

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29-04-2016

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition Nos. 21328 and 33136 of 2014
and
M.P. No. 1 of 2014 in WP No. 21328 of 2014

Model Education Society
represented by it's Hon'ary Secretary
Mr. Prakash Mathew
No.15, Thandavarayan Street
Thandaiyarpet, Chennai - 600 021
represented by their power agent
Mr.Kaleeswaran

.. Petitioner in both the Writ Petitions

-Versus-

1. The Principal Commissioner
Survey and Settlement
Ezhilagam, Chennai - 600 005
 2. The Assistant Settlement Officer, North
Survey Building
Chepauk, Chennai - 600 005
 3. The Tahsildar
Sriperumbadur Taluk
Kancheepuram District
 4. The District Collector
Kancheepuram
 5. The National Disaster Force
4th Battalion, Arakonam (Tamil Nadu)
Arakonam
- ...Respondents in WP.No.21328 of 2014

1. The Director
Survey and Settlement Department
Government of Tamil Nadu
Survey House, 3rd Floor
Ezhilagam, Chennai - 600 005

2. The Principal Commissioner of
Survey and Settlement
Ezhilagam, Chennai - 600 005

3. The Assistant Settlement Officer, North
Survey Building, Chepauk, Chennai - 600 005.

..Respondents in WP.No.33136 of 2014

WP No. 21328 of 2014:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus forbearing the respondents herein, their men, agents servants, subordinates or any other person or persons claiming through them or authorised by them from in any manner interfering with the peaceful possession and enjoyment of the property of an extent of 7.00 acres comprised in Survey No.390/1 in Palanjur Village, Mevalurkuppam, Sriperumbadur Taluk, Kancheepuram District or allotting the same to the fifth respondent herein or any other person for allotment of the same to the persons suffered by natural disasters.

WP No. 33136 of 2014:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent herein viz., the impugned order bearing Na.Ka.No.E2/1685/13 dated 24.10.2014 and quash the same and direct the respondents to rectify the classification of the lands measuring an extent of 7.00 acres comprised in Survey No.390/1 in Palanjur Village, Mevalurkuppam, Sriperumbadur Taluk, Kancheepuram District by removing the same from the classification of Anadeenam and to grant patta in respect of the said lands in favour of the petitioner

For Petitioner : Mr.Ar.L.Sundaresan, Senior Advocate
for Ms. Al.Ganthimathi
in both the writ petitions

For Respondents: Mr.S.Pattabiraman
Government Advocate
in WP No.33136 of 2014
and for RR1 to 4 in WP No.21328 of 2014

Ms.G.Hema for R5 in WP No.21328/2014

COMMON ORDER

In both the writ petitions, the issue arise for consideration is one and the same. The learned counsel for both sides advanced common argument in both the writ petitions. Therefore, by their consent, the writ petitions are taken up for hearing together and are disposed of by this common order.

2. The facts which are necessary for disposal of these writ petitions are as under:-

(I) The petitioner claims to be the owner of the land measuring an extent of 7.00 acres in Survey No.390/1 in Palanjur Village, Mevalurkuppam, Sriperumbadur Taluk, Kancheepuram District having purchased the same for a valuable sale consideration by means of three sale deeds dated

21.10.1999, 25.10.1999 and 27.10.1999 respectively and they were registered on the file Sub-Registrar, Poonamallee. According to the petitioner, his predecessor-in-title namely Etti Naicker, Duraivel Naicker and Balakrishna Naicker were shown as owners in respect of the land in question in the Survey and Re-settlement register of Palanjur Village. On their death, the name of their legal heirs namely Gunasekaran, Nagesh and Stanley respectively has been registered as owners in the Survey and Land records. The aforesaid persons have transferred the title of the property in favour of one Kuppan, Son of Natesa Naicker and Ramachandran, Son of Ragava Naicker by means of unregistered sale deeds during the year 1966 to 1970. The aforesaid Kuppan and Ramachandran have in turn sold the lands in question in favour of the vendors of the petitioner during the year 1988. Thus, the name of the predecessor-in-title of the petitioner has been duly recorded in the survey and settlement register. After purchase of the lands by means of three sale deeds in the year 1999, mentioned above, the petitioner has been in continuous and uninterrupted possession

