

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.5340 of 2016

Elumalai

... Petitioner

vs.

1.The Principal Secretary and
Commissioner of Land Administration,
Chepauk, Chennai.

2.The District Collector,
Salem District,
Salem.

3.The District Revenue Officer,
Salem District, Salem.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the first respondent to consider the appeal dated 12.3.2012 pending on the file of the first respondent and pass appropriate orders to assign the land as per the Sub Division of the petitioner's respective portions in Sy.No.3 at Nagaramalai Adivaram, Porappan Kadu, Alagapuram Village, Salem-636 016, as per the recommendations made by the Tahsildar, Salem by his communication dated 30.6.1994.

For Petitioner : Mr.Ilenthirayan

For Respondents : Mrs.P.Rajalakshmi,
Govt. Advocate.

ORDER

The petitioner has come up with the present writ petition for the issuance of writ of mandamus, directing the first respondent to consider the appeal dated 12.3.2012 pending on his file and pass appropriate orders to assign the land as per the Sub Division of the petitioner's respective portions in Survey No.3 at Nagaramalai Adivaram, Porappan Kadu, Alagapuram

Village, Salem-636 016, as per the recommendations made by the Tahsildar, Salem by his communication dated 30.6.1994.

2. The case of the petitioner, in brief, is as follows:-

(a) The petitioner is the resident of Alagapuram Village. His ancestors were landless agricultural coolies, having income of less than Rs.9,000/- per annum. In view of poverty, they occupied various extent of land for more than 60 years in Survey No.3 of Alagapuram Village. The said survey number is adjacent to a hill called Nagaramalai and the entire survey number is classified as Karadu i.e., rough terrain of value less and unobjectionable poromboke lands. After occupying the said rough terrains, the petitioner and his ancestors worked on the respective extent of lands by levelling the land. For the said purpose, they had spent a sum of Rs.50,000/- to Rs.2,00,000/- per acre. Thereafter, they started to cultivate the said dry waste lands. After repeated cultivation, the said lands are now somehow suitable for cultivable purpose and thereafter, many of them have dug up Well. The petitioner is cultivating various extent of lands in Survey No.3 and is living in the same lands by putting up houses and obtained electricity connection for his resident. Some of them were granted patta by the Tahsildar, Salem. Thus, they are in possession and enjoyment of their respective lands.

(b) While so, being landless poor, they have submitted several petitions to the respondents and other revenue officials for assigning of the said lands to them and the same are under consideration. The lands with specific purposes, should be continued to be used for the purpose only, but other lands are fit for assignment. Such lands, which are fit for assignment, shall have to be transferred as Assessed Waste and thereafter, shall be assigned. The persons eligible to get assignment are landless poor and the maximum extent is 3 acres of dry land or 1.5 acres of wet land. The persons assigned should cultivate the land directly and they cannot alienate the same for ten years and even thereafter, prior approval is necessary for alienation. Hence, the petitioner and his ancestors have submitted application for assignment of their respective lands in their possession and cultivation. By a communication dated 25.8.1989, the Tahsildar, Salem, communicated that since the lands were classified as Karadu Poromboke, the classification has to be altered first as Assessed Waste Dry lands and thereafter only assignment could be made. The process of altering the nature of the land was taken up and again, by communication dated 27.2.1990, the Tahsildar, Salem informed them that only after completion of alteration of classification,

the assignment application would be considered on merits.

(c) Thereafter, it was advertised in the entire village area as to the alteration of classification and local publication was also made. Objections were called for and no objection whatsoever was received. The matter was intimated to the local body and concurrence was also obtained. By then, the Tahsildar and RDO, Salem inspected the land in which the petitioner and others are in possession and a detailed enquiry was also conducted. It was found that the said lands are only Karadu Poromboke without any specific purpose. Therefore, they were treated as unobjectionable and land tax alone was collected without any penalty from them. There was no temple, church or mosque, burial or cremation ground etc. and except the occupation by the petitioner and their ancestors, there was no other occupation. It was also found that there was no mines or mineral in the said area and there was no Government building in the area. The said Survey number was not included in the Prohibitory Order book maintained for the purpose. Accordingly, the authorities submitted their inspection report.

(d) Pursuant to the above said findings, by a proceeding dated 30.6.1994, the Tahsildar, Salem also made recommendations for assignment of land to them. Since the District Collector, Salem is the appropriate authority, the Tahsildar, Salem forwarded the entire report, recommendations and all connected records to the District Collector for passing orders of assignment. Later, the Tahsildar, Salem by proceedings dated 20.8.1998, sent a detailed report by recommending the assignment of land to the petitioner and his ancestors along with all the statements and reports. Thereafter, the petitioner is making repeated representations to the respondents and other revenue officials. Since the same was not considered, he approached this Court by filing a writ petition in W.P.No.34134 of 2007 seeking a direction to the respondents and other revenue officials to assign the land in Survey No.3 classified as Karadu Poromboke of Alagapuram Village and retained as unobjectionable poromboke as per the final report filed by the Tahsildar, Salem dated 30.6.1994. In the said writ petition, this Court directed them to submit a detailed representation and upon receipt of the same, directed the respondent therein to consider the same and pass orders within six weeks.

