
(2008) 09 MAD CK 0133

In the Madras High Court

Case No : Writ Petition No's. 2904, 2906 of 2005, 190, 763, 764, 977, 978, 1691 to 1694, 1699 to 1702, 1718, 1719, 1905, 1934, 2010 of 2006, 4232 of 2007, 5062, 5209, 5464, 5474, 7006 and 7007 of 2008 and W.P. M.P. (MD) No. 195 of 2006 in Writ Petition (MD) No. 190

S. Chellakkannu and Others

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468, 471

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 12, 71

Tamil Nadu Pension Rules, 1978 — Rule 9

Citation : (2008) 09 MAD CK 0133

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : AR.L. Sundaresan in W.P. Nos. 2904, 2906/05, 763, 764, 977, 978, 1691 to 1694, 1699 to 1702, 1718, 1719, 2010, of 2006, J. Anand Kumar, in W.P. No. 4232 of 2007, R. Sundarsrinivasan, in W.P. Nos. 190, 1905 and 1934/06, D. Venkatesh, in in W.P. Nos. 5062, 5209, 5464 and 5474 of 2008 and R. Vijayakumar, in W.P. Nos. 7006 and 7007 of 2008, for the Appellant; K.A. Thirumalaiappan, Additional Government Pleader, T. Raja, A.A.G. and R. Janakiramulu, Spl. Govt. Pleader for R. 1 to R.3 in W.P. Nos. 5062, 5209, 5464 and 5474 of 2008, R. Janakiramulu, for R. 1 and R. 2 in W.P. Nos. 7006 and 7007 of 2008 and Spl. Govt. Pleader R. 4 to R. 7 in W.P. Nos. 7006 and 7007 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard the respective learned Counsel for the petitioners and Mr.T.Raja, the learned Additional Advocate General leading Mr.R.Janakiramulu, learned Special Government Pleader and perused the records.

2. In view of the interconnectivity of the matters arising out of similar facts, a common order is being passed.

3. The grievance of the petitioners in all these matters are that the petitioners are in possession of certain amount of lands in Kazhanivasal Village, Karaikudi Taluk as well as O.Siruvayal Village and they should not be dispossessed by the respondents from their peaceful and enjoyment of the said property. In some of the writ petitions, they have also sought for a direction to carry out mutations in the revenue records and village accounts regarding their possession and ownership.

4. Apart from the above prayers, W.P. Nos. 7006 and 7007 are filed to set aside the communication sent by the Tahsildar, Karaikudi to the District Registrar dated 24.07.2008, wherein he had given list of survey Nos. found in the Prohibitory Order Book (POB) of Kazhanivasal group village and instructing the District Registrar and his Subordinates not to register those survey nos. by way of any sale deeds. While many of the petitioners were individuals, but in W.P. Nos. 1691, 1699, 1700 and 1701, it is claimed to be owned by certain Trustees representing four communities such as Vallambar Nahar, Mutharayar, Yadavar and Adi Dravidars.

5. In W.P. No. 1691 of 2006, it was claimed to be owned by Kazhanivasal Vallambar Nakara Community people and the said trust claims to own property measuring an extent of 67.17.5 hectares. Likewise, in W.P. No. 1699 of 2006 is filed by Kazhanivasal Mutharayar Community People rep.by a Trust which claims to own 31.47.0 hectares. In W.P.1700 of 2006, it is a trust representing Kazhanivasal Yadavar Community People and it claims to own 21.99.0 hectares. In W.P. No. 1701 of 2006, it is a Trust representing the Adi Dravidars of Kazhanivasal and claims to own 31.72.0 hectares in the village. Thus, the four community groups in the name of certain so called Trusts claims to own a total extent of 152.35.5 hectares. The Vallambar Nakar Community People rep.by its trustee one Ramasamy in W.P. No. 1691 of 2006, had nowhere mentioned whether the trust was a registered trust or not. On the contrary, in para:5, he makes an averment that the members of Vallambar Nakar Community and their forefathers were in continuous possession and enjoyment of the lands. Neither the registered Trust Deed is filed nor the list of members or the beneficiaries of the Trust is mentioned in the affidavit filed in support of in the writ petition and no documents have also been enclosed to show the list of beneficiaries who were allegedly owning a total extent of 67.17.5 hectares in Kazhanivasal Village.

