

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.27887 of 2010

1. Tmt.Ammaniammal (deceased)
 2. Rajalakshmi
 3. Ramachandran
- ... Petitioners

[Petitioners 2 & 3 - substituted as legal heirs in the place of deceased petitioner as per order dated 10.01.2012 in M.P.No.1 of 2012 in W.P.No.27887 of 2010]

Vs.

1. The Principal Secretary & Commissioner of Land Administration
Chepauk, Chennai - 600 005.
 2. The Settlement Officer,
Office of the Settlement Officer,
Chepauk, Chennai - 600 005.
 3. Assistant Settlement Officer - South,
Office of the Settlement Officer,
Chepauk, Chennai - 600 005.
 4. The Collector,
Madurai District, Madurai.
 5. The District Revenue Officer,
Madurai District, Madurai.
- ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 01.10.2010 made in Rc.No.K.1/4456/2009 and quash the same, and direct the respondents to cause the correction in the settlement register of the fifth respondent insofar as Survey No.31/2 Ulaganeri Village, North Taluk, Madurai District and issue patta in favour of the petitioner to the lands situated in Survey No.31/2, Ulaganeri Village, Madurai District.

For Petitioners : Mrs.Thilakavathy
Senior Counsel
for Mr.R.Gopinath

For Respondents : Mr.R.P.Prathap Singh
Government Advocate

Judgment

The present Writ Petition which was filed earlier has been remitted back by the bench of this Court to the learned Single Judge to dispose it of in accordance with law after the Settlement Officer filed a counter affidavit and produced the documents which were placed before this Court in W.A.No.171 of 2018 is taken up for further hearing.

2. The prayer in the Writ Petition is for issuance of a Writ of Certiorarified Mandamus to quash the order of the first respondent dated 01.10.2010 and consequently to direct the respondents to correct the settlement register maintained by the fifth respondent in respect of Survey No.31/2, Ulaganeri Village, North Taluk, Madurai District and to issue patta in favour of the petitioner in respect of the lands situated in the said Survey Number.

3. The original petitioner Ammaniammal died, and the petitioners 2 and 3 were substituted in the place of deceased Ammaniammal as per the order dated 10.01.2012 made in M.P.No.1 of 2012 in W.P.No.27887 of 2010.

4. The case of the petitioner as stated in the original affidavit filed by late Tmt.Ammaniammal was that an extent of 92 cents in Survey No.31/2 in Ulaganeri Village, Madurai North Taluk, which was initially vested with late Ammaniammal's husband's possession and enjoyment, and after his death in the year 1950, it vested with the late Ammaniammal. The land was classified as Ryotwari Nanjai Land, and even prior to 1950, it was put into effective cultivation, through which income only, the Ammaniammal was sustaining her life with her daughter and son. In fact, the Revenue Authorities have issued Patta that stood in the name of late Srinivasa Ayyengar as per Patta No.18.

5. It is the case of the petitioner is that when the Tamilnadu Estates (Abolition and Conversion) into Ryotwari Act 1948 came into force, necessary enquiries were conducted with the land owners and final orders came to be made under the provisions of the Act, and upon thorough enquiry, the original

Patta which stood in the petitioner's name as Patta No.18 was sustained and mutation has taken place, based on the enquiry in the revenue records. However, the entries made in the revenue records had not forwarded to the handbooks of revenue records, which fact came to the petitioner's knowledge at very later point of time. However, it came to the knowledge of the petitioner only in the year 2003 as to the error of the reflection caused in the records, whereby, the authorities have treated the land as Anadeenam land. Despite the petitioner paying tax continuously for the said agricultural land even up to the year 1961. However, on account of mischief caused by the revenue authorities, posting of entries in the revenue records, the petitioner was made to suffer.

6. It is the further case of the petitioner is that she made a representation dated 17.09.2003, immediately after coming to know the error crept in the revenue records seeking for rectification which was classified as Anadeenam, and on her representation, the Inspector of Revenue filed favourable report by order dated 01.09.2004.

7. It is the further case of the petitioner is that she approached the first respondent who by order dated 26.11.2007 indicated that the said land has been classified as Anadeenam and hence, no claim could have been made by the petitioner. Subsequently, the first respondent passed an order dated 29.11.2007 rejecting Ammaniammal's request for correction of entries in the revenue records on the ground that the Ammaniammal failed to take appropriate recourse under G.O.Ms.No.714 dated 29.06.1987.

