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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.5886 OF 2008

AND

M.P.NO.1 OF 2008 & M.P.NO.1 OF 2014

S.Diaz

... Petitioner

.Vs.

1. The Special Commissioner and Commissioner
of Land Administration,
Chepauk, Chennai - 5.
2. The District Collector of Kannyakumari,
Nagercoil.
3. The Revenue Divisional Officer,
Padmanabhapuram,
Kannyakumari District.
4. The Tahsildhar,
Vilavancode Taluk,
Kuzhithurai,
Kannyakumari District.
5. Selvamani
6. Kasirajan
7. Ponnupillai

(R5 to R7 impleaded as per order
dated 26.09.2011 by VDPJ in M.P.No.1
of 2011 in W.P.No.5886 of 2008)

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the order of the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai-5 made in



D.DisG1/996/06 dated 03.12.2007 confirming the order of the District Collector, Kanniakumari made in RC M2/31580/2005 dated 07.12.2005 and quash the same.

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For Petitioner : Mr.D.Raja Gopal

For Respondents : Mr.T.Chezhiyan

R1 to R4 Additional Government Pleader

O R D E R

The petitioner has filed this writ petition for quashment of the order passed by the 1st respondent/Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai-5 made in D.DisG1/996/06 dated 03.12.2007.

2. The case of the petitioner is that he is the owner of the property in Old Survey No.1106 RS.No.582/10 and No.1109/1 & 2, New Survey No.582/11 of Kadamacode Desom, Pacode Village, Kaniyakumari District to an extent of 86 cents. While that being so, the petitioner's father made representation dated 08.10.1973 before the 4th respondent for grant of Patta in respect of the lands comprised in Old Survey Nos.1109/1 and 2 (RS.No.582/11). Since the request was rejected by the 4th respondent, the petitioner filed a Writ Petition in W.P.No.19042/1999 and this Court, by order dated 13.09.1999, directed the respondent therein to consider and dispose of the petitioner's representation. Pursuant to the order of this Court, the 2nd respondent/District Collector by order in L.Dis/45009/2000 (M2), dated 28.09.2001 rejected the petitioner's claim and refused to grant Patta on the ground that the lands comprised in Survey No.582/11 to an extent of 0.14.0 acres were specified as "Tank Poramboke", as against which, the petitioner filed another Writ Petition in W.P.No.13312/2002 before this Court and this Court, by order dated 19.04.2002, disposed of the said Writ Petition and directed the petitioner to file appeal before the Appellate Authority, following which, the petitioner filed appeal before the 1st respondent and the 1st respondent by order dated 18.12.2004, set aside the order of the 2nd respondent and remanded the matter back to the 2nd respondent for fresh consideration.

3. Thereafter, a detailed representation dated 05.09.2005 was made before the 2nd respondent and the same was again rejected. Aggrieved by the same, the petitioner filed second appeal before the 1st respondent and sought stay of all proceedings pursuant to the order dated 07.12.2005. Pending



disposal of the said appeal, the 1st respondent by order in ROC No.G1/996/2006 dated 24.08.2006 dismissed the stay petition. Aggrieved by the same, the petitioner again filed a Writ Petition in W.P.No.33942 of 2006 before this Court and this Court, by order dated 19.09.2006, directed the 1st respondent to dispose of the appeal. However, the 1st respondent rejected the petitioner's appeal by way of impugned order in D.Dis G1/996/06 dated 03.12.2007. Challenging the said order, this Writ Petition is filed.

4. The learned counsel for the petitioner submitted that the fact finding authorities have arrived at a conclusion that the petitioner owned a vast extent of Patta lands in Survey Nos.608/2A, 389/6, 405/2 and 389/10, but the same has not been established by the respondents. Mere allegation as to large holdings without any material cannot partake the character of proof. Further, it is submitted that the petitioner is in enjoyment of Kuthagaipattam, and the Kuthagaipattam Rules having been repealed by the Government, the petitioner is entitled to claim assignment based on enjoyment. The said fact has not been properly appreciated by the District Collector while pressing the impugned order. Accordingly, he prays for allowing the Writ Petition.

5. Heard the contentions of the learned Additional Government Pleader appearing for the respondents 1 to 4 on the above aspects.

6. From a perusal of the materials available on record, it is seen that the petitioner initially made a claim before the Tahsildar for assignment of the land and the said request was rejected on the ground that the petitioner lands, for which assignment is claimed was classified as "Kulam Poramboke". Even as per the Revenue Standing Order, objectionable lands viz., "Kulam Poramboke", Orani and others cannot be granted Ryotwari Patta. Further, the fact finding authorities observed that the petitioner owned a vast extent of Patta lands in different survey numbers. However, assignment is granted based on the eligibility of the respective enactments and only to the landless poor. Since the petitioners are not landless poor, claiming assignment Patta for objectionable land is not sustainable. Further, if the petitioner is aggrieved at the findings as to huge holdings of land at the hands of the petitioner, the same has to be agitated by the petitioner before the appropriate Civil Court and such disputed issues cannot be gone into under Article 226 of the Constitution. Further, considering that already the fact finding authority rendered their opinion re-appreciating the said facts under Article 226 of the Constitution of India, is also not sustainable.



7. For the reasons aforesaid, this writ petition is devoid of merits and accordingly the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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of Land Administration,
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3. The Revenue Divisional Officer,
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4. The Tahsildar,
Vilavancode Taluk,
Kuzhithurai,
Kanniyakumari District.

+1cc to Mr.D.Raja Gopal, Advocate, S.R.No.14875
+1cc to the Government Pleader, S.R.No.15557

W.P.NO.5886 OF 2008

RR(CO)
PBS/23/05/2022