



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.P(MD)Nos.4131 and 4132 of 2014

and

M.P.(MD)Nos.1 of 2014, 1 and 2 of 2015

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W.P.(MD)No.4131 of 2014

S.Ganapathy

... Petitioner

versus

1. The Government of Tamil Nadu,
Rep. By the Principal Secretary to
Government,
Revenue Department, Secretariat,
Fort St. George, Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai - 5.
3. The Assistant Settlement Officer,
The Office of the Assistant Settlement
Officer, Madurai
Now functioning in the office of
Assistant Settlement Officer,
Chennai South, Chepauk, Chennai - 5.
4. The Tahsildhar,
Kovilpatty Taluk,
Thoothukudi District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders passed by the second respondent dated 14.02.2013 in R.Dis.K1/12529/2005 and the supplementary order dated 08.08.2013 in letter No.K1/10171/2013 and quash the same and consequently, direct the respondent to issue patta in the name of the petitioner for his land in Survey No.282/5 admeasuring 1.31 acres, Vadakku Ellanthaikullam Village, Kovilpatti Taluk, Thoothukudi District.

W.P.(MD)No.4132 of 2014

G.Sivanarayanan

... Petitioner



versus

1. The Government of Tamil Nadu,
Rep. By the Principal Secretary to
Government,
Revenue Department,
Secretariat,
Fort St. George, Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai - 5.
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The Office of the Assistant Settlement
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Now functioning in the office of
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Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders passed by the second respondent dated 14.02.2013 in R.Dis.K1/12529/2005 and the supplementary order dated 08.08.2013 in letter No.K1/10171/2013 and quash the same and consequently, direct the respondent to issue patta in the name of the petitioner for his lands in Survey No.283/9 (41 cents), 283/11 (22 cents) and 283/12 (43 cents), Vadakku Ellanthaikullam Village, Kovilpatti Taluk, Thoothukudi District.

For Petitioner

in both W.Ps. : Mr.N.Dilip Kumar

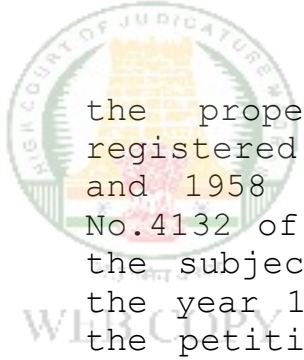
For Respondents : Mr.R.Suresh Kumar

in both W.Ps. Government Advocate

COMMON ORDER

The subject matter of challenge in both the writ petitions is the common order passed by the second respondent dated 14.2.2013 and the subsequent order dated 08.08.2013 and for a consequential direction to the respondents to issue patta in the name of the petitioners with respect to the subject property.

2. The case of the petitioners is that the subject properties were purchased through duly executed registered sale deeds. Insofar as the petitioner in W.P. (MD) No.4131 of 2014 is concerned,



the properties were purchased by his father through five registered sale deeds, executed during the year 1942, 1943, 1944 and 1958 respectively. Insofar as the petitioner in W.P.(MD) No.4132 of 2014 is concerned, the petitioner himself has purchased the subject property by virtue of three sale deeds, executed in the year 1996 and 1999 respectively. It is the further claim of the petitioners that patta was also issued by recognizing their title which got vested after the execution of the sale deeds.

3. It is stated that the survey and settlement proceedings were initiated under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter called as "the 1948 Act"). According to the petitioners, in the course of the settlement proceedings, the Settlement Officers had recorded the names of the title holders of the properties. To substantiate the same, the proceedings of the Assistant Director of Survey, Thoothukudi dated 21.04.1999, was pressed into service, which shows that the names have been registered and patta was also issued.

4. The grievance of the petitioners is that after the settlement proceedings, the subject properties were classified as "assessed wet waste lands". The petitioners came to know about the same in the year 1999 and hence, they made a representation for rectification of the mistake and for issuance of patta in their names.

