

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32786 of 2015

- 1.E.Gunasekaran
- 2.E.Rani
- 3.E.Selvi
- 4.E.Chandrasekar
- 5.E.Ramu

... Petitioners

Vs.

- 1.The District Collector,
Collectorate of Kanchipuram,
Kanchipuram.
- 2.The Tahsildar,
Office of the Tahsildar,
Sriperumbudur Taluk,
Chengalpet District.
- 3.The Captain,
Madras Regiment Abhilekh Karyalaya,
Records - The Madras Regiment,
Wellington, Nilgris-634 231.
4. The Director,
Department of Ex Serviceman's Welfare,
Kanchipuram District, Tambaram, Chennai-45.
- 5.The Secretary,
District Soldier's, Sailor's &
Airmen's Board Chengalpet,
Saidapet, Chennai-15.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 & 2 to issue or transfer the patta in respect of the property to an extent of 6 acres and 76 cents comprised in S.No.243/3B of Navalur Village, Sri Perumbudur Taluk morefully described in the schedule of the writ petition to the names of the petitioners after conducting necessary enquiries or collecting informations from the respondents 3 to 5 regarding the assignment of the Schedule mentioned lands to the petitioner's father Late Ethiraj.

For Petitioners : Mr.T.Sundar Rajan

For Respondents : Mr.S.Pattabiraman, GA

ORDER

This writ petition has been filed by the petitioners praying for issuance of a Writ of Mandamus, directing the respondents 1 & 2 to issue or transfer the patta in respect of the property to an extent of 6 acres and 76 cents comprised in S.No.243/3B of Navalur Village, Sri Perumbudur Taluk, to the names of the petitioners after conducting necessary enquiries or collecting informations from the respondents 3 to 5 regarding the assignment of the said land to the petitioner's father Late Ethiraj.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioners are the children of one Late Ethiraj. The petitioners' father was enrolled in the Regiment of the 3rd respondent on 08.02.1942, with No.5187. The petitioners' father served as a Sepoy (No.51571) and rendered military service in the Infantry 43 Regiment. As an appreciation for his service, the Government has assigned lands to an extent of 6 acres and 76 cents comprised in S.No.243/3B of Navalur Village, Sri Perumbudur Taluk to him under the land Handing Over Order No.614/01/87 dated 17.5.1961 issued by the Office of the 1st respondent. The petitioner's father Mr.Ethiraj passed away on 08.08.1988 leaving behind the petitioners herein and their mother Mrs.Rosammal as his legal heirs. The petitioners' mother Mrs.Rosammal also passed away on 27.08.2009. The petitioners herein are the surviving legal heirs of late Ethiraj on whom the property was devolved.

2-2.In the year 1998, the said land which was assigned to the petitioners' father Mr.Ethiraj, was encroached illegally by some third parties and the petitioners had therefore petitioned to the 5th respondent on 17.10.1998 to retrieve the property to them. Accordingly, the 5th respondent forwarded a letter to the 2nd respondent to remove the encroachers. The 2nd respondent had taken action to remove the encroachers and subsequently, the petitioners have been in continuous possession and enjoyment of the said property and carrying on agricultural activities. The certificate issued by the Village Administrative Officer dated 11.12.1998, Chitta and Adangal dated 11.12.1998 stands in the name of their father Mr.Ethiraj in respect of the said property.

2-3.As the petitioners alone are the only legal heirs of late Ethiraj, the patta in respect of the said property has to be transferred to the names of the petitioners by the respondents 1 & 2. When the petitioners

approached the 2nd respondent for transfer of the patta, they were asked to produce the original assignment order. The petitioners had lost the original assignment order issued by the 1st respondent in favour of their father late Ethiraj. Therefore, the 1st petitioner made a request on 25.02.2010 under the Right to Information Act to the 4th respondent requesting to furnish a copy of the Assignment Order. The 4th respondent issued a letter dated 02.03.2010 stating that the petitioners could approach the 2nd respondent and get a copy of the Letter RO No.12/428/61, dated 18.07.1961. The 1st petitioner had made a Copy Application dated 06.03.2015 to the 1st respondent requesting a copy of the Handing Over Letter/Handing Over Order No.614/01/87 dated 17.05.1961 issued by the 1st respondent to the the petitioners' father Ethiraj. The 1st respondent did not issue any certificate copy of the said order. Under the Right to Information Act, the 1st petitioner made a representation dated 13.05.2015 to the 1st respondent seeking details and copy of the A Register. The 1st respondent replied vide letter dated 26.05.2015 Na.Mu.29/2015/D3 enclosing a A Register pertaining to S.No.243/3 of the year 1911 which shows the land as Government Poramboke "Odai Stream". But, according to the petitioners, the subject land was assigned to their father in the year 1961 and from the said date, they have been carrying on agricultural activities in the said land. The subject land is the only reward for the service rendered by the petitioner's father in the regiment. The subject land is the only source of livelihood for the petitioners and they are cultivating the same. The petitioners made a representation to the respondents on 13.07.2015 requesting the respondents 1 & 2 to transfer the Patta in respect of the said property to the names of the petitioners and also requested the respondents 3 to 5 to provide any document as required by the respondents 1 & 2. But, no action was taken on the said representation given by the petitioners. Hence, the petitioners have come forward with the present writ petition before this court.

3.Heard both sides and perused the materials available on record.

4.Considering the facts and circumstances of the case and submissions made on either side, without expressing any opinion on the claim of the petitioners, this Court directs the petitioners to give a fresh representation to the 2nd respondent, within a period of two week from the date of receipt of a copy of this order. On receipt of such representation, the 2nd respondent is directed to consider the same and pass appropriate orders, after affording opportunity of personal hearing to the petitioners as well as all the necessary parties, if any, on merits and in accordance with law, within a period of six weeks thereafter.

With the above direction, the writ petition is disposed of.

No costs.

ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The District Collector,
Collectorate of Kanchipuram,
Kanchipuram.
- 2.The Tahsildar,
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Sriperumbudur Taluk,
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- 3.The Captain,
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Records - The Madras Regiment,
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4. The Director,
Department of Ex Serviceman's Welfare,
Kanchipuram District, Tambaram, Chennai-45.
- 5.The Secretary,
District Soldier's, Sailor's &
Airmen's Board Chengalpet,
Saidapet, Chennai-15.

+ 1 CC TO Mr.T.Sundar Rajan, ADVOCATE SR 15312

+ 1 CC TO THE GOVT.PLEADER, SR 15342

KR/18/3/16

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