IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.23068 of 2015 & M.P.No.1 of 2015

1. K.Vasundaradevi
2. V.K.Hari Prakash
3. Kothandam

.. Petitioners

Vs.

1. The Assistant Settlement Officer (North),
Office of the Principal Secretary &
Commissioner of Land Survey and
Settlement,
Chepauk, Chennai-600 005.

2. The Tahsildar,
Taluk Office, Ambattur,
Thiruvallur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in O.Mu.E.1/2383/2015, dated 15.07.2015 passed by the first respondent and quash the same and consequently direct the first respondent to consider the petitioner's representation, dated 23.03.2015 and dispose of the same on merits in the light of the decisions of this Court in similar and identical issue in respect of the petitioners' land measuring to an extent of 0.40 cents (17597 Sq.Ft.) comprised in Survey No.22/1 mentioned in the impugned order, situated at Numble Village (Pulliyampedu Unit), Ambattur Taluk, Thiruvallur District.

For Petitioners : Mr.M.Rajendiran

For Respondents : Mr.M.Dig Vijay Pandian, Addl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in O.Mu.E.1/2383/2015, dated 15.07.2015 passed by the first respondent and quash the same and consequently direct the first respondent to consider the petitioner's representation, dated 23.03.2015 and dispose of the same on merits in the light of the decisions of this Court in similar and identical issue in respect of the petitioners' land measuring to an extent of 0.40 cents (17597 Sq.Ft.) comprised in Survey No.22/1 mentioned in the impugned order, situated at Numble Village (Pulliyampedu Unit), Ambattur Taluk, Thiruvallur District.

2. It is the case of the petitioners that the above said land originally belonged to Shanmuga Naicker, son of Ellappa Naicker, vide Sale Certificate Register Document No.2186/1962, dated 29.08.1962 on the file of the Sub-Registrar Office, Poonamallee. The above said land had been purchased from the above said person by Mrs.Rajeetha, wife of Koteeswara Rao, vide Document No.5194/1998, dated 27.11.1998 on the file of the Sub-Registrar Office, Kundrathur. Thereafter, the land(s) had been purchased by the petitioners, vide Document No.8581/2011, 8579/2011 and 8580/2011, dated 14.07.2011 and the petitioners are in continuous possession and joint enjoyment of the same.

3. It is further stated that the land was previously classified as Punjai land and patta land in the name of the said Shanmuga Naicker in title. By virtue of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, the said land had been classified as Anaadheenam (unclaimed land) by the Revenue Authority. Merely because the land was classified as Punjai Anadheenam and entry made in 'A' Register, the predecessors-in-title and the petitioners have not lost their right or title. The petitioners are having relevant records to prove their claim and establish their right before the Settlement Authority for their entitlement to get patta in their names. The petitioners have verified the SLR copy obtained from the District Collector Office, Thiruvallur, in respect of the said land and the name of Shanmuga Naicker is found on the right side column of the SLR copy, noted as Anaadheenam. It is further stated by the petitioners that they have been giving petition in Jamapanthi claiming patta in their name. The petitioners approached various Revenue Authorities, based on which, they came to know that they should make their claim only before the Settlement Authority, based on which, the petitioners filed application, dated 23.03.2015, before the first respondent, claiming patta. It is the grievance of the petitioners that the first respondent, without properly verifying and considering the issue involved in the case, rejected the said application, by the impugned order dated 15.07.2015. Challenging the said order of the first respondent, the petitioners have filed this Writ Petition for the above relief.

4. The first respondent, on his behalf and on behalf of the second respondent, has filed counter affidavit, stating that Puliyampattu Inam Estate was notified to be taken over by the Government with effect from 01.05.1963 under Section 1(4) of the said Act in G.O.1127, Revenue Department, dated 16.03.1963 and Ryotwari Settlement was introduced in the year 1375 Fasli (calendar year - 1965) on completion of survey and settlement works. At that time, non-inam Noombal Village was also added to the Village in Survey Nos.1 and 25. During introduction of Ryotwari Settlement, the lands comprised in Puliyampattu had been classified and pattas were issued to all eligible persons as per the provisions of the said Act. The land(s) comprised in Survey No.22/1 of an extent of 2.04 acres had been classified as Government-Punjai Anaadheenam, as no one was entitled to get patta as per the provisions of the Act. Anyone aggrieved against the above said classification should have filed appeal before the then Settlement Officer within 30 days as per the Rules framed under the said Act and the Government extended the appeal time which ended by 20.08.1987. Since no appeal is filed, the classification became final. The Government in G.O.No.1300, Revenue Department, dated 30.04.1971, permitted the respective Revenue Divisional Officers, District Revenue Officers, to consider the request to grant patta based on the continuous possession and enjoyment of the lands, even though they did not come under the eligible category for grant of patta under the Act. It came to an end on 30.06.1975 as per G.O.Ms.No.589, Commercial Tax and Religious Endowment Department, dated 14.05.1975.

5. It is further stated in the counter affidavit that the petitioners filed appeal petition, dated 23.03.2015 on 08.04.2015 before the Assistant Settlement Officer (North), Chennai, requesting to cancel the existing registry as Anaadheenam and grant patta for the above land(s) based on the sale deed registered on 14.07.2011. Since the request is against the earlier order of the classification, the petitioners were informed by the impugned order dated 15.07.2015 that the appeal petition cannot be considered, by referring to Section 64(c) of the said Act and G.O.Ms.No.714, Commercial Tax and Religious Endowment Department, dated 29.06.1987. As the power of the Assistant Settlement Officer (North) in receiving the appeals had been barred in the said G.O.Ms.No.714, conduct of enquiry by the Assistant Settlement Officer (North) does not arise, as the officer cannot pass any orders in the settled matter. It is further stated that the petitioners cannot transact the Government lands. If the petitioners or anyone who claims patta under the provisions of the said Act, they should have proved the eligibility as per law during the settlement proceedings or within the stipulated appeal time prescribed in the Rules or

atleast proved the continuous possession over the lands outside the scope of the Act as per the said G.O.Ms.No.1300.

