

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2016

CORAM
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.42854 of 2016

1. V.Sugumar
2. Vijayalakshmi
3. Renuka Devi
4. R.Sheela
5. R.Gavaskar
6. Lavanya
7. Srikanth

... Petitioners

vs.

1. The District Collector,
Kanchipuram District,
Kanchipuram.
2. The Revenue Divisional Officer,
Tambaram.
3. Vijayakumar
4. Vishalakshi
5. Mangali
6. Elumalai
7. Lingamoorthi
8. Kala
9. Manohar
10. Pavithra
11. Bhuvanesh

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the 2nd respondent to dispose of the representation dated 29.09.2015 sent by the petitioners within a stipulated period.

For Petitioners : Mr.S.Parthasarathy
For Respondents 1 & 2 : Mr.S.Rajeswaran
Special Government Pleader

O R D E R

The petitioners have come up with this Writ Petition seeking a direction to the 2nd respondent to dispose of their representation dated 29.09.2015 within a stipulated period.

2. According to the 1st petitioner, his father Vedachalam was the absolute owner of the properties at Survey No.403/1A1 to an extent of 3.50 acres and Survey No.403/2A2 B1A1 to an extent of 2 hectares 61.10 ares at Pallikaranai Village, Sholinganallur Division. Earlier, in the year 1911, the said property was allotted in favour of his grandfather Kuppan and the same was recorded in 'A' register. After his death, the 1st petitioner's father Vedachalam was the only legal heir and he was in possession and enjoyment of the property. After his father's death on 24.01.1993, the petitioner is in peaceful possession and enjoyment of the said properties. While so, in the years 1964 and 1970, the property in question is alleged to have been purchased by the respondents and they claim that they are in possession and enjoyment of the property in question. In this regard, the 1st petitioner has sent a representation dated 29.09.2015 to the 2nd respondent seeking cancellation of patta granted in favour of some bogus persons and to issue patta to the legal heirs of Vedachalam. Since no action is taken by the respondents, the petitioners are before this Court.

3. On a perusal of the records, it is seen that after the death of Vedachalam, i.e. on 24.01.1993, the 1st petitioner and other legal heirs of Vedachalam are in possession and enjoyment of the property in question. If it is their grievance that some bogus persons are holding patta in respect of the property in question, they ought to have taken steps to cancel the same much before. The Tahsildar or the Revenue Divisional Officer cannot cancel the patta without going into veracity of the documents. The petitioners cannot seek to cancel the same by virtue of a mere representation.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. In similar circumstances, a Division Bench of this Court in the case of M.Ingaci Vs. The Commissioner. Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, 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, 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 'pilable' 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. Issuance of patta or cancellation of patta are matters which can be dealt with only by the competent authorities and this Court cannot deal with the same under Article 226 of the Constitution of India. The approach of the petitioners seeking a direction to consider their representation for cancellation of patta issued in favour of others, that too very long back invoking Article 226 of the Constitution of India, is not a welcome one. Undoubtedly, in this case, a claim, which is stale and time-barred is put forth in the form of a representation.

7. In view of the aforesaid observation and in the light of the decision cited supra, this Court finds no merit in the claim of the petitioners. Therefore, this Writ Petition stands dismissed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To :

1. The District Collector,
Kanchipuram District,
Kanchipuram.

2. The Revenue Divisional Officer,
Tambaram.

+1 cc to Mr.S.Parthasarathy,advocate,sr.72131

+1 cc to Government Pleader,sr.72131.

ss(co)
krd 1/2

W.P.No.42854 of 2016