

J. Kanniyammal and anr.. Vs. the Additional Chief Secretary and Director of Survey and Settlement, Chepauk, and ors.

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Court : Chennai

Decided On : Apr-24-2012

Judge : K.Chandru, J.

Acts : Tamil Nadu Estates (Abolition of Conversion into Ryotwari) Act, 1948 - Section 64(C); Inam Abolition Act - Section 11(a)

Appeal No. : W.P.No.5359 of 2009 and M.P.No.1 of 2009

Appellant : J. Kanniyammal and anr..

Respondent : The Additional Chief Secretary and Director of Survey and Settlement, Chepauk, and ors.

Advocate for Def. : Mr.V.Subbiah; Mr.R.Karthikeyan; Mr.S.M.Subramaniam, Adv.

Advocate for Pet/Ap. : Mr.N.Kannan Adv.

Judgement :

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records in pursuant to the impugned order in R.P.No.12 of 2008 dated 24.2.2009 confirming the order of the second respondent in R.P.No.1 of 2008 (E1) dated 6.10.2008 and quash the same

as illegal.

K.CHANDRU, J.

ORDER

1. The two petitioners in this writ petition have challenged an order of the first respondent, dated 24.02.2009 made in R.P.No.12 of 2008, in confirming the order of the second respondent viz., the Settlement Officer, Chennai made in R.P.No.1 of 2008 dated 06.10.2008 and seeks to set aside the same.

2. In the writ petition, notice of motion was ordered on 02.04.2009 and an interim stay was granted for a limited period. Subsequently, the writ petition was admitted on 09.03.2010 and the interim stay granted was extended until further orders.

3. Subsequent to the filing of the writ petition, respondents 5 to 9 got themselves impleaded vide order dated 17.02.2010. It was their case that they were also parties before the Settlement Officer's proceedings and hence, they are necessary parties to the writ petition. Though the impleaded respondents filed application to vacate the interim order in M.P.No.2 of 2010, the same was dismissed by this Court on 23.04.2010.

4. It is the case of the petitioners that they along with the 4th respondent are joint owners of the lands in Survey Numbers 89/1 to the extent of 0.78 acres and 89/2 to the extent of 2.77 acres, presently bearing Town Survey numbers 11 and 13 respectively in Kolathur Village, Perambur-Purasawalkam Taluk, within the limits of Chennai City Municipal Corporation. The property was originally comprised in Pymash number 571. The said property in respect of Pymash number 571 and the present Town Survey No.11, R.S.No.89/1 were purchased by one K.P.Sundarambal, wife of Late Perumal Naidu under the registered sale deed dated 06.10.1919 registered as Document No.133/1919 in Sub Registrar's Office, Sembium and by sale deed dated 24.08.1939 registered as Document No.1362 of 1939 in the same Sub-Registrar Office.

5. After the death of Sundarambal, the property devolved on her son Narasimhalu Naidu and after the death of said Narasimhalu Naidu, on his three sons viz., Jayaram Naidu, Venugopal Naidu and Kannaiah Naidu, the husband of 4th respondent and petitioners 1 and 2. They partitioned the said properties among themselves by a registered partition deed dated 24.04.1959 and continued to be in joint possession of the family of late Narasimhalu Naidu. During the settlement proceedings, after the village was taken over by the Government after the enactment of Tamil Nadu Estate Abolition Act, 1940, they did not participate in the proceedings. Hence, the lands were declared as 'Anadeenam' in the revenue records. However, the lands were Ryotwari lands which were purchased by the ancestors of the petitioners and were in continuous possession and enjoyment of the family.

6. The petitioners along with co-owners filed a petition before the Assistant Settlement Officer (for short ASO), Tiruvannamalai District for grant of Ryotwari Patta and after proper enquiry, patta was granted jointly in the name of two petitioners and 4th respondent vide proceedings dated 12.07.2000. Subsequently, the matter was taken to the Settlement Officer, Thanjavur. The Settlement Officer, Thanjavur, after giving notice to the parties and after conducting enquiry upheld the order passed by the Assistant Settlement Officer, Tiruvannamalai vide his proceedings dated 22.01.2001.

7. Subsequent to that, one Arulmigu Somanathaswamy Kovil represented by its Executive Officer contended that grant of patta in favour of the petitioners were wrong and they filed a suit in O.S.No.7282 of 2000 on the file of the V Assistant City Civil Court, for an injunction. After a full-fledged trial, the suit filed by the Temple was dismissed on the ground the petitioners are in valid possession of patta. The said temple also filed a writ petition before this Court, being W.P.No.6151 of 2001, praying for a direction to the ASO, Tiruvannamalai to conduct a fresh enquiry. That writ petition was also dismissed as devoid of merits on 29.01.2007.

8. While so, the third respondent, who is the son of late Jeyaram Naidu filed an application before the Special Commissioner and Commissioner for Land

Administration (CLA) for an exclusive grant of patta in favour of himself and the 4th respondent in respect of the land situated in Survey Number 89/1 measuring 0.78 acres and in respect of Survey Number 89/2 measuring 2.77 acres. The said application was taken up by the Settlement Officer viz., the second respondent. The Settlement Officer, by his proceedings dated 06.10.2008 in R.P.No.1 of 2008 cancelled the patta granted in favour of the petitioners as well as the 4th respondent.