6. Likewise, in W.P. No. 1699 of 2006 claims to have been filed on behalf of the Mutharayar Community. Here also, there was no mention of any registered Trust Deed and identical averments as found in W.P.1691 Of 2006 is mentioned in the affidavit filed by one Subramanian on behalf of the alleged trust. There is no description or names of members of the trust, who are owning such vast lands.

7. Same was the case of the writ petition filed by the Yadavar Community people represented by one Manikonar, wherein no details have been forth coming in the affidavit. Likewise, in W.P.1701 OF 2006, which is filed by Adidravidar community people rep.by its trustees, there was no reference or the names of members or

beneficiaries of the trust. The registration details of the trust have not been mentioned, even though, the said trust claims to own more than 31.72.0 hectares.

8. This gives clear suspicion whether certain land grabbers are using the names of different caste groups to corner the vast extent of lands belonging to the Government without any factual or legal basis. The stereotyped version filed on behalf of the caste groups, that too, in the name of some Community Trusts, betrays their real intention in grabbing vast lands from the Government's possession and which lands were entered in the Prohibitory Order Book (POB) relating to the village in question.

9. The writ petition at that instance of these caste / community groups is liable to be dismissed solely on the ground that an un-registered body can never maintain a Writ Petition either on behalf of the trustees or the beneficiaries. The lack of details regarding the actual land owners clearly will disentitle these petitioners from putting forth any case before this Court. At their instance, no decision can be rendered with reference to the alleged ownership of lands. Hence, W.P. Nos. 1691, 1699, 1700 and 1701 of 2006 are liable to be rejected as not maintainable.

10. Mr. AR. L. Sundaresan, learned Senior Counsel for the petitioners took this Court to the averments made in W.P. No. 2904 of 2006. He submitted that the Assistant Settlement Officer, Madurai, was approached by that petitioner to reclassify his land as punja land and to grant patta in his favour. It is claimed that the Assistant Settlement Officer, Madurai, conducted an inspection on 06.01.1996 and on being satisfied that he was in possession and enjoyment of the land rectified the mistake crept in the classification of the land as "Kanmoi Poramboke". As per Section 11 of Tamil Nadu Act 26 of 1948 he reclassified the land as "ryotwari punja" and granted patta in his favour. He also observed that an appeal will lie to the Land Reforms Officer within 30 days. Since no appeal was filed, the order has become final and he was given patta.

11. Likewise, in the other writ petitions, the same story was repeated. In all these cases, the Assistant Settlement Officer was one R. Muthu Krishnan, who seems to have passed all these orders in the guise of dealing with the representations made by the individuals. In all these cases, he passed orders to the effect that the Kazhanivasal Village was taken over by the Government by G.O. No. 1231, dated 09.04.1965, for the purpose of settlement proceedings. During the settlement proceedings, on enquiry, it was found that in the village revenue accounts, it was registered as an encroachment. But during the earlier settlement proceedings, it was noted as "Sarkar Punjai" wrongly. Therefore, in accordance with the notification issued under the Tamil Nadu Act 26 of 1963, if any mistake is brought to the notice of the Settlement Officer, he has power to rectify the mistake and convert the same into "ryotwari punja". Therefore, he made corrections and directed pattas to be issued to the trustees of the various community groups as well as to the individuals. It is on the strength of these

proceedings, the petitioners are seeking for either a restraint order or a direction to carry out mutations in the village records. In his proceedings, he allegedly recorded the sale testimony of the Village Administrative Officer and there were no other materials before him.

12. In W.P. Nos. 7006 and 7007 of 2008, the challenge is to the communication sent by the Tahsildar, Karikudi to the District Registrar and his subordinates in reference No. Roc.B6/2436/2008, dated 24.07.2008. For better appreciation of facts, the letter is reproduced below:

Sub: Registration - Karaikudi Taluk Kazhanivasal Group - List of Lands in Prohibitory order Book - Registration should not be done - Regarding.

