entry of the plaintiffs in the khasra record is as encroacher, but no such khasra entries have been produced by them....”

In the middle of para 15 of the impugned decree, again the High Court observes:

“Further, the defendant has failed to prove the possession of the plaintiff and his father was that of an encroacher. The defendant has further failed to prove Khasra Nos. 1950 to 1952 to be wrong or that patta given to the plaintiffs, was only for one year....”

The above observations made by the High Court, show that it has erroneously placed onus of proof of title and possession of the plaintiffs, on the defendant. The High Court has completely ignored the fact that the plaintiff after losing case in the first round from the trial court, got amended the plaint and took plea of adverse possession, on which matter was remanded to the trial court, and after hearing parties suit was again dismissed, which was upheld by the first appellate court. The above approach of the High Court is against the law laid down by this Court, and in our opinion, it erred in law in reversing the decree passed by the trial court and that of the first appellate court by shifting burden of proof on the defendant.

12. From the perusal of the papers on record, it appears that though the plaintiffs have pleaded that Surjan Singh was granted an oral patta by erstwhile Zamindar Srilal, but it has not been averred in the plaint as to in which year or



WEB COPY



W.P.No.27727 of 2015

Samvat such an oral patta was given to Surjan Singh (father of plaintiff Nomi Singh). The first appellate court has rightly taken note of the fact that if the respondents (plaintiffs) were bhumiswamis, they could have filed the receipts of payments of land revenue (lagaan), or the receipts of crop profits paid to the zamindar. Though the plaintiffs did file some documentary proof in the form of khasra entry in respect of some of the plots in question, for the period of 1950-1952 (i.e. when admittedly land was allotted for one year to the father of the plaintiff), but the subsequent entries for period Samvat 2013 to Samvat 2018 disclosed that the land in question was part of industrial area and recorded in favour of the Commercial Department of the State.

13. Apart from this, the trial court and the first appellate court have rightly found that to succeed on the plea of adverse possession, the plaintiffs should have disclosed and proved as to when the adverse possession started and when it was perfected by them, particularly when they were declared encroachers way back in the year 1978 by the Tahsildar. As such, in our opinion, the plaintiffs have failed to prove their case on the grounds taken by them in the plaint.

14. For the reasons, as discussed above, we find that the High Court has erred in law in allowing the second appeal and setting aside the decree passed by the first appellate court. Accordingly, this appeal is allowed. The impugned judgment and decree dated 30-5-2011, passed by the High Court in *Nomi Singh Vs. State of M.P.* [Second Appeal No. 256 of 2005, decided on 30-5-2011 (MP)] is set



W.P.No.27727 of 2015

aside and the judgment and decree passed by the first appellate court (the Eighth Additional District Judge, Gwalior, in Civil Appeal No. 5-A of 2004), affirming the judgment and decree passed by the Fifth Civil Judge, Class II, Gwalior, in Suit No. 189-A of 2004, is restored."

35. Further, a plea was already placed before this Court in W.P.No37337 of 2002 regarding production of original documents and the same was dismissed with the observation that the petitioners filed to produce the original documents in support of their claim and also suspected to have submitted manipulated document.

36. On the one hand, the petitioners claim title and on the other hand, they have claimed prescriptive rights and further, their father has paid encroachment tax/charges which cannot go together. The lands are classified as Tharisu/dry lands. It is well settled law that long and continuous possession by itself cannot confer any right and it must be shown to be held in adverse to the knowledge of the actual owner and that the Courts must be circumspect while dealing with a claim of adverse possession over the Government lands, as held by the Supreme Court in the decision reported 2023 Livelaw SC 621



W.P.No.27727 of 2015

(Government of Kerala and another Vs. Joseph and others).

WEB COPY

37. The learned Government Advocate (Pondicherry) also contended that the allegations regarding corrections in the survey register are all false. The petitioners who are big landlords, must not resort to such illegal activities. The reference to Indian Evidence Act is completely misplaced. Similarly, the reference to French Code, De-facto Agreement and the Pondicherry (Administration) Act, 1962, is also misplaced. Even as per Section 4 of the Pondicherry (Administration) Act, the French laws will be in force only until a legislation is made by the Legislature of Pondicherry or by any competent authority. Therefore, the reference to Article 226 of the Constitution of India or Sections 3 and 5 of the said Act is misplaced. In fact, the property that earlier stood with the French Government would now vest with the Union and the Union Territory is administered by the Honourable President of India through the Administrator as per the Constitution of India.

