

Devi and anr. Vs. the Special Commissioner and ors.

Devi and anr. Vs. the Special Commissioner and ors.

SooperKanoon Citation : sooperkanoon.com/927130

Court : Chennai

Decided On : Apr-17-2012

Judge : K.Chandru, J.

Acts : Tamil Nadu Forest Act, 1976 - Section 2(1), 4, 6, 12, 16 ; Evidence Act - Section 114; [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.36216 of 2003

Appellant : Devi and anr.

Respondent : The Special Commissioner and ors.

Advocate for Def. : Mr.V.Subbiah, Spl.G.P. Adv.

Advocate for Pet/Ap. : Mr.AR.L.Sundaresan, Adv.

Judgement :

This writ petition is preferred under Article 226 of the [Constitution of India](#) praying for the issue of a writ of certiorarified mandamus to call for the records relating to the order dated 26.9.2003 in Ni.Mu.(K1) 38950/01 passed by the first respondent and to quash the same and consequently to direct the first respondent to grant joint patta to the petitioners in respect of the lands comprised in S.No.1/2 (137.10 acres) and S.No.9/8 (26.98 acres) in Sekkalakottai village, Karaikudi Taluk, Sivagangai District.

ORDER

1. This writ petition came to be posted before this Court on being specially ordered by the Hon'ble Chief Justice vide order dated 09.09.2011.
2. In this writ petition, the petitioners challenge an order of the first respondent viz., the Special Commissioner- cum-Commissioner of Land Administration, Chennai dated 26.09.2003 and after setting aside the same seeks for a direction to grant joint patta to the two petitioners in respect of the lands comprised in S.No.1/2 (137.10 acres) and in S.No.9/8 (26.98 acres) in Sekkalakottai Vilalge, Karaikudi Taluk, Sivagangai District.
3. By the impugned order, the first respondent held that there was no ground to interfere with the rejection of the revision order by the Director of Survey and Settlement dated 27.07.2001.
4. The writ petition was admitted on 11.12.2003. On behalf of second respondent, a counter affidavit dated 27.01.2007 was by the District Forest Officer, Ramnad cum Sivaganga District. On behalf of third respondent viz., Tamil Nadu Forest Plantation Corporation Ltd., a counter affidavit dated 04.12.2006 was filed.
5. The 4th respondent got herself impleaded claiming to be a joint pattadar along with two petitioners, who are none other than her own sisters. Her impleadment was allowed by this Court on 22.07.2011.
6. Heard the arguments of Mr.ARL.Sundaresan, learned Senior Counsel for Mr.V.C.Janarthanan, counsel for the petitioner, Mr.V.Subbiah, learned Special Government Pleader for the first respondent Commissioner, Mr.Abdul Saleem, learned Additional Government Pleader (Forest) for respondents 2 and 3 and Mr.V.K.Vijayaraghavan appearing for M/s.P.T.Nalinkumar, learned counsel for the fourth respondent.
7. The two petitioners and the 4th respondent are sisters and daughters of Late Subramania Raja, who died in the year 1969. The petitioners' father is the legal heir of Zamindar of Sekkalakottai Village, Karaikudi Taluk, Sivagangai District.

8. The following is the family tree which will show the place of the petitioners.

Udayana Raja

(died in 1918)

Doraisingha Raja

(died in 1941)

Shanmuga Raja Subramania Raja

(died in 1962) (died in 1969)

Rajalakshmi Karthikeya Ramachandran Devi and

Raja Lalitha

(Petitioners)

Valli (R4)

Madurantagi Banumathi

9. It is stated by the petitioners the land in Survey No.1/2 to the extent of 137.10 acres and Survey No.9/8 to the extent of 26.98 owned by late Udayana Raja, who died in the year 1918. Part of the share was sold to Alagappa Trust and other part was enjoyed by the family as a Thope. During the year 1959, settlement proceedings were introduced. Prior to the settlement, lands were leased out to the Forest Estate Department. Even after the settlement proceedings, the lands in question were maintained as 'Thope' by the Forest Estate Department as Lessee. During the settlement proceedings, the lands, which were sold by T.Shanmugaraja, the paternal uncle of the petitioners to Dr.Alagappa Chettiar College as well as to Central Electro Chemical Research Institute (CECRI) and to the Nattars. They all got patta. The lands were classified by the Forest Department as 'Kadu' (Forest) by the issuance of notification under Section 4,6 and 16 of the Forest Act, 1976. Even after the settlement proceedings, the lands were classified only as 'Kadu' in Settlement 'A' Register. The District Forest Officer, Sivagangai

had agreed that the pattas were given to 56 persons. But the stand of the Department was that the lands as per the Zamin records were only classified as 'Kadu' poramboke and even during the settlement proceedings, they were treated as such and therefore, no Ryotwari pattas were issued to anyone with reference to these lands.

