



W.P.(MD)Nos.1662 of 2020 & 12656 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.03.2025

DELIVERED ON : 19.03.2025

CORAM

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.(MD)Nos.1662 of 2020 & 12656 of 2024

and

W.M.P.(MD)No.11261 of 2024

1.Sreekumaran Nair

2.Ramachandran Nair

3.Geetha : Petitioners in W.P.(MD)No.1662/20

1.Robert Bruce : Petitioner in W.P.(MD)No.12656/24

Vs.

1.The State of Tamil Nadu,

Represented by the District Collector of Kanyakumari,

at Nagercoil,

Kanyakumari District.

2.The Tahsildar,

Vilavancode,

at Kuzhithurai,

Kanyakumari District.



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3.The Special Commissioner and

Commissioner of Land Administration,

Chepauk,

Chennai – 600 005.

: Respondents in both Writ Petitions

[R3 is impleaded vide Court order dated 22.09.2022 in WMP(MD)No. 16406 of 2022 in WP(MD)No.1662 of 2020]

PRAYER in W.P.(MD)No.1662 of 2020: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the third respondent in his order in proceedings in R.Dis.No.K1.RP/4/88 dated 20.05.1997, on his file and the records of the first respondent pertaining to its subsequent order in Petition Status in Government of Tamil Nadu – Petition Processing Portal – Online Status, relating to Petition No.2019/9005/30/280249/0930 dated 30.09.2019 – Application (New Petition), dated 14.10.2019 on its file quash the same, directing the respondents to issue pattas for an area of 1 acre and 69 cents in favour of the first petitioner, for an area of 30 cents in favour of the second petitioner and for an area of 50 cents in favour of the third petitioner in Re-Survey No.422 of Malayadi Village, Vilavancode Taluk, Kanyakumari District within a time to be fixed by this Court.

[Prayer amended vide order dated 14.10.2022 in W.M.P.(MD)No. 17232 of 2022]



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PRAYER in W.P.(MD)No.12656 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the third respondent in his order in proceedings in R.Dis.No.K1.RP.4/88 dated 20.05.1997 on his file and the records of the second respondent, pertaining to his subsequent order in his order in letter No.Aa2/38837/2010 dated 10.01.2011 on his file, communicated under endorsement of the District Collector of Kanyakumari at Nagercoil in M4/28593/10 dated 24.03.2011, signed on 25.03.2011, on his file, quash the same, directing the respondents to issue pattas for an area of 1 acre and 10 ½ cents in Re-Survey No.422 of Malayadi Village, Vilavancode Taluk, Kanyakumari District in favour of the petitioner within a time to be fixed by this Court.

For Petitioners : Mr.K.N.Thampi

For Respondents : Mrs.K.Malathi

Additional Government Pleader

[In both Writ Petitions]

COMMON ORDER

As the issue in both these Writ Petitions is common, with the consent of the learned Counsel in both the matters, the Writ



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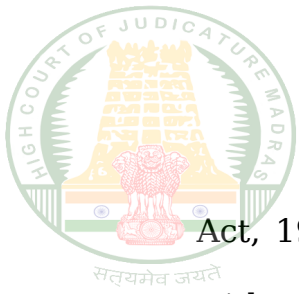
Petitions have been heard together and are being disposed of, by this common order.

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2.The case of the writ petitioners in W.P.(MD)No.1662 of 2020 is that they belong to Nair Tarwad. They trace title to one Neelakanda Pillai, Chellapan Pillai. The name of the Tarwad was Chathancode Veedu alias Chathankottu Veedu, which Tarwad was entitled to 18 hectares 66 ares [equivalent to 46 acres and 9 cents] comprised in Old Survey Nos.2022A and 2022B in Lekkom No.47, formerly Vilavancode village, then Palukal Village.

3.A suit was filed in O.S.No.38 of 1089 (M.E.), which corresponds to 1913/1914 A.D., on the file of the District Judge, Nagercoil. The suit was filed for declaration of title and possession of the properties which have been wrongly included in the Government records as poramboke lands. After contest, by judgment dated 14.09.1915, the District Judge, Nagercoil decreed the suit, thereby declaring the title of the Tarwad of the plaintiffs, holding that the lands were not poramboke lands and also directed issue of patta in favour of the Tarwad of the plaintiffs.