38. Heard both sides and perused the materials available on record.

39. The specific case of the petitioner is that as per Article III of the De-Facto Agreement, dated 21.10.1954 entered into between the Government of

Page No.38/50



W.P.No.27727 of 2015

India and the Government of France, the actions, the Matrice Cadastre (Patta) and the Journal Official, dated 01.04.1910, containing the list of Poramboke lands prepared and issued/published by the then French Government, are binding on the Government of Puducherry and its officers, including the respondents herein. Therefore, they are bound to accept and enforce the same and they are barred and estopped from claiming/entering anything contrary to the same. The second respondent had made Re-survey settlement proceedings in the year 1972 itself and that, at the time of Cession in the year 1962, the then French Government had handed over all its Revenue and Settlement records, including the Mutation proceedings, the Matrice Cadastres (Pattas) and the list of Poramboke lands prepared and published by it in its Journal Official, dated 01.04.1910 etc., to the Government of Puducherry and available in the custody of the respondents 2 and 3. Hence, the then French Government cannot and it had also not claimed it as Poramboke land vested with it, and not included in the list of Government Poramboke lands prepared and published by it in its Journal Official, dated 01.04.1910 and they had not transferred to the Government of Puducherry at the time of Cession with Union of India in the year 1962 and hence, not vested with the Government of Puducherry as per Section 5 of the Pondicherry Administration Act, 1963.



W.P.No.27727 of 2015

40. According to the petitioners, the above list of Government Poramboke lands, is the only basis for making entries as Government Poramboke lands in the Settlement Register and Register of Rights at the time of Re-survey settlement proceedings made in the year 1972 and this portion of absolute private agricultural land was not included in the above said list and it has also no power and authority to claim or treat this portion of the absolute private agricultural land as a Government Poramboke land vested with the Government of Puducherry and enter so for the first time in the Settlement Register and Register of Rights.

41. The properties in question are also existing as an absolute private agricultural land prior to and also at the time of the Re-survey Settlement proceedings made by the second respondent in the year 1972 and the second respondent assigned R.S.No.44/2 to it and bound to enter so in the Settlement Register and Register of Rights, but by mistake, as stated by the petitioners in their affidavit filed in support of this writ petition, it has not issued notice and heard them, but the following documents were brushed aside, i.e. Registered Notarial Sale Deed dated 28.05.1913, the Registered Notarial Partition Deed, dated 26.10.1915, the binding Matrice Cadastre (Patta) bearing Patta No.171, dated 02.09.1950 and the binding list of Government Poramboke lands prepared



W.P.No.27727 of 2015

and published in the Journal Official, dated 01.04.1910, and it was arbitrarily and wrongly entered it as a Government Poramboke land in the Settlement Register and Register of Rights.

42. The case of the respondents is that on a perusal of the alleged registered document of French and in translation in English made before the Notaire Vide RV.123 No.345, Registered at Puducherry on 05.06.1913, a private sale deed, is executed by Ramu Coundar, S/o Manjini Coundar in respect of the property comprised in Paimache Nos.3686, 3688, 3689, 3690, 3693 and 3694 ad-measuring 98-1/2 Kuzhis only. The original has not been produced. The sale deed is based on an earlier partition. The particulars of the previous owners are not mentioned. A partition is claimed to be entered based on mere possession. On a further perusal of the records, it is seen that another alleged registered document in French and its translation in English made before the Notaire, vide RV.94 No.83, dated 27.10.1915, allegedly 7 prominent members had affirmed that the properties of 11 items were possessed and enjoyed by the deceased Ramu Coundar and then by his descendants. Then there was allegedly partitioning of 11 items of land which was said to be under enjoyment of the legal heirs of the deceased Ramu Coundar, out of which, the first 6 items bearing the Paimache Nos.3686, 3688, 3689, 3690, 3693 and 3694 ad-measuring 2 Kanis



W.P.No.27727 of 2015

95 kuzhi and 8 Veesams are the property for which the petitioners requested for grant of Patta. Again, the particulars of the original owners are not mentioned and a claim seems to be made based on possession and the petitioners have failed to prove that the above said 6 Paimach numbers correlate to Cadastre No.726 of Karuvadikuppam Revenue Village, as the records produced by the respondents proved that Cadastre No.726 never stood in the name of the ancestors of the petitioners. The petitioners have not produced the originals of the documents to prove the genuineness of the documents.

