



W.P(MD).No.9631 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.9631 of 2013

1. G.Govindharaju (died)
2. G.Selvaraju
3. G.Ramesh

... Petitioners

(P-3 is Substituted vide order of
this Court, dated 27.10.2022 in
W.M.P(MD) No.16278 of 2022
in W.P(MD) No.9631 of 2013)

-VS-

1. The Assistant Settlement Officer (North)
Office of the Principal Secretary/
Commissioner of Survey and Settlement,
Chepauk, Chennai – 5.
2. G.Sridhar
3. Mahalakshmi

.... Respondents

(R-2 and R-3 are Substituted vide
order of this Court, dated 27.10.2022 in
W.M.P(MD) No.16278 of 2022 in
W.P(MD) No.9631 of 2013)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the



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records of the respondent in Ref.Na.Ka.(Oo.1) 10146/2012, dated 10.01.2013 and quash the same as illegal arbitrary and unenforceable consequently direct the first respondent to consider the rights of petitioners on merits.

For Petitioners : Mr.V.K.Vijayaragavan
For R-1 : Mr.A.Sivanupandian
Government Advocate
For R-2 & R-3 : No appearance

ORDER

The present Writ Petition has been filed challenging the order passed by the first respondent herein, under which, the request of the petitioners for grant of patta under the Tamil Nadu Act 26 of 1948, was rejected on the ground of limitation citing G.O.(Ms).No.714, dated 29.06.1987.

2. The learned Counsel for the petitioners traced his title as follows:-

According to the learned Counsel for the petitioners, the petitioners' father viz., M.Gothandapani Naicker, has purchased an extent of 2.51 Acres in Survey No.13/1 and 1.29 Acres in S.No.86/2 under a registered sale deed, dated 25.10.1951 from some of the co-owners of the original owner of the



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property. Thereafter, one of the co-owners of the property had filed a suit in O.S.No.33 of 1958, on the file of the District Munsif Court, Pattukkottai for the relief of partition and separate possession. In the said suit the petitioners' father was arrayed as the eighth defendant. A preliminary decree was passed in the said suit. The petitioners' father and two others had filed A.S.No.46 of 1960, before the Sub Court, Thanjavur. The said appeal was dismissed on 14.02.1961. Thereafter, the writ petitioners' father and two others had filed S.A.No.822 of 1961 before this Court. The Second Appeal was dismissed on 31.07.1964. Hence, the preliminary decree has become final.

3. The final decree proceedings were initiated pursuant to the said preliminary decree in I.A.No.385 of 1961 on the file of the District Munsif Court, Mannarkudi. In the said final decree application, the petitioners' father was arrayed as the eighth respondent. The petitioners' father was allotted the disputed survey numbers in the said final decree proceedings by an order, dated 21.03.1966.



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4. In the meanwhile, the village in question namely, Nainankulam, was taken over by the Government under the Tamil Nadu Act 26 of 1948. The petitioners' father, for the reasons best known to him, has not approached the Settlement Officer in time seeking patta during the settlement proceedings. Thereafter, the petitioners have approached the Settlement Officer by way of an application on 17.12.2012. The said application was rejected under the impugned order, dated 10.01.2013 on the ground that under G.O.(Ms)No.714, dated 29.06.1987, no application can be entertained after 20.08.1987 for grant of patta under the Tamil Nadu Act 26 of 1948. This order is under challenge in the present Writ Petition.

