

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2016

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

W.P. No.13624 of 2013

1. Tmt.Sathyabama

2. A.Masilamani

...Petitioners

Vs

1 The Special Commissioner and
Commissioner for Land Administration,
Ehilagam, Chepauk, Chennai.

2 The Tahsildar
Thajavur.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in K1/2898/13 dated 11.02.2013 and quash the same and further direct the respondents to issue patta in respect of 3.65 acres of land in Survey No. 136/1 and 136/4 in Pudhupattinam Village in Thanjavur Taluk, Thanjavur District in accordance with the decision of the Civil Court in O.S. No. 375/1996 after deleting the classification anaadheenam in the revenue records.

For Petitioners : Mr.B.Kumar,
Senior Counsel for
Mr. S.Ramachandran.

For Respondents : Mr.V.Subbiah.
Spcl. Govt. Pleader

सतयमेव जयते
O R D E R

The petitioners are said to have purchased the property in question through the registered sale deed in the year 2004. The Patta sought for by the petitioners was not granted on the ground that the land has been classified as Anaadheenam land. A suit was filed by the assignee against the vendor of the property in O.S. No. 375 of 1966, for declaration and injunction, with an alternative prayer for possession of the suit property. The suit was dismissed, holding that there is no evidence so as to prove the petitioners as having title of the property. Thereafter, the petitioners made an application to the respondent No. 1 seeking grant of Patta in their favour for the suit property. The said application was rejected on the ground

of delay, stating that the petitioners have preferred the application after a delay of 25 years after the issuance of notification. Challenging the said order, the present writ petition has been filed by the petitioners before this Court.

2. Heard the learned Senior counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents.

3. Learned Senior counsel for the petitioners submitted that the question of delay cannot be put against the petitioners as the sale itself took place in the year 2004. The title of the petitioner's vendor over the suit property has been upheld by the Civil Court. He further submitted that the issue involved in the present case is covered by the judgment of the Full Bench in case of The Special Commissioner and Director of Survey and Settlement Chepauk, Chennai Vs. M.Arumugam reported in 2007-3-L.W.988.

4. Learned Special Government Pleader for the respondents, based on the counter affidavit submitted that the last date fixed as per the Government order for claiming of title has expired on 30.06.1975. Therefore, there is no power available with the respondents to entertain the said application made by the petitioners for issuance of patta. Hence, at this stage, no interference of this Court is required.

5. What the petitioners seek is adjudication of the case on merits. The question of limitation is only procedural in nature. Considering the above issue, the Full Bench of this Court in the decision referred to in case of M.Arumugam (Supra) in paragraph No. 6, has stated as follows;

'On a bare reading of the provision of Section 5(2) of the Act, it is clear that the power conferred on the Director by Section 5(2) to cancel or revise any of the orders, acts or proceedings of the Settlement Officer is very wide. In the first place, the Director need not necessarily be moved by any party in that behalf, and the power could be exercised wither on an application by an aggrieved person or suo motu. For example, if the Director comes to know that contrary to the scheme of the Act or due to misrepresentation or fraud played, a patta had been granted to a person under the relevant provisions of the Act, then to set right that mistake, the Director should be enables to exercise his power so as to effectuate the scheme of the Act and to implement the purpose behind the Act. The fact that the rule making authority has prescribed procedure in exercise of the powers under Section 67 for making an application to the Director does not mean that the suo motto power which is explicit in

Section 5(2) of the Act is in any way curtailed or taken away. We are, therefore, unable to appreciate the contention of the respondent that making an application in sine qua non for invoking the power under Section 5(2) of the Act.''

6. Considering the facts and circumstances of the present case, the ratio laid down in the above judgment would be applicable in the case on hand. Accordingly, the order of the 1st respondent, dated 11.02.2013, is hereby set aside. Consequently, the respondent No. 1 is directed to consider the application of the petitioner afresh and pass appropriate order, within a period of twelve weeks from the date of receipt of copy of this order.

7. With the above direction, the present writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1 The Special Commissioner and
Commissioner for Land Administration,
Ehilagam, Chempauk, Chennai.
- 2 The Tahsildar
Thajavur.

+1cc to M/S.S.Ramachandran, Advocate, S.R.No.5984
+1cc to the Government Pleader, S.R.No.6140

W.P.No. 13624 of 2013

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