

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3522 of 2015
and MP.No.1 of 2015

1.R.Bharathi
2.C.Yamuna @ Amul
3.K.Shoba
4.J.Bangajam
5.P.Pushpa

.... Petitioners

Vs.

1.The Assistant Settlement Officer (North),
Office of the Principal Secretary &
Commissioner of Land Survey and
Settlement, Chepauk,
Chennai - 600 005.

2.The Tahsildar
Ambathur Taluk Office,
Ambathur,
Chennai.

.... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in O.Mu.E1/8026/14 dated 23.12.2014 of the first respondent and quash the same and consequently direct the first respondent to consider the petitioner's representation dated 17.10.2014 and dispose the same on merits in the light of the decisions of this Hon'ble Court in the similar and identical issue in respect of the petitioner land measuring to an extent of 10.27 Acres comprised in survey numbers 297/1, 298/2 mentioned in the impugned order, situated at Morai Village, Ambattur Taluk, Thiruvallur District.

For Petitioner
For Respondents

: Mr.M.Rajendiran
: Mr.R.Vijayakumar
Government Advocate

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents, who has accepted notice on behalf of the respondents. With the consent of either side, this writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner has challenged the order of the first respondent dated 23.12.2014 by which the petitioner's application for cancellation of the entry in the Revenue records classifying the land as 'Meikkal Poromboke' and for issuance of Ryotwari Patta in his favour was rejected only on the ground that the land has been already classified as 'Meikkal Poromboke' and notification in the Government Gazette has been issued on 22.07.1987 and there is no power for the first respondent to receive any application beyond 20.08.1997.

3.Identical issue arose for consideration in several writ petitions namely, in W.P.No.8668 of 2010 dated 28.04.2010, W.P.No.28578 of 2010 dated 23.12.2010, W.P.No.11593 of 2011 dated 29.04.2011 and W.P.No.3702 of 2012 dated 27.11.2012. In all the earlier cases, the orders of rejection were identical to that of the present writ petition. The issue involved is whether the first respondent is entitled to condone the delay and this Court in the earlier writ petition following the earlier orders and taking note of the earlier orders allowed the writ petition, set aside the impugned order and directed the respondent to consider the matter afresh in accordance with law.

4.At this stage, it would be relevant to refer to the decision in the case of R.Kanniappan vs. The Assistant Settlement Officer (North), Chennai and another in W.P.No.11593 of 2011 dated 29.04.2011 and the operative portion of the order reads as follows:

"2.Under similar circumstances, when such order was passed rejecting the claim of the petitioners on the ground of delay, the order was set aside directing the Assistant Settlement Officer to give opportunity to the parties and decide the issue, including the question of delay. That was in the order dated 28.4.2010 in W.P.No.8668 of 2010 (M.R.Nalini Kumari and another v. The Assistant Settlement Officer (North), Chennai and others). In the said order N.Paul Vasanthakumar, J. has observed as follows:

"5.A perusal of the impugned orders and the materials on record would show that no notice was given to the petitioners by the first respondent as well as by the appellate authority namely, the second respondent. In view of the above submission and having regard to the facts and circumstances of the case and since the order impugned in this writ petition was passed without

giving any opportunity of hearing to the petitioners, the impugned orders passed by respondents 1 and 2 are set aside and the matter is remitted to the first respondent to consider the application filed by the petitioners, afresh after giving an opportunity to the petitioners to sustain the contention taking notice of the relevant rules and notifications including that of delay and pass fresh orders within a period of two (2) weeks from the date of receipt of a copy of this order."

and this decision has been followed in series of cases.

3. In the present writ petition also the Assistant Settlement Officer has chosen to state in the impugned order that the application was made by the petitioner for issuance of patta as per the provisions of the said Act regarding Survey Nos. 196/7 (0.48 Cents), 201/2 (0.59 Cents), 201/4 (2.35 Acres) and 211/6 (1.45 Acres) situated at Nallathur village, Thirukazhukundram Taluk, Kancheepuram District, which has been classified as Punjai Anadhinam as per the records, and the same cannot be considered by virtue of the government order in G.O. 714, CT and RE Department, dated 29.6.1987. The Assistant Settlement Officer thereby rejected the application of the petitioner without affording any opportunity to him.

In such view of the matter, this writ petition is allowed and the impugned order is set aside and the matter is remanded to the first respondent for passing appropriate orders after giving opportunity to the petitioner. Such order shall be passed by the first respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs."

5. Following the above orders, this writ petition is allowed and the impugned order is set aside. The matter is remanded to the first respondent for passing appropriate orders after giving opportunity of hearing to the petitioner and conducting enquiry. The above direction shall be complied with, within a period of three months from the date of receipt of a copy of this order.

6. This writ petition is allowed with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

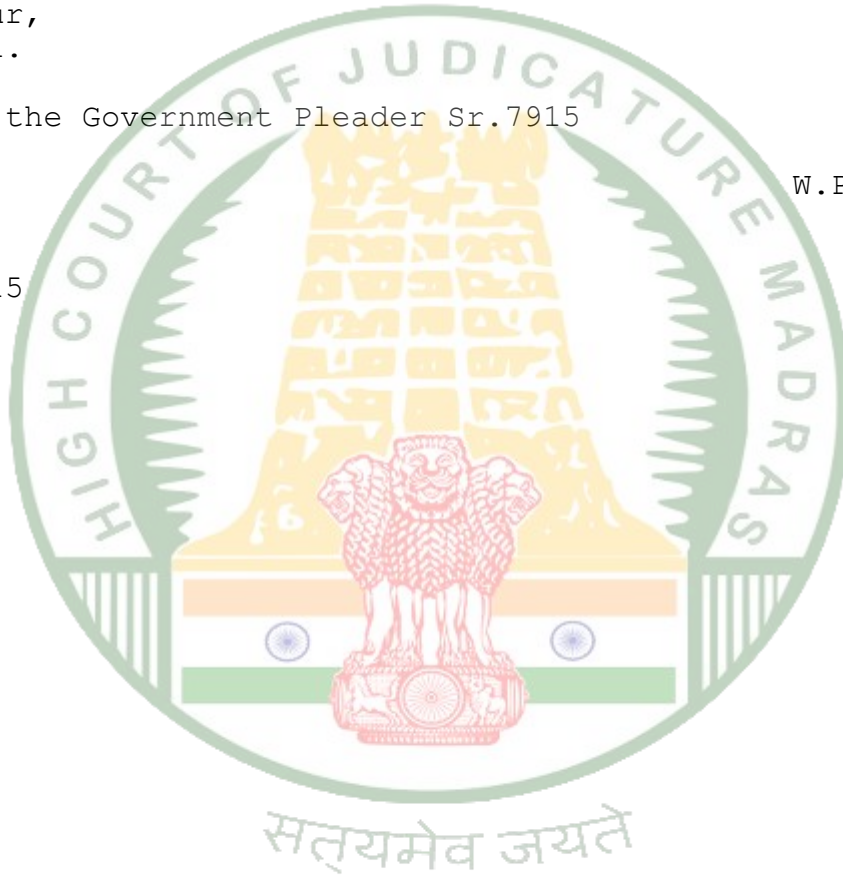
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+ 1 cc to the Government Pleader Sr.7915

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RJ(CO)
Eu 25.02.15



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