8. Challenging the above order, W.P.No.1871 of 2008 was filed raising the grounds of jurisdiction of the District Revenue Officer to pass an order dated 29.11.2007. In which Writ Petition, the original petitioner late Ammaniammal had obtained an order from this Court directing the District Revenue Officer, Madurai District, to pass appropriate orders. The District Revenue Officer, pursuant to the order passed by this Court, had rejected Ammaniammal's request on 30.12.2008. As against which, an appeal was preferred which also came to be rejected on 27.10.2009.

9. The petitioner submitted that the rejection order was challenged in W.P.No.26153 of 2009, in which, this Court by an order dated 23.03.2010 directed the first respondent to give opportunity to the petitioner and pass fresh orders. The first

respondent, after considering the same, by order dated 01.10.2010, issued the present impugned order rejecting the request made by the petitioner.

10. Rebutting the contention of the petitioner, the Settlement Officer, the second respondent herein, had filed a counter pursuant to the order passed by the bench of this Court in W.A.No.171 of 2018.

11. The learned Government Advocate Mr.R.P.Prathap Singh contended that when this Court in W.P.No.26153 of 2009, by its Judgment dated 23.03.2010, had set aside the order of the first respondent dated 27.10.2009, the case was taken on file and the late Ammaniammal was offered personal hearing. Further, the learned Government Advocate contended that as per the record, late Ammaniammal was one among a proprietor of the village and as per the Rules, the late Ammaniammal ought to have preferred the claim under Section 15 of the Act XXVI of 1948 to claim patta under the provision by proving rights over the lands claimed. Having not claimed and proved any such rights over the land, the land was classified as Anadeenam.

12. To counter the petitioner's argument, the learned Government Advocate further contended that the settlement land register is a registered document prepared at the time of settlement, and the entries in the register are provisional which would be confirmed by the statutory orders of the competent authority after Final Settlement Enquiry under the said Act. As far as the petitioner's case is concerned, the settlement register of the village has been verified, which suggest that the petitioner's claim has been enquired by the settlement authority. As per the enquiry conducted, it was clear that the petitioner wanted to get a patta for the land in Survey No.31/2 under Section 15 of the Tamilnadu Estates Abolition and Conversion into Ryotwari Act 1948 has been disallowed as early as in the year 1960, thereby, abolishing the pre-existing right of the petitioner if she possessed already.

13. The learned Government Advocate would also contend that as there is no evidence to show that the petitioner is a continuous possession of the land as she claims in the affidavit, the land is reportedly vacant for several years. Under these circumstances, when appeal was preferred before the first respondent, the impugned order dated 01.10.2010 came to be passed after proper enquiry, and since the petitioners claim was disallowed as early as 1960, the order has attained finality and

the entire land which the petitioner claimed has been treated as Government poramboke. Hence, on the above facts, the learned Government Advocate seeks for dismissal of the Writ Petition.

14. Heard the learned Senior Counsel Mrs.Thilakavathy appearing for the petitioners and the learned Government Advocate Mr.R.P.Prathap Singh appearing for the respondents, and perused the materials available on record.

15. The only point in which the bench of this Court has remitted the matter back to the learned Single Judge to decide in the Writ Petition is with regard to the counter filed by the Settlement Officer and for producing the documents which was placed before the bench.

16. The original petitioner late Ammaniammal who claimed that the land bearing Patta No.18 was issued with the Ryotwari Patta prior to the Tamilnadu Estates Abolition and Conversion into Ryotwari Act 1948 coming into force. However, the said land without petitioner's knowledge has been wrongly classified as Anadeenam when she was paying the kist regularly. According to the petitioner, that the said classification came to the notice only when she wanted to execute a settlement deed during the year 2003 to her children and she was not issued with any notice prior to such reclassification of land from Ryotwari Land to Anadeenam.

17. The learned Government Advocate appearing for the Settlement Officer filed certain documents as typed set of papers and drew this Court's attention in support of his argument that the prior notice relating to determination of compensation payable to the inamdars has been produced.

18. The learned Government Advocate would also point that the original petitioner Ammaniammal has been given notices for determination of compensation under Section 39(1) of the Act 96 of 1948 and the said notices have been acknowledged by her as early as on 16.07.1961.