6. It is further averred in the counter affidavit that as the matter had been finalised in the year 1987, the authorities cannot reopen the settled matter again. As no one including the persons said to be the petitioners' predecessors, had been found eligible to get patta as per Section 11(a) of the Act, no Ryotwari pattas had been granted and the land(s) have been treated as Government lands. Since the SLR had been prepared at the time of introduction of settlement after taking over of the Village in the year 1963, the entires in SLR alone cannot be the basis to prove the eligibility as per Section 11(a) of the said Act. In order to get patta, one should have proved his entitlement before the authorities based on the records such as Zamin patta, Muchalika or any other records to show that the land(s) had been cultivated and included in the Zamin Chitta as per Section 11(a) of the Act or had been cultivated at least prior to 01.07.1945 as per proviso to Section 11(a) of the Act. The petitioners or their predecessors failed to prove their entitlement. The Jamapanthi Officer is not the authority appointed under the Act to consider the claims under the said Act. The entires in A-Register had become final as per Section 64(c)(1) of the said Act and therefore, the appeal petition, dated 23.03.2015 cannot be considered as per law. Moreover, the land(s) in this case had already been classified as Government-Anaadheenam in the settlement proceedings in the year 1965 itself. As no one is found eligible to get patta, the land(s) had been classified as Government lands and recorded in A-Register as such. The present physical possession and enjoyment of the property is not the criterion to get patta under Section 11 of the said Act. The respondents prayed for dismissal of the Writ Petition.

7. Learned counsel for the petitioners submitted that in identical situation, this Court (Madurai Bench) in W.P.(MD).No.3702 of 2012, by order dated 27.11.2012, set aside the impugned order therein and remitted the matter back to the first respondent therein for fresh consideration. The relevant portion of the said order, dated 27.11.2012 in W.P.(MD).No.3702 of 2012, reads as follows:

> "3. Heard the submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader.
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> 4. In the similar nature of petition, in W.P.No.14237 of 2011, this Court has set aside the impugned order and remitted back the matter to the respondent to pass a reasoned order with regard to the issue including whether the Government Order in

G.O.Ms.No.714, Commercial Taxes Department, dated 29.06.1987 oust the jurisdiction of the 2nd respondent for the grant of patta or not.

5. On a perusal of the said Government Order, it is clear that the said Government Order deals only with the admission of belated appeals and reversions and at no point of time, the authority under the Act has examined or considered the question of grant of patta in favour of the petitioner which are stated to be in her possession for a long time.

6. The relevant portion of the said order is extracted hereunder:

> "In the light of the above submissions, the writ petition stands allowed and the impugned order dated 04.01.2011 is set aside and the matter is remanded back to the second respondent for fresh consideration, after affording an opportunity of personal hearing to the petitioners as well as other interested persons, if any, and in the personal hearing, the petitioners are entitled to raise all the issues, which have been raised in this writ petition, including the issue as to, whether the Government Order in G.O.Ms.No.714, Commercial Taxes Department, dated 29.06.1987, oust the jurisdiction of the second respondent for the grant of patta and pass a reasoned order, on merits and in accordance with law, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order."

7. Following the said judgment, I am of the opinion that by setting aside the impugned order, the matter could be remitted back to the first respondent for fresh consideration.

8. In the result, this writ petition stands allowed. The impugned endorsement bearing No.Oo.Mu.Ki.1/853/2012 dated 23.01.2012 issued by the 1st respondent is set aside and the matter is remitted back to the 1st respondent for fresh consideration, after affording an opportunity of personal hearing to the petitioner as well as other interested persons, if any, and in the personal hearing, the petitioner is entitled to raise all the issues, which have been raised in this writ petition, including the issue as to, whether the Government Order in G.O.Ms.No.714,

Commercial Taxes Department, dated 29.06.1987, oust the jurisdiction of the first respondent for the grant of patta and pass a reasoned order, on merits and in accordance with law, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order. No costs."

8. Following the above said order of this Court in W.P.(MD). No.3702 of 2012, dated 27.11.2012, this Writ Petition is allowed and the impugned order, dated 15.07.2015 passed by the first respondent, is set aside. The matter is remitted back to the first respondent for fresh consideration after affording an opportunity of personal hearing to the petitioners as well as other interested persons, if any and in the personal hearing, the petitioners are entitled to raise all the issues which have been raised in this Writ Petition, including the issue as to whether the Government Order in G.O.Ms.No.714, Commercial Taxes Department, dated 29.06.1987 oust the jurisdiction of the first respondent for the grant of patta. After conducting enquiry and affording the above said personal hearing, the first respondent is directed to pass a reasoned order, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioners and it is for the first respondent to decide the same. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Assistant Settlement Officer (North),
Office of the Principal Secretary &
Commissioner of Land Survey and Settlement,
Chepauk, Chennai-600 005.

2. The Tahsildar,
Taluk Office, Ambattur,
Thiruvallur District.

+1cc to M/S.M.Rajendran, Advocate Sr.20371
+1cc to The Government Pleader Sr.20491

W.P.No.23068 of 2015

ala(CO)
srg(20/04/2016)