9. Aggrieved by the order of the second respondent, the petitioners preferred a revision before the first respondent. The revision petition was initially posted on 22.12.2008 for hearing. It was adjourned to 31.01.2009. On 31.01.009, the counsel for the petitioners was present but the other parties were not present. Hence, the petitioners' counsel sought for a short adjournment and the counsel filed an adjournment application. The first respondent informed that the next date of hearing will be intimated by registered post. But even after two weeks, no intimation was sent. Hence, the counsel sent a representation to the first respondent to fix an early date of hearing by letter dated 19.02.2009. But no reply was sent. In the meanwhile, the first respondent passed an order dated 24.04.2009 dismissing the Revision Petition in R.P.No.12 of 2008. The said order is contrary to the principles of natural justice as no opportunity was given. Therefore, they were forced to approach this Court.

10. The first respondent has filed a counter affidavit dated 04.02.2010 and the second respondent has filed an adoption counter affidavit dated Nil.

11. It was claimed by the first respondent that the village Kolathur of Perambur - Purasawalkam Taluk, was taken over by the Government on 01.10.1951 under the provisions of Tamil Nadu Estates (Abolition of Conversion into Ryotwari) Act, 1948 by G.O.Ms.No.2302, Revenue Department, dated 01.09.1951. The Ryotwari Settlement was introduced from the Fasli year 1370 (Calendar Year 1960). During the introduction of ryotwari settlement, the lands comprised in S.Nos.89.1 and 89/2 were treated as 'Government Wet Anadeenam'. Since these entries were not cancelled by any appropriate appellate forum under the Act, these classification have become final as per Section 64(C) of the Tamil Nadu Act, 1948. As per

amendment issued in G.O.714, CT & RE Department, dated 29.06.1987, the Settlement authorities have no right to entertain any application made beyond the cut-off date prescribed viz., 20.08.1987. It was after a lapse of about 40 years, the petitioners preferred an application before the ASO, Tiruvannamalai on 05.06.2000 for the grant of patta for the said lands. The ASO took up the petition and after conducting an enquiry passed an order dated 12.07.2000 in S.R.No.8 of 2000 granting Ryotwari patta in respect of the two survey numbers in the name of Devaki Ammal, (the 4th respondent herein) and the two petitioners jointly. Based on this order, the Tahsildar, Perambur - Purasawalkam made necessary corrections in the revenue records. Thus, the ASO had passed a second order for the same lands before cancelling the earlier orders as per the register, before an appropriate appellate authority could pass an order. Therefore, the order passed by the ASO was illegal and ultra vires of the Act.

12. In the mean while, an appeal was filed by the third respondent before the second respondent on the ground that patta should be restored only on his mother Devakiammal and in his name. The Settlement Officer, after giving opportunities to the parties, without going into the matter in depth cancelled the order of the ASO, Tiruvannamalai in R.P.No.1 of 2008 dated 06.10.2008 observing certain irregularities and directed the original entries to be restored in the revenue records.

13. Aggrieved by the said order, the respondents 3 and 4 preferred a revision before the Director of Survey and Settlement viz., first respondent in R.P.No.3/2008, 12/2008 and 1 to 3 of 2009. The first respondent vide order dated 24.02.2009 confirmed the order of the Settlement Officer dated 06.10.2008, wherein the Settlement Officer had cancelled the order of the ASO, which was passed without jurisdiction. The contention raised by them was they have not been granted patta and treating the land as Government Anadeenam was erroneous. The first respondent since found that the petitioners were prolonging the proceedings by seeking frequent adjournments rejected the request for adjournment and passed the order on the merits of the case.

14. Hence, the only question to be decided is whether the order passed by the first respondent is legally correct.

15. In the present case, the ASO, Tiruvannmalai, without any justification cancelled the classification of land from Government Anadeenam to that of Ryotwari land. On an appeal preferred, the Settlement Officer, has correctly cancelled the entries and restored the original entries. The order passed by the ASO that he has power to rectify the mistake is not applicable to the lands covered by the Tamil Nadu Estate Estates (Abolition and Conversion into Ryotwari) Act. The other argument that petitioners were present during the enquiry was disputed by the first respondent. Their subsequent request for adjournment through Advocate was refused by the authority and the ground raised was also not valid.

16. The contention that revisional powers cannot be exercised by the Settlement Officer also does not stand to reason in the light of the Full Bench Judgment of this Court reported in 2007 (4) CTC 538 [The Special Commissioner and Director of Survey and Settlement v. M.Arumugam]. The Full Bench after analysing all the previous orders found acceptance of the ratio laid down in the case of David Pillai v. The Settlement Officer, Mumbai (Writ Appeal No.1296 of 1986 decided on 18.07.1989) and in the case of M.Veeraswamy v. Special Commissioner and Commissioner of Land Administration, 1996 WLR 554.

17. In David Pillai's case (cited supra), it was found that there was suo motu power of revision to authorities to effectuate the Scheme of the Act and to implement the purpose behind the Act. In Veerswamy's case (cited supra), it was found that Board has got power to cancel and set aside any order passed by a lower authority and it is open to the Board to exercise the said power suo motu. Hence, there was no infirmity in the order passed by the first respondent, as the first respondent has correctly restored the correct position because the order passed by the ASO after 40 years of the entries made was clearly outside the jurisdiction of his office and contrary to the Government circular issued wherein it was stipulated that no proceedings can be entertained by an ASO after 20.08.1987. Further, the Settlement Officer is an appellate authority over the order of the ASO in terms of Section 11(a) of the Inam Abolition Act.

18. Hence, there is no case made out to interfere with the impugned order. The other objections raised by respondents 5 to 9 is beyond the purview of this Court. Their claim that they were bonafide purchasers has no relevance to the case on hand and hence, their contentions are also rejected.

19. In the light of the above, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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