IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.18526 of 2017
and
W.M.P.No.20089 of 2017

Orders reserved on 07.02.2020	Orders pronounced on 18.02.2020

1.L.Sundaram
S/o.Late K.Lakshminarayanan

2.Mahadevi,
D/o.Late K.Lakshminarayanan

3.L.Nagamani
D/o.Late K.Lakshminarayanan

4.L.Sujatha
D/o.Late K.Lakshminarayanan .. Petitioners

-vs-

1.The District Revenue Officer,
Krishnagiri District, Krishnagiri.

2.The Sub Collector,
Hosur, Krishnagiri District.

3.The Tahsildar,
Shoolagiri Taluk, Krishnagiri District.

4.The Revenue Inspector,
Uddanapalli,
Shoolagiri Taluk,
Krishnagiri District. .. Respondents

Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the 1st respondent passed in Pa.Mu.No.7002/2015/32 dated 07.10.2016, quash the same and consequently direct the respondents herein to grant necessary patta to the petitioners for the lands situated in S.F.Nos.15, 18/1, 31/2, 31/3, 32/3, 32/4, 37/2, 31/4, 32/5, 49/2, 50/1 and 58/27 measuring acres 3.06, 3.30, 2.90, 3.53, 0.50, 1.77, 0.95, 0.16, 0.67, 6.02, 15.62, 5.63 and 2.81 respectively, situated at Seebam Village, Shoolagiri Taluk, Krishnagiri District.

For Petitioners : Mr.N.Nithianandam

For Respondents : Ms.A.Sri Jayanthi,
Special Government Pleader

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ORDER

The petitioners challenge the order passed by the first respondent dated 07.10.2016, by which, the request made by the petitioners for grant of patta in respect of the lands in question was rejected.

2.The petitioners' case is that Seebam Village in Hosur Taluk, was an Inam Village taken over by the Government under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as "the 1948 Act"). The petitioners' grandfather, Krishna Gowda had purchased the subject lands comprised in various survey numbers prior to coming into force of the 1948 Act and continued to be in absolute possession and enjoyment of the same. However, the lands were erroneously vested with the Government in terms of Section 3(b) of the 1948 Act. The petitioners' grandfather is stated to have passed away in the year 1950 and after which, the petitioners' father, K.Lakshminarayanan, succeeded to the property and he was enjoying the same. Though the petitioners' father was in possession and enjoyment of the property ever since 1950, that is, after the demise of his father, he did not take immediate steps to obtain patta and only in the year 1964, he applied for grant of patta and the matter was dealt with by the Board of Revenue and by order dated 29.02.1964, the Board of Revenue directed the petitioners' father to remit a sum of Rs.2,984.10 ps. to obtain the patta under general category instead under the 1948 Act. The Government also subsequently issued G.O.Ms.No.1300, Revenue Department, dated 30.04.1971, and directed issue of patta outside the purview of the 1948 Act. The petitioners' father did not remit the entire amount in one-go, but paid the amounts in instalments between 1965 and 1970. Since the patta was not granted till 1973-1974, the petitioners' father once again applied for patta and the Sub Collector, Hosur, by order dated 27.02.1974, directed him to remit the entire amount as directed by the District Collector, Salem, pursuant to the proceedings of the Board of Revenue dated 29.02.1964.

3.It is stated that the petitioners' father was continuously following up of the matter and submitted various representations, which were not considered and was compelled to file a writ petition before this Court in W.P.No.3209 of 2015, which was disposed of by order dated 10.02.2015, directing the Tahsildar, Shoolagiri Taluk, to consider the representations within a time frame. Pursuant to such direction, enquiry was conducted by the second respondent, Sub Collector, Hosur, during which the petitioners' father produced all documents, but however, the application was rejected by the impugned order and subsequently, the petitioners' father fell sick and ultimately died on 02.05.2017 and when the petitioners were rummaging through the old files, they came to know about the impugned order and have filed this writ petition.

4.Mr.N.Nithianandam, learned counsel for the petitioner submitted that the second respondent while passing the impugned order did not take note of the various documents filed by the petitioners' father, but merely was guided by the report submitted by his subordinates and has erred in passing a cryptic order. Further, it is submitted that the petitioners' father having remitted the entire amount of Rs.2,984.10 ps., was entitled to obtain the patta under the general category instead under the 1948 Act, more particularly when the entire remittance was made well prior to 1970.

5.Further, it is submitted that the respondents are estopped from not performing their duty in issuing patta having received the entire amount and not having returned the amount and retained the same for the past 47 years. Therefore, it is submitted that the present classification of the land as "podukal" is absolutely erroneous. That apart, the petitioners' father, as a matter of right, was entitled to ryotwari patta as per Section 12 of the 1948 Act. However, the Board of Revenue imposed a condition on the petitioners' father for grant of patta under the general category, which had been complied with. On the above grounds, the learned counsel seeks for setting aside the impugned order.

6.Ms.A.Sri Jayanthi, learned Special Government Pleader appearing for the respondents by referring to the counter affidavit filed by the District Revenue Officer, Krishnagiri, would submit that even before the coming into force of the 1948 Act, the writ petitioners' grandfather, Krishna Gowda had purchased the lands and was entitled to ryotwari patta as per Section 12 of the 1963 Act. It is submitted that for obtaining ryotwari patta, the land owner had to prove that he was cultivating the land continuously for a period of twelve years immediately before the commencement of the 1963 Act, that is, before 01.04.1960 and in the instant case, the land owner had failed to prove the same at the time of settlement and consequently, the land was classified as “Anadeenam”.

