



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.13285 OF 2015

T.V.Amasalingam

... Petitioner

.Vs.

1. The District Collector,
Tiruvellore District,
Tiruvellore.

2. The Tahsildar,
Poonamalle Taluk,
Tiruvellore District.

3. Chembrambakkam Minor Panchayat,
Rep by its President;
Chembarambakkam,
Tiruvellore District.

... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing respondents 1 and 2 to consider the petitioner representation dated 23.02.2015 and cancel the wrong sub-division in respect of S.No.146/5A, 146/5B, 146/6A, 146/6B, 146/7A, 146/7B, 146/16A, 146/16B, 236/1B1, 236/1B2, 236/2C1, 236/2C2, 236/2D1, 236/2D2, 236/2E1, 236/2E2, 236/2F1, 236/2F2, 236/5A, 236/5B and 236/8A in the UDR and restore them in the original S.No.146/5, 146/6, 146/7, 146/16, 236/1B, 236/2C, 236/2D, 236/2E, 236/2F, 236/5 and 236/8.

For Petitioner : Mr.N.S.N.Krishnakumar

For Respondents : Mr.C.Kathiravan
Government Advocate
[For R1 and R2]

Mr.R.Bharathkumar
[For R3]



ORDER

The relief sought for in the present writ petition is to direct the respondents 1 and 2 to consider the representations submitted by the writ petitioner on 23.02.2015 and cancel the wrong sub-division in respect of Survey No.146/5A, 146/5B, 146/6A, 146/6B, 146/7A, 146/7B, 146/16A, 146/16B, 236/1B1, 236/1B2, 236/2C1, 236/2C2, 236/2D1, 236/2D2, 236/2E1, 236/2E2, 236/2F1, 236/2F2, 236/5A, 236/5B and 236/8A in the UDR and restore them in the original Survey No.146/5, 146/6, 146/7, 146/16, 236/1B, 236/2C, 236/2D, 236/2E, 236/2F, 236/5 and 236/8 and grant such further or other reliefs.

2. The learned counsel for the petitioner in clear terms, contended that there is no title dispute in respect of the property belongs to the petitioner. However, the representation is submitted to cancel the erroneous sub-division made by the authorities. It is contended that the third respondent/ Chembrambakkam Minor Panchayat is also creating trouble in respect of such sub-division made erroneously.

3. The learned counsel for the petitioner is of an opinion that even after the sub-division is effected, the property right of the petitioner is not affected. However, regarding creation of pathway and the wrong sub-division made, the representation is submitted to restore the original survey number.

4. This Court is of the considered opinion that incase, a wrong sub-division is made, it is for the authorities to correct the same by following the procedures as contemplated. As far as the petitioner is concerned, his property right is not affected and the learned counsel for the petitioner also clarified that the petitioner has not filed any writ petition, claiming his property right.

5. But, it is contended that the representation is to be disposed of by issuing an appropriate direction by this Court.

6. Even for issuing a direction to consider the representation, a person filing a writ petition should establish his right or infringement of any such right. As merely stating, a wrong sub-division is made and seeking a direction to consider the representation for the purpose of canceling the sub-division, this Court cannot issue a direction as certain issues in this regard may involve the property rights of other persons also. However, these disputed factors are to be adjudicated before the competent authority or before the competent Court of law.



7. The learned counsel appearing on behalf of the third respondent/Panchayat, opposed the writ petitioner by stating that the very same writ petitioner earlier filed the writ petition in W.P.No.6915 of 2002 with a prayer to forbear the respondents therein or anybody claiming through the respondents from anyway interfering with peaceful possession and enjoyment of the lands of the petitioner comprised in Survey No.146/7, 146/16, 236/1, 236/2C, 236/2D, 236/2E and 236/2F situated in Chembarambakkam Ponnammallee Taluk, Tiruvallore District without due process of law.

8. In the said writ petition, the petitioner has clearly stated by way of sworn affidavit as follows:

"12. To their shock and surprise the petitioner came to know that the land comprised in S.No. 146/7, 146/16, 236/2B, 2C, 236/2E, 236/2F of the petitioner has been shown as subdivided Sub-Division No.146/7B, 146/16B, 236/1B1, 1B2, 2E1, 2E2, 2F1, 2F2, 236/2A, 2B, 2C1 and 2D1 respectively and Survey Nos.146/7B, 146/16B, 236/2C1, 236/2D1, 2E1, 2F1 and 236/2B is shown as pathway.