4.It is the further case of the plaintiffs that after re-organization of the States, in terms of the States Reorganisation



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Act, 1956, the subject lands became part of the then Madras State with effect from 01.11.1956. The father of the writ petitioners joining hands with others of the Chanthancode Veedu, filed O.S.No.7 of 1961, before the Sub-Court, Padmanabapuram and obtained delivery of portions of the property in Old Survey No.2022A and 2022B, which was in the possession of the defendants in the said suit. Thereafter, the father of the petitioners, Chellappan Pillai and others filed yet another suit in O.S.No.441 of 1989, on the file of the II Additional District Munsif, Kuzhithurai, against the State of Tamil Nadu represented by its District Collector, Kanyakumari and also the Tahsildar, Vilavancode, seeking relief of permanent injunction to restrain the defendants from interfering with the writ petitioners' father's peaceful possession and enjoyment of the subject lands in Old Survey Nos.2022A and 2022B. Pending the said suit, Chellappan Pillai died and the writ petitioners were brought on record as plaintiffs in the said suit. Ultimately, the suit also came to be decreed on 06.02.1998, in favour of the petitioners.

5.The further case of the writ petitioners is that the said Old Survey Nos.2022A and 2022B came to be resurveyed as Re-Survey No.422 and on bifurcation of Palukal village, thereafter, the property in Re-Survey No.422 was situated in Malayadi Village.



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6.It is also the specific case of the petitioners that the Government of Tamil Nadu took a gift of 3 cents by way of a registered Gift Deed dated 10.06.1998, which was executed by one Arthur son of Sreedharan, in which Gift Deed there is specific mention of Old Survey Nos.2022A and 2022B, being re-assigned re-survey No.422. The said Gift Deed was registered as Document No.900 of 1998, on the file of the Sub-Registrar, Palukal. Placing strong reliance on the said Gift Deed, the petitioners contend that Old Survey No.2022A and 2022B and then re-survey No.422 was only patta lands and not poromboke lands as being contended by the respondents. In fact, it is also the case of the petitioners that pursuant to the various decrees in the civil suits, patta was mutated in the name of the father of the petitioners in Patta No.4682. However, ignoring all these material documents, the Special Commissioner and Commissioner of Land Administration has held otherwise and passed the impugned order.

7.The case of the petitioners is that the petitioners have been in absolute possession and enjoyment of the subject lands and portions of the same have also been alienated after effecting registered Partition Deeds amongst the co-owners on 29.04.1991 as



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well as 05.12.1996. In fact, one of the purchasers by name Robert Bruce, is the writ petitioner in W.P.(MD)No.12656 of 2024. The impugned order of the first respondent is challenged by the petitioners on the ground that the order is arbitrary, mala fide besides also passed in violation of principles of natural justice including *audi alterum partem* ie., without giving a fair opportunity to the petitioners before passing the impugned order.

8.The petitioner in W.P.(MD)No.12656 of 2024, being the purchaser from the writ petitioners in W.P.(MD)No.1662 of 2020 has challenged the order of the third respondent in proceedings R.Dis.No.K1.RP.4/88 dated 20.05.1997 as well as records of the second respondent relating to subsequent order dated 10.01.2011 under endorsement of the District Collector of Kanyakumari District at Nagercoil dated 25.03.2011 and to consequently direct the respondents to issue patta to the petitioner. The petitioner as purchaser has only toed the same line that has been taken by the writ petitioner's vendors.

9.The respondents have filed a counter affidavit denying the averments in the Writ Petitions. According to the respondents, the lands have been classified as poromboke lands even after the State reorganization on 01.11.1956 and Old Survey No.2022A of an



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extent of 12.09 acre has been classified as Hill Rock and old survey No.2022B of an extent of 32.39 acres was classified as Rock poramboke and during re-survey, the said survey numbers were brought under re-survey No.422 and registered as poromboke lands. It is the further case of the respondents that a suit in O.S.No.7 of 1961, was against private individuals and Government was not a party to the said suit and therefore, the decree in O.S.No.7 of 1961, would not bind the State.

