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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NO.73 OF 2018

1.K.O. Abdul Salam
2.K.O. Abdul Rabic
3.K.O. Abdul Hyum

... Petitioners

Versus

1. The Revenue Divisional Officer
Kancheepuram,
Kancheepuram District.

2. The Tahsildar,
Uthiramerur Taluk,
Uthiramerur,
Kancheepuram District.

3. Tmt.M.Pyrose Kathoon

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the second respondent to consider the representation dated 23.10.2017 to give opportunity to petitioners in the light of the first respondent letter O.Mu.793/2017/A2, dated 17.04.2017.

For Petitioners : Mr.G.Punniakoti

For Respondents - 1 & 2 : Mr.G.Krishnaraja,
Government Counsel

Respondent - 3 : Mr.B.Narayanan

O R D E R

The relief sought in this writ petition is to issue a Writ of Mandamus directing the second respondent to consider the petitioners' representation dated 23.10.2017, afford them an opportunity of hearing and to pass order thereon in the light of the first respondent's letter O.Mu.793/2017/A2, dated 17.04.2017.



2. According to the petitioners, on 07.02.1947, their father Mr.K.O.Mohammad Usman and his brother K.O.Abdul Razak have jointly purchased 28 cents of land situated in S.No.66/1, Old S.No.391 at Vedapatanyam Village vide Sale Deed registered in Document No.1635/2004, on the file of the Sub Registrar Office, Uthiramerur. Subsequent to such purchase, they were in absolute possession and enjoyment of the same till their death. After their demise, on 15.10.2004, the petitioners had entered into a Partition Deed with the legal heirs of the said deceased Abdul Razak. By way of said Partition Deed, out of the aforesaid 28 cents of land, 17 cents of land was allotted to the petitioners morefully set out in Schedule 'A' thereon and the remaining 11 cents was allotted to the legal heirs of the deceased Abdul Razak under Schedule 'B'. While so, the third respondent has filed a writ petition before this Court in W.P. No. 24094 of 2017, seeking a mandamus directing the second respondent herein to survey and issue patta to her in respect of the property comprised in S.No.66/1A, Old S.No.66/1, in No.28, Vedapalayam Village, bearing Patta No.940, Uthiramerur Taluk, Kancheepuram District measuring 0.081/2 cents out of 0.07.0 Ares vide online application, dated 02.11.2016 and representation dated 27.03.2017. The said writ petition was disposed of by this Court vide order dated 08.09.2017. The operative portion of the said order reads as follows:

"5. In view of the submissions made by the learned counsel on either side, without expressing any opinion with regard to the merits of the case, I direct the 1st respondent to consider the petitioner's online application dated 02.11.2016 and the representation dated 27.03.2017 and pass orders, in accordance with law, after giving notice to all the interested parties, within a period of eight weeks from the date of receipt of a copy of this order.

6. With this observation, this writ petition is disposed of. No costs."

3. As per the direction issued by this Court in the aforesaid order, before considering the third respondent's online application dated 02.11.2016 and the representation dated 27.03.2017, the second respondent herein ought to have issued notice to the petitioners herein since they are the interested parties in that case, however, the second respondent has not issued any notice to them. Therefore, the petitioners submitted a representation dated 23.10.2017, before the second respondent, requesting to afford them an opportunity of hearing, on the basis of the letter issued by the first respondent in O.Mu.793/2017/A2, dated 17.04.2017, before passing any order,



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however, there was no response for the same. Thereafter, the petitioners had even issued a Legal Notice dated 06.12.2017 to the second respondent but all their efforts went in vain. Hence, left with no other alternative, they have filed the present writ petition.

4. The learned counsel for the petitioners submitted that the first respondent vide letter in O.Mu.793/2017/A2, dated 17.04.2017, directed the second respondent to conduct an enquiry by affording opportunity to the concerned parties, verify the relevant documents and take appropriate steps in this matter. Subsequent to the said letter, this Court vide order passed in W.P. No. 24094 of 2017 dated 08.09.2017, directed the second respondent to issue notice to the concerned parties, while considering the third respondent's online application and representation and thereafter, pass appropriate orders. But the second respondent has neither followed the direction issued by the first respondent nor complied with the order passed by this Court. The petitioners also made a representation to the second respondent but the same has not been considered. The act of the second respondent forced the petitioners to file this writ petition. Therefore, he prayed that appropriate direction may be issued to the second respondent to consider the petitioners' representation and pass appropriate orders on merits and in accordance with law.

5. The learned Government Counsel appearing for the respondents 1 & 2 submitted that as per the direction issued by this Court in W.P.No.24094 of 2017 dated 08.09.2017, entries have taken place in the Patta. He also brought to the notice of this Court that the petitioners herein had filed a suit in O.S.No.80 of 2017 as against the third respondent and the same is pending on the file of the District Munsif Court, Uthiramerur. However, he fairly submitted that the petitioner's representation would be duly considered by the second respondent and appropriate orders will be passed on merits, within a time frame, as stipulated by this Court.

6. Heard the learned counsel on both sides and perused the materials placed before this Court.

7. The third respondent herein has filed WP No. 24094 of 2017 before this Court to survey and issue patta to her in respect of the land in Survey No.66/1 and this Court directed the second respondent to consider the application dated 02.11.2016 of the third respondent herein. The grievance of the petitioners is that before passing any order in the application dated 02.11.2016 of the third respondent, they should be heard as they are also having a right over the land comprised in Survey No.66/1 and consequently any order that may be passed on



the application dated 02.11.2016 of the third respondent will adversely affect their interest in the land in question.

8. Having regard to the above facts and the submission of the counsel for both sides, this Court, without expressing any opinion on the merits of the case, directs the second respondent to consider the petitioner's representation dated 23.10.2017 and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioners as well as the third respondent herein.

9. This Writ Petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrr/rsh

To

1. The Revenue Divisional Officer,
Kancheepuram,
Kancheepuram District.
2. The Tahsildar,
Uthiramerur Taluk,
Uthiramerur,
Kancheepuram District.

+1cc to Mr.G.Punniakoti, Advocate, S.R.No.49311
+3ccs to Mr.B.Narayanan, Advocate, S.R.No.49606
+1cc to the Government Pleader, High Court, Madras, S.R.No.49758

W.P.NO.73 OF 2018

SJ(CO)
PBS/20/10/2021