



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.12448 of 2011

The Church of South India Trust Association,
Kanyakumari Diocese,

Rep. By Bishop of Kanyakumari Diocese

Rt.Rev. Devakadatsham, Bishop House, Nagercoil - 1. ... Petitioner
Vs.

- 1.The Secretary,
Government of Tamil Nadu,
Revenue Department, Fort St. George,
Chennai.
- 2.The Principal Secretary and Commissioner of
Land Administration, Ezhilagam,
Chepauk, Chennai.
- 3.The Principal Commissioner and Director of
Survey and Settlement, Chennai.
4. The District Collector,
Kanyakumari District.
5. The Tahsildar,
Agasteeswaram Taluk,
Nagercoil District.

... Respondents

Prayer : Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent to issue patta to the petitioner for the land measuring an extent of 2 acres 9.235 cents in Survey No.1247/3, 1247/4 and 1247/5 of Nagercoil Village, Agasteeswaram Taluk, Kanyakumari District by changing the classification from poramboke land to patta land measuring an extent of 2 acres 9.235 cents in Survey No.1247/3, 1247/4 and 1247/5 of Nagercoil Village, Agasteeswaram Taluk, Kanyakumari District.

For Petitioners

: Mr.R.Devaraj

For Respondents

: Mr.M.Alagadevan

Special Government Pleader

**ORDER**

This writ petition has been filed for issuance of writ of mandamus directing the respondent to issue patta to the petitioner for the land measuring an extent of 2 acres 9.235 cents in Survey No.1247/3, 1247/4 and 1247/5 of Nagercoil Village, Agasteeswaram Taluk, Kanyakumari District by changing the classification from poramboke land to patta land measuring an extent of 2 acres 9.235 cents in Survey No.1247/3, 1247/4 and 1247/5 of Nagercoil Village, Agasteeswaram Taluk, Kanyakumari District.

2, Heard both sides.

3. The brief facts of the case is as follows:

The petitioner association is the owner of the land measuring an extent of 2 acres and 9.235 cents in Survey Nos. 1247/3, 1247/4 and 1247/5 at Nagercoil Village, Agasteeswaram Taluk. According to the petitioner, during re-survey the petitioner's subject land was wrongly classified as 'poramboke lands' and hence, they have filed a suit in O.S.No.968 of 1981 before the learned Principal District Munsif, Nagercoil for declaration to cancel the wrong classification of poramboke lands and consequently direct the respondents to change the classification as 'patta lands'. By judgment and decree dated 11.11.1986, the said suit came to be decreed in favour of the petitioner. The defendants in the said suit was the State of Tamilnadu represented by the District Collector, Nagercoil. As against the decree of the trial court, the fourth respondent herein had filed an appeal in A.S.No. 3 of 1988 before the Sub Court, Nagercoil, which also came to be dismissed on 08.12.1989. As such, the decree of the trial court became final. Hence, the petitioner had made several requests seeking for re-classification and for consequential direction to issue patta in favour of the petitioner, in which no orders have been passed till date. Hence, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner submitted that pursuant to the judgment and decree passed by the trial court and the dismissal of the appeal filed by the Government, no Second Appeal has been filed till date and hence, the respondents are duty bound to re-classify the lands and issue patta in favour of the petitioner.

5. The learned Additional Government Pleader on instructions submitted that the respondents are contemplating to file a Second Appeal against the judgment and decree passed in the year 1989 and hence submitted that they are unable to give effect to the judgment and decree passed by the trial Court. The learned Additional Government Pleader further submitted that the lands in



7. Though the respondents have raised several grounds in the writ petition, I am unable to appreciate the said grounds for the simple reason that the orders passed by the trial court in O.S. No.968 of 1981 as confirmed by the judgment and decree passed in A.S. No 3 of 1988 has become final. I am rather surprised on the submissions of the learned Additional Government Pleader that they are contemplating to file a Second Appeal after a period of 28 years and on that ground, the petitioner's request, which is based on the decree of the trial court, is being kept in abeyance. It is needless to point out that the respondents are duty bound to obey the orders of the civil court.

9. The said order was not complied and hence, the petitioner had filed a Contempt Petition in Cont.P.No. 93 of 2006. When the said Contempt Petition came up for hearing, the fifth respondent had submitted that the Director of Re-survey and Settlement alone is the competent authority to re-classify the lands and therefore, the contempt petition came to be closed by recording their statement. Consequently, the petitioner had approached the Director of Re-survey and Settlement through representation dated 19.07.2007 and the said representation has not been acted upon by the respondent till date.

11. It is rather unfortunate that all the respondents have totally disregarded the following orders:

a) The judgment and decree passed in O.S. NO.968 of 1981



dated 11.11.1986.

b) The judgment and decree passed in A.S.No.3 of 1988 dated 08.12.1989.

c) The order passed in W.P.No.8894 of 2005 dated 20.10.2005

d) The order passed in Cont.P.No.93 of 2006 dated 6.2.2007

e) The order passed in W.P.NO.9521 of 2007 dated 20.11.2007.

12. The State of Tamilnadu was the defendant in the said Original Suit filed before the learned Principal District Munsif, Nagercoil. As such, all the Departments under the State of Tamilnadu were bound by the decree. The decree is very specific to the effect that the respondents had to cancel the wrong classification of the Poramboke lands and change the classification into the patta land. The only ground on which the petitioner's request is not being considered is that the respondents are contemplating to file a Second Appeal with the application for condoning the delay of 28 years.

13. I am unable to understand as to how the respondents have prolonged the re-classification for so many years even without taking steps to file a Second Appeal. I do not intend to pass any remarks with regard to the merits of the grounds raised in the counter affidavit filed by the respondents for the simple reason that whatever be the defence available to the respondents, still they are bound by the decree of the trial court, which has become final. On this sole ground, the petitioner is entitled to succeed in this writ petition.

14. Accordingly, the Writ Petition is allowed. The District Collector, Kanyakumari District is directed to issue a patta in favour of the petitioner for the land comprised in Survey Nos. 1247/3, 1247/4 and 1247/5, Nagercoil Village, Agatheeswaram Taluk, Kanyakumari District by changing it's classification from Poramboke lands to patta lands. Such an exercise shall be complied within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar



To

1.The Secretary, Government of Tamil Nadu, Revenue Department,
Fort St. George, Chennai.

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

3.The Principal Commissioner and Director of
Survey and Settlement,
Chennai.

4.The District Collector, Kanyakumari District.

5. The Tahsildar, Agasteeswaram Taluk, Nagercoil District.

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.12316

+1cc to M/s. R.DEVARAJ Advocate in SR. No.12382

CM/

JS/MR/27.03.2017/5P-8C

W.P. (MD) No.12448 of 2011
02.03.2017