

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.21240 of 2017
and
W.M.P.No.22145 of 2017

1. S.Lakshmi
2. S.Gopi
3. S.Kala
4. S.Sujatha
5. S.Priya
6. J.Kannammal
7. J.Suresh
8. J.Kalpana
9. J.Govindaraj

..Petitioners

Vs.

1. The Principal,
Secretary and Commissioner of Survey
and Settlement,
Chepauk,
Chennai - 600 005.
2. The Assistant Settlement Officer (North)
O/o Commissioner Survey and Settlement
Survey House,
Chennai - 600 005.
3. The Thasildhar,
Aminjikarai,
Koyambedu,
Chennai - 600 107.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the 1st respondent to conduct the enquiry on the petitioner's representation dated 27.01.2017 with regard to issue of Ryotwari patta in favour of the petitioners to the property comprised in S.No.55/3 now correlating to T.S.No.34 of Block 57 to an extent of 0.17 cents situate at Koyambedu Village as Anadhenam.

For Petitioners: Mr.R.Nirmala Devi

For Respondents: Mr.R.Govindasamy,
Special Government Pleader

O R D E R

The petitioner seeks for a mandamus directing the first respondent to conduct enquiry on the petitioners representation dated 27.01.2017 with regard to issue of Ryotwari patta in favour of the petitioners in respect of the property comprised in S.No.55/3, now co-relating to T.S.No.34 of Block 57 to an extent of 0.17 cents situate at Koyambedu Village as Anadhenam.

2. It is claimed by the petitioners that the subject matter land was classified as Anadhenam without offering an opportunity to put forth their case and without issuing any notice in a manner known to law, more particularly, when these petitioners are in possession and enjoyment of the subject matter land for long number of years. Therefore, the petitioners made the above representation for grant of Ryotwari patta in respect of the subject matter land.

3. The above claim of the petitioners is opposed by the respondents. In their counter affidavit, it is stated that the said classification was made 56 years ago and therefore, the present petitioners cannot make their appeal and as such, the appeal is barred by limitation in view of G.O.Ms.No.714 Commercial Taxes and Religious Endowment Department dated 29.06.1987 wherein such appeal has to be filed within a period of 30 days i.e., from 20.08.1987, the date on which the said G.O. came into force for claiming issuance of patta.

4. Heard both sides.

5. It is seen that what is sought for by the petitioners through their representation is for grant of Ryotwari patta. They have not preferred any appeal against any order. This Court has already considered the same issue in W.P.No.16834/2016, wherein at paragraph Nos. 5 and 6 it has been observed as follows:

5. It is seen from the respective contentions of the parties that the impugned order was passed by the first respondent to reject the claim of the petitioners purely on the sole reason of limitation and not on any other grounds on merits. According to the first respondent, the claim made by the petitioner is by way of an appeal. The very same issue was considered by this Court in the above said decision of this Court wherein at paragraph Nos.10 and 11, it has been observed as follows:

"10. Now, the crux of the question involved in these matters is whether

there is any time limit prescribed under any provisions of Act 26 of 1948 for claiming the relief of grant of pattas. The fact remains that there is no time limit fixed either under the provision u/s.11(a) of the Act 26 of 1948 or the rules framed there under in G.O.Ms.No.2043 revenue dated 05.08.1949. The perusal of the impugned orders passed by the 1st respondent 12.01.2009 reveals that the 1st respondent solely placed reliance on G.O.Ms.No.714 (Commercial Taxes and Religious Endowments) department dated 29.06.1987 for holding that the petitioners have not preferred the appeals within the stipulated period of 30 days from 22.07.1987, the date on which the said Government Order came into force for claiming the issue of pattas.

11. A perusal of the said G.O.Ms.No.714 dated 29.06.1987 makes it crystal clear that the said order deals in respect of prescription of time limit for preferring appeals and revisions as per the amendment made to various rules. It is also pertinent to note that as far as the cases on hand are concerned, the petitioners preferred only the original applications seeking for the relief of grant of pattas and by no stretch of imagination, the said applications could be construed to be an appeal. Therefore, this court has no hesitation to hold that G.O.Ms.No.714 (CT & RE) Department dated 29.06.1987 is not at all applicable to the facts of the instant cases and the 1st respondent has wrongly placed reliance on such Government Order for setting aside the orders passed in favour of the petitioners by the Assistant Settlement Officer, Tiruvannamalai for granting the relief of patta in their favour. It is needless to state that there is absolutely no statutory rule or provision available prescribing any time limit for claiming grant of patta."

