

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL  
AND  
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.22001 of 2018

1.S.Suganthi  
2.K.S.Deepa Rani  
3.K.S.Raj Kumar .... Petitioners

vs.

1.The Commissioner of Land Administration,  
Chepauk,  
Chennai-600 005  
2.The District Collector,  
Salem District,  
Salem.  
3.The District Revenue Officer,  
Salem District, Salem. .... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records relating to the order of the 2<sup>nd</sup> Respondent dated 6.10.2017 in Roc.No.9348/2017/E1 and quash the same in so far as it relates to the Petitioners.

For Petitioner : Mr.K.Selvaraj  
For Respondents :Mr.J.Pothiraj,Spl.G.P.

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioners and the Learned Special Government Pleader for the Respondents.

2.No counter is filed on behalf of the Respondents.

3.According to the Petitioners, one S.Jayaraman, Son of Sundaram Pillai, was the absolute owner of the property, measuring 30,400 sq.ft. at Ward G, Block 10, T.S.No.16/1, Old Survey No.633, Periyeri Village, Salem Taluk and District.

Because of the fact that Patta land of said Jeyaraman was wrongly classified as 'Government Land', during the Town Survey Period, the said Jayaraman, filed a Petition for re-classification of his Patta Land, before the Director of Land Survey and Settle Department, Chennai-8. After due enquiry, an Order dated 23.02.1996 was passed by the Director of Land Survey and Settlement Department, wherein, it was held that the aforesaid land of Jayaraman was wrongly classified as 'Government Land' during the Town Survey Period and therefore, it was ordered to restore the said land as Patta Land, in the name of S.Jayaraman. Based on the Order of Director of Land Survey, the Tahsildar, Salem, by an Order dated 10.03.1997 had classified the Land in Survey No.16/1, Ward G, Block 10, measuring 29,186 sq.ft. as Patta Land in the name of S.Jayaraman.

4.The aforesaid Jayaraman, by means of a 'Will' dated 13.01.1998 bequeathed his land measuring 24,500 sq.ft in Ward G, Block 10, Town Survey No.16/1, Old Survey No.633 at Periyeri Village, Salem, to his daughter J.Mallika. Since the Revenue Authorities had not implemented the Order of Land Survey and had not issued Patta in respect of the aforesaid Lands, the daughter of Jayaraman, viz., J.Mallika, filed W.P.No.1851 of 2011, seeking necessary directions. This Court, by means of an Order dated 28.01.2011 in W.P.No.1851 of 2011, was pleased to direct the Assistant Director, Land Survey Department and the Tahsildar, Salem Taluk Office, to take proper action by making necessary entries within a period of eight weeks, for issuance of Patta. Based on the Order of this Court and the Order of the Director of Land Survey, the Headquarters Deputy Tahsildar, Salem, through an Order dated 05.05.2011, issued Patta for the land in Town Survey No.16/1, in the name of S.Jayaraman, father of Mallika.

5.At this juncture, the Learned Counsel for the Petitioners submits that on 07.03.1998, the said S.Jayaraman died, leaving behind his daughter Mallika and as per the Will dated 13.01.1998 of the said Jayaraman, Mallika became the owner of the property measuring 24,500 sq.ft., in T.S.No.16/1. The said Mallika, in turn had executed a Registered General Power of Attorney, dated 20.12.2002 in favour of K.R.Srinivasan, for development of the said land as well as sale of the said property. The Petitioners had paid a total sum of Rs.34 lakhs to the said J.Mallika for purchase of 5 plots, viz., Plot Nos.1, 2, 3, 4 and 6 in the said T.S. No.16/1 and the said Mallika duly acknowledged the payment of the aforesaid sum from the Petitioners. Further, on the instructions of said Mallika, the Power of Attorney Holder K.R.Srinivasan, the husband of the 1<sup>st</sup> Petitioner, namely, S.Suganthi and the father of the Petitioners 2 and 3 had executed Five Registered Sale Deeds, dated 03.06.2011 to and in favour of the Petitioners in respect of the

Plot Nos.1, 2, 3, 4 and 6 in T.S.No.16/1 and registered as Document Nos.1663, 1664, 1665, 1666 and 1668 of 2011. As such, from 03.06.2011, the Petitioners are stated to be the owners of the aforesaid Plots in T.S.No.16/1. Moreover, the said Mallika gave the land in T.S.No.16/4 in favour of Salem Traffic Police Office.