5. According to the learned counsel for the writ petitioner, the time limit or the limitation that was fixed under the G.O.(Ms) No.714, it is only for filing an appeal and not for entertaining any original application before the Assistant Settlement Officer for grant of patta. The learned Counsel for the petitioner had relied upon the judgment of this Court in W.P. Nos.2590 to 2595 of 2009, (*G.Ramachandran and others vs. The Additional Chief Secretary to Government and Director of Survey and Settlements*), dated 17.03.2010, wherein the learned Single Judge was pleased to observe in



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paragraph No. 11 as follows:-

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“11. A perusal of the said G.O.Ms.No.714, dated 29.06.1987 makes it crystal clear that the said order deals in respect of prescription of time limit for preferring appeals and revisions as per the amendment made to various rules. It is also pertinent to note that as far as the cases on hand are concerned, the petitioners preferred only the original applications seeking for the relief of grant of pattas and by no stretch of imagination, the said applications could be construed to be an appeal. Therefore, this Court has no hesitation to hold that G.O.Ms.No.714 [CT & amp; RE] Department dated 29.06.1987 is not at all applicable to the facts of the instant cases and the 1st respondent has wrongly placed reliance on such Government order for setting aside the orders passed in favour of the petitioners by the Assistant Settlement Officer, Tiruvannamalai for granting the relief of pattas in their favour. It is needless to state that there is absolutely no statutory rule or provision available prescribing any time limit for claiming grant of pattas”.

6. The learned Counsel appearing for the writ petitioner also relied upon the judgment of the learned Single Judge of this Court in W.P.No.



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13900 of 2009, dated 17.11.2009 (R.Muniyandi @ Chandran, vs. The Additional Chief Secretary to Government and Director of Survey & Settlements and two others). Paragraph No. 9 is extracted as follows:-

9. Sec.5(2) of Act XXVI/48 gives sufficient power for exercising suo motto power by the first respondent and on the basis of the power vested under Section 5(2) of the Act XXVI of 1948, the impugned order has been passed. But the first respondent has not considered the issue from the right perspective. It is not the case of the petitioner that he has approached the Assistant Settlement Officer seeking grant of patta against any provision after lapse of any period for presenting the petition for grant of patta. As rightly contended by the learned Senior Counsel for the petitioner, there is no specific provision prescribing any time limit for presenting original application before the original authority for carrying out the corrections in revenue records as mentioned in the "A" register. In the absence of any provision prescribing any particular time limit for making application for rectifying any revenue records, the first respondent has wrongly exercised the suo-motto power holding that the petitioner has presented a time barred application



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before the Assistant Settlement Officer. As contended by the learned senior counsel appearing for the petitioner, there is no provision shown prescribing any specified time limit to present an application for grant of patta before the Assistant Settlement Officer, nor mentioned any where in the impugned order now shown to me by the learned Additional Government Pleader. Further the Assistant Settlement Officer has merely repeated from what is stated in the "A" Register, hence the same cannot be found fault with".

7. According to the learned counsel for the writ petitioner, consistent view taken by this Court with regard to interpretation of G.O.(Ms)No.714, dated 29.06.1987, is that the limitation for entertaining application for grant of patta is only applicable to the appeals and not for any original application presented before the Assistant Settlement Officer. This Court has taken a consistent view that the said Government Order will not be applicable to the facts where the applications are presented seeking patta for the first time. Hence, he prayed that the order impugned in the Writ Petition is not valid in the eye of law and in view of the decisions of this Court.



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8. The learned Counsel appearing for the writ petitioner has also relied upon the judgments of this Court in W.P. Nos. 2590 to 2595 of 2009, (*G.Ramachandran and others vs. The Additional Chief Secretary to Government and Director of Survey and Settlements*), dated 17.03.2010 and W.P.No.13900 of 2009, dated 17.11.2009 (*R.Muniyandi @ Chandran, vs. The Additional Chief Secretary to Government and Director of Survey & Settlements and two others*). While the balance have been classified as Assessed Dry Waste during settlement proceedings, merely because they have been classified as Assessed Dry Waste, that will not take away title of the writ petitioner. According to the learned Counsel for the writ petitioners, since the petitioners' father has purchased the property in the year 1951 and the same was subjected to partition suit and a final decree has been passed. The petitioner has to establish pre-existing title over the survey numbers in dispute even before the village was taken over by the Government under