5. A report was called for by the second respondent from the 3rd respondent through letter dated 23.02.2000. The 3rd respondent conducted an enquiry. The Assistant Settlement Officer, Madurai, submitted two reports before the second respondent dated 11.04.2000 and 12.04.2000 respectively, by categorically finding that the properties have been classified as "assessed wet waste lands" by mistake and these properties are in possession and enjoyment of the title holders and therefore, the rectification has to be made in the records and Ryotwari patta should be issued in the name of the petitioners.

6. After the receipt of the report from the Assistant Settlement Officer, the second respondent proceeded to issue proceedings dated 13.03.2002 rejecting the claim made by the petitioners on the ground that the petitioners have applied for patta under the 1948 Act beyond the period of limitation and therefore, their claims cannot be entertained.

7. The proceedings of the second respondent became a subject matter of challenge before this Court in W.P.(MD)Nos.5684 and 5685 of 2005. This Court, on considering the facts and circumstances of the case and the records placed for consideration, passed the



following order:

"2. Under similar circumstances, in respect of issuance of Ryotwari Patta under Tamil Naud Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, "Act 26/1948"), when the settlement authority has rejected the claim on the ground that the applications have been filed belatedly after 20.08.1987, this Court has set aside such orders directing the Assistant Settlement Officer to pass appropriate orders, after giving notice to the parties. As it is seen in the order of this Court in W.P.No.8668 of 2010, dated 28.04.2010, and the same has been followed subsequently also.

3. Considering the above facts and circumstances of the case and also taking note of the fact that there is no limitation prescribed under Act 26/1948, the impugned orders dated 13.03.2002 are set aside and the Writ Petitions are allowed. The matters are remanded back to the first respondent to consider the claim of the petitioners dated 23.11.1999 and after giving notice to the parties, conduct enquiry in the manner known to law, pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order."

8. It is clear from the above order that this Court in no uncertain terms gave a finding to the effect that there is no limitation prescribed under the 1948 Act and the matter has to be considered on merits and hence, the same was remanded back to the file of the second respondent.

9. The second respondent once again took up the proceedings and passed the impugned order dated 14.02.2013, rejecting the claims made by the petitioners. For proper appreciation, the relevant portions in the impugned order are extracted hereunder:

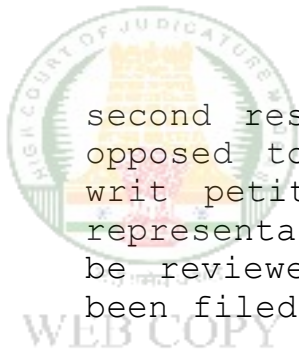
"10. The claims of the petitioners have been carefully examined and connected records have also been verified. The petitioners have claimed that they have been enjoying the lands from the time of their purchases. They have also submitted copies of their documents. In this connection, it is pertinent to mention that the first petitioner's documents are pre settlement documents. He could have very well applied to the settlement authorities during the currency of settlement and got patta. However, he has not done so. Instead he has continued to occupy the land and preferred to pay penalty for unauthorized occupation of Government land. The B Memos have not been issued from the year 2002 (Fasli 1412).



11. As per the rules framed to the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act XXVI of 1948, appeal shall be filed to Assistant Settlement Officer/Settlement Officer against the decision made in Final Settlement Enquiry, under Section 11 of the Act within 30 days. Taking into consideration of the plights of ryots, the Government have amended the rules under the powers conferred in Section 67 of the Act, periodically, extending the appeal time. Only in 1987, the Government considering the fact that ample opportunities have been given to the affected parties/persons to claim for lands and that there should be a finality to these settlement proceedings, the Government have amended the Rules under the powers conferred in Section 67 of the Act and issued a Notification in G.O.Ms.No.714, Commercial Taxes and Religious Endowment Department, dated 29.06.1987. In the said Notification, the Government have fixed 20.08.1987 as the last date to apply for patta and have withdrawn the powers of authorities to condone delay. The Notification was withdrawn the powers of authorities to condone delay. The Notification was published in Tamil Nadu Government Gazatte No.28, dated 22.07.1987. Apart from this, the Government have also provided opportunities to apply for patta outside the scope of the Act in G.O.Ms.No.1300, Revenue Department, dated 30.04.1971, wherein further concessions were given to the persons whose claims have been rejected under the Act to apply for ownership rights and issue of patta. This concession came to end on 30.06.1975, as per G.O.Ms.No.589, Commercial Taxes & Religious Endowment Department, dated 19.05.1975.

