

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.31603 of 2014

Mrs.Babyammal

... Petitioner

Vs.

1.The District Collector
Collectorate Building
Vellore.

2.Revenue Divisional Officer
Collectorate Building
Sathuvachari, Vellore - 632 007.

3.The Tahsildar,
Arakkonam Taluk, Arakkonam,
Vellore District.

4.Mr.Kothandan

5.Mr.Murugan

... Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of mandamus to direct the respondents to consider the representation dated 23.10.2013 and pass such further or other orders.

For Petitioner : Mr.C.A.Sharmila

For Respondents : Mrs.Rajalakshmi, GA

for R1 to R3.

Mr.R.VijayKumar, for R4 & R5

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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 mandamus to direct the respondents 1 to 3 to consider the representation dated 23.10.2013.

3.The petitioner is the absolute owner of the agricultural land bearing SF.No.342/2 measuring Ac.1.02 and AC.0.84 cents (dry) and S.No.200/1 measuring 0.12 cents (wet) situated at Poigainallur Village, Arakonnam Taluk, Vellore District. Originally the said land belong to the petitioner's father/Dharmalingam, after the death of Dharamalingam the said property devolved upon the petitioner and her mother/Jayammal being the legal heirs. The petitioner is in possession and enjoyment of the said land and doing agricultural activities.

4.While so, the fifth respondent herein alleged to have claimed him to be the son of Dharamalingam sold the said land to the fourth respondent herein in the year 1989. Upon hearing the same, the petitioner's mother Jayammal filed OS.No.491 of 1989 before the District Munsif, Arakonnam on 25.07.1989 seeking declaration and permanent injunction against the respondents 4 and 5 herein. Pending suit, the fourth respondent mutated the revenue records and obtained patta by producing the sale deed executed by the fifth respondent, by suppressing the pendency of civil suit. In the meanwhile, the petitioner's mother Jayammal died on 30.03.2004. Subsequently, the petitioner impleaded herself in the suit as legal heir of the deceased Jayammal. The suit was decreed exparte against the respondents 4 and 5. The respondents 4 and 5, filed Interlocutory Application to set aside the said exparte order. The said IA.No.303 of 2005 was dismissed on 27.01.2011. Thereafter, the fifth respondent filed CRP.No.2082 of 2011 before this Court against the dismissal of IA.No.303 of 2005. This Court by an order dated 17.08.2012 dismissed the CRP with the following observation :-

"reasons assigned by the petitioner i.e, Murugan is not legally acceptable and the petitioner has not satisfactorily explained the inordinate delay as contemplated under Section 5 of the Limitation Act and therefore the petition is dismissed."

Hence, the order passed by the District Munsif, Arakonnam becomes final, the respondents 4 and 5 has not preferred any appeal against the said order. The fourth respondent has filed a suit for permanent injunction against the petitioner in OS.No.203 of 2001 and the same was dismissed on 01.08.2011. The petitioner filed Execution Petition in EP.No.23 of 2003 against the respondents 4 and 5, the learned judge has also issued an arrest warrant against the respondents 4 and 5, the said warrant was not executed till date.

5.Based on the strength of the order passed by the learned District Munsif, Arakonnam and this Court in CRP.No.2082 of 2011, the petitioner gave a representation dated 23.11.2013 to

the respondents 1 to 3 to cancel the patta granted in favour of the fourth respondent and to issue patta in her favour. The said representation was not considered by the respondents. Hence, the petitioner filed the present writ petition before this Court.

6. Heard the submissions of learned counsel appearing for the petitioner and the learned Government Advocate who accepts notice on behalf of the respondents 1 to 3.

7. This Court, considering the facts and circumstances and without going into the merits of the same, directs the respondents 1 to 3 to consider the representation of the petitioner dated 05.11.2013 and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording opportunity of personal hearing to the petitioner as well as to respondents 4 and 5 and the necessary parties, if any. It is made clear, that this Court has not expressed any opinion on merits of the claim of the petitioner.

8. The writ petition is disposed of accordingly. No costs.
tsh

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The District Collector
Collectorate Building
Vellore.

2. Revenue Divisional Officer
Collectorate Building
Sathuvachari, Vellore - 632 007.

3. The Tahsildar,
Arakkonam Taluk, Arakkonam,
Vellore District.

+ 1 cc to Ms. C.A. Sharmila, Advocate SR 17800

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