IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. NO.10596 OF 2016
AND
M.P.NO.9287 OF 2016

P.Malliga

... Petitioner

-Vs-

1. The Commissioner of Survey and Settlement,
Survey House,
Chepauk, Chennai-600005.

2. The Tahsildar,
Uthukottai Taluk,
Tiruvallur District.

... Respondents

Prayer :- 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 of the Commissioner for Survey and Settlement, Survey Illam, Chepauk, Chennai-600 005 relating to the Endorsement, dated 02.02.2016 made is Na.Ka.E1/5298/2015, the first respondent herein and quash the same and consequently direct the first respondent herein to consider the claim petition, dated Nil submitted by the petitioner under Section 5(2) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 seeking for Ryotwari Patta under Section 11(a) of the Act 26/1948 and received by the first respondent on 04.08.2015, with respect to the lands comprised in S.No.54/1, Poochi Athupattu Village, Uthukottai Taluk, Tiruvallur District.

For Petitioner : Mr.S.Gokul
For Mr.N.Damodaran

For Respondents : Mr.Richardson Wilson
Government Advocate.

ORDER

The Writ Petition has been filed to call for records of the Commissioner for Survey and Settlement, Survey Illam, Chepauk, Chennai-600 005 relating to the Endorsement, dated 02.02.2016 made is Na.Ka.E1/5298/2015, and quash the same and consequently direct the first respondent herein to consider the claim petition submitted by the petitioner under Section 5(2) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 seeking for Ryotwari Patta under Section 11(a) of the Act 26/1948 and received by the first respondent on 04.08.2015, with respect to the lands comprised in S.No.54/1, Poochi Athupattu Village, Uthukottai Taluk, Tiruvallur District.

2. The case of the petitioner is that she owned property comprised in S.No.54/1 (Paimash number 108) situated at No.77, Poochi Athipattu Village, Uthukottai Taluk, Tiruvallur District to an extent of 1.20 acres by the virtue of sale deed dated 13.05.1999 vide document No.964/99 on the file of the Sub Registrar, Arani. While being so, the Government of Tamil Nadu enacted the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948 (Tamil Nadu Act XXVI/1948) (herein after called as “the Act”) and introduced raywari settlement in order to abolish the intermediary and to bring the tax collection under the director control of the Government. Under the Act, the settlement authorities without any notice to the land holders and without affording any opportunity of hearing in possession of their respective properties and simply classified the land situated in the Poochi Athipattu village as Annadheenam. The term Annadheenam referred to cultivable land and that was not claimed by the any one during the settlement.

3. Insofar as the petitioner's land is concerned, she is in possession and enjoyment of the same and also mutated all revenue records in her favour. Unfortunately, her predecessor had failed to make any claim for grant of patta under the said Act. After knowing the said fact, the petitioner immediately made a claim before the first respondent by the invoking the provision under Section 5(2) of the Act, as against the wrong classification made by the settlement authority. She also made representation under Section 11(a) of the Act, with regard to the aforesaid land, and the same was received by the said authority on 04.08.2015. The first respondent by the impugned order dated 02.02.2016, rejected her claim for the reason that it cannot be considered, since the claim was time barred one. Further the first respondent relied upon the G.O.Ms.714, Commercial Taxes and Religious Endowment, dated 21.06.1984 and rejected the petitioner's claim. Aggrieved by the said order, the present Writ Petition has been filed.

4. Heard Mr.S.Gokul, learned counsel appearing for the petitioner, Mr.Richardson Wilson, learned Government Advocate appearing for the respondents.

5. The learned counsel appearing for the petitioner relied upon the order dated 17.03.2010 passed by this Court in W.P.No.2590 to 2595 of 2009 batch in the case of G.Ramachandran & ors Vs. The Additional Chief Secretary to Government And Director of Survey & Settlements & anr, which held as follows :-

> “10. Now, the crux of the question involved in these matters is whether there is any time limit prescribed under any provisions of Act 26 of 1948 for claiming the relief of grant of pattas. The fact remains that there is no time limit fixed either under the provision u/s.11[a] of the Act 26 of 1948 or the rules framed there under in G.O.Ms.No.2043 Revenue dated 05.08.1949. The perusal of the impugned orders passed by the 1st respondent 12.01.2009 reveals that the 1st respondent solely placed reliance on G.O.Ms.No.714 [Commercial Taxes and Religious Endowments] department dated 29.06.1987 for holding that the petitioners have not preferred the appeals within the stipulated period of 30 days from 22.07.1987, the date on which the said Government Order came into force for claiming the issue of pattas.
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> 11. A perusal of the said G.O.Ms.No.714 dated 29.06.1987 makes it crystal clear that the said order deals in respect of prescription of time limit for preferring appeals and revisions as per the amendment made to various rules. It is also pertinent to note that as far as the cases on hand are concerned, the petitioners preferred only the original applications seeking for the relief of grant of pattas and by no stretch of imagination, the said applications could be construed to be an appeal. Therefore, this court has no hesitation to hold that G.O.ms.No.714 [CT & RE] Department dated 29.06.1987 is not at all applicable to the facts of the instant cases and the 1st respondent has wrongly placed reliance on

such Government Order for setting aside the orders passed in favour of the petitioners by the Assistant Settlement Officer, Tiruvannamalai for granting the relief of pattas in their favour. It is needless to state that there is absolutely no statutory rule or provision available prescribing any time limit for claiming grant of pattas.

Accordingly, there is no time fixed for under the provisions under Section 11(a) of the Act or the Rules framed thereunder in G.O.Ms.No.2043 Revenue dated 05.08.1949. Therefore, the above judgment is squarely applicable to the case on hand.

6. More over, the first respondent by the impugned order rejected the claim of the petitioner by relaying upon the G.O.Ms.714, Commercial Taxes and Religious Endowment, dated 29.06.1987. But the petitioner has not preferred any appeal after the lapse of 30 days from 29.06.1987 viz., on the date which the Government Order came into force for claiming the patta. The said Government order deals with prescription of time limit for preferring appeals and revisions as per the amendment made to various rules. Whereas in the present case, the petitioner made an application claiming patta and as such the Government Order cited by the first respondent is not applicable to the case on hand. That apart, there is no statutory rule or provision available for prescribing any time limit for claiming grant of patta. Therefore, the impugned order cannot be sustained and it is liable to be set aside.

7. Accordingly, the order dated 02.02.2016 passed by the first respondent in Na.Ka.E1/5298/2015, is hereby set aside. The petitioner's application is remanded back to the first respondent for fresh consideration. The first respondent is also directed to consider the petitioner's application on merits and in accordance with law and pass orders, within a period of twelve weeks from the date of the receipt of a copy of this Order.

8. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

rts

To

1. The Commissioner of Survey and Settlement,
   Survey House,
   Chepauk,
   Chennai-600005.

2. The Tahsildar,
   Uthukottai Taluk,
   Tiruvallur District.

+1cc to Mr.N.Damodaran, Advocate, S.R.No.42480

+1cc to the Government Pleader, S.R.No.42693

W.P. No.10596 of 2016
and M.P. No.9287 of 2016

NRL(CO)
RLP(22/09/2021)