(ii) According to the petitioner, they came to know that in the settlement proceedings, the land in Survey No.390/1 appears to have been erroneously classified as Anadeenam. On coming to know about the same, the petitioner submitted an application dated 02.01.2012 to the first respondent to rectify the error relating to classification of the land in question and to grant patta in their favour. However, the Commissioner of Land Administration, Chepauk, Chennai has rejected the application dated 02.01.2012 of the petitioner by an order dated 31.01.2012 on the ground that such claim made by the petitioner is time barred. As against the same, the petitioner filed WP No. 4980 of 2012 before this Court to quash the communication dated 31.01.2012 of the Commissioner of Land Administration, Chepauk, Chennai and for a consequential direction to the respondents therein to consider the petitioner's application dated 02.01.2012 after affording an opportunity of hearing. This Court by order dated 09.03.2012 disposed of the writ petition by holding 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 and therefore the communication dated 31.01.2012 is patently irregular. Therefore, while setting aside the communication dated 31.01.2012, this Court directed the second respondent therein namely Assistant Settlement Officer (North), office of the Principal Secretary and Commissioner of Land and Survey, Chepauk, Chennai to consider the claim of the petitioner afresh in accordance with law after affording an opportunity of hearing. Pursuant to the said order, a notice was received by the petitioner for an enquiry. The petitioner participated in the enquiry and submitted detailed written submissions together with supporting documents. However, the second respondent in WP No. 21328 of 2014, without properly appreciating the claim made by the petitioner, rejected the claim of the petitioner by passing an order dated 11.02.2013 stating that the lands were

classified as Arasu Punjai Anadeenam. According to the petitioner, the said order dated 11.02.2013 of the second respondent is per se without application of mind inasmuch as the petitioner only wanted to re-classify the land but the second respondent without going into the question of re-classification has simply stated that the land has been classified as Arasu Punjai Anadheenam in the revenue records. As against the order dated 11.02.2013, the petitioner filed an appeal before the first respondent in WP No. 21328 of 2014 on 14.03.2013. When the appeal was pending, on 31.07.2014, the officials belonged to the office of the third and fourth respondent in WP No. 21328 of 2014 have inspected the land in question purportedly to measure the extent of land and when it was questioned, it was informed that they are contemplating to allot the land for rehabilitation of the persons who have suffered disaster through the fifth respondent agency. In such circumstances, the petitioner has filed WP No. 21328 of 2014 for a Mandamus as mentioned above.

3. During the pendency of WP No. 21328 of 2014, the appeal preferred by the petitioner before the first respondent in WP No. 21328 of 2014 was rejected on 24.10.2014 by assigning the very same reason that the claim made by the petitioner is belated. Therefore, the petitioner has filed the writ petition No. 33136 of 2014 challenging the order dated 24.10.2014 of the first respondent.

4. Mr. Ar.L. Sundaresan, learned senior counsel appearing for the petitioner would contend that earlier the second respondent in WP No.21328 of 2014 has passed an order 31.01.2012 rejecting the claim of the petitioner as belated. Challenging the same, the petitioner has filed WP No. 4980 of 2012. This Court, by order dated 09.03.2012 set aside the order dated 31.01.2012 by specifically holding that there is no time limit prescribed under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963. While so, it is no longer open to the first respondent to assign the very same reason relating to limitation in the impugned order dated 24.10.2014 and therefore the impugned order is legally not sustainable. The learned Senior counsel for the petitioner also would contend that the name of the predecessors-in-title have been duly recorded in the revenue records relating to the land in question. The petitioner has purchased the lands in question by means of registered sale deeds. The first respondent has not gone into these aspects at the time of passing the impugned order. Therefore, the learned senior counsel for the petitioner prayed for allowing the writ petitions as prayed for.

5. The learned Government Advocate appearing for the respondents, by relying upon the counter affidavit of the respondents 1, 2 and 4 in WP No. 21328 of 2014 would contend that Mevalurkuppam Village was taken over by the Government vide G.O. Ms. No.3157, Revenue Department dated 09.12.1951 under the provisions of the Tamil Nadu Estate Abolition Act 1948 (Act XXVI of 1948). At the time of survey and settlement