10. Subsequent to the lands were given on lease to the third respondent viz., Tamil Nadu Forest Plantation Corporation by G.O.Ms.No.267 Forest and Fisheries Department, dated 03.04.1974, the lands were notified under Section 4 of the Tamil Nadu Forest Act, 1976. After due enquiry by the Forest Settlement Officer and completion of all formalities, the lands were declared under Section 16 of the Tamil Nadu Forest Act as Reserve Forest vide notification dated 16.08.1983. Long after the notification of the lands in question as Reserve Forest, the legal heirs of Zamin filed application for patta only in the year 1995. The Assistant Settlement Officer, Madurai, by an order dated 25.07.1996 granted Ryotwari patta in the name of the claimants. As against the said order, an appeal was filed to the Settlement Officer at Thanjavur. The Settlement Officer at Thanjavur, vide order dated 27.03.2003 dismissed the appeal. As against the dismissal of the appeal, the third respondent filed a revision petition in R.P.No.2 of 2000. By an order dated 27.07.2001, the Revisional Authority, viz., the Director of Survey and Settlement set aside the order of Assistant Settlement Officer, Madurai and the Settlement Officer, Thanjavur. The said officer held that for claiming Ryotwari patta, a limitation has been prescribed in G.O.Ms.No.714 Commercial Taxes and Religious Endowment Department, dated 29.06.1987. By the said GO, any application claiming Ryotwari patta will have to be filed on or before 20.08.1987 and therefore, he held that the application claiming patta filed by the legal heirs of the late Shanmuga Raja was not maintainable and he has got no power to condone the delay.

11. Aggrieved by the dismissal of the revision petition, the legal heirs of Subramania Raja viz., the petitioners filed an application before the first respondent. The first respondent dismissed their petition by the impugned order dated 26.09.2003 and held that the earlier order passed by the Director of Survey and Settlement was valid and it cannot be interfered with. The appeal filed by

Shanmuga Raja was also rejected by the first respondent. Aggrieved by the same, the petitioners have filed the present writ petition.

12. In the counter affidavit filed by the second respondent, it was averred as follows:-

3. ...I state that the Hon'ble Supreme Court by order dated 12.12.1996 in Writ Petition (Civil) 202 of 1995 has pointed out that "the Forest (Conservation) Act was enacted with a view to check deforestation, which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its disciplinary meaning. This description cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term "forest land" occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of ownership." In this order, the Hon'ble Supreme Court observe. "This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any Court (including High Court) or Tribunal. In the same Writ Petition, the Hon'ble Supreme Court by its order dated 07.05.1999 in I.A.No.418 observed. "In the meantime, no pattas with regard to any forest land shall be granted nor shall any encroachment be regularised." It is thus clear that the petitioners cannot be entitled to any patta whatsoever, the said land originally being "kadu poramboke" and now a Reserve Forest.

13. In the counter affidavit filed by the third respondent, it was averred as follows:-

"2. I state the the petitioner cannot claim any patta with regard to the lands in S.F.No.1/2 Sekkalaikottai Village to an extent of 137.10 acres. I state that the lands were taken over by the Government as per G.O.Ms.No.2093 dated 11.08.1949 and vested with the Government from 07.09.1949 and since then the

lands have been at the disposal of the Government. The lands originally even as per the Zamin Records were "kadu poramboke" and even during the settlement proceedings were treated as such and, therefore, no ryotwari patta was issued with regard to these lands. The petitioners have not established that they are the heirs of the original Zamindar family nor have they established that they are ryotwari lands.