10.Insofar as the other suit in O.S.No.441 of 1989 is concerned, it is the stand of the respondents that the suit was filed only in respect of lease of quarrying rights and the writ petitioners cannot take undue advantage of the decree in the said suit. The various alienations pursuant to the partition deeds of the Government poromboke lands are not maintainable under law and rightly the impugned orders have been passed rejecting the request for patta. It is also contended that the claim of the petitioners is barred by limitation, since resurvey and settlement was finalised even in the year 1976 and a suit having not been filed under Section 15 of the Tamil Nadu Survey and Boundaries Act, 1923, the belated attempts by way of writ petitions was not maintainable.



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11.I have heard Mr.K.N.Thampi, learned Counsel for the petitioners in both the Writ Petitions and Mrs.K.Malathi, learned Additional Government Pleader for the respondents in both the writ petitions. I have also gone through the records including the impugned orders in both the Writ Petitions.

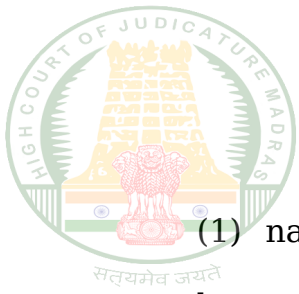
12.The learned Counsel for the petitioners reiterating the averments in the affidavits in support of the Writ Petitions would take me through various judgments in the three suits which have been discussed herein above and also the fact that the Government itself recognized the lands to be private patta lands by taking a Gift of 3 cents. Further, he would contend that in the subject lands, there are as many as 140 pattas issued to various persons and several alienations have been made and even a Church has been constructed as late as in June 1998. He would further place reliance on the Encumbrance Certificate to fortify his contentions that several alienations have taken place in the subject survey numbers and it was therefore, not open to the respondents to deny patta, when it comes to the writ petitioners alone, citing lands to be Government poramboke lands.



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13. Learned Counsel for the petitioners Mr.K.N.Thampi, would also invite my attention to the provisions of the States Reorganisation Act, 1956, which came into force on 01.11.1956. He would place reliance on Section 4, which pertains to transfer of territory from Travancore to Cochin to the then State of Madras, which has specific reference to Vilavancode Taluk. He would also take me through provisions of the Act 30 of 1964, namely the Tamil Nadu [Transferred Territory] Ryotwari Settlement Act, 1964. He would emphasise on the object of the said legislation being only to provide for Survey and Ryotwari Settlement of lands in Kanyakumari District and Shengottai Taluk, Tirunelveli District. He would also place reliance on the definition of the “Ryotwari Assessment” under Section 2(g) which means assessment payable to the Government under sub-section (1) of Section 10. He would also refer to the definition of “Land Holder” under Section 2(f), which has been set out to mean registered holder of any land and same would include his heirs, legal representatives and assigns as well as any person who under any law for the time being in force is liable to pay public revenue due in respect of land held by him. He would then take me through Section 8, pertaining to survey of lands, more specifically, Section 8(2), which enables resurvey to be conducted even if land has already been surveyed under the Act referred to in sub-section



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(1) namely Tamil Nadu Survey and Boundaries Act, 1923, if it becomes necessary for such resurvey, insofar as ryotwari settlement of that land is concerned. Therefore, learned Counsel for the petitioners would submit that the scope of the Act itself is very restricted and the power conferred on the third respondent was only limited to the exercise of assessing the persons who are liable to pay tax.

14. Learned Counsel for the petitioners would therefore submit that the third respondent has clearly exceeded his jurisdiction in passing the impugned order, that too ignoring the binding decisions of competent Civil Courts, to which, even the State was a party. Learned Counsel for the petitioners would also attack the findings of the third respondent in the impugned order dated 20.05.1997, where without any discussion whatsoever, the third respondent has proceeded to hold that the petitioners were not in possession of the subject lands.

15. Learned Counsel for the petitioners would also place reliance on the decision of the Hon'ble Supreme Court in ***State of West Bengal and another Vs. Kamala Prasad and others*** reported in ***(2010) 4 SCC 568***, where the Hon'ble Supreme Court held that the High Court was not in error in directing consideration



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of certain claims of the respondents therein and such exercise would not amount to the Court executing Civil Court's decree but only recognising the fact that Civil Court has declared the status of the writ petitioners, the same being binding on the State. The learned Counsel would also place reliance on the judgment of the Division Bench of this Court in ***Vishwas Footwear Company Ltd., Vs. The District Collector and others*** reported in 2011 (5) CTC 94, where this Court held that Revenue Divisional Officer cannot decide the dispute between the parties and if such exercise is undertaken, it would be without jurisdiction.