6. When that be the fact situation, the Petitioners received a Notice dated 23.06.2017, from the Office of the Second Respondent/District Collector, Salem District, Salem, regarding an enquiry in respect of the aforesaid land, on the Petition of one B.V.Nagaraj. Immediately the Petitioners had engaged a Counsel to find out the nature of the Petition as well as the claim of B.V.Nagaraj over the said property. On enquiry, it is found by the Petitioners' Counsel that the 3<sup>rd</sup> Respondent/the District Revenue Officer, Salem District, Salem, without conducting any enquiry and without giving any opportunity to the owners, viz., the Petitioners, had passed an Order on 19.10.2015, behind their back and by the Order, the 3<sup>rd</sup> Respondent had directed the removal of Jayaraman's name from the Revenue Records in respect of the land in T.S.No.16/1 and to replace the name of B.V.Nagaraj and three others.

7. The grievance of the Petitioners is that no Notice was issued to them prior to the passing of Order dated 19.10.2015 and further no opportunity was given to them to disprove the claim of B.V.Nagaraj. Indeed the said B.V.Nagaraj, had made a false claim based on fabricated documents and ex-parte collusive decrees, which are mentioned in the Order dated 19.10.2015. That apart, the 3<sup>rd</sup> Respondent had not followed the relevant provisions of the Tamil Nadu Patta Pass-Book Act, 1983. To put it precisely, he had no jurisdiction to entertain the Appeal Petition of B.V.Nagaraj and others. As per the Act, only the Revenue Divisional Officer is an Appellate Authority. Admittedly, in this Case, the Order re-classifying the land from the 'Government Land' to 'Patta Land' was made by the Director of Land Survey as early as on 23.02.1996 and Patta was given in the name of S.Jayaraman.

8. Continuing further, the Learned Counsel for the Petitioners contends that without providing any opportunity to the Petitioners, by an Order dated 06.10.2017, the Second Respondent/District Collector, Salem District, Salem, had rejected the claim of B.V.Nagaraj and others over the property of the Petitioners over T.S.No.16/1 and it is further stated in the Order that the land measuring 30.400 sq.ft in T.S.No.16, Block No.10, Ward 'AD' of Perieri Village, Salem Taluk, Salem District, is part and parcel of the land acquired by the Deputy Collector, Salem and it is a Government property and not a private property.

9. In sum and substance, the stand taken on behalf of the Petitioners is that the aforesaid finding of the Second Respondent/District Collector, Salem District, Salem, is a baseless and a wrong one and against the documentary evidence.

10. The Learned Counsel for the Petitioners brings it to the notice of this Court that as against the Order of the District Collector, dated 06.10.2017, one A.M.Raju and others have filed Writ Petition Nos.26856 to 26858 of 2017 before this Court and this Court, by means of Order dated 04.04.2018, was pleased to direct the Petitioners to prefer individual Appeals before the Commissioner of Land Administration, Chennai-5 and further directed the Commissioner of Land Administration to entertain the Appeals without putting the issue of Limitation and to decide the Appeals on merits and in accordance with Law, within a period of twelve weeks from the date of entertainment of the Appeals. Being aggrieved against the Order dated 06.10.2017 of the Second Respondent/the District Collector, Salem District, Salem, the Petitioner has filed the present Writ Petition.

11. In response, the Learned Special Government Pleader for the Respondents 1 to 3 submits that in similar matter in W.P.No.26856 to 26858 of 2017, dated 04.04.2018, this Court had permitted the Petitioners therein to file individual Appeals before the Commissioner of Land Administration, Chepauk, Chennai-5, by enclosing the relevant and authenticated documents together with Petitions for Stay and granted four weeks' time from the date of receipt of copy of the said order and proceeded to observe that the Official Concerned, on receipt of Appeals, may entertain the same, if the papers are otherwise in Order and categorically mentioned that the issue of 'Limitation' cannot be put against the Petitioners. Further, this Court, in W.P.Nos.26856 to 26858 of 2017, on 04.04.2018, had directed the Petition for Stay to be taken up and disposed of in accordance with Law within a period of four weeks from the date of entertainment of the Appeals. Till such time, the possession of the Petitioners therein, in respect of the properties, was directed not to be disturbed by Respondents 2 to 6 etc. Also the Commissioner of Land Administration, Chepauk, Chennai-5 was directed to take up the Appeals and give a final disposal on merits and in Accordance with Law within a period of twelve weeks from the date of entertainment of the Appeals and he was also directed to communicate the decision to the Petitioners therein. Also that till the disposal of the Appeals by the Commissioner, Land Administration, Chennai-5, the Petitioners therein were directed not to create any 3<sup>rd</sup> party right in respect of the superstructure and site in question and further directed not to alter the physical features.