19. On perusal of the documents furnished by the respondents on behalf of the Settlement Officer, no doubt, the Director of Settlement has determined the compensation payable under Section 31 of the Tamilnadu Estates Abolition and Conversion into Ryotwari Act 1948 which is addressed to the original petitioner

have issued under Section 39(4)(a) of the Act, proposing to review the order already passed, and the land holders were requested to state whether they wished to be heard in-person in this connection. Further, the proceedings states that if no reply is received within the time allowed, it would be presumed that they have no objection to the settlements revising the Basic Annual Sum and the Total Compensation proposed. Over the leaf of the same document, it is seen that manuscript words of the name of Ammaniammal, Aandalammal and others being incrypted as signatures from the respective parties. However, the date being 07.08.1962. When the proceeding itself is dated 08.08.1962, it is hard to believe that the authorities have obtained signatures from the original petitioner and others a day before i.e. on 07.08.1962 which is as follows:



21. Under these circumstances, I am unable to convince myself that the original petitioner was given proper notice before the land being classified from Ryotwari to Anadeenam.

22. As per the counter filed by the Settlement Officer, the entire counter reiterates that the claim of the petitioner to get Patta was disallowed as early as 1960 and attained finality, and the land has also been reclassified as Anadeenam Government porambokke. However, it is not the case of the petitioner to grant fresh Patta, but the claim of the petitioner is that as per SLR, her name was entered in the SLR, but not in the settlement 'A' register. It is her sole case that the land continues to be in their possession and no determination of compensation was ever known to the petitioner nor received by her.

23. On perusing the documents furnished, especially the reports of the Tahsildar dated 20.01.2004 which is based on the statement given by the tenants, who was clearly stated that the original petitioner and other owners were in possession of the land and cultivating the land and they were paying the lease rent by giving paddy. There is no proof of evidence produced by the Settlement Officer for having enquired the land owners. The report submitted by the Revenue Divisional Officer dated 18.03.2004 and 19.04.2004 clearly exhibits that the petitioner were in possession of the land when the Act came into force.

24. On a perusal of the SLR as against the Survey No. 31/2, it clearly refers to the petitioner's name so far as the Survey is concerned, which is reflected in the kist as early as 25.03.1959.

25. Under these circumstances, with the additional documents being filed by the Settlement Officer which I find is of no help to the case of the Settlement Officer to claim that the notice was served on the original petitioner. While holding so on the ground that the original petitioner is not given any notice and there is sufficient proof that there was a mistake in the entry in the Revenue records for Ryotwari Land being reclassified as Anadeenam, which appears to be incorrect and the petitioner is directed to challenge the same in the manner known to law as the assistant Settlement Officer without conducting proper enquiry and affording proper opportunity to the original petitioner has made correction in the SLR which ought to have been challenged by the petitioner. As the Act does not prescribe any time limit for preferring application, and there being a procedural lacuna on part of the respondent in serving the notice before reclassifying the land into Anadeenam, and they accepting the kist subsequently, would also show that the application filed by the petitioner for rectifying the error crept-in reclassifying the Survey No.31/2 from Ryotwari to Anadeenam has to be entertained and should not be rejected on the ground of delay.

26. This rectification can only be done when the order passed by the Assistant Settlement Officer and the final settlement or challenge in the manner known to law.

27. The Writ Petition is disposed of with a liberty to the petitioner to challenge the proceedings of the Assistant Settlement officer and other proceedings under the Act as laid down under the law, if so, decide by the petitioner.

28. It is also made clear that taking advantage of this order, the petitioner before this Court shall not make any further alienation of the property until final orders being passed by the Assistant Settlement Officer while the petitioner challenging the orders passed earlier by the Assistant Settlement Officer.

29. At this Juncture, the respondent shall also make no entries in the revenue records and no mutation shall also be effected in any manner till the outcome of the appeal being filed by the petitioner within four weeks from the date, when the respondent furnishes the relevant order to the petitioners to enable them to challenge the same in accordance with law on application made by the petitioner in furtherance of this order.

30. With the above direction, this Writ Petition is disposed of.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary &
Commissioner of Land Administration
Chepauk, Chennai - 600 005.
 2. The Settlement Officer,
Office of the Settlement Officer,
Chepauk, Chennai - 600 005.
 3. The Assistant Settlement Officer - South,
Office of the Settlement Officer,
Chepauk, Chennai - 600 005.
 4. The Collector,
Madurai District, Madurai.
 5. The District Revenue Officer,
Madurai District, Madurai.
- +1 CC to Govt. Pleader sr 64675.
+1 CC to Mr.R.Gopinath, Advocate sr 64477.

W.P.No.27887 of 2010

KK(CO)
SP(29/08/2019)