12. The failure of the petitioners to avail the aforesaid opportunities to get patta either under the Act or Outside the Scope of the Act cannot be ignored. Settlement Operation have to be given a finality failing which these will be chaos. The petitioners has not given any convincing reason as to why he could not claim patta in the period 1951-1987. The fact that he was paying B-memo shows that he was aware that the land has been classified as Government land. Ignorance of Settlement process cannot be taken as a plea for reporting the process. With notification of G.O.Ms.No.714, (CT & RE) Department dated 29.6.1987 Settlement process has come to an end. Hence, the claims of the petitioners are hereby rejected."

10. The petitioners attempted to make representations to the

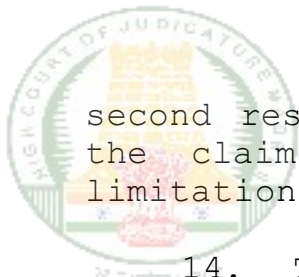


second respondent to review the order on the ground that it is opposed to the findings given by this Court while allowing the writ petitions. However, the second respondent rejected those representations also on the ground that the impugned order cannot be reviewed. Aggrieved by the same, these writ petitions have been filed before this Court.

11. The learned counsel for the petitioners submitted that the impugned order passed by the second respondent on the face of it is in violation of the earlier order passed by this Court in the writ petitions, since the second respondent has rejected the claims once again on the ground of limitation, even though this Court had held that there is no limitation prescribed under the 1948 Act. The learned counsel further submitted that even during the survey and settlement proceedings, it has been clearly recorded that the properties belonged to the title holders and subsequently, the classification was unilaterally changed as if the properties were assessed wet waste lands. The learned counsel further submitted that it virtually amounts to taking away the right to property guaranteed under Article 300A of the Constitution of the India. It was further contended that there is an apparent anomaly that has crept in the records as found in the report of the Assistant Settlement Officer and the same ought to have been rectified by the second respondent and instead, the second respondent has rejected the same on an unsustainable ground that the claim has been made beyond limitation.

12. The learned counsel for the petitioners also brought to the notice of this Court that a similar mistake was committed even for the adjoining owners and the same was rectified and patta was issued in their favour. To substantiate the said submission, the learned counsel relied upon the proceedings of the Assistant Settlement Officer dated 31.03.1995. The learned counsel also placed reliance upon the orders passed by this Court in similar writ petitions and submitted that these orders resulted in the matters being remanded to the file of the second respondent and the second respondent had in fact entertained the claims and issued orders for issuance of patta to the claimants. Further, it was contended that the second respondent has acted arbitrarily and the benefit that has been extended to the adjacent owners, should have been extended to the petitioners also and they cannot be treated differently.

13. Per contra, the learned Government Advocate appearing on behalf of the respondents, by placing reliance upon the counter affidavit filed by the second respondent submitted that the claim was made beyond the period of limitation and the second respondent does not have the powers to condone the delay and the said power has been taken away under the amended Rules. Therefore, the



second respondent was left with no other option except to reject the claims on the ground that the claims were made beyond limitation.