12.Considering the fact that in similar/identical matter in W.P.No.26856 to 26858 of 2017, dated 04.04.2018, this Court had directed the Petitioners to prefer individual Appeals before the Commissioner of Land Administration, Chepauk, Chennai-5, etc., this Court, in the interest of justice and fair play, directs the present Writ Petitioner to prefer individual Appeal before the Commissioner of Land Administration, Chepauk, Chennai-5, by enclosing necessary documents together with Petitions for Stay, within a period of four weeks from the date of receipt of copy of this Order. The concerned Official, on filing of the Appeals and receiving the same, is directed to entertain the same and it is further directed by this Court that the plea of 'Limitation' shall not be put against the Petitioners. Further, the said Appeals, along with the Petitions for Stay, are to be taken up within a period of four weeks from the date of entertainment of the Appeals. Till such time, the Petitioners' possession, in respect of the properties in question, is not to be disturbed by the Respondents 1 to 3. Within a period of twelve weeks, the Commissioner of Land Administration, Chepauk, Chennai-5, shall dispose of the Appeals and to communicate the Order passed therein to the Petitioners. Till the disposal of the Appeals by the Commissioner of Land Administration, Chepauk, Chennai, the Writ Petitioners (in W.P.No.22001 of 2018) are directed not to create any 3<sup>rd</sup> Party rights or encumbrance over the Property, viz., in respect of superstructure and the site in question and further they are directed not to alter the physical features.

With the above observations/directions, the Writ Petition shall stand disposed of. No costs. Connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1 The Commissioner of Land Administration,  
Chepauk,  
Chennai-600 005

2.The District Collector,  
Salem District,  
Salem.

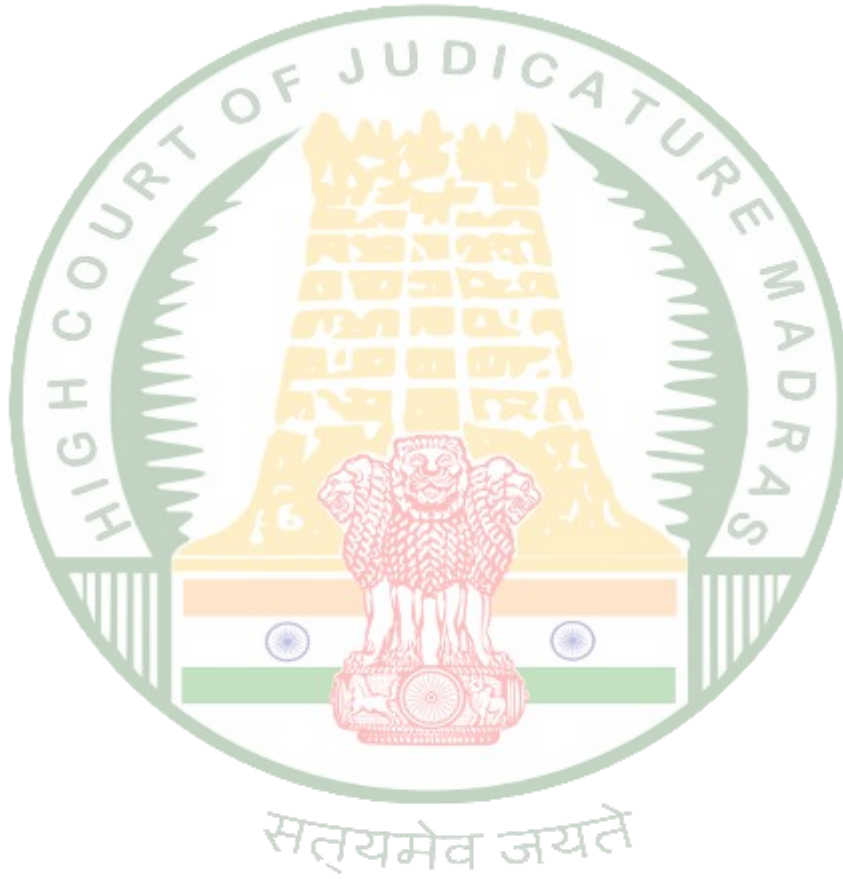
3.The District Revenue Officer,  
Salem District, Salem.

+1 CC to The Govt. Pleader sr 60873.

+1 CC to Mr.K. Selvaraj, Advocate sr 60401.

W.P.No.22001 of 2018

SS(CO)  
SP(18/09/2018)



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