16.The learned Additional Government Pleader appearing for the respondents Mrs.K.Malathi, learned Additional Government Pleader would submit that there is no error or illegality in the findings of the third respondent and that an opportunity has been afforded to the writ petitioners and there has been detailed consideration of all documents relied on by the writ petitioners, before rejecting the petitioners' request for issuance of patta. She would further submit that when the lands have been rightly reclassified as poromboke lands, the petitioners were not entitled to challenge the said settlement land records belatedly. She would therefore, seek for dismissal of the Writ Petitions.



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17.On a perusal of the records, it is clear that the petitioners were belonging to one Tarwad, which was entitled to lands in Old Survey Nos.2022A and 2022B of Lekkom No.47, [which is similar to Survey Number] of the former Vilavancode Village and subsequently Palukal Village. The suit in O.S.No.38 of 1089 (M.E.), which corresponds to the year 1913 / 1914 – AD was filed against the Diwan of Trivancore, representing the princely State of Trivancore. At that relevant point of time, the said defendant represented only the State. The suit was a substantive suit for declaration of title and recovery of possession, alleging even at that point of time, the Government had wrongly included the lands belonging to the Tarwad as if they were poromboke properties. After contest, on 14.09.1915, the suit came to be decreed holding that the plaintiffs were the lawful owners of the subject lands and that the same was not poromboke lands as contended by the State and a direction was also given for issuance of patta in favour of the Tarwad of the plaintiffs.

18.Subsequently, with the coming into force of the States Reorganization Act on 01.11.1956, the subject lands in Old Survey Nos.2022A and 2022B, fell within the territory of the then Madras State. After such reorganization, the petitioners' father Chellappan



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Pillai filed a suit in O.S.No.7 of 1961. No doubt, the said suit was filed against private individuals. However, the fact remains that the suit property was nothing but lands in Old Survey Nos.2022A and 2022B. The said suit came to be decreed and the father of the petitioners also obtained delivery of possession as per delivery list in O.S.No.7 of 1961. Even thereafter, the father of the petitioners filed suit in O.S.NO.441 of 1989, on the file of the II Additional District Munsif, Kulithurai. The said suit was based on physical and absolute possession of the petitioners' father and the relief sought for was against the official respondents, who were attempting to interfere with the possession of the petitioners' father. In fact, pending the said suit, the petitioners' father died and the petitioners themselves were brought on record and subsequently, decree for permanent injunction also came to be granted on 06.02.1998.

19.As rightly contended by the learned Counsel for the petitioners, the finding in the three suits, though in one of the suits the official respondents were not parties and it was only a suit against private individuals, the competent Courts have gone into the issue of title and have declared the right, title and interest of the father of the petitioners. In the latest suit namely O.S.No.441 of 1989, in which the official respondents themselves were the defendants, the Court has found the petitioners to be entitled to the



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relief of injunction based on their lawful possession. The further fact that the State of Tamil Nadu has recognized the survey numbers concerned in this dispute to be private patta lands is fortified by the fact that the State of Tamil Nadu has taken a Gift Deed in respect of 3 cents in the very same survey number. The petitioners have also established proper correlation of Old Survey No.2022A and 2022B with Re-survey No.422. The encumbrance certificates that have been relied on by the petitioners also evidences the fact that several alienations have taken place in the subject survey numbers, thereby clearly indicating that the subject survey numbers could not have been poromboke lands.

20.Despite such overwhelming evidence in favour of the petitioners, the third respondent in and by the impugned order has merely held, without any basis, that the petitioners are not enjoying the lands and they were not in possession for several years. Such a finding is contrary to the judgments of the competent Civil Courts, not only declaring the rights of the petitioners but also protecting the rights of the petitioners by granting permanent injunction. The decree passed in the earliest suit which was instituted in the year 1913-1914 AD., against the then State of Trivancore represented by Diwan would certainly bind the official respondents. In fact, even in the impugned order, the third respondent has only held that it is not

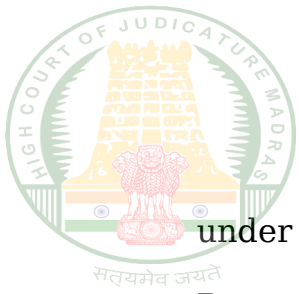


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possible for the authorities to go beyond the basic record maintained by the predecessor Government. On the strength of such assumption, the third respondent has confirmed the order of the Director of Survey and Settlement dated 02.04.1988, holding that the property is only poromboke lands and not private patta lands and that it would not be possible to reopen the said settlement of the predecessor Government belatedly. The said findings are clearly perverse, contrary to record.

