

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2016

CORAM:

THE HON'BLE MR.JUSTICE B. RAJENDRAN

Writ Petition Nos. 31910 to 31919 of 2016

M.Nagammal .. Petitioner in W.P. No. 31910 of 2016
Dhotraya Pidari .. Petitioner in W.P. No. 31911 of 2016
S.Palanivel .. Petitioner in W.P. No. 31912 of 2016
Mrs.Kaliyammal .. Petitioner in W.P. No. 31913 of 2016
Mahalakshmi .. Petitioner in W.P. No. 31914 of 2016
Roshini .. Petitioner in W.P. No. 31915 of 2016
Subramani .. Petitioner in W.P. No. 31916 of 2016
N.Chinnusamy .. Petitioner in W.P. No. 31917 of 2016
T.Latha .. Petitioner in W.P. No. 31918 of 2016
Valanjiyapalraj .. Petitioner in W.P. No. 31919 of 2016

Versus

- 1.The State of Tamilnadu
represented by Secretary to Government
Revenue Department
Secretariat
Chennai-600 009.
- 2.The State of Tamilnadu
represented by Secretary to Government
Environment and Forest Department
Secretariat
Chennai-600 009. ...Respondents 1 & 2 in all WPs
- 3.The District Collector
Namakkal
Namakkal District. ...3rd respondent in
W.P.No.31910,31911,31912,31913,
31915,31916,31918 & 31919 of 2016
- 4.The Tahsildar
Kollimalai Taluk
Namakkal District. ...4th Respondent in
W.P.No.31910,31911,31913,31915,
31916,31918 & 31919 of 2016
- 5.The District Forest Officer
Kollimalai Division
Namakkal District. .. 5th Respondent in
W.P.No.31910,31911,31913,31915,
31916,31918 & 31919 of 2016

- 6.The District Collector,
Salem, Salem District. ...3rd Respondent in
W.P.No.31914,31917 of 2016
- 7.The Tahsildar,
Rasipuram Taluk,
Namakkal District. ...4th respondent in W.P.31912 of 2016
- 8.The District Forest Officer,
Rasipuram Division,
Namakkal District. ...5th Respondent in W.P.No.31912 of 2016
- 9.The Tahsildar,
Attur Taluk,
Salem District. ...4th respondent in W.P.31914,31917 of 2016
- 10.The District Forest Officer,
Attur Division,
Salem District. ...5th Respondent in W.P.No.31914,
31917 of 2016

W.P. No. 31910 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondents to consider and pass orders on the petitioner's representation, dated 28.06.2016, with regard to issuance of patta for the lands measuring an extent of 3.0 acres in New No.3/68, Kazhumur, Kollimalai Taluk, Namakkal District and to pass further orders as this Court may deem fit and proper in the circumstances of the case.

W.P.No.31911 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation dated 28.05.2016 with regard to issuance of patta for the lands to an extent of 3.0 acres in New No. 46 Araikalpatti Kollimalai Taluk Namakkal District.

W.P.No.31912 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation dated 29.06.2016 with regard to issuance of patta for the lands to an extent of 3.60 acres in Kaligoundar Garden Rasipuram Taluk Namakkal District.

W.P.No.31913 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders of the petitioner representation dated 09.05.2016 with regard to issuance of patta for the lands to an extent of 1.10 acres in Kuchirayapatti Kollimalai Taluk Namakkal District.

W.P.No.31914 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation dated 29.06.2016 with regard to issuance of patta for the lands to an extent of 3.0 acres in Thumbai Village Attur Taluk Salem District.

W.P.No.31915 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation dated 28.06.2016 with regard to issuance of patta for the lands to an extent of 3.0 acres in NO.18/52 Pallakuzhipatti Post Kollimalai Taluk Namakkal District.

W.P.No.31916 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation dated 29.06.2016 with regard to issuance of patta for the lands to an extent of 3.0 acres in NO.46/7 Vellakuzhipatti Kollimalai Taluk Namakkal District.

W.P.No.31917 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation dated 28.05.2016 with regard to issuance of patta for the lands to an extent of 3.0 acres in No.21 Kattukottai Mukkankuttai Athur Taluk Salem District.

W.P.No.31918 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation

dated 28.05.2016 with regard to issuance of patta for the lands to an extent of 3.0 acres in Aaraikalpatti Kollimalai Taluk Namakkal District.

W.P.No.31919 of 2016:

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus, directing the respondent to consider and pass orders on the petitioner representation dated 29.06.2016 with regard to issuance of patta for the lands to an extent of 3.0 acres in Periyakovilurpatti Post Kollimalai Taluk Namakkal District.

For Petitioners :Mr.V.Thirupathy
in all WPs.

For Respondents :Mr.N.Inbarajan
in all WPs. Government Advocate (Forest)
for R.2 and R.5
Mr.A.Kumar
Special Government Pleader
for R.1, 3 and 4

COMMON ORDER

In all these Writ Petitions, the petitioners seek for a direction to the respective respondents to consider their respective representations with regard to issuance of patta for their respective lands situated at various Districts.