43. The petitioners having failed in three rounds of litigation before this Court, are attempting to grab the Government land with new contentions. The petitioners have not produced any document to correlate Cadastre number with Pymash number. Further, the reliance upon adjacent property, sale and re-sale of certain properties, have nothing to do with the case on hand. There is no clarity in the claim of the petitioners.

44. The settlement registers to the entries of the Revenue Records are existing prior to the introduction of re-survey. As per the survey register of Karuvadikuppam Revenue Village, prepared during the survey operations the lands comprised under R.S.No.44/2 correlates to Cadastre No.726 with remarks



W.P.No.27727 of 2015

as "Colony Poramboke". The father of the petitioners, i.e Mr.Narayanasamy, was a renowned freedom fighter and was Mayor of Oulgarent Commune Panchayat till 1968, expired only in the year 1993. After completion of re-survey operations, the individual rough Patta notice copy under Section 8(2) of the Pondicherry Survey and Boundaries Act, 1967, was issued to the petitioners' father (Naraynasamy), vide Patta No355, correlating to R.S.No.45/2, Cadastre Nos.727, 728 of Karuvadikuppam Revenue Village.

45. The father of the writ petitioners being a renowned person in the society, without preferring an appeal against non-inclusion of Cadastre No.726 before the then Director-cum-Appellate Authority for the land in question, instead, agreed that the said land is a Government Poramboke land at R.S.No.44/2, Cadastre No.726 of 39-Karuvadikuppam Revenue Village, had paid the encroachment tax and penalty for the portion of encroachment, which was booked under Section 7 of the Pondicherry Land Encroachment Act, 1970. As per the survey register of Karuvadikuppam Revenue Village prepared during the re-survey operations, the lands comprised in R.S.No.44/2 correlates to Cadastre No.726, with remarks as "Colony Poramboke", which clearly indicates that the land under Cadastre No.726 is a Government land and not a private land.



W.P.No.27727 of 2015

46. According to the petitioners, they are claiming the land comprised in R.S.No.44/2 correlating to Cadastre No.726, is a private land which belongs to the writ petitioners, as it is their ancestral property and they have derived title from partition. Even at the time of cession, the land(s) is/are handed over and declared as Government land(s) and while the French Government handed over the land(s) to the Pondicherry Government, the land(s) had not been declared as 'poramboke lands' by the French and handed over to the Pondicherry Government and these lands were not covered as 'poramboke lands', and the same are not 'colony poramboke' lands. It is only private agricultural lands(s), whereas, the petitioners have also earlier filed writ petition (as stated supra), and the property(ies) mentioned therein are not the subject property(ies). The petitioners claim title through Narayanasamy (who is the father of the writ petitioners). But from the records, it is seen that the said Narayanasamy was a renowned freedom fighter and who was also a Mayor of Oulgaret Commune of Puducherry till 1968 and he expired only in 1993. After re-settlement and after completion of re-survey operations, the individual rough Patta notice copy under Section 8(2) of the Pondicherry Survey and Boundaries Act, was issued to the said Narayanasamy, who is the father of the petitioners, vide Patta No.355, correlating to R.S.No.45/2, Cadastre Nos.727 and 728 of Karuvadikuppam Revenue Village.

Page No.44/50



W.P.No.27727 of 2015

WEB COPY

47. It is seen that the Patta Cadastre No.726 was not included by the French Government in the Revenue Records, which fact was fully aware by the father of the petitioners, i.e. Mr.Narayanasamy and he has not filed any appeal against non-inclusion of the said Cadastre 726 before the Director/appellate authority in respect of the land(s) in question. The father of the petitioners also admitted that the land in R.S.No.44/2, Cadastre 726 pertaining to 39-Karuvadikuppam Revenue Village, is a "Government Poramboke" and he also paid the encroachment tax and penalty for a portion of the encroachment, which was booked under Section 7 of the Pondicherry Land Encroachment Act, 1970. As per the survey register of Karuvadikuppam Revenue Village, prepared during the survey operations, the land(s) comprised under R.S.No.44/2 correlates to Cadastre No.726 with remarks as "Colony Poramboke". Thus, it is clear that the land under Cadastre No.726 is a Government land. When once the father of the petitioners, i.e. Narayanasamy himself admitted that the land is a "Government Poramboke" and he was given Patta for Cadastre Nos.727 and 728 of Karuvadikuppam Revenue Village, whereas the subject property is Cadastre No.726, which is an adjacent property with the other two properties (i.e. Cadastre Nos.727 and 728). Patta was granted to those two properties, but not to Cadastre No.726 and the said Cadastre No.726 was declared and shown as



