

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9935 of 2016

R.Balusamy

.. Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Board,
119, Uthamar Gandhi Road,
Nungambakkam High Road,
Nungambakkam, Chennai-600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Balasundaram Road,
Coimbatore.
3. The Executive Officer,
Arulmigu Visuwaswaraswami Visalatchiamman
Subramaniaswami Temples,
Nallur, Tirupur Taluk and District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the first respondent to consider and pass orders on the appeal petition, dated 17.07.2015 within a reasonable time.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mrs.Rita Chandrasekaran, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to consider and pass orders on the appeal petition, dated 17.07.2015 within reasonable time.

2. It is the case of the petitioner that he owns and possess a house site comprised in Survey No.247 situate at Nallur

Village, Tirupur Taluk and District, measuring an extent of 1950 Sq.Ft. out of acres 6.58 cents, which was purchased by registered sale deed, dated 14.07.2003 from one Mr.Godhandapani and registered as Doc.No.1982/2003 in the office of the Sub-Registrar, Nallur. After obtaining permission from the concerned authority, the petitioner constructed a house and has been residing there for nearly 35 years.

3. It is the further case of the petitioner that originally, the said property was in possession and enjoyment of one Mr.Kandasamy and Valliammal by virtue of registered sale deed in Doc.No.2019/1946, which was taken over by the Government subsequent to the enactment of Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, in order to determine as to who is entitled to Ryotwari patta for the land, and notice as prescribed under the said Act was published and served on the concerned parties. After due enquiry by the Settlement Tahsildar No.2, Gobichettipalayam, an order was passed by him on 24.10.1968, confirming the title of the said Mr.Kandasamy and Valliammal, thereby, Ryotwari patta was ordered to be issued as per the provisions of the said Act in the title name of those two persons.

4. The petitioner further alleges that subsequently, the Settlement Tahsildar-4, Gobi, applied for fixation of fair rent under the said Act and Rules framed thereunder in respect of the above property and also in S.No.266/1, measuring an extent of Acres 3.54 cents, for which also, Ryotwari patta had already been issued under the said Act, subject to the condition that they should pay a consideration to the Government a sum equal to 20 times of the fair rent to be fixed and the land revenue dues. The Special Tahsildar (Fixation of fair rent), Coimbatore, by order dated 07.05.1971, fixed the fair rent for S.No.247 as Rs.285.70, of which, 20 times is equal to Rs.5,720/-. The Special Tahsildar (Fixation of fair rent), Coimbatore, directed the said two persons to pay a sum of Rs.5,720/- in 20 equal installments to be paid between the period of Fasli 1380 and 1399.

5. Based on the above direction of the Special Tahsildar, those two persons have paid the said amount of Rs.5,720/- in one quit in the Fasli 1387 on 13.08.1978, on the basis of which, patta has also been issued in the name of the said Kandasamy, vide patta No.863 for S.No.247, measuring an extent of Acres 6.58 cents and both the said persons have been cultivating the said lands with seasonal crops and paying all Revenue charges ever since they are in possession and enjoyment of the property without any interference from third party.

6. It is the further stated by the petitioner that the said Kandasamy sub-divided the larger extent of the property and

formed a housing lay-out in Acres 3.83 Cents out of Acres 6.58 cents in the name of Amarjothi Mullai Nagar and sold them to several individuals in 1990. Thereafter, some of the purchasers applied for patta and joint patta was also issued in patta No.863. After verifying the title deeds and the Revenue Records, the petitioner purchased a plot in the above lay-out and put up house as stated supra and as such, living with his family. Subsequently, the petitioner applied for patta and the same was issued with joint patta in patta No.863 and the remaining portion of the land was sold to one Mr.Muhamed Isak, Muhamed Ismail and Akbar Ali in 1993, who applied for patta and the larger extent was sub-divided as S.No.247/2, measuring an extent of 2 Acres and patta was also issued in their names in patta No.1371.

7. While so, when the petitioner approached the Sub-Registrar, Nallur for enquiring the guideline value for the above property in June 2015, he was informed that the third respondent sent a communication, dated 11.10.2013 to the Sub-Registrar, Nallur, prohibiting the Sub-Registrar from registering any documents in respect of certain survey numbers, including S.No.247, after which, immediately, the petitioner approached the third respondent, who issued the copy of the said communication and he realized that the above land(s) are under the control of the H.R. & C.E. Department.

8. The petitioner further avers that S.No.247, measuring an extent of Acres 6.548 cents, was classified as default / non-payment of consideration and the petitioner asserts that the said fact of non-payment is false. The third respondent misconstrued the fact(s) without even reading necessary documents, since the said two persons, namely Kandasamy and Valliammal, have already paid the entire consideration in Fasli 1387, dated 10.08.1978. Thereafter, the petitioner made a representation, dated 29.06.2015, with all relevant documents, to the third respondent to re-call the order dated 11.10.2013 in respect of S.No.247 and the copy of such representation was also sent to the first and second respondents for necessary action. Since no orders are passed by the second and third respondents, the petitioner appealed to the first respondent on 17.07.2015 with all related documents and proof for payment of consideration. Since the first respondent did not dispose of the said appeal, the petitioner has come forward with this Writ Petition for the above relief.

9. Heard both sides.

10. Taking into consideration the above facts and circumstances of the case, without going into the merits of the claim of the petitioner, this Court directs the first respondent to consider the said appeal, dated 17.07.2015, conduct enquiry,

give an opportunity of hearing to the petitioner and other necessary parties and thereafter pass appropriate orders, on merits and in accordance with law and also taking into account the payment(s) already made by the concerned party in respect of the above said S.No.247. The first respondent is directed to pass appropriate orders by disposing of the said appeal, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner and it is for the first respondent to decide the same.

11. With the above observations and directions, the Writ Petition is disposed of. No costs.

cs

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

Copy to

1. The Commissioner,
Hindu Religious and Charitable Endowments Board,
119, Uthamar Gandhi Road,
Nungambakkam High Road,
Nungambakkam, Chennai-600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Balasundaram Road,
Coimbatore.
3. The Executive Officer,
Arulmigu Visweswaraswami Visalatchiamman
Subramaniaswami Temples,
Nallur, Tirupur Taluk and District.

+ 1 cc to The Govt.Pleader, Sr 17374

+ 1 cc to Mr.S.Sivakumar, Advocate Sr 17102

KR/30/3/16

W.P.No.9935 of 2016