Ref: Karaikudi Taluk- Kazhanivasal Group Prohibitory order Book.

...

The District Collector Sivaganga and the Sub-Collector, Devakottai are instructed me to inform the list of Survey Nos. in the Prohibitory order book of Kazhanivasal Group for not to Register any sales in these Survey Nos.

As instructed, I am sending here with the list of Survey Nos. in Prohibitory order book of Kazhanivasal Group in Karaikudi Taluk for enabling to stop the registration of sales in these Survey Nos.

Annexure to the letter contained various survey nos, which were entered into the Prohibitory Order Book in Kazhanivasal group Village. Therefore, the petitioner in these two Writ Petitions wanted to set aside the said order, so that the Registrar can register documents without any hindrance.

14. Before going into other issues a brief history of the fraud committed on the State, the role played by two Assistant Settlement Officers of Madurai, should be narrated as found in the records. They are Mr. Muthukrishnan and Mr.S.Ganapathirajan. They along with certain officers in the Assistant Settlement Office, at Madurai, committed these frauds. The following F.I.Rs. were registered against these officers under Sections 468, 471 r/w 420 I.P.C.

SL. No. Police Station FIR No Date of F.I.R.

1 Karaikudi P.S. 386/2005 27.07.2005

2 Thirupachethi P.S 174/2004 19.07.2005

3 Crime Branch Police, 33/2008 12.09.2008 Sivagangai

15. When the said Muthukrishnan, Assistant Settlement Officer, Madurai, on coming to know that the registration of criminal cases against him regarding the fabricating the Government documents and misusing the power, he moved for an anticipatory bail before this Court in CrI.O.P. No. 7113 of 2005. He was granted anticipatory bail by an order dated 12.08.2005. During the course of the order, this Court observed in para:2, which is as follows:

2. The petitioner in CrI.O.P. No. 7113 of 2005 is a retired Asst.Settlement Officer. The petitioner in CrI.O.P. No. 7116 of 2005, is working as Superintendent in the Settlement Office. It appears elsewhere in the year 1996, the petitioner in CrI.O.P. No. 7113 of 2005 had passed 11 orders favouring patta in respect of Government property to several persons and the said orders were not implemented. Aggrieved party appeared to have moved a petition for implementing the said orders."

16. In fact, it was only when this Court gave directions to dispose of the grievances of certain individual, the entire land scam came to the notice of the higher officials. Even the village adangals produced in the typed set showing the survey nos for which possession and pattas were claimed, contains remarks that those survey nos. are entered in the Prohibitory Order Book (POB). When one Periya Karuppan moved this Court with a writ petition in W.P. No. 2232 of 2002 seeking for a direction to grant patta in respect of the same Kalanivazahal Village on the strength of the order passed by the then Assistant Settlement Officer, Madurai (R. Muthurkrishnan), this Court gave a direction vide an order dated 27.08.2003 to the District Revenue Officer, Sivagangai, to dispose of his representation.

17. The said officer, Sivagangai, in turn contacted the Special Commissioner, Chennai. The Land Commissioner after examining the records sent the following clarifications dated 22.07.2005. The entire letter may be reproduced for better appreciation of the facts involved in this case.

2) As requested by you and in the light of the directions of the Hon"ble High Court, Madras in the reference second cited the order of the Assistant Settlement Officer, available file S.R.145/96(A) dated 15.02.1996 has been scrutinised. It is seen from the file of the Assistant Settlement Officer, that one Peria Karuppan by his petition dated Nil, applied to the Assistant Settlement Officer for grant of patta for an extent of 5.45 acres in old S. No. 55 without enclosed any valid documentary evidence in support of his claim.

3) The following other defects were also noticed.

(i) The petition was not even numbered and there is no office seal of the Assistant Settlement Officer in the face of the petition.

(ii) No statutory notice was sent to the Tahsildar, petitioner or any other person by the Assistant Settlement Officer.

(iii) The Assistant Settlement Officer has filed the depositions of the Village Administrative Officer and the petitioner alone.

