

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-03-2015

CORAM :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP No. 28075 of 2012

and

M.P. No. 1 of 2012

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

Versus

1. The Principal Secretary and Commissioner
of Land Administration
Chepauk, Chennai - 600 005
2. The Assistant Settlement Officer (North)
O/o. The Commissioner of Survey and Settlement
Survey House, Chennai - 600 005

... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the first respondent's letter No.K1/19380/2012 dated 11.09.2012 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 Survey No.1 etc., over an extent of 872.35 acres of Vanniammalli, Gummudipoondi Taluk, Tiruvallur District pursuant to the petitioner's representation dated 30.07.2012.

For Petitioners : Mr. K. Balakrishnan

For Respondents : Mr. V. Jayaprakash Narayanan
Special Government Pleader

ORDER

Heard the learned counsel for the petitioners as well the learned Special Government Pleader appearing for the respondents.

2. The petitioners have come forward with this writ petition challenging the order dated 11.09.2012 of the first respondent. By the said order dated 11.09.2012, the petitioners' request for issuance of patta under the provisions of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, XXVI of 1948 (hereinafter referred to as the Act) was rejected as time barred by relying upon the Rule as notified under G.O. Ms. No.714, Commercial Taxes and Registration Department dated 29.06.1987. According to the first respondent, there is an inordinate delay on the part of the petitioners in filing an application for issuance of Patta under the Act and therefore, such application cannot be entertained.

3. The learned counsel for the petitioners submit that the order passed by the first respondent is contrary to the Act. The first respondent failed to consider that merely because the land owners did not approach within the stipulated time, that would not alter the character of the land. Further it is contended that the Act does not prescribe any time limit for submitting an application seeking patta. The first respondent rejected the claim of the petitioners by relying upon the Government Order dated 26.06.1987. Such an order passed by the Government cannot prescribe time limit which virtually amounts to amending the statute. In this regard, the learned counsel for the petitioners referred to the earlier order dated 06.01.2015 passed by this Court in WP No. 30194 of 2012 wherein an identical order was passed by the second respondent herein rejecting the claim made by the petitioners therein as time barred. By the order dated 06.01.2015, this Court, following the earlier order passed by this Court in WP No. 24604 of 2012 dated 24.09.2012, passed the following order.

"4. The petitioners' case is identical to the case referred supra and the petitioners would state that without conducting any enquiry and without even considering as to whether G.O. Ms. No.714, Commercial Taxes Department dated 29.06.1987 would be applicable to the case of the petitioners, the impugned order is passed.

5. Hence, following the earlier order passed by this Court, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded back to the respondent with a direction to issue notice to the petitioner and consider their objections and pass fresh orders within a period of three months from the date of receipt of a copy of this order."

4. In the counter affidavit filed by the first respondent, the averments made in the impugned order have been repeated. There is no reply to the specific contention raised by the petitioners that there is no time limit prescribed under the Act. There is also no reply to the contention that the Government has no jurisdiction to issue an executive instruction and apply law of limitation by overriding the statute.

5. In the light of the above discussion and in the light of the decision rendered by this Court in order dated 06.01.2015 passed by this Court in WP No. 30194 of 2012, the impugned order passed by the first respondent on 11.09.2012 is set aside. The writ petition is allowed. No costs. The matter is remanded back to the first respondent with a direction to issue notice to the petitioners, consider their objections and pass fresh orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary and Commissioner
of Land Administration
Chepauk, Chennai - 600 005
2. The Assistant Settlement Officer (North)
O/o. The Commissioner of Survey and Settlement
Survey House, Chennai - 600 005

+1cc to Mr.K.Balakrishnan, Advocate, S.R.No.16606
+1cc to the Government Pleader, S.R.No.16990

WP No. 28075 of 2012

RJ(CO)
CA(06/04/2015)