6. As it is contended by the petitioners that they have not filed any appeal and what was filed on 02.11.2015 is the original application itself, this Court is of the view that the above decision made by this Court squarely applies to this case as well and consequently, the first respondent is not entitled to rely on G.O.Ms.No.714 to reject the claim of the petitioner only on the ground of limitation. However, insofar as the merits of the claim of the petitioners seeking for ryotwari patta is concerned, it is for the first respondent to consider such claim on its own merits and pass orders in accordance with law. Accordingly, this Writ petition is allowed and the impugned order dated 04.01.2016 is set aside and the matter is remitted back to the first respondent to consider the claim of the petitioners and pass orders on merits and in accordance with law after giving due opportunity of hearing to the petitioners. Such exercise shall be done by the 1st respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

6. In view of the above findings rendered in the above case which are applicable to the facts of the present case as well, I am of the view that the respondents are not entitled to reject the claim of the petitioners on the ground of limitation. Therefore, it is for the respondents to consider the representation of the petitioners and pass orders on the same on merits and in accordance with law without reference to the period of limitation. It is once again made clear that this Court has not expressed any view on the merits of the claim made by the petitioners as it is for the respondents to consider and decide. Such exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

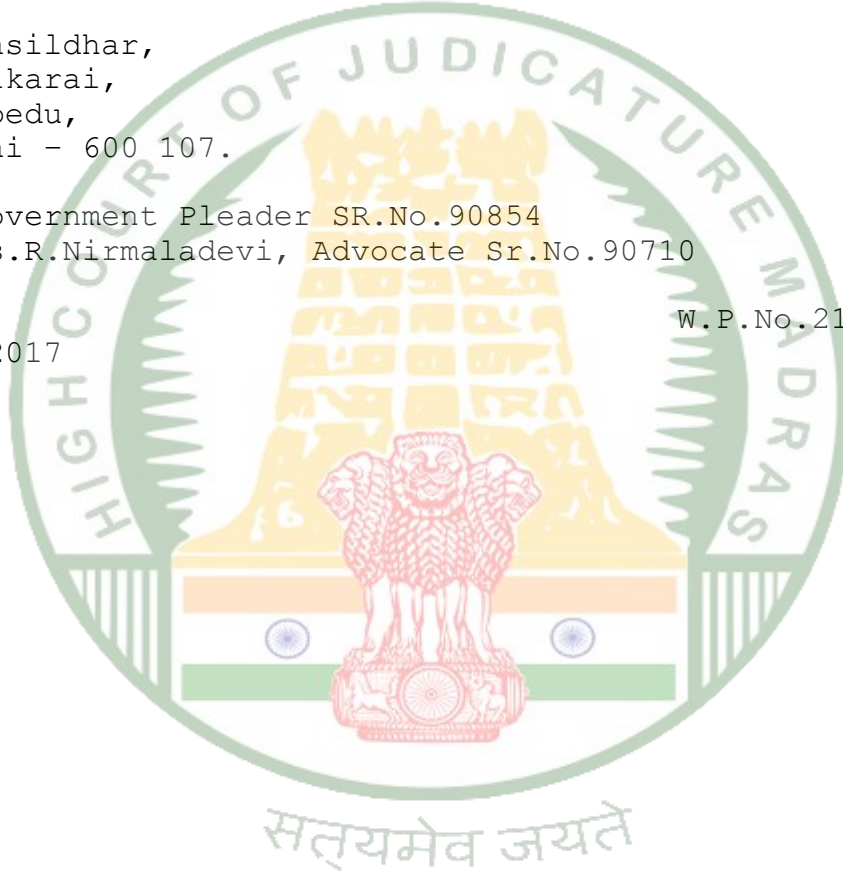
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Chennai - 600 107.

+1cc to Government Pleader SR.No.90854

+1cc to Ms.R.Nirmaladevi, Advocate Sr.No.90710

W.P.No.21240 of 2017

sm:20.12.2017



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