

(1992) 01 MAD CK 0059

In the Madras High Court

Case No : Writ Petition No. 1070 of 1984

K. Vaidyanatha Sastri

APPELLANT

Vs

The Assistant Settlement Officer, Branch Settlement Office,
Pudukkottai, The Settlement Officer, Part II, Thanjavur, The
Director of Settlements, Chepauk, Madras- 5. and The Board
of Revenue

RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Citation : (1992) 01 MAD CK 0059

Hon'ble Judges : Govindasamy, J

Bench : Single Bench

Advocate : Ram Mohan, M/s. S. Pitchai, R. Subramaniam and S. Sadasharam,
for the Appellant; P. Sengottuvel, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Govindasamy, J.—This court by order dated 22-1-1973 in W.P. No. 891 of 1971 directed that the Assistant Settlement Officer concerned shall take up the subject matter on file and deal with it in the light of the observations and directions contained in the said order. In pursuance of the above said order of this Court, the Assistant Settlement Officer in his proceedings dated 19-6-1975 in S. R. 1/ G.R. Revision/73 remanded by High Court observed as follows:

A careful scrutiny of Ex. Durbar records reveals that a number of sites in T.S. No. 273 have been assigned during the period in and around 1939. The petitioner has got the release deed in his favor only in the year 1956. Further during the Durbar Settlement in 1912 the suit lands have been registered as Natham Poramboke and grazing ground. Against the treatment of it either his predecessor or any other person has not contested. It clearly proves that his predecessor has not got any title over the suit properties during the time of Durbar till to the execution of release deed in favor of the petitioner. On the same point of view the claim of the petitioner that the suit land are all his private

property and he is in possession of them, is not at all acceptable. Hence the petitioner has no locus stands over the suit land.

In the circumstances, I hold that Thiru Vaidyanatha Sastri is not entitled to get ryotwari patta for T.S. Nos. 259, 262 and 273 and order its registry as Natham Poramboke. The orders of cancelling the patta for T.S. Nos. 259 and 262 in S.R.I and 4/G.R. Revision/69 and the existing registry in respect of T. S, No. 273 will stand.

Aggrieved by the said order, the petitioner preferred an appeal before the Director of Survey and Settlements. Madras who in his proceedings in D.D is. F-1/30754/1976 dated 14-2-77 rejected the appeal on the ground that the appeal was not filed within 30 days from the date of receipt of the order from the Settlement Officer. Against the said order, the petitioner filed a revision petition before the Provisional Authority, namely, Board of Revenue (Settlement of Estates); Madras- 5 who in its proceedings B.P. Rt. 81(SE) dated 6-3-79 rejected the revision petition. While rejecting the said revision petition, the provisional authority observed that there is no provision empowering the Board of Revenue to condone the delay that has occurred before the lower authorities and in view of the sad fact, the revision petition is liable for rejection summarily as not maintainable and further observed that it was found from the records that both the Assistant Settlement Officer, Pudukkottai and Settlement Officer Thanjavur had considered the claims of the revision petitioner with reference to the documents filed by him, that the petitioner had no rebuttable evidence on record to disprove the registry of the lands as Natham Poramboke and cattle stand respectively in ex Durbar accounts as early as 1912 and that the Tahsildar and the Commissioner of Pudukkottai Municipality had also objected to the claim of the revision petitioner besides some of the assignees in the said claim. Aggrieved. By the said order, the petitioner has filed the above writ petition for issue or a writ of certiorari for quashing the order of the provisional authority Mr. R. Rammohan, learned counsel for the petitioner represented that in pursuance of G.O. Ms. No. 2254 (Revenue) dated 22-5-1962, the petitioner was granted regular patta in respect of the land comprised in Survey Nos. 259 and 262 and that he applied for rough patta in respect of the land comprised in Survey No. 273. While considering the claim of the petitioner in so far as his request for grant of rough patta in respect of land comprised in Survey No. 273 is concerned, the authorities considered the grant of patta for the lands including the lands comprised in Survey Nos. 259 and 262 in respect of which regular patta had been granted in favor of the petitioner and as such, the consideration is not in accordance with the direction of this Court. Secondly, the provisional authority should have considered that the petitioner should be given adequate opportunity to put forth his claim before the appellate authority on production of sufficient and relevant materials to establish his right over the lands in question. Learned counsel for the petitioner also objected to the observations made by the provisional authority with reference to the records which the petitioner was not aware. The petitioner was not put on notice of the records of Ex Durbar. In reply,

learned Government Advocate submitted that in pursuance of the direction of this Court, the Assistant Settlement Officer considered the matter on merit and ultimately passed the order which was confirmed by the provisional authority and it need not be interfered with at this juncture. Learned Government Advocate may be correct in his submission that the original authority had considered the matter in pursuance of the direction of this court. Of course, the appellate authority rejected the appeal on the ground that the appeal was not passed in time. The Provisional Authority should have considered the matter on merit after due opportunity was given to the petitioner by enabling, the petitioner to go through the records of Ex-Durbar and then should have passed the order on merits. The petitioner was not aware of records of the Ex-Durbar classifying the lands comprised in Survey Nos. 259 and 262 as Narham Poramboke. The grievance of the petitioner is that the proceedings in question are with reference to the lands comprised in Survey No. 273 and in so far as the lands comprised in Survey Nos. 259 and 262 are concerned, it is the case of the petitioner that the petitioner was already granted regular patta. Having regard to the fact that the petitioner was not in possession of the Ex-Durbar records on the basis of which the original authority has decided the matter, the impugned proceedings are liable to be quashed. The impugned order is quashed with a direction that instead of directing the original authority to decide the matter, this matter is remitted back to the appellate authority to consider the matter on appreciation of entire evidence on record by providing adequate opportunity to the petitioner being heard and decide the matter on merit With this direction, the writ petition is allowed. No costs.