(iv) Although the Assistant Settlement Officer has stated in the alleged order that he has inspected the lands on 27.01.1996, no notes of inspection is available in the file.

(v) The Assistant Settlement Officer had not verified or called for any prior

settlement records and S.F.1,7 & 10 and filed.

vi) The time limit for applying for patta u/s 9 or any other provisions of the Act.26/63 were over as early as 35 years back. The petition is time barred and also the A.S.O. has no jurisdiction or powers to grant patta even under his official authority. When the land had been treated as Government land, the Assistant Settlement Officer had no power to reopen the matter which had been settled already.

vii) Further no record of evidence is available in the file to show that the applicant had filed title with continuous possession and enjoyment of the Government poramboke land.

3) Therefore, it is clear from the above facts that the petitioner conspired to grab the Government lands with the connivance of the Village Administrative Officer and the Assistant Settlement Officer and created an order illegally for unlawful gain.

4) In the circumstances explained above, the illegal order passed by the Assistant Settlement Officer, Madurai cannot be implemented in the village accounts. I request you to give a detailed reply to the petitioner on the above lines and send a copy to this office.

5) I also request you to report these fraudulent and illegal activities of the A.S.O's Madurai who have connived with the land grabbers and paved way to grab Government lands in Kazhanivasal and their misfeasance in granting Government lands in other villages also. The Government Pleaders may be properly explained about the illegal and bogus orders of the then A.S.O. Thiru. Muthukrishnan which could not be implemented. If the Government Pleaders of Madurai Bench of Madras High Court are properly appraised about this land scam we may avoid these kind of directions from the High Court and unnecessary embarrassment to the State."

18. Thereafter, on 03.11.2005, the Commissioner for Land Administration sent a letter to the District Collector, Sivagangai, and in para:3, it was observed as follows:

3.In the first instance, I would like to reiterate that Thiru R. Muthukrishnan and then Assistant Settlement Officer at Madurai had passed orders on all the 12 cases under reference without any jurisdiction. As per the provisions of the Act 26 of 1963 and extant Government instructions, the ASOs were authorised to handle cases of residual nature, but they did not have any jurisdiction to interfere with any of the cases settled during settlement in 1965. In this regard, I would also like to recall that the Tamil Nadu Act 26 of 1963 and 30 of 1963 were totally excluded from the operation of the Limitation Act. Accordingly, any person claiming patta under these Acts should have made a claim within six months from the notified date. Even under the Act XXVI of 1948 the Government had passed an order in G.O.Ms. No. 714 CT&RE dated 29.06.1987 and as per this

G.O. One month time was given to the effect that all objections should be submitted on or before 29.07.1987. Hence, it is quite obvious that no Assistant Settlement Officer had the jurisdiction to inquire and pass any orders on settled matters that too after a long gap of more than 30 years in 1996. I would also refer to my predecessor's D.O. letter K1/16007/2004 dated 13.10.2005 in which the orders on all the 12 cases were declared as a fraud committed by Thiru R. Muthukrishnan and his accomplices.

19. Subsequently, the same officer addressed all the District Collectors by a communication dated 21.01.2006 and in paras:3 and 4 of his circular letter reads as follows:

3. In one instance Thiru R. Muthukrishnan, who worked as Assistant Settlement Officer, Madurai during 1994-1996 issued several illegal and fabricated orders which are highly injurious to public interest. There is some evidence to suggest that he had issued the bogus orders even after his retirement in 1996. The beneficiaries of such illegal orders have approached the revenue authorities for mutation of records in this favour. In some cases, they moved the Courts for implementation of such illegal orders by the revenue authorities.

4. Thiru.R.Muthurkirshnan issued such illegal orders in several districts coming under the Madurai ASO's jurisdiction. These orders which were passed without any jurisdiction and authority have caused irreparable damage to the image of Land Administration. This matter is reviewed in all seriousness so as to undo the damage and also to ensure that the action taken proves to be a deterrent against such attempts in future. The Collectors of Sivaganga, Ramanathapuram and Madurai have already filed criminal cases against Thiru.R. Muthukrishnan and his accomplices in respect of a few cases and further probe is still on."