21.When the plaintiffs' father and the petitioners' father was granted patta and similarly placed persons in the very same survey number have also been granted pattas and innumerable alienations have been made and none of them being challenged, when the petitioners come forward with the request of issuing patta to them, the classification is put against the petitioners and patta is declined. There is absolutely no discussion in the impugned order about the effect of the decree for declaration of title in favour of the father of the petitioners in the earliest suit in O.S.No.38 of 1089 (M.E.) corresponding to 1913 – 1914 AD.

22.Further, as rightly contended by the learned Counsel for the petitioners, the third respondent has proceeded on a erroneous assumption that the subject matter in dispute was a revision arising



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under the Tamil Nadu Estates [Abolition and Conversion into Ryotwari] Act, 1948, whereas the revision was only arising under the Tamil Nadu [Transferred Territory] Ryotwary Settlement Act, 1964, the scope of which was only to decide assessment of land for the purpose of payment of tax and cannot be a platform for deciding the title of the parties. Unfortunately, the third respondent has not understood the very scope of the proceedings before him and clearly ignored the binding findings of the competent Civil Courts especially when the official respondents themselves were clearly bound by two of the said judgments, out of the three suits.

23.As held by the Hon'ble Supreme Court in ***Kamala Prasad's*** case, the third respondent ought to have factored the decree for declaration made by the competent Civil Court which had attained finality and the third respondent has therefore, clearly assumed jurisdiction that did not vest with him to deny the entitlement of the petitioners in both the Writ Petitions, for issuance of patta. Though the learned Additional Government Pleader would rely on the order of this Court in W.P.(MD)No.2506 of 2012 dated 27.11.2023, stating that the purchaser's Writ Petition namely W.P. (MD)No.12656 of 2024 is not maintainable, since he has already approached this Court in the said Writ Petition and suffered an order of dismissal, on going through the said order, I find that the writ



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petitioner was given liberty to either work out his remedy before the Commissioner of Land Administration, Chennai or challenge the proceedings dated 20.05.1997, in accordance with law. It is only this liberty that has been availed by the purchaser in filing the present Writ Petition in W.P.(MD)No.12656 of 2024. Therefore, the dismissal of the earlier Writ Petition cannot be put against the writ petitioner in W.P.(MD)No.12656 of 2024.

24.As regards the finality of the survey, Section 8(2) of the Tamil Nadu [Transferred Territory] Ryotwari Settlement Act, 1964, provides an avenue for re-survey specifically and therefore, the said objection of the learned Additional Government Pleader Mrs.K.Malathi, also cannot be sustained.

25.Therefore, for all the above reasons, the writ petitioners are entitled to succeed.

26.In fine, the Writ Petitions are allowed and the impugned orders challenged in these Writ Petitions are set aside and the second respondent in both the Writ Petitions are directed to issue patta to the petitioners in respect of their entitlements within a period of eight [8] weeks from the date of receipt of a copy of this



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order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index :Yes / No

Internet : Yes / No

NCC : Yes/No

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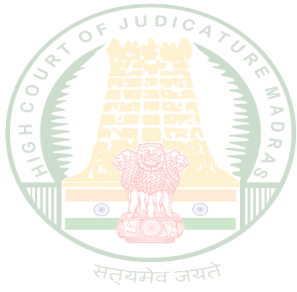
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To

1.The District Collector of Kanyakumari,
State of Tamil Nadu,
at Nagercoil,
Kanyakumari District.

2.The Tahsildar,
Vilavancode,
at Kuzhithurai,
Kanyakumari District.

3.The Special Commissioner and
Commissioner of Land Administration,
Chepauk,
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P.B.BALAJI, J.

MR

PRE-DELIVERY COMMON ORDER MADE IN
W.P.(MD)Nos.1662 of 2020 & 12656 of 2024

19.03.2025