2. The case of the petitioners in all these Writ Petitions is almost the same. According to the petitioners, they have been in absolute and continuous possession and enjoyment of the lands situated at various Districts, for more than 70 years. The petitioners have been cultivating the lands and paying the penal charges to the Government. The petitioners made representations to the authorities concerned for issuance of patta for the lands in their possession and enjoyment. Since their representations were not considered, they have filed these Writ Petitions, seeking the relief stated supra.

3. I heard the learned counsel for the respective petitioners and Mr.N.Inbarajan, the learned Government Advocate, who took notice on behalf of the respondents 2 and 5 and Mr.A.Kumar, the learned Special Government Pleader, who took notice on behalf of the respondents 1, 3 and 4 and also perused the materials placed on record.

4. In my considered opinion, these Writ Petitions are liable to be dismissed in limini. Taking advantage of the

earlier order passed by this Court in W.P.Nos.26129 to 26136 of 2013 etc. batch, dated 13.10.2015, stating that the petitioners' case is squarely covered by the said judgment of this Court and their case will come under the said batch, these kind of Writ Petitions are filed, but, on a perusal of the documents filed along with these Writ Petitions, it is seen that these Writ Petitions are filed without any documents and pleadings. The case of the petitioners is that they have been in possession of the Government land, especially, the Forest land for the past more than 70 years. In their respective affidavits, the petitioners would contend that they have been paying tax, penal charges and kist to the Government. The petitioners' case is that they have got tax receipts and other documents to prove their possession and enjoyment of their respective lands for the past more than 70 years, but, on a perusal of the documents filed along with these Writ Petitions, it is seen that in some cases Voter's I.D. was filed, in some cases Ration Card of the year 2005-2009 was filed and in other cases Property Tax Receipt of recent year was filed, which is in respect of the superstructure put up by them, that too, without obtaining permission. Unfortunately, none of the petitioners have chosen to produce any documentary proof to show that they have been paying the penal charges or kist to the Government. In the earlier order passed by this Court in W.P.Nos.26129 to 26136 of 2013 etc. batch, dated 13.10.2015, this Court while observing that the issue of consideration of patta is pending, directed the Tahsildar therein to dispose of the pending representations of the petitioners therein within a time frame. In the cases on hand, what the petitioners herein did is that they conveniently made representations to the authority concerned for issuance of patta for their respective lands and when that representations were not considered by the respondents, immediately they filed these Writ Petitions for a Mandamus, to direct the respective respondents to consider their respective representations. It is unfortunate to state that once this Court passes an order directing the respondents to consider the representation, the persons like these petitioners are attempting to use the same as a stamp of approval from the High Court and thereafter, force the authority concerned "to consider their representations" and to pass favourable orders. Such a practice has to be deprecated.

5. In this context, I wish to follow the decision of the Division Bench of this Court reported in (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, in which I am also a party, wherein the Division Bench held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on the decision of the Hon'ble Supreme Court reported in

the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

6. Thus, it is evident from the decision of the Hon'ble Supreme Court (cited supra) that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. In the cases on hand, admittedly, when the petitioners are not even able to prima facie establish their case that they are in absolute and continuous possession and enjoyment of the lands for more than 70 years by producing documentary proof, mere direction to consider their representations cannot be granted as it will result in adverse consequences. In such view of the matter, the contention of the learned counsel for the petitioners that a mandamus has to be automatically granted on the ground of earlier order passed by this Court in W.P.Nos. 26129 to 26136 of 2013 etc. batch, dated 13.10.2015, cannot be accepted. Such a practice has to be curbed. First of all, I have to state that to come within the purview of the earlier order, the petitioners should have fulfilled the basic requirement. In the cases on hand, the basic requirement is that to prove the factum of absolute and continuous possession and enjoyment of the lands for more than 70 years, the petitioners should have enclosed necessary documents, such as Tax Receipt, Kist Receipt, Penal Charges Receipt etc. In their respective affidavits, though the petitioners would contend that they have been paying tax, penal charges and kist to the Government, for which, they have got documentary proof, but, on a perusal of the documents filed along with these Writ Petitions, it is seen that in some cases Voter's I.D. was filed, in some cases Ration Card of the year 2005-2009 was filed and in other cases Property Tax Receipt of recent year was filed, that too, it is in respect of the superstructure put up by them without obtaining permission. The petitioners having failed to produce the relevant documentary proof, in my considered opinion, they are not entitled to seek for a mandamus.

7. For all the above said reasons, these Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government
State of Tamilnadu
Revenue Department
Secretariat
Chennai-600 009.
- 2.The Secretary to Government
The State of Tamilnadu
Environment and Forest Department
Secretariat
Chennai-600 009.
- 3.The District Collector
Namakkal
Namakkal District.
- 4.The Tahsildar
Kollimalai Taluk
Namakkal District.
- 5.The District Forest Officer
Kollimalai Division
Namakkal District.
- 6.The District Collector,
Salem, Salem District.
- 7.The Tahsildar,
Rasipuram Taluk,
Namakkal District.

8.The District Forest Officer,
Rasipuram Division,
Namakkal District.

9.The Tahsildar,
Attur Taluk,
Salem District.

10.The District Forest Officer,
Attur Division,
Salem District.

+lcc to the Special Government Pleader Sr.52073

+lcc to the Government Pleader Sr.52256

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31919 of 2016

vsn[co]
srg 04/11/2016



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