

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26049 of 2017  
and W.M.P.No.27647 of 2017

K.Vijayan

.. Petitioner

Vs.

- 1) The Special Commissioner and  
Commissioner of Land Administration,  
Chepauk, Chennai - 600 005.
- 2) The District Collector,  
Collectorate of Kancheepuram District,  
Kancheepuram Town and District.
- 3) The Commissioner,  
Pallavapuram Municipality,  
Pallavaram, Chennai.
- 4) Central Bank Of India,  
rep.by its Principal Officer and Senior Manager,  
Mylapore Branch, Luz Church Road,  
Chennai - 600 004.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the proceedings of Special Commissioner and Commissioner for Land Administration, the first respondent, Rc.No.K1/20220/04 dated 25.07.2006 and quash the same and consequently directing the first respondent to conduct the enquiry and pass suitable orders after considering the registered loans documents, L.O.No.115/67 NES and L.O.No.135/67 NES disbursed with by Special Tahsildar, Saidapet on 06.06.1958 against the property S.No.168/2 of Nemilicherry Village, re-settlement entries and the revenue authorities reports pertaining to the property bearing S.No.168/2 of Nemilicherry Village, Pallavaram Taluk, Kancheepuram District to an extent of 2.29 Acres of lands, within stipulated time.

For Petitioner : Mr.P.Thiagarajan  
For Respondents: Mr.S.Diwakar,  
Special Government Pleader  
(for R1 and R2)  
Mr.P.Srinivas (for R3)

#### ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the first respondent in Rc.No.K1/20220/04, dated 25.07.2006 and quash the same and consequently direct the first respondent to conduct enquiry and pass suitable orders, after considering the registered loans documents, L.O.No.115/67 NES and L.O.No.135/67 NES disbursed with by Special Tahsildar, Saidapet on 06.06.1958 against the property in S.No.168/2 of Nemilicherry Village, re-settlement entries and the Revenue authorities reports pertaining to the property bearing S.No.168/2 of Nemilicherry Village, Pallavaram Taluk, Kancheepuram District to an extent of 2.29 Acres of lands.

2. The case of the petitioner is that one Ramakrishnan was the owner of the property in Survey No.168/2 to an extent of 2.29 acres and patta bearing No.128 was issued in his name. The petitioner has stated that Ramakrishnan had availed two different loans and for non payment of the amount, recovery proceedings had been initiated and property had been taken back by the Government and entries have been removed in the Revenue Records. The petitioner has submitted that the said Ramakrishnan had paid the loan amounts and his name was re-entered in the Revenue Records. The said Ramakrishnan died in the year 1996. The Assistant Settlement Officer wrote a letter to Tahsildar, Saidapet to enter the names of the legal heirs of the deceased Ramakrishnan in the register. In the meantime, on 29.09.1999, the legal heirs of Ramakrishnan entered into a sale deed in favour of the petitioner. According to the petitioner, though Ramakrishnan's name was entered in the Village A register, his name has not been entered. The petitioner has put-up construction in the said property and it was assessed to tax and he is enjoying the property. The petitioner has made several representations to change in his name in A Register, which has not been considered.

3. The petitioner has submitted that there was writ petition challenging the order of the Assistant Settlement Officer dated 06.07.2000 and a direction was issued to conduct full fledged enquiry. The Assistant Settlement Officer was of the view that there was a mistake and directed the DRO to take appropriate

action to change the records. Against the said order, there was a revision before the first respondent-Special Commissioner and Commissioner of Land Administration. However, on 25.07.2006, the first respondent passed the impugned order. The petitioner submitted that though there is a specific order for Tahsildar to consider his request, the first respondent has passed the said order ignoring the contentions of the petitioner. According to the petitioner, there was no full-fledged enquiry and none of the documents have been verified and the documents produced by the petitioner have not been looked into. According to the petitioner, when the erstwhile owner had already cleared the loan amounts and the petitioner is owning the land from the deceased owner of the land and for want of incorporation of his name in the records, petitioner should not be put to hardship, more particularly, after several representations and knowing this fact, the petitioner has purchased property from the legal heirs of the deceased Ramakrishnan. According to the petitioner, there was a direction from this Court to Tahsildar to examine independently and take action in accordance with law. In the impugned proceedings, the first respondent did not consider various records although authorities recommended for issuance of patta in favour of the petitioner's vendor.

4. In the Revenue Records, the fact of availing loan and the registration of the said loan with Sub Registrar, reflection in the encumbrance certificate, recovery proceedings of the Revenue authorities and request to remove the name of the petitioner's vendor and including the name of the petitioner have not been completely considered by the authority in the impugned order. Hence, the same is liable to be interfered with.