W.P.No.27727 of 2015

"Colony Poramboke". The father of the petitioners, i.e. Mr.Narayanasamy did not file any appeal before the competent authority and he accepted it (Cadastre No.726) as a Government land and that he has encroached and paid encroachment tax and also he accepted that it is a "Government Poramboke" land and admitted that he is in possession of the Government land.

48. Thus, when the father of the petitioners, had himself admitted that he was an encroacher of the Government land and paid necessary encroachment tax and also paid penalty for a portion of the encroachment. Therefore, now the petitioners cannot say that Cadastre No.726 is not a "poramboke land". Till the lifetime of the father of the petitioners, and who was also not an illiterate or innocent person, and he was a renowned freedom fighter and was also a Mayor for some time till 1968 and all the exchange of land and also the cession had taken place during his lifetime. It is clear that the father of the petitioners, himself, admitted that the land(s) in question is a 'poramboke land' and he was also an encroacher and paid necessary encroachment penalty, the petitioners cannot now turn around and say that it is a private land.

49. When once a person admits that he is an encroacher, or a tenant, he is estopped from denying the title. A person who claims title and if he is a



W.P.No.27727 of 2015

tenant or a lessee or an encroacher, that person should first surrender the land in dispute and then he has to claim title. In this case, since there is a cloud in the title, the Writ Court cannot decide the issue on the subject and when the respondents have clearly denied that Cadastre No.726 is not a private land and it is a 'Government land' and the documents produced by the petitioners do not cover the disputed land and that the petitioners have not also produced the ancestral documents to substantiate their claim made in this Writ Petition, but they have simply stated that there was a partition and it was only based on enjoyment of the property(ies) in question. No material is produced to show that the property(ies) in question are originally private land(s), or they are ancestral property(ies) of the petitioners, more-so-ever, when the father of the petitioners, himself, admitted that he was an encroacher, that too, he had paid the penalty for the encroachment. The fact remains that the father of the petitioners never disputed the title and never claimed any Patta. In the above circumstances, the petitioners are not entitled to the relief sought for in this Writ Petition.

50. Since the father of the petitioners has not raised any objection for the land shown as Poramboke land or he has also not filed any appeal challenging the said entry, and he himself admitted that the land(s) in question is/are 'poramboke land' and that he has also paid necessary encroachment penalty, if



W.P.No.27727 of 2015

at all the petitioners have got any right, either they can approach the Civil Court for appropriate remedy or approach the authority under the relevant statute to seek necessary relief. This Court, sitting under Article 226 of the Constitution of India, cannot decide the title in this Writ Petition.

51. In the above facts and circumstances and in view of the foregoing discussion, the petitioners are not entitled to the relief sought for in this Writ Petition, as there is a cloud in the title in respect of the property(ies) in question.

52. For the reasons stated above, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

08.04.2024

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

CS

Page No.48/50



WEB COPY



W.P.No.27727 of 2015

To

1. The Secretary to Govt. (Revenue)-cum-
Revisional Authority,
under the Puducherry Settlement Act, 1970
Govt. of Puducherry, Puducherry.
2. The Director of Settlement,
Directorate of Survey and Land Records,
Puducherry.
3. The Settlement Officer-I,
Directorate of Survey and Land Records,
Puducherry.
4. The Deputy Collector (Revenue),
North-cum-Estate Officer,
Office of the Deputy Collector (Revenue)-North,
Govt. of Puducherry,
Puducherry.



WEB COPY



W.P.No.27727 of 2015

P.VELMURUGAN, J

CS

Pre-delivery order
in W.P.No.27727 of 2015

Order pronounced on
08.04.2024

Page No.50/50