3. I state that the said lands were leased out to this respondent as early as 1974 as per G.O.Ms.No.267 Forests and Fisheries Department dated 03.04.1974. In boundary of the notification, one Sundaravinayakar Temple and Theppakulam with tamarind trees and palmyrah trees have been notified. Right of way has been given by the second respondent and his prior permission is required for any maintenance work there. The said lands were notified under Section 4 of the Tamil Nadu Forests Act in 1976 and after due enquiry by the Forest Settlement Officer and the completion of the other formalities under the said Act, the said lands regularised." It is thus clear that the petitioners cannot be entitled to any patta whatsoever, the said land originally being "kadu pormaboke" and now a Reserve Forest."

14. The learned Senior Counsel for the petitioner referred to a judgment of this Court reported in 1998 L.W.89 [Mangathayi Ammal v. E.M.Sami] for contending that the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act do not purport to destroy title but only makes a transformation in the tenure. The question as to the title to a land in zamindari or other estate covered by the Act is not to be regarded as being foreclosed merely because a notification issued by the Government under Section 3. An application by a landholder under Section 12 of the Act is not the only means open under the statute for obtaining ryotwari patta.

15. The learned Senior Counsel further referred to a judgment of this Court reported in Vol.32 MLJ 407 [Arunachella Ambalam and others v. R.G.Orr and others] for contending that the limitation pleaded by the respondents will not apply to the case on hand and referred to the following passages found in page 410:-

" ...I am of the opinion that Section 22 of the Limitation Act applies only to cases where the added or substituted plaintiff wants to litigate a right for himself

independently of the rights of the original plaintiff....I must respectfully dissent from the Full Bench ruling in so far as it lays down that where a new plaintiff is substituted under Section 372 he will be affected by a period of limitation different from that which is applicable to the original plaintiffs."

16. The learned Senior Counsel also referred to a judgment of this Court reported in 1990 (2) L.W. 478 [Mariabackiammal (deceased) by her legal heirs and others v. The District Forest Officer] for contending even if there is any failure to grant Ryotwari patta by the Government, a ryoti land continues to be the same and the character of the land will not be changed. Reference was made to the following passages found in paragraph 15:-

15. ...If the Government fails to collect land revenue, on that ground, a ryoti land will not become a land at the disposal of the Government as defined in the Act.

17. The learned Senior Counsel referred to a Division Bench judgment of this Court reported in 1998-2-L.W.189 [Srinivasan and others v. Sri Madhyarjuneswaraswami, Pattavaithalai and referred to the following passages found in page 208:-

"A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these legislations is subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and vesting, of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basic and fundamental rights which entitle a person to preferentially get patta under these legislations, and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under rules of assignment outside the scope of the statutory enactments. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that

they do not mean and even intend to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claims, in their attempt to project a claim for patta."

18. Supporting the stand of the petitioners, Mr.V.K.Vijayaraghavan, learned counsel appearing for the fourth respondent referred to the judgment of this Court reported in (1971) 1 MLJ 190 [N.S.Kuppuswamy Odayar and another v. The Panchayat Narthangudi] for contending that merely because the land register shows a particular land as poramboke, that by itself will not establish the title of the State Government. Reference was made to the following passages:

"It has been repeatedly held that the mere fact that in the Re-Settlement Register, a particular piece of land has been described as poramboke will not by itself establish title of the Government to the land in question."

19. The learned counsel referred to another judgment of this Court reported in 1998-3-L.W.1 [S.Subramaniam and Co. rep. By its Partner, S.Subramaniam v. The State of Tamilnadu rep. By the Secretary to the Government of Tamilnadu] for contending that possession for more than 30 years, of the property, even though it was claimed as a channel which was running earlier and was obliterated can be said to be established under Section 114 of the Evidence Act, the presumption both backwards and forward are permitted.

20. The learned counsel also referred to an unreported judgment of this Court in W.P.No.68 of 2005 dated 03.12.2009 [S.Kulanthaivel v. The District Revenue Officer, Namakkal], wherein this Court held that Ryotwari patta has to be considered by the provisions applicable to the claim and not by a mere entry in the land register as it is not a conclusive evidence.

21. In substance, the learned counsel contended that notifying a land as Government Forest without notice to the land owners was not valid.