operations, the lands in question has been classified as 'government punja' with remarks as Anadeenam. Such classification of the land has been duly recorded to effect the ryotwari settlement procedures as contemplated under Section 22 of the said Act. As per the provisions of the Act, a person who seeks ryotwari patta has to submit an application before the competent authority. If no application is submitted, the Settlement Tahsildar can cause field inspection and conduct suo motu enquiry for such settlement. In connection with the land in question, no one has submitted an application for grant of patta. Even as per the order in G.O. No.714, Commercial Taxes and Religious Endowment Department dated 29.06.1987, amendments were made to enable the applicants to submit their claim petition within one months thereof. As per the said Government Order, the last date for filing claim petition has come to an end on 20.08.1987. In this case, the predecessor-in-title of the petitioner or the petitioner have not filed any such claim petition and therefore, the present claim made by the petitioner, after 52 years from the date of introduction of the settlement procedure in the Village is not only belated but not feasible of consideration. According to the learned Government Advocate, the petitioner or his predecessor in title seems to have created some unregistered and then registered sale deeds to grab the government lands. As per the documents produced by the petitioner, the unregistered as well as registered sale deeds have been executed on the same day i.e., 20.06.1988. Further, the survey number mentioned in the documents have been manipulated. In any event, even if the registration is proper, if it is in respect of government lands, it will not bind the government in any manner. The order dated 24.10.2014 has been passed by the first respondent in WP No. 33136 of 2014 is preceded by a valid enquiry in which the petitioner participated and submitted his objections. The learned Government Advocate would further contend that a request was made by the fifth respondent in WP No. 21328 of 2014 for stationing of one team/company of National Disaster Response Force under the control of Ministry of Home Affairs, New Delhi, proposals have been forwarded to the Government to part with 5.00 acres of land out of 7.00 acres to set up a National Disaster Response Team. The proposals are under scrutiny. In any event, as on date, the entire land in Survey Field No.390/1 is classified as government punjai anadeenam over which the petitioner has no right to seek for re-classification. Further, the sale deeds in favour of the petitioner are void and therefore the petitioner cannot claim title to the land in question on the basis of the sale deeds executed in their favour. The learned Government Advocate therefore prayed for dismissal of the writ petitions.

6. The learned Counsel appearing for the fifth respondent in WP No. 21328 of 2014 would contend that the fifth respondent has only made a requisition to the fourth respondent for stationing one team/company of National Disaster Response Force under the control of Ministry of Home Affairs, New Delhi in the land in question which was identified as suitable for such purpose. Further, proposals have been forwarded to the

Government to allot 5.00 acres of land out of 7.00 acres to set up a National Disaster Response Team and the proposals are under scrutiny. Therefore, the relief of Mandamus sought for by the petitioner is unsustainable and prayed for dismissal of WP No. 21328 of 2014.

7. I heard the learned counsel on either side and perused the materials on record. Earlier, the claim of the petitioner for re-classification of the land in question was rejected by the Commissioner of Land Administration, Chepauk, Chennai by an order dated 31.01.2012. The reasons assigned for rejection of the claim made by the petitioner for re-classification of the land in question is that such claim for re-classification has been made belatedly. Challenging the same, the petitioner filed WP No. 4980 of 2012 before this Court. This Court, by an order dated 09.03.2012 set aside the order dated 31.01.2012 of the Commissioner of Land Administration, Chepauk, Chennai. The relevant portion of the order dated 09.03.2012 reads as under:-

"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 WP 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 Tamilnadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1983, 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."

8. Thus, it is evident that the earlier order of rejection passed by the Commissioner of Land Administration, Chepauk, Chennai on 31.01.2012 holding that the claim made by the petitioner is belated has been set aside by this Court on 09.03.2012 in WP No. 4980 of 2012 specifically on the ground that the Tamilnadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1983, does not prescribe any time limit for filing a claim petition for the purpose of issuance of patta. Therefore, it is no longer open to the first respondent to pass the impugned order rejecting the claim of the petitioner as belated. However, in the impugned order dated 24.10.2014 of the first respondent in WP No. 33136 of 2014, in para No.5, it was stated that "the survey and settlement work in the Village has been completed 60 years ago. If during the settlement procedure patta has not been obtained, as per Section 67 of the Act, the applicant has no right to claim patta. Further, appeal ought to have been preferred within the time prescribed by the Government, however, appeal has not been preferred within time. When no claim has been made during the survey and settlement procedure, then the land will be treated as

"Anadheenam" and as against such classification of the land, claim ought to have been made by submitting supporting documents within the time specified. In the absence of the same, the claim made by the petitioner either for re-classification of the land or for issuance of patta is not feasible of consideration." Thus, it is evident that the first respondent has passed the impugned order mainly on the ground of delay in making the claim for issuance of patta by re-classifying the land. As mentioned above, such a reasoning relating to delay assigned earlier was set aside by this Court. It is also to be mentioned that as against the order passed by this Court on 09.03.2012 in WP No. 4980 of 2012, the department has not preferred any appeal and it has become final. While so, as rightly pointed out by the learned Senior counsel for the petitioner, it is no longer open to the first respondent to reject the claim of the petitioner only on the ground of delay in making the claim for patta by re-classifying the land.