7.It is submitted that the petitioners' grandfather or their father did not file any appeal to the Tribunal against the said order. It is submitted that after the demise of the petitioners' grandfather, the petitioners' father applied for patta and the Board of Revenue passed an order dated 29.02.1964, directing him to remit a sum of Rs.2,984/- to get patta under general category instead under the 1948 Act. It is submitted that the petitioners' father remitted a sum of Rs.500/- in the year 1965; Rs.1000/- on 14.02.1965; Rs.800/- on 29.02.1966; Rs.594.10 ps., on 02.04.1970; and Rs.100/- on 19.10.1987.

8.It is further submitted that as per G.O.Ms.No.589, Commercial Taxes and Religious Endowment Department, dated 14.05.1975, the time limit for preferring application outside the scope of the 1948 Act was extended up to 31.03.1977, in G.O.Ms.No.1889, dated 24.12.1976, and thereafter, no extension of time was granted by the Government. Further, it is stated that the father of the writ petitioners had remitted the said cost of Rs.2,984.10 ps., on different dates. Further, it is stated that the land owner or his heirs are not preferred any application before the Settlement Officer in the year 1961 and have not availed any remedy to obtain the ryotwari patta and therefore, the contention of the writ petitioners is liable to be rejected.

9.Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

10.The case of the respondents as could be seen from the counter affidavit is that the petitioners' grandfather was the owner of the subject lands much prior to the coming into force of the 1948 Act. This has been admitted in the counter affidavit in more than one place. The counter affidavit further states that the petitioners' grandfather's application for grant of ryotwari patta was not favourably considered because he could not prove at the time of settlement that he was cultivating the land continuously for a period of 12 years immediately before the commencement of the 1963 Act, that is, before 01.04.1960. The petitioners' grandfather did not file any appeal to the Tribunal as prescribed under Section 12(2) of the 1963 Act. It is admitted in the counter affidavit that the petitioners' grandfather was entitled to apply for patta under general category, that is, outside the purview of the 1948 Act. The

Government provided for such a relief to the owners of the lands, which were declared as inam villages.

11.It is further admitted in the counter affidavit that the petitioners' father had applied under the said category. The application was favourably considered by the Board of Revenue and an order in B.P.M.No.287 of 1964, dated 29.02.1964, was issued directing the petitioners' father to pay a sum of Rs.2984/- for being entitled to patta under general category. Admittedly, this amount has been paid by the petitioners' father, but not in one lump sum, but on different dates. The first of the such payments was made in the year 1965 and the last of such payment of Rs.100/- was on 19.10.1987.

12.The learned Special Government Pleader would vehemently contend that the payment of Rs.100/- was made in the year 1987. Though all the earlier payments were made prior to 1970, the payment of Rs.100/- in 1987 cannot be accepted, as the time limit for grant of patta outside the purview of the Act was not extended by the Government beyond 31.03.1977. If this is the case of the respondents, then they ought to have returned the amounts paid by the petitioners' father on various dates up to the year 1970. Presumably, there was some calculation error or certain old records were missing and when the petitioners approached the authorities, they pointed out that Rs.100/- is the deficit amount to be paid, which has been paid promptly.

13.In the instant case, the Board of Revenue has already taken a decision to grant patta outside the purview of the 1948 Act, but the condition being, the sum of Rs.2984/- had to be remitted. There has been substantial compliance of the payment of the said money except for Rs.100/-. It is not the case of the respondents that they noticed this mistake and issued notice to the petitioner and returned the amounts, which were collected, that is, Rs.2894/-. It is only when the petitioners approached the authorities for grant of patta, this issue has arisen. The respondents are estopped from refusing to grant patta in favour of the petitioners, as the decision to grant patta had already been taken by the Board of Revenue in the year 1964. Therefore, the respondents cannot sit in judgment over the order of the Board of Revenue and if such a plea is raised, it has to be struck down as being one without jurisdiction.

14.The fact that the petitioners' grandfather was the absolute owner of the property prior to the 1948 Act coming into force has been admitted by the respondents. The possession and enjoyment of the lands in question of the petitioners' father had also been admitted as well as the possession of the petitioners and others as legal heirs of their father. The decision of the Board of Revenue taken in the year 1964 to grant patta under general category outside the purview of the 1948 Act has also been accepted. The respondents do not deny the fact that the petitioners' father had remitted a total sum of Rs.2884/- and they would state that there was a balance amount of Rs.100/- to be paid. Even assuming there was no such deficit, the same cannot be a ground to nullify the order of the Board of Revenue passed in the year 1964. The amount of Rs.2884/- has been retained by the Government for 46 years. This is also one of the factors, which has to be borne in mind. Therefore, the provisions of G.O.Ms.No.1889, dated 24.12.1976 cannot be a bar for grant of patta in favour of the petitioners under the general category in the light of the factual position set out above. Thus, for all the above reasons, the petitioners are entitled to succeed.

15.In the result, this writ petition is allowed, the impugned order dated 07.10.2016,is quashed and the matter is remanded to the respondents with a direction to respondents 1 to 3 to grant patta in favuor of the petitioners under the general category by taking note of the order passed by the Board of Revenue in Reference No.B.P.M.No.289 of 1964, dated 29.02.1964 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

// True Copy//

Sub Assistant Registrar

abr

To

1.The District Revenue Officer,
Krishnagiri District,
Krishnagiri.

2.The Sub Collector,
Hosur,
Krishnagiri District.

3.The Tahsildar,
Shoolagiri Taluk,
Krishnagiri District.

4.The Revenue Inspector,
Uddanapalli,
Shoolagiri Taluk,
Krishnagiri District.

+1cc to Mr.N.Nithianandam, Advocate, SR.No.14713.
+1cc to Government Pleader, SR.No.14250.

Orders made in
Writ Petition No.18526 of 2017

CSR: 24.02.2020