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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 15862 of 2021

and

W.M.P. Nos. 16746, 16748 & 22309 of 2021

1.R.Somasundaram

2.R.Mohanraj

3.R.Nedunchhezhiyan

... Petitioners

Versus

1.The State of Tamil Nadu

Rep by its Principal Secretary to Government
Revenue and Disasters' Management Department
Secretariat
Chennai - 600 009.

2.The Commissioner of Land Administration

Ezhilagam
Chepauk
Chennai - 600 005

3.The Commissioner of Survey and Settlement

Survey House
Chepauk
Chennai - 600 005

4.The District Collector

Thiruvallur District
Thiruvallur

5.The Tahsildar

Ambattur Taluk
Chennai - 600 078

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the proceedings initiated in pursuant to impugned notice dated 09.07.2021 in Ref.No.K1/1259132/2021 issued by the 2nd respondent is illegal, without jurisdiction and against judgment passed by the Full Bench of this Hon'ble Court in W.A.No.326 of 2007 dated 24.07.2007 (2000 (4) CTC 538).



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For Petitioner: Mr.Jothimanian

For Respondents: Mr.S.Silambanan
Additional Advocate General
assisted by
Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition is filed seeking for issuance of a Writ of Declaration to declare that the proceedings initiated in pursuant to impugned notice dated 09.07.2021 in Ref.No.K1/1259132/2021 issued by the 2nd respondent is illegal, without jurisdiction and against judgment passed by the Full Bench of this Hon'ble Court in W.A.No.326 of 2007 dated 24.07.2007 (2000 (4) CTC 538).

2. According to the petitioners, their father late Mr. Rajagopala Mudaliyar purchased agricultural lands comprised in S.Nos.23/3,23/4,24/5 and 24/6 to a total extent of 0.99.0 hectares during the year 1954 and 1958. Further, due to enactment of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act XXVI of 1948 (hereinafter referred to as 'Act') by the Government for granting ryotwari patta, their lands were also notified under the said Act and the same was classified as Anadheenam lands without hearing them. However, their father filed several applications to the Assistant Settlement Commissioner, Thiruvannamalai for issuance of patta and the same was pending. While so, their father executed a registered will in their favour in Doc.No.6/1990, Nonetheless, patta was not in their name. Hence, they approached the Assistant Settlement Officer, North, Chennai and ryotwari patta was issued in their favour on 28.04.2003 vide proceedings in SR.No.2/2003.

3. In the meantime, a Full Bench of this Court in W.A. No. 326 of 2007 vide order dated 24.07.2007 held that under Section 5(2) and 7, Director of Settlement as well as Board of Revenue has suo moto powers to interfere with the order passed by the lower authorities. Hence, referring to the same, the third respondent conducted detailed enquiry and passed an order that there is no need for interference as the application have been made before the cut-off date. Further, as regards the cancellation of patta with respect to S.No.21/6 by the Assistant Settlement Commissioner before the issuance of patta by Assistant Settlement Commissioner, North Chennai dated 28.04.2003 was rectified by the third respondent under



Section 5(2) vide proceeding dated 21.03.2011 in Na.Ka.I-1/18830/2010 and finally, patta was granted in respect of all their lands.

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4. While so, a notice dated 09.07.2021, which is impugned herein was received from the second respondent vide suo moto revision under Section 7(d) of the Act stating that order passed by the third respondent is not valid in law as the issuance of patta is time barred. Further, it was stated that the petitioners have not preferred an appeal against the final settlement enquiry under the Act. Aggrieved with the notice, the petitioners have come up with this writ petition.

5. The learned counsel for the petitioners submitted that when the power was conferred in the third respondent under Section 5(2) and the same was exercised by the third respondent after due enquiry given to all the parties and order was passed dated 21.03.2011 granting patta in favour of the petitioners, however, to their shock and surprise, the second respondent who is also the same cadre in as much as the third respondent has sent the impugned notice calling upon the petitioners for enquiry which is contrary to the provisions of law and prayed this Court to declare the impugned notice as illegal and against the Full Bench decision of this Court referred supra.

6. On the other hand, Mr.S.Silambanan, learned Additional Advocate General submitted that as per the Notification issued in G.O.Ms.No.714, Commercial & Religious Endowments Department, dated 29.06.1987, no authority in the settlement hierarchy has no powers to entertain application and pass order under the Act after 20.08.1987 and as the orders passed granting patta to the petitioners by the Commissioner of Survey and Settlement are pursuant to 20.08.1987, the same is time barred as, the settlement had attained finality under Section 64-C of the Act. Hence, the orders passed by the Commissioner of Survey and Settlement under the Act is valid in accordance with law.

7. Continuing his arguments, the learned Additional Advocate General appearing on behalf of the respondents submitted that the petitioner who has been called for enquiry vide notice dated 07.07.2021 in Ref.No.K1/1259132/2021 has not attended the said enquiry to place their submissions before the second respondent. He further placed reliance on order of this Court in the case of The Mylapore Club Vs. The Joint Commissioner and another in W.P.No.471 of 2022 in which it is observed that "writ jurisdiction cannot be invoked in a routine manner



against a show cause notice issued by the competent authorities".

8. Considering the facts and circumstances of this case and having regard to the submissions of the learned counsels for either side, the petition having been filed against a show cause notice, this Court is not inclined to interfere with the same as it has been held time and again, the Courts should generally not interfere at the stage of show cause notice. Therefore, this court, without going into the merits of the case, directs the petitioner to submit their explanation and the second respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, after affording opportunity of hearing to the petitioners, as expeditiously as possible. Liberty is granted to the petitioners to canvass all the points before the second respondent. It is made clear that this court has not expressed any opinion on the merits of the case and it is for the authority concerned to decide the case on merits and as per law. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

Rli
To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
Revenue and Disasters' Management Department,
Secretariat ,
Chennai - 600 009.
- 2.The Commissioner of Land Administration,
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Chepauk,
Chennai - 600 005.
- 3.The Commissioner of Survey and Settlement,
Survey House,
Chepauk,
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- 4.The District Collector,
Thiruvallur District,
Thiruvallur.



5.The Tahsildar,
Ambattur Taluk,
Chennai - 600 078.

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+1cc to M/s.K.Balu, Advocate Sr.19611

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srg 22/04/2022