13. The petitioner has not applied for sub-division of his land for purpose of making a pathway. The petitioner never received notice for sub-division of his land to make a pathway as thoroughfare. The petitioner's land was not acquired for making a pathway in accordance with law. The petitioner gave petitioner dated 16.04.1998 in the jamabandhi to close the sub-division and redo the survey records with Sub-Divisions. The petitioner is filing separate writ to direct the concerned authorities to cancel the sub-division entries disclosing sub-division of the lands of the petitioner.

14. The petitioner has earlier filed W.P.No.10782/98 for forbearing the respondents and Revenue authorities from interfering with our peaceful possession and enjoyment other have also file similar writs. Notice of Motion was ordered on 28.07.1998. The respondents did not file any counter. Thereafter no steps were taken by Panchayat to form the pathway. The respondents have abandoned the idea to form the pathway through the lands of the petitioner. Hence the petitioner and others did not pursue the matter. The W.P's were dismissed for default on



26.06.2001. The petitioner has been taking steps to restore the same by filing W.M.P.No.21553 of 2001 and it is not yet listed for hearing."

9. Relying on the affidavit filed by the petitioner in the year 2002, the learner counsel for the third respondent reiterated that the petitioner was aware of the sub-division in the year 1998 itself and he has very clearly admitted in his affidavit also. While so, the present representation dated 23.12.2015, based on which, the present writ petition is filed, is not maintainable and the writ petition is liable to be rejected on the ground latches. It is further contended that some of the properties belong to the other persons and the petitioner is no way connected with those properties and therefore, the writ petition deserves to be rejected.

10. In respect of the earlier writ petition filed by the very same petitioner in W.P.No.6915 of 2002, this Court passed an order on 23.12.2011, which reads as follows:

"8. As it has been assailed by the petitioners that they are the absolute owners of the land in question, which fact has not been denied by the respondents by filing counter affidavit, these writ petitions are disposed of by directing the respondents not to interfere with the possession and enjoyment of the petitioner's property without following due process of law. Consequently, connected miscellaneous petitions are closed. No Costs."

11. The third respondent/Chembrambakkam Minor Panchayat filed a Writ Appeal in W.A.No.2400 of 2012 and the Hon'ble Division Bench of this Court passed an order on 08.01.2015 as under:

"5. It is also the fact that the respondents 2 to 4, namely, the Block Development Officer/Commissioner, Poonamallee Panchayat Union, the District Collector, Tiruvallore District and the Tahsildar, Poonamallee Taluk have accepted the said order of the learned single Judge. The order of the learned single Judge is no way affecting the right of the appellant to evict the private respondent from the property, if they are not having any right over the same. In such view of the matter, no ground is made out to interfere with the order of the learned single Judge."



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12. The Honourable Division Bench in the writ appeal, clarified that the order of the learned single Judge is no way affected the right of the appellant-Chembrambakkam Minor Panchayat to evict the private respondent from the property, if they are not having any right over the same.

13. Considering the facts and circumstances, this Court is of the considered opinion that certain disputes were existing even during the year 2002 itself between the parties. Such nature of disputes with reference to the immovable properties cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. The petitioner on one hand says that his property rights has not affected.

14. Perusal of the orders would reveal that certain disputes were existing during the relevant period of time in the year 2002, when the writ petition was filed by the writ petitioner. However, the present writ petition is filed after a lapse of many years in the year 2015 for a direction to dispose of the representation dated 23.02.2015. It is further not explained by the petitioner that, in what manner his rights are infringed or affected. In the absence of establishing any right, no writ petition can be maintained and even for disposal of representation, the petitioners are bound to establish the right.

15. Beyond the facts placed before this Court, the petitioner was aware of the sub-division in the year 1998 and he has stated those facts in the writ petition filed in the year 2002. Thus, the present writ petition filed in the year 2015, questioning sub-division, no doubt, belated.

16. A trend has been created through some legal brains that the lapsed cause of actions are reopened by sending a representation to the authority concerned and thereafter, filing a writ petition with a prayer for a direction to the authority concerned to consider the representation and pass orders. Normally, the High Courts are granting such reliefs by issuing a direction to the authorities concerned to consider the representation and pass orders. However, the other part of the intention has not been taken into account by the Courts in normal circumstances. In fact, the intention of the litigants is to reopen the lapsed cause of action.