5. According to the petitioner, the petitioner's request for issuance of patta was rejected. Aggrieved by the proceedings, he filed W.P.No.16692 of 2017 for quashing the said proceedings and for the consequential direction to complete the enquiry and based on the report filed by Tahsildar, Alandur on 05.01.2012. The writ petition has been admitted and interim order was passed. According to him, the first respondent has passed the order, without considering the documents on merits, issuance of removal of name from patta in the Revenue Records and order for re-entry after receipt of amount.

6. Detailed enquiry has been conducted and objections have been considered in detail, as could be seen from the impugned order, more particularly in paragraph 5. It is also stated in Paragraph 6 of the order that opportunities have been given and petitioner was heard in person, in order to establish his case. All the parties concerned were heard and written explanation also filed to prove the correctness of the order passed by the Assistant Settlement Officer. Categorically, in Paragraph 7, K.Vijayan (petitioner herein) appeared and requested for adjournment for one month, which was negated. The Tahsildar,



Tambaram, has deputed Zonal Deputy Tahsildar and he submitted relevant account, inspection notes and his report. Scrutinising the entire records, the authority passed a detailed order and relevant paragraphs 11 and 12 are extracted below:

"11) In the circumstances stated above the alleged orders the Assistant Settlement Officer, Tiruvannamalai in K.Dis.1146/2000, dated 6.7.2000 are hereby set aside and the Collector, Kancheepuram is directed to evict the authorised encroachments in the S.No.168/2 by due process of law and to protect this land for the use of general public as play ground. This land should not be assigned.

12) Out of the total extent of 2.29 acres of the suit land in S.No.168/2 Nemilicherry Village, Tambaram Taluk classified as Cart Track Poramboke an extent of 1.91 acres have been sold out to Thiru.K.Sampath Kumar by Thiru K.Vijayan (8th respondent herein) as per document No.4829/2005, dated 29.09.2005 of Sub-Registrar Office, Pallavaram for an value of Rs.75,00,000/- (Rs. Seventy five lakhs only). Therefore, the Collector, Kancheepuram is directed to examine the matter to take criminal action against all the individuals who have sold out this valuable land with bogus order of this Assistant Settlement Officer."

7. It appears that some extent of land has been sold to one Sampath Kumar by Vijayan in the year 2005 and detailed order has been passed after giving opportunities to all the persons concerned, including the petitioner herein. The petitioner contention that no opportunity was given by the Revenue officers, cannot be accepted.

8. When the matter was heard, Mr.P.Srinivas, learned counsel appearing for the third respondent-Municipality has submitted that the petitioner has already filed writ petition in the year 2006 in W.P.No.24496 of 2006 challenging the very same order and the writ petition was dismissed for default on 28.09.2011. Eventhough the petitioner has referred to the said order in paragraph 12 of the affidvait filed in support of this writ petition, the learned counsel has not addressed the same in the arguments and failed to bring the same to the notice of this Court. The contention of the petitioner is that the said writ petition was dismissed for default, is not an order passed on merits and the subsequent writ petition is maintainable. This contention of the petitioner cannot be accepted, as it is for the petitioner to file a petition to restore the writ petition that was dismissed for default as early as on 2011. Without challenging the order, by way of an appeal, subsequent writ petition has been filed with same cause of action, which cannot be accepted by this Court. That apart, a detailed order has been passed by the first respondent on 25.07.2006, whereby the

petitioner was given an opportunity and his request had been negatived. The Court must ensure finality to the litigation and not to create multiplicity of litigations. The petitioner has also not given any reason in the affidavit for not filing restoration petition and also has not made any request with supporting documents, except stating that he was seriously ill and could not follow the case. In fine, as a detailed order has been passed on merits, this Court is not inclined to accept the contentions of the petitioner, even assuming for the sake of arguments that the petition was dismissed for default, on merits also, the petitioner does not have a case. On that score also, the writ petition is liable to be dismissed.

9. The petitioner at this stage prayed that he may be permitted to file a restoration petition. This Court cannot prevent him from filing such petition for restoration. This Court is of the view that the impugned order in this writ petition passed by the first respondent has correctly dealt with the facts of the case and rejected the request of the petitioner, and hence he is not entitled for any relief.

10. The writ petition is dismissed accordingly. No costs. consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pvs

To:

- 1) The Special Commissioner and  
Commissioner of Land Administration,  
Chepauk, Chennai - 600 005.
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Pallavapuram Municipality,  
Pallavaram, Chennai.
- 4) The Principal Officer and Senior Manager,  
Central bank of India  
Mylapore Branch, Luz Church Road,  
Chennai - 600 004.

+1 cc to M/s.P.Srinivas Advocate sr 71811

+1 cc to the Govt Pleader sr 72116

+1 cc to M/s.P.Thiagarajan Advocate sr 71667

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aa16/11/2017