22. The learned Additional Government Pleader (Forest) referred to a decision of this Court reported in CDJ 2011 MHC 3687 [Sirumalai Pazhathotta Vivasayigal Sangam, rep. By its President v. The State of Tamil Nadu and others], wherein this

Court held that in respect of notified Forest, patta cannot be granted in favour of any individuals and the term 'Forest Land' will not merely can be understood with a dictionary meaning. In that case, it was observed as follows:-

27. In this context, it is necessary to refer to the attempt made by the Supreme Court to keep the forest free from encroachment and the necessity for keeping minimum forest cover so that environment degradation cannot take place. The Supreme Court in T.N. Godavarman Thirumulpad v. Union of India reported in (1997) 2 SCC 267 dealt with the need to keep the forest land as forest and in paragraphs 3 and 4 had observed as follows:

"3.It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short "the Act") and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works

v. State of Gujarat¹, Rural Litigation and Entitlement Kendra v. State of U.P.² and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority³). The earlier decision of this Court in State of Bihar v. Bansi Ram Modi⁴ has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

28. In respect of State of Tamil Nadu, the following specific directions were given by the Supreme Court, which reads as follows:

5. We further direct as under:....

5. Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.....

IV. FOR THE STATE OF TAMIL NADU

1. There will be a complete ban on felling of trees in all "forest areas". This will however not apply to:

(a) trees which have been planted and grown, and are not of spontaneous growth, and

(b) are in areas which were not forests earlier, but were cleared for any reason.

2.The State Government, within four weeks from today, is to constitute a committee for identifying all "forests".

3.Those tribals who are part of the social forestry programme in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.

4.Insofar as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

(a) The felling of shade trees in these plantations will be -

(i) limited to trees which have been planted, and not those which have grown spontaneously;

(ii) limited to the species identified in the TANTEA Report;

(iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and

(iv) under the supervision of the statutory committee constituted by the State Government.

(b) Insofar as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of shade trees, and the further action for felling them will be as per that report. Meanwhile, Eucalyptus and Wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

(c) The State Government is directed to ascertain and identify those areas of the plantation which are a "forest" and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub-paras (b) and (c) above will not apply to such areas.

(d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of "forests".

5.As far as the trees already cut, prior to the interim orders of this Court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled for Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one-time measure.

6.Insofar as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeals Nos. 367 to 375 of 1977 in CAs Nos. 1344-45 of 1976. After the order is made in those civil appeals on the IAs pending therein, if necessary, this aspect may be re-examined.

7.This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, Tribunal or court, including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

29.Further in I.A.No.418 in W.P.(C)No.202 of 1995, the Supreme Court had passed the following interim order :

"Notice to the State of Tamil Nadu returnable in the first week of August 1999.

In the meantime, no pattas with regard to any forest land shall be granted nor shall any encroachment be regularised."

30. When the attempt by the Supreme Court is to monitor the maintenance of forest and to avoid environment degradation to forest, the petitioners cannot by filing successive writ petitions get an order which will diametrically opposite to the efforts taken by the Supreme Court. The petitioners have failed to prove any violation of procedure by the department in issuing the impugned notification challenging in the two sets of writ petitions. They have also failed to establish any legal or enforceable right on their part for getting the relief as prayed for by them. Successfully they were involved in forum shopping and are attempting to get orders from this court to prolong their illegal occupation in forest land. Certainly, this court will not be a party to encourage the petitioners' attempt to derail the orders of the Supreme Court."

23. The learned Additional Government Pleader also referred to another judgment of the Division Bench of this Court in W.A.No.2026 of 2010 dated 10.02.2011, wherein the Division Bench held that encroachers cannot claim any part of the forest land.

24. Under the circumstances, it has to be seen whether the petitioners have made out any case for interference.

25. In the present case, the petitioners made a very faint attempt to challenge a notification issued by the Forest Department reserving the land as Reserve Forest. Subsequently, as categorically held, no pattas can be granted in respect of a notified reserve forest. The petitioners attempt to go before the Inam Abolition Authority for claiming patta long after the settlement proceedings are over is totally unacceptable and beyond the limitation period under the provisions of the Act. The petitioners have not made out any case to establish their entitlement for Ryotwari patta in respect of the notified forest which during the proceedings were notified as 'Forest Poramboke'. Not only the petitioners are guilty of delay and laches but also they have not established any legal right to claim the land in question. The Director of Forest and Settlement rightly set aside the order of the Assistant Settlement Officer, Madurai and Assistant Settlement Officer, Thanjavur as it is not within their

province, an application beyond the prescribed time by the State Government.

26. Under the said circumstances, there is no case made out to entertain the writ petition. Accordingly, the writ petition stands dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com