

P.Kannan vs The District Collector on 15 October, 2024

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

W.P(MD)N

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2024

Pronounced on : 15.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.28333 of 2023

and

W.M.P.(MD)No.24397 of 2023

P.Kannan

... Petition

Vs.

1.The District Collector,
Madurai District,
Madurai - 625 020.

2.The District Revenue Officer,
Madurai District,
Madurai - 625 020.

3.The Tahsildhar,
Madurai North Taluk,
Madurai District.

... Responde

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings Na.Ka.No.1258506/2023/J1 dated 14.11.2023 passed by the 1st respondent and quash the same as void and illegal and consequently direct the 1st respondent to issue joint patta of the legal heirs of Periyandi Ambalam, in respect of the land to the e

<https://www.mhc.tn.gov.in/judis>

1/10

W.P(MD)

26 cents situated in old Survey No.16/3 and in New Survey No.75/3 in Veerapandy Village, Madurai North Taluk, Madurai District.

For Petitioner : Mr.H.Lakshmi Shankar,
For Mr.P.Krishnasamy

For Respondents : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.G.V.Vairam Santhosh,
Addl. Government Pleader.

ORDER

The petitioner is the son of one K.Periyandi. The said Periyandi is no more. There are other legal heirs also. The petitioner sought issuance of joint patta in favour of the legal heirs of Periyandi Ambalam in respect of the petition mentioned land. The request was rejected by the District Collector, Madurai vide proceedings dated 14.11.2023. Challenging the same, this writ petition came to be filed.

2.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied on a catena of case laws. He has also filed his written submission. He called upon this Court to set aside the impugned order and grant relief as prayed for. <https://www.mhc.tn.gov.in/judis>

3.The respondents have filed counter affidavit. The learned Additional Advocate General took me through its contents. The prime argument of the respondents is that the land in question has always been classified as government land. Earlier, it was classified as “sarkar / poramboke / anadheenam”. Now it is classified as “sarkar poramboke / tharisu”. The learned Additional Advocate General submitted that during settlement, during UDR and now, the classification of the property has always remain constant and consistent. The petitioner cannot claim any relief under the Inam Abolition Laws. My attention is drawn to G.O.Ms.No.714 Commercial Taxes and Religious Endowments Department dated 29.06.1987 as well as the circular issued by the Director of Survey and Settlement on 31.03.2022 in support of the contention that nothing can be done at the administrative level and that the petitioner had long ago missed the bus. The learned Additional Advocate General submitted that the District Collector's order is well reasoned and that it does not call for interference.

4.I carefully considered the rival contentions and went through the materials on record. The case on hand pertains to a property comprised in Old S.No16/3, New S.No.75/3 measuring 26 cents in Veerapandi Village, Madurai Taluk. It was originally an inam estate. It is true that the property had always <https://www.mhc.tn.gov.in/judis> been classified as government poramboke land. But the records enclosed in the typed set of papers clearly indicate that one Kalla Karuppan Ambalam was in possession of Old S.No.16/3 measuring 26 cents in his capacity as a ryot. It is also beyond dispute that the land was a ryoti land bearing Patta No.89. The name of Kalla Karuppan Ambalam is very much mentioned in the kist receipts. Kalla Karuppan Ambalam had submitted what is known as water application dated 23.06.1925 for water supply. The application was received by the Executive

Engineer, Public Works Department, Madura Division, who granted temporary supply for fasli 1335. Copy of the mortgage deed dated 11.04.1934 executed by Kalla Karuppan Ambalam for himself and his minor son / Periyandi Ambalam mortgaging the petition mentioned land has also been enclosed in the typed set of papers. During the hearing before this Court, the original document was also produced. It is a registered deed (Document No.1131/1934). It was also redeemed on 20.03.1942. Copy of the proceedings of the Tahsildar Manager, Madurai dated 18.01.1955 confirms that the land measuring 26 cents in S.No.16/3 was under the occupation and cultivation of Periyandi Ambalam, S/o.Kalla Karuppan Ambalam and that the land had been admitted to Periyar irrigation earlier and that pattas had also been issued for fasli 1338. Since possession as on 01.07.1939 was proved beyond doubt, Periyandi Ambalam's name was to be entered in the village accounts subject to <https://www.mhc.tn.gov.in/judis> final order to be passed by the Settlement Officer. For reasons that are not clear, Periyandi Ambalam failed to obtain ryotwari patta during settlement proceedings, leading to classification of the land as “anadheenam”. Periyandi Ambalam passed away on 25.10.1985.