20. It was only thereafter, the Joint Commissioner, Land and Administration by his D.O. letter dated 30.05.2006, circularised the letter of the Commissioner dated 21.01.2006 and impressed the collectors not to implement the orders granting patta issued by the Assistant Settlement Officers during the year 1994 and after. Even as against the said Muthukrishnan, the Government had issued G.O.(D). No. 80, Revenue dated 24.02.1999 and directed that disciplinary action to be taken against him under Rule 9 of the Tamil Nadu Pension Rules, as he had already retired by then.

21. It is in this back ground, the learned Additional Advocate General referred to Section 12 of the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act 1963 (for short "TN Act,26/1963"). It is stated that the Settlement Officer can examine any person for ryotwari patta under 9 or 10 and against the decision of the Settlement Officer, an appeal lies to the Tribunal by the Government within one year and by the person aggrieved within three months. u/ s 71 of the Act, finality is attached if the order passed by the authorities. Neither the Settlement Officer nor the Assistant Settlement Officers have any right to make an other order except in accordance with law.

22. In the present case, the settlement proceedings was opened for the Kazhanivasal Village only in the year 1965, by G.O. No. 1231, Revenue dated 09.04.1961. The said Inam lands were taken over by the Government on 15.05.1965. The then Settlement Officer by his proceedings dated 18.07.1977 set out the total extent of the village lands which was taken over by the Government. Even in respect of O. Siruvaial Village, the lands were taken over on the same day namely on 15.05.1965 and the proceedings were concluded by an order dated 18.05.1972. Ever since the take over, the land vests with the State and the claim of the petitioners that they were in possession and enjoyment can not be accepted. Since the year 1977, there was no objection from any land owners claiming rectification of the land classification and no claim for patta was made to the Settlement Officers. Thus, the settlement proceedings remained unchallenged and reached a finality as per Section 12 r/w 71 of the Tamil Nadu Act 26/1963.

23. In the counter affidavit filed by the DRO, Sivagangai, dated 25.03.2008, the following averments are made in paras:20 and 21 and they may be reproduced;-

20. It is submitted that the averment of the petitioner are incorrect and denied. The petitioner had no enjoyment or continuous possession over the property. The impugned order of the Assistant Settlement Officer, Madurai does not confer any legal right or ownership over the property. The impugned order issued in favour of the petitioner is out of legal jurisdiction. If the prayer of the petitioner is accepted, it would cause great revenue loss to Government.

21. The petitioner had no enjoyment or possession over the property. The petitioner had not produced any valid document or tax receipt for proving his ownership or continuous enjoyment over the property. The impugned order of Assistant Settlement Officer, Madurai is out of legal jurisdiction and based on created bogus records. The property is highly valuable land. The prayer of the petitioner is only illegal and is trying to grab the Government lands with impugned order.

24. Notwithstanding, the factual back ground Mr.AR.L.Sundaresan, learned Senior Counsel relied upon the following unreported decisions of this Court and contended that similar directions should be given:

(i) W.P.(MD). No. 1439 of 2005 dated 04.03.2005

(ii) W.P. No. 850 of 2006 dated 03.02.2006

(iii) W.P. Nos. 2958 to 2969 of 2004 dated 01.08.2007.

25. However, while granting such directions, the factual matrix as found here were not brought to the notice of the Court and the legal provisions were not analysed. Also, there was no benefit of counter affidavits from the contesting respondents were available and some of the cases were disposed of at the admission stage itself after asking the Government Pleader to take notice for the officials respondents.

26. When fraud and deceit were brought to the notice of the Court, this Court can never issue a Writ of Mandamus or direct the authorities to illegal acts. Even the petitioners have not given the clear details about their enjoyment of the property in question. On the contrary, stereotyped averments were made in the affidavits without any regard for truth. As correctly suggested by the District Revenue Officer, this is nothing but a massive land grab covering vast lands in connivance with certain officers of the Government, against some of whom both criminal and disciplinary proceedings are pending.

27. Therefore, this Court is unable to countenance the prayer of the writ petitions filed by the petitioners. All the writ petitions will stand dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there will be no order as to costs.