IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017
CORAM
THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU
W.P.No.16834 of 2016
and WMP.No.14451 of 2016

1. E.Syed Hussain
2. Syed Atha Ullah
3. Sharbunnisha
4. Shali Munnisha Begum
5. Sulthana
6. Kairunnisha
7. Shakeela
8. Thameena
9. Rahmathulla
10. Karimullah
11. Babu
12. Asmath alias Rasiya Begum

Petitioners 1 to 12 are represented by their
Power of Attorney Agents
1. M.P.Rajendran
2. S.Perumal ... Petitioners

vs.

1. Commissioner for Survey and Settlement,
Survey Illam, Third Floor, Chepauk,
Chenai - 600 005.

2. Tashildar,
Ambattur Taluk,
Tiruvallur District. ...Respondents

PRAYER:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the Commissioner for Survey and Settlement, Survey Illam, Chepauk, Chennai - 600 005 relating to the Endorsement dated 04.01.2016 made in Na.Ka.E1/7400/2015, the first respondent herein and quash the same and consequently direct the first respondent herein to consider the claim petition, dated Nil submitted by the petitioner under section 5 (2) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 seeking for Ryotwari Patta under section 11 (a) of the act 26/1948 and received by the frist respndent on

02.11.2015, with respect to the lands comprised in S.Nos. 300/1 (1.73 acres) and 304/3 (6.93 acres), Morai village, Ambattur Taluk, Tiruvallur District, on merits and in accordance with law within such time as may be fixed by this Court.

For Petitioner : Mr.P.Wilson,
Senior counsel for
Mr.V.Z.Victor

For Respondents : Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petitioners are aggrieved against the order of the first respondent dated 04.01.2016, wherein and whereby, their request for grant of Roytwari patta made through application dated 02.11.2015 was rejected on the reason that the appeal filed by the petitioners was beyond the time as stipulated in G.O.Ms.714, Commercial Taxes and Religious Endowments Department, dated 29.06.1987, which bars filing of appeal after 20.08.1987.

2. Mr.P.Wilson, learned senior counsel appearing for the petitioners submitted that the first respondent misconstrued the application filed by the petitioners as if the same is an appeal and consequently, has wrongly chosen to rely on G.O.Ms.No.714, Commercial Taxes and Religious Endowment Department, dated 29.06.1987 to reject the claim of the petitioners only on the ground of limitation. He further submitted that the application filed by the petitioners on 02.11.2015 itself is the original application and therefore, the question of applying the above G.O.Ms.714 does not arise in this case. He further pointed out that the above issue has already been considered by this Court in W.P.No.2590 to 2595 of 2009 dated 17.03.2010 by holding that the said G.O. cannot be applied to the original application.

3. Learned Special Government Pleader submitted that the impugned order was passed since the claim made by the petitioners was barred by limitation as found in G.O.Ms.No.714 Commercial Taxes and Religious Endowment Department, dated 29.06.1987.

4. Heard both sides.

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 the1st respondent 12.01.2009 reveals that the 1st respondent solely placed reliance on G.O.Ms.No.714 (Commercial Taxes and Reigious Endowments) department dated 29.06.1987 for holding that the petitioners have not preferred the appeals within the stipulated period o 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 form the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vsi

To

1. The Commissioner for Survey and Settlement,
Survey Illam, Third Floor, Chepauk,
Chenai - 600 005.

2. Tashildar,
Ambattur Taluk,
Tiruvallur District.

+1cc to Mr.V.Z.Victor, Advocate SR.No.83008

W.P.No.16834 of 2016

GN(28/11/2017)