5.The aforementioned records convincingly demonstrate that Kalla Karuppan Ambalam and after his demise, his son / Periyandi Ambalam were in possession and enjoyment of the petition mentioned land. One can conclude that Periyandi Ambalam's legal heirs are in possession of the property after his demise. Section 113 of the Bharatiya Sakshya Adhiniyam, 2023 is as follows:-

“113.Burden of proof as to ownership - When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.”

6.The materials on record point out a fact that for close to a century, the petitioner's family has been in possession of the petition mentioned land. Merely because in the revenue records, the land has been shown as government poramboke / anadheenam / tharisu, that cannot make any difference by itself. It is well settled that mere fact that a particular land is classified in the revenue record in a particular manner is not by itself conclusive and such entries are <https://www.mhc.tn.gov.in/judis> subject to challenge [vide (2000) 1 L.W 154 (Government of Tamil nadu v. Periya Pallivasal, Abiramam)]. In Indian Bank v. Pappi Reddiyar (2018) 18 SCC 252, question arose if mere classification of land in revenue records as agricultural is conclusive for the purposes of SARFAESI Act. It was held by the Hon'ble Supreme Court that it is not so. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put and the purpose for which it was set apart. In Srimathi Saraswathi Bai v. Chairman, Estates Abolition Tribunal, Madurai (1956 (1) MLJ 200), it was held that the character of the property has to be seen not with reference to the entries in the survey register which is not conclusive on the issue and that it has to be examined having regard to the materials on hand.

7.The petitioner's grandfather was recognized as a ryot by the administration. As per Section 11(a) of TN Act No.26 of 1948, ryot would be entitled to ryotwari patta. It was noted that many ryots failed to apply and obtain ryotwari patta. Therefore, to grant relief to them, G.O.Ms.No.1300 dated 30.04.1971 was issued to obtain patta outside the scope of the Act. It is true that a ceiling was put by issuing G.O.Ms.No.714 Commercial Taxes and Religious Endowments Department dated

29.06.1987 and 01.08.1987 was <https://www.mhc.tn.gov.in/judis> brought in as a outer time limit. The learned counsel for the petitioner would claim that G.O.Ms.No.714 dated 29.06.1987 will not have any bearing on G.O.Ms.No.1300 dated 30.04.1971. I am of the view that this issue need not be gone into in this writ petition. Admittedly, the petitioner has not sought settlement patta. He is seeking what can be called as regular revenue patta.

8.The only question that calls for consideration is whether the petitioner is entitled to issuance of such patta. Since the petitioner has demonstrated that his family has been in uninterrupted possession of the land for close to a century, he deserves to be issue with patta. It is not the case of the respondents that the documents enclosed in the typed set of papers are not genuine. Production of the original Document No.1311/1934 clinches the issue in favour of the petitioner. The petitioner's grandfather had mortgaged the land comprised in Survey No.16/3 in Veerapandi Village. By applying one's common sense, one can conclude that the petitioner's father was in possession of the petition mentioned land. There is nothing on record to show that the Government had formally taken possession from the petitioner's family. There have been no acquisition proceedings. Mere classification in the revenue records will not determine the issue. The third respondent had not taken note of the aforementioned documents. To some extent, the petitioner appears to be at <https://www.mhc.tn.gov.in/judis> fault. He could have simply produced the original mortgage deed of the year 1934 before the District Collector, Madurai. That would have turned the tables in his favour. It is an ancient document and it has been produced from proper custody. The policy of the Government has been to confer ownership on those who are in settled possession. The petitioner's family has been in settled possession. The learned counsel for the petitioner relied on the following decisions:-

“(i) (2020) 2 SCC 569 (Vidya Devi v. State of H.P

(ii) 2010 O Supreme(Mad) 1060 (G.Ramachandran v. The Additional Chief Secretary to Government)

(iii) 1990-2-L.W. 478 (Mariabackiammal (Deceased) v. The District Forest Officer)

(iv) W.P.No.10596 of 2016 dated 24.08.2021 (P.Malliga v.

The Commissioner of Survey and Settlement, Chennai)

(v) S.A.No.531 of 1997 dated 28.06.2021 (The State of Tamil Nadu v. L.Narasinga Rao)

(vi) A.S.No.190 of 1997 dated 29.12.1982 (State of Kerala v. Mundoli Hydrus)”
<https://www.mhc.tn.gov.in/judis>

9.They are clearly in favour of the petitioner. But I have not discussed them for the simple reason that the petitioner is seeking only revenue patta and not settlement patta. The petitioner has clearly made a case for grant of relief. As rightly pointed out by the learned counsel for the petitioner, the right to property is a constitutional right and it cannot be interfered with casually. It is truism that

possession is the nine points of the law.

10. In this view of the matter, the impugned order is set aside the writ the petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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Pre-Delivery Order in

15.10.2024

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