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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.NO.6973 OF 2016

AND

W.M.P. NOS. 6188 & 6189 OF 2016

1. K.Ramasamy,
S/o. Karuppanna Gounder
2. S. Loganathan,
S/o. Late Subramani
3. P.Eswaramoorthy,
S/o. Late Semmalai Gounder
4. S.Balasubramani,
S/o. Samiyappa Gounder
5. K.Subramani,
S/o. Karuppanna Gounder

... Petitioners

Vs.

1. The Settlement Tahsildar - II,
Gobichettipalayam,
Erode Dt.
2. The Executive Officer,
Arulmigu Subramania Swamy Tirukoil,
Sivanmalai, Kangayam Taluk,
Tiruppur Dt.
3. The Tahsildar,
Kangayam Taluk,
Kangeyam, Tiruppur Dt.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 3rd respondent to assess value of the lands situated in Old



S.No.594-C and subsequently, change over as S.No.1274/1 and 1274/2 (now changed as S.No.616), Sivanmalai Village, Kangayam Taluk, Tiruppur District as on date of order passed by the 1st respondent in his S.R.No.18/69/M.I. Act/Dharapuram Taluk, dated 12.02.1969 and receive 20 times amount from the petitioners as per order of 1st respondent.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr. Yashwanth,
Addl. Govt. Pleader for R1

Mr.K.V.Dhanapalan for R2

Mr. S.Ravikumar,
Special Govt. Pleader for R3

O R D E R

The grievance of the petitioners is that, the petitioners' fathers and grandfathers have rendered service to the 2nd respondent temple. Considering the same, the 1st respondent initiated proceedings under the Madras Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter called as 'Act') and conducted enquiry for granting ryotwari patta in their favour. After enquiry, the 1st respondent had passed an order dated 12.02.1969, granting ryotwari patta to an extent of 11.60 acres under Sec.8(2)(i)(b) of the Act, and directed them to pay an amount equal to twenty times the difference between fair rent as decided by the Tahsildar, Dharapuram. However, the fair rent was not fixed by the respondents and they are permitted to continue the possession and enjoyment of the land. Now, the 2nd respondent, after lapse of 53 years, claiming title over the property, and taking steps to take possession of the property. In the said circumstances, the present Writ Petition has been filed seeking a direction to the 1st respondent to receive the amount as fixed by an order dated 12.02.1969.

2. The 2nd respondent temple filed a counter affidavit that, it is a service inam, and for ensuring the performance of the services for all the time, from the incomes of the Inams and making the temple always remain wealthy, owing to their hold on the inams. It is submitted that the grant was subject to the condition that grantee and his successors-in-interest should do the service in the temple, the grantee would be entitled to enjoy the inam. Now, considering the question in dispute, the full Bench of this Court has held that, the grant being burdened with service was of a restricted nature and lands granted in Inam were inalienable. Hence, the service holder is only permissive occupant not as a owner and the ultimate beneficiary



is the temple with ownership right as against the service holder. In the earlier settlement proceedings, the temple is not a party and the mandatory provision contained in Rule 21 of Tamil Nadu Minor Inams (Abolition and Conversion in Ryotwari) Rules, was not followed. Hence, the order of Settlement Tahsildar is non-est in the eye of law. Now, the patta in respect of the property concerned stands in the name of temple, the temple is the absolute owner of the property and no one has any right to claim the property. As the petitioners are only encroachers, the 2nd respondent temple will take action against them.

3. Mr.C.Prakasam, learned counsel appearing for petitioners would submit that, even though the order was passed granting patta in the year 1969, the Settlement Tahsildar is the competent authority to grant patta and after due enquiry, patta has been granted in favour of his predecessor. Thereafter, a notice under Rule 9(8) of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965, was also issued seeking for their consent and they have also given the consent. However, the fair rent was not fixed by them. Hence, they were not in a position to pay the amount to the Government. Even though the petitioners' predecessor are ready and willing to pay differential amount, it is only the 1st respondent failed to receive the same. Now, right from the date of order, the petitioners are in possession and enjoyment of the property. Even now, if the Government fix the fair rent, the petitioners are ready and willing to pay the amount. Since the respondents are not coming forward to fix fair rent, the present Writ Petition has been filed.

4. Mr.K.V.Dhanapalan, learned counsel appearing for 2nd respondent would submit that, it is a service inam and the grant was made on condition that the grantee should pay an amount equal to twenty times of difference between fair rent in respect of land as determined by the Tahsildar, Dharapuram. But, even though the fair rent was fixed, the petitioners' predecessor did not come forward to pay the amount for more than 53 years, and now, it is not open to the petitioners to come forward to make the payment. That apart, now patta was also granted in favour of temple. In the said circumstances, the prayer sought by the petitioners cannot be granted.

5. Mr. Yashwanth, learned counsel appearing for 1st respondent would also submit that, the original order was passed in the year 1969 in favour of petitioners' predecessor and they did not come forward to pay the amount, now, it is not open to the petitioners, after 53 years, to come forward to pay the amount. The learned counsel would further submit that, now patta was also granted in favour of temple and all the revenue records



stands in the name of temple.

6. Heard and considered rival submissions of learned counsel appearing for both sides and perused the records carefully.

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7. The prayer sought in the Writ Petition seeking a direction directing the 3rd respondent to assess the value of lands and also to receive 20 times amount enabling them to get ryotwari patta. It is an admitted fact that, the original order was passed on 12.02.1969 under Sec.8(2)(i)(b) of the Act, subject to the condition that on payment of amount equal to twenty times the difference between the fair rent in respect of land as determined by the Tahsildar, Dharapuram. Thereafter, from the records, it could be seen that a notice under Rule 9(8) of Rules in Form-7 is also issued in favour of original grantee and even though they said to have appeared and given their consent to pay the amount, there is nothing available on record to show that they were ready and willing to pay the amount. Now, more than 53 years, the petitioners, who are all claiming legal heirs of original grantee, come forward with the prayer directing the respondents to fix fair rent enabling them to pay the amount and get patta in their favour. Absolutely, there is no explanation given in the affidavit on the part of the petitioners for the long delay of 53 years in approaching the respondents to fix fair rent. It is now stated that, since the original grantee did not come forward to pay the amount and get patta in their favour, the patta has been granted in favour of temple and the revenue records also stands in the name of temple. In those circumstances, without challenging the order granting patta in the name of the temple, the relief sought by the petitioners cannot be granted. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Settlement Tahsildar - II,
Gobichettipalayam,
Erode Dt.



2. The Executive Officer,
Arulmigu Subramania Swamy Tirukoil,
Sivanmalai, Kangayam Taluk,
Tiruppur Dt.

3. The Tahsildar,
Kangayam Taluk,
Kangeyam, Tiruppur Dt.

+lcc to Mr.C.Prakasam, Advocate, S.R.No.23909
+lcc to Mr.K.V.Dhanapalan, Advocate, S.R.No.23577
+lcc to the Government Pleader, S.R.No.24313

W.P.No.6973 of 2016

JPII(CO)
PM/27/05/2022