

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.24537 of 2013

and

M.P.No.1 of 2013

1.Sundaram
2.S.Lakshmi
3.S.Venkatesan
4.S.Gopi
5.S.Kala
6.S.Sujatha
7.S.Priya
8.J.Kannammal
9. J.Suresh
10.J.Kalpana
11.J.Govindaraj

... Petitioners

Vs.

1.The Additional Chief Secretary and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2. The Assistant Settlement Officer (North),
O/o. The Commissioner Survey and Settlement,
Survey House, Chennai-5.

3. The Director of Highways Research Station,
Highways Department, Venkatapuram,
Saidapet, Chennai-15.

(R3 impleaded as per order
dated 11.04.2014 by SVNJ
in M.P.No.1/14 in W.P.No.24537 of 2013.)

4. Association of Tamil Nadu Highways Engineers,
Represented by its General Secretary,
No.35 V, Taluk Office Road,
Saidapet, Chennai-15.

(R4 impleaded as per Court
order dated 27.06.2014 by MMSJ
in M.P.No.2/14 in W.P.No.24537 of 2013.)

.. Respondents

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Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records relating to the 1st respondent's letter No.K1/3439/2013 dated 07.05.2013 and quash the same and to direct the respondents to grant Ryotwari Patta as per provisions of Act 26/48 in favour of the petitioners for the land comprised in S.No.192/1.T.S.No.21, Block No.5 over an extent of 4.23 acres of Venkatapuram Village, Guindy-Mambalam Taluk, Chennai District. Pursuant to the petitioners representation dated 11.02.2013.

For Petitioner .. Mr.K.Balakrishnan

For Respondents .. Mr.P.Sanjay Gandhi,
Addl. Govt. Pleader

ORDER

By consent of both parties, the matter is taken up for final disposal.

2. This Writ Petition is filed for issuance of a Writ of Mandamus calling for the records relating to the 1st respondent's letter No.K1/3439/2013 dated 07.05.2013 and quash the same and to direct the respondents to grant Ryotwari Patta as per provisions of Act 26/48 in favour of the petitioners for the land comprised in S.No.192/1.T.S.No.21, Block No.5 over an extent of 4.23 acres of Venkatapuram Village, Guindy-Mambalam Taluk, Chennai District, pursuant to the petitioners representation dated 11.02.2013.

3. The petitioners filed a petition before the respondents seeking Ryotwari Patta under Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948. The request made by the petitioners was rejected as belated having made the claim after few decades. Reliance has been made on the common order passed by this Court in W.P.No.11317 of 2002 dated 19.02.2013.

4. The learned counsel appearing for the petitioners has made reliance upon the another order passed by this Court W.P.No.2751 of 2014 dated 12.08.2015 wherein, it has been held as follows:

'2. Considering the very same issue involved, this Court in W.P.No.7856 of 2013 dated 27.06.2013 has passed the following order:

6. Admittedly, the request made by the petitioners has not been considered on merits. The impugned order does not indicate as to whether any claim is not inclined to go into the said issue. Considering the very same issue, this Court in

W.P.No.4980 of 2012 dated 09.03.2012, was pleased to pass the following order, after placing reliance upon the earlier decisions:

" 4. Learned counsel for the petitioner at the outset would refer to the impugned order dated 31.01.2012, wherein his request for grant of patta has been summarily rejected on the ground that any application filed beyond 20.08.1987 would be rejected as time barred. He also points out that when a similar order of rejection was questioned by a person like that of the petitioner herein before this Court, this Court by a detailed order, set aside the same and remanded the matter to the authorities concerned with a direction to consider the application without reference to the delay. Therefore, he submits that this order is liable to be interfered with.

5. I find that the rejection has been made only on the ground that the application has been filed beyond the time. In this connection, I refer to the order passed by this Court on 21.02.2012 in W.P.No.3989 of 2012, wherein this Court had an occasion to deal with a similar order of rejection and set aside the order, after finding that the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 does not prescribe any time limit for filing a claim petition for the purpose of issuance of patta. Therefore, when the application filed by the petitioner herein for patta has been rejected as it is time barred, the order suffers from patent irregularity. Further, the order of rejection has been passed without hearing the petitioner concerned.

6. Therefore, in the light of the order passed by this Court on 21.02.2012 in W.P.No.3989 of 2012, this writ petition is allowed. The impugned order dated 31.01.2012 is set aside and the matter is remanded to the first respondent with a direction to consider the application afresh and in accordance with law after affording opportunity to the petitioner, within a period of eight weeks from the date of receipt of a copy of a order, without rejecting on the same ground of limitation once again.

The writ petition is allowed in the above terms. Consequently, connected miscellaneous petition is closed. No costs.

7. In the light of the decision referred supra, the order impugned in this writ petition is set aside and the petitioner is directed to resubmit the papers within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, the second respondent is directed to decide the application on merits and in accordance with law, within a period of twelve weeks thereafter. It is made clear that this court has not expressed any opinion on the merits of the matter. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.''

In the above decision, this Court also perused the order passed by this Court in W.P.No.11317 of 2002 dated 19.02.2013.

5. The issue involved in the present writ petition is different. In those cases, petitioners concerned approached the court belatedly. Challenge was made to an inter office communication between the Inspector of Police and the Government Officials. The prayer was also to direct the first respondent to take suitable action against the respondents 2 and 3. Thus, the case involved in the said cases are totally different.

6. What the petitioner wants is an adjudication on merit. They are also claiming to be in possession for number of years. The decision relied upon by the learned counsel appearing for the petitioner in which the earlier orders were taken note of would govern the case. The period of limitation fixed is only directory but not mandatory being part of the procedure of law. Thus, the order impugned is hereby set aside and consequently, the first respondent is directed to decide the issues on merit after affording an opportunity to the petitioners, within a period of eight weeks from the date of receipt of copy of this order.

In the result, this writ petition is ordered accordingly.
No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional Chief Secretary and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2. The Assistant Settlement Officer (North),
O/o. The Commissioner Survey and Settlement,
Survey House, Chennai-5.

3. The Director of Highways Research Station,
Highways Department, Venkatapuram,
Saidapet, Chennai-15.

+2 ccs to Mr.K.Balakrishnan Advocate sr.60858/15

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W.P.No.24537 of 2013
and
M.P.No.1 of 2013

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