17. The Constitutional Courts across the country reiterated that any grievances must be redressed within a reasonable period of time. Even in case there is no limitation period prescribed, then also, the litigants must approach the Court of law within a reasonable period of time. In the event of allowing the claim to get lapsed, thereafter, the same cannot be reopened one way or the other by citing the representation or otherwise. Thus, the



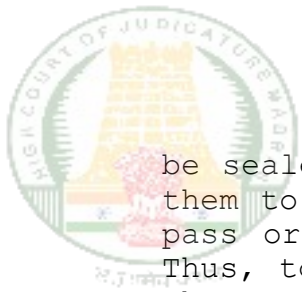
aggrieved persons, slept over their rights, cannot wake up one fine morning and knock the doors of Court of law for the redressal of their grievances. The rights are to be established at the earliest possible time or at least within a reasonable period of time. More specifically, in service matters, the employees are very much aware of their service rules and conditions. Ignorance of law can never be pleaded by the employees of the State or Union or its Organizations. Thus, the limitation period though not prescribed, the reasonable period within which, the litigations have been filed, are to be taken into consideration before admitting the writ petitions.

18. However, large number of writ petitions are filed in the High Courts, merely on the ground that the writ petitioner sent several representations to the respondents and the respondents have not considered the same, taken a decision and passed orders. Under these pretexts, arguments are advanced by stating that the authorities competent are duty bound to pass orders on the representations. The Courts also in a routine manner issuing a direction to the authorities concerned to consider the representations.

19. Such an exercise of the power of judicial review under Article 226 of the Constitution of India, cannot be done for the purpose of providing a scope to the litigant to reopen the lapsed cause of actions. Once an aggrieved person allowed the cause of action to get lapsed, then the Courts would not entertain any writ petition thereafter under Article 226 of the Constitution of India. Mere submission of representation after number of years would not provide any cause of action for the aggrieved persons for filing a writ of mandamus.

20. There is no provision to submit repeated appeals, so also it is not necessary that repeated representations are to be sent to the authorities concerned. One appeal or one representation with all particulars and details to be acknowledged by the authorities competent is the requirement for moving a writ petition for issuing a writ of mandamus. However, the practice of sending representations on several occasions in order to fill up the gap or time limit cannot be entertained by the Courts under Article 226 of the Constitution of India.

21. Most of the times, even these representations are not supported with any acknowledgment. The litigants are typing representations and enclosing it in the typed set of papers and filing it in the Court. In a writ jurisdiction, the High Courts are also not questioning the genuinity of these representations enclosed in the typed set of papers by the litigants. Such a conduct of the litigants amounts to abuse of judicial process. Thus, any representation sent to the authorities competent must



be sealed and acknowledged by the authorities competent enabling them to deal with the appeal/representation, take a decision and pass orders by following the procedures contemplated under law. Thus, to entertain a writ of mandamus, it is a precondition that the aggrieved person should have approached the authorities competent against whom such a direction is sought for and the said representation/appeal acknowledged by the authorities competent must be available in the file of the authority concerned. This being the mandatory requirement for the purpose of entertaining a writ petition to direct the authorities concerned to consider the representation, this Court is of the considered opinion that even the legal rights regarding the claim established should also be set out in the writ petition. Once again, it is a precondition that the person approaching the High Court, under Article 226 of the Constitution of India, must establish his legal right. In the absence of establishing any such legal rights, no writ petition can be entertained under Article 226 of the Constitution of India.

22. Even recently, the Honourable Supreme Court of India, in the case of Government of India Vs. P.Venkatesh (Civil Appeal No.2425 of 2019), has held as follows:-

"...This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute...."

23. In view of the facts and circumstances, this Court of the considered opinion that the relief as such sought for in the present writ petition cannot be granted and accordingly the writ petition stands dismissed. No Costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nti/kak



To

1. The District Collector,
Tiruvellore District,
Tiruvellore.
2. The Tahsildar,
Poonamalle Taluk,
Tiruvellore District.
3. The President,
Chembrambakkam Minor Panchayat,
Chembarambakkam,
Tiruvellore District.

+1cc to Mr.N.S.N.Krishnakumar, Advocate, S.R.No.54410
+1cc to the Government Pleader, S.R.No.54624

W.P.NO.13285 OF 2015

AK (CO)
PBS/09/11/2021