

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.11372 of 2016
and WMP.9820 of 2016

Chidambaram

... Petitioner

Vs.

The Commissioner
Land Survey and Land Tax,
Survey house,
3rd floor, Chepauk,
Chennai-05.

2.The Assistant Settlement Officer (North)
Director of Survey and Settlement
Chepauk, Chennai-05.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order vide letter No.O.Mu.U(1)5066/2015 dated 24.08.2015 passed by the second respondent and quash the same and consequently direct the second respondent to issue a patta in the name of the petitioner with regard to the land in survey No.73/4A of an extent of 1.17acres in Neelagiri Therku Thottam, Tanjore Taluk and District pursuant to the representation dated 23.07.2015.

For Petitioner : Mr.T.Muruganantham
For respondents : Mr.R.A.S.Senthilvel, AGP.

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O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2.The petitioner has come forward with the present Writ Petition seeking for issuance of Certiorarified Mandamus to call for the records relating to the impugned order vide letter No.O.Mu.U(1)5066/2015 dated 24.08.2015 passed by the second respondent and quash the same and consequently direct the second respondent to issue a patta in the name of the petitioner with regard to the land in survey No.73/4A to an extent of 1.17acres in Neelagiri Therku Thottam, Tanjore Taluk and District pursuant to the representation dated 23.07.2015.

3.The petitioner's great grand father/Azhagappan Chettiyar S/o.Chidambaram Chettiyar of Devakottail filed a suit for partition in OS.No.21/1936 on the file of Subordinate Judge, Thanjore for partition of the property among the legal heirs. The said properties mentioned in the said suit are located in different places in Tamil Nadu. A compromise memo was filed therein, with regard to sharing of the property, based on the compromise memo, the suit was decreed on 22.10.1937. The respective parties are under possession and enjoyment of their share. The petitioner's grandfather/Chokkalingam Chettiar s/o.Velaiyan Chettiyar was the 7th defendant in the said suit. The property in S.No.73/4A to an extent of 1.17acres of land in Neelagiri Therku Thottam, Thanjore Taluk and District is one of the properties was allotted to petitioner's grandfather and the same is in his continuous possession.

4.During the period of Estate Abolition Act 26/1948 the petitioner grandfather failed to obtain patta for the said land and the same was wrongly classified as Anaadinam, by oversight the petitioner's grandfather and others have not noticed the said classification.

5.Recently, the petitioner noticed the wrong entry made in the extract and sent an application dated 23.07.2015 to the second respondent to correct the extract and cancel the entry Anaadinam and issue patta in his favour. In reply, the second in his letter O.Mu.U(1) 5066/2015 dated 24.08.2015 stated that the request for cancellation of the entry Anaadinam ought to have been made on or before 29.06.1987 and any application received thereafter cannot be entertained and thereby rejected the request of the petitioner. Aggrieved over the said order of rejection, the petitioner filed the present writ petition.

6.The learned counsel for the petitioner relied on the order of this Court dated 06.01.2015 passed in WP.No.30194 of 2012 - M.Valliammal and others V. The Assistant Settlement Officer (North), Chepauk, Chennai, wherein this Court observed as follows :

The learned counsel for the petitioners submit that in an identical situation, this Court has passed an order in WP.No.24604 of 2012 dated 24.09.2012. The order dated 24.09.2012 reads as follows :

"The prayer in the writ petition is to quash the order dated 19.08.2011 and consequently direct the respondent to effect correct entries in the revenue records as Rayathwari patta land.

2.The impugned order was passed stating that there is no provision to condone the delay by the Settlement Officer.

3.The learned counsel for the petitioner submits that the very same issue was considered by this Court in W.P.No.8668 of 2010, by order dated 28.04.2010, wherein a similar order was set aside on the ground that no notice was issued before rejecting the revision filed with condone delay and the matter was remitted to the respondents therein to give an opportunity to the petitioners in that case to sustain the contention, taking note of the relevant Rules and Notifications including the question of delay and pass fresh orders within a period of two weeks.

4.The learned Government Advocate for the respondent submits that a similar order may be passed in this writ petition also.

5.Following the earlier order referred above, the impugned order is set aside, with a direction to the respondent to issue notice to the petitioner and consider his objections including the question of condonation of delay and pass fresh orders, within a period of eight weeks from the date of receipt of a copy of this order.

6.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed."

7.The case of the petitioner is identical to the case referred supra and the petitioner 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 petitioner, the impugned order is passed.

8.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 respondents with a direction to issue notice to the petitioner and consider the objections and pass fresh orders within a period of three months from the date of receipt of a copy of this order. No costs.

Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner
Land Survey and Land Tax,
Survey house,
3rd floor, Chepauk,
Chennai-05.

2.The Assistant Settlement Officer (North)
Director of Survey and Settlement
Chepauk, Chennai-05.

+1cc to Government Pleader High Court Madras sr.20163/16

+1cc to Mr.T.Muruganatham Advocate sr.20302/16

W.P.No.11372 of 2016

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