(e) Thereafter, the first respondent, after receipt of the reports from all the revenue officers of Salem District, passed an order dated 3.6.2011, directing the second respondent to consider the request of the petitioner in the light of the points raised by the first respondent and also with reference to the Revenue Standing Order No.15 and connected Government Orders

and to pass orders on merits within one month. On receipt of the same, the respondents 2 and 3 once again called for reports from the revenue authorities. But, unfortunately, after receipt of the same, the third respondent rejected their request to assign the land, by order dated 5.1.2012. Therefore, once again, the petitioner filed an appeal before the first respondent as against the order was passed by the third respondent on 12.3.2012. But, the first respondent neither called for any enquiry nor passed any order on the said appeal. Hence, the petitioner has come up with the present writ petition seeking a direction to the first respondent to consider the appeal dated 12.3.2012 pending on the file of the first respondent and pass appropriate orders to assign the land as per the Sub Division of his respective portions in Survey No.3 at Nagaramalai Adivaram, Porappan Kadu, Alagapuram Village, Salem-636 016, as per the recommendations made by the Tahsildar, Salem by his communication dated 30.6.1994.

3. I have heard the learned counsel appearing for the petitioner as well as the learned Government Advocate, who has taken notice on behalf of the respondents.

4. Considering the facts and circumstances of the case and considering the submissions made on either side, this Court directs the first respondent to consider the appeal dated 12.3.2012 preferred by the petitioner and pass appropriate orders, on merits and in accordance with law, by affording an opportunity of personal hearing to the petitioner as well as to the necessary parties, if any, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any opinion with regard to the claim made by the petitioner and it is for the first respondent to consider the claim of the petitioner on merits and in accordance with law. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbi

To

1.The Principal Secretary and
Commissioner of Land Administration,
Chepauk, Chennai.

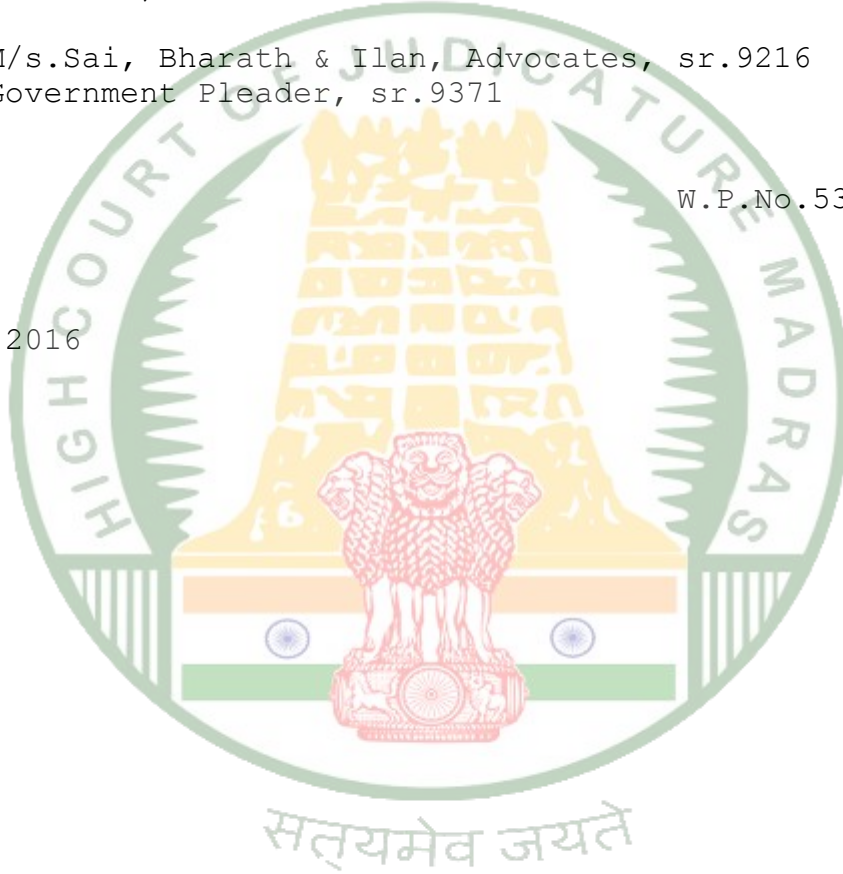
2.The District Collector,
Salem District,
Salem.

3.The District Revenue Officer,
Salem District, Salem.

+1 cc to M/s.Sai, Bharath & Ilan, Advocates, sr.9216
+1 cc to Government Pleader, sr.9371

W.P.No.5340 of 2016

gj co
kra 17.02.2016



WEB COPY