9. In the light of the above finding, the impugned order of the first respondent has to be set aside with a direction to the first respondent to consider the claim of the petitioner afresh notwithstanding the delay in making the claim for issuance of patta after re-classifying the land. In other words, the first respondent shall consider the claim of the petitioner without taking into account the delay in making the claim for issuance of patta after re-classifying the land. Accordingly, the impugned order dated 24.10.2014 of the first respondent in WP No. 33136 of 2014 is set aside. The matter is remanded back to the first respondent in WP No. 33136 of 2014 for fresh consideration. The first respondent in WP No. 33136 of 2014 is directed to consider the claim of the petitioner afresh without taking note of the delay in making the claim for issuance of patta after re-classifying the land in question and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, WP No. 21328 of 2014 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

rsh

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Director
Survey and Settlement Department
Government of Tamil Nadu
Survey House, 3rd Floor
Ezhilagam, Chennai - 600 005.

2. The Principal Commissioner of
Survey and Settlement
Ezhilagam, Chennai - 600 005.

3. The Assistant Settlement Officer, North
Survey Building
Chepauk, Chennai - 600 005.

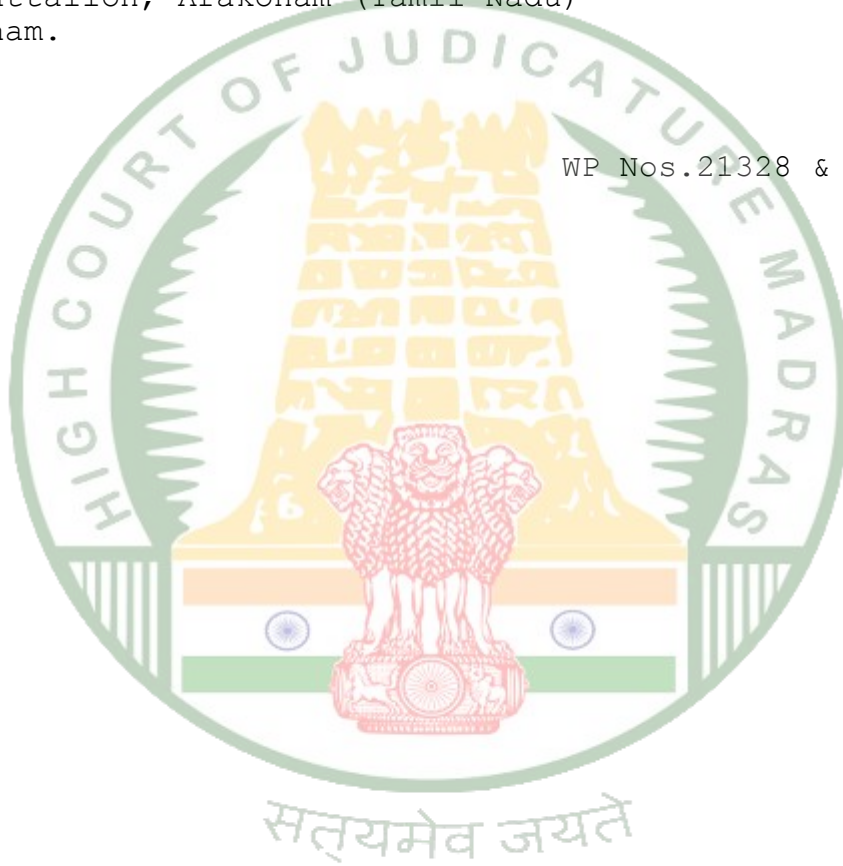
4. The Tahsildar
Sriperumbadur Taluk
Kancheepuram District

5. The District Collector
Kancheepuram.

6. The National Disaster Force
4th Battalion, Arakonam (Tamil Nadu)
Arakonam.

KR/8/6/16

WP Nos.21328 & 33136/2014



WEB COPY