14. This Court has carefully considered the submissions made on either side and the materials available on record.

15. There are no serious disputes on facts in the present case. There are overwhelming materials to show that the petitioners are basing their title over the property through registered documents and even while the survey and settlement proceedings were undertaken under the 1948 Act, the settlement officers have recorded the names of the title holders and the same is also borne out by the records. That apart, the Assistant Settlement Officer has submitted two reports through proceedings dated 11.04.2000 and 12.04.2000 and has informed the second respondent categorically that the property has been wrongly classified as "assessed wet waste lands". A recommendation was also made for issuance of patta in the name of the petitioners.

16. The second respondent had earlier rejected the claims made by the petitioners only on the ground that the same is beyond the time limit prescribed under the 1948 Act and therefore, it cannot be entertained. When this order became a subject matter of challenge before this Court, this Court in no uncertain terms held that no limitation is prescribed under the Act and thereby, the order passed by the second respondent was set aside and the matter was remanded to the file of the second respondent to consider the claim of the petitioners on merits.

17. After the remand, the second respondent has virtually repeated the very same reasoning in the impugned order dated 14.02.2013 and rejected the claims on the ground that the claims have been made beyond the period of limitation. In the considered view of this Court, this finding given by the second respondent on the face of it is in total violation of the earlier orders passed by this Court. The second respondent has virtually disregarded the findings given by this Court and had stood by the earlier stand. These writ petitions are coming up for final hearing after nearly seven years and therefore, this Court is restraining itself from initiating contempt proceedings against the then officer, who was holding the position of the second respondent. If these writ petitions had come up for hearing immediately, this Court without any hesitation would have initiated contempt proceedings for gross violation of the earlier orders passed by this Court. The impugned order passed by the second respondent is liable to be quashed only on the ground that it is in complete violation of the earlier orders passed by this Court.



18. What is sauce for the goose is sauce for the gander. When similarly placed persons, who are none other than the adjoining owners of the properties, also faced the similar problem, where their properties were also wrongly classified as waste lands, they had also filed similar claims before the second respondent. In some of the cases, this Court had passed orders by reiterating that there is no provision which prescribes the time limit to present an application for patta and had directed the second respondent to consider the claim on merits. In such cases, the second respondent has passed orders by allowing the claims made by the concerned owners and granted patta in their favour. The same treatment should be given to the petitioners also and when it came to the petitioners, the second respondent for reasons best known to him once again had applied limitation against the petitioner. Therefore, it is apparent that the impugned order passed by the second respondent also suffers from arbitrariness. On a given set of facts, the parties ought to be treated equally, failing which, it will violate Article 14 of the Constitution of India.

19. In view of the above discussion, this Court has absolutely no hesitation to interfere with the impugned order passed by the second respondent dated 14.02.2013 and accordingly, the same is hereby quashed. The matter is remitted back to the file of the second respondent and the second respondent is directed to pass orders on merits by taking into consideration the earlier orders passed by this Court and the similar orders that were passed in favour of other owners of the property, who are similarly placed like the petitioners and final orders shall be passed within a period of eight weeks from the date of receipt of a copy of this order.

20. The petitioners are directed to make a fresh representation to the second respondent along with the relevant documents and also a copy of this order.

21. In the result, both the writ petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

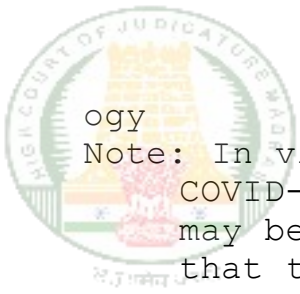
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Assistant Registrar (AS)

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Sub Assistant Registrar(CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Secretary to Government,
Revenue Department, Secretariat,
Fort St. George, Chennai - 600 009.
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Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai - 5.
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4. The Tahsildhar,
Kovilpatty Taluk,
Thoothukudi District.

+2 CC to M/s.N.DILIP KUMAR, Advocate (SR-19868 & 19869[F] dated 22/06/2021)

+1 CC to M/s.SPL GP (SR-19939[F] dated 22/06/2021)

W.P(MD)Nos.4131 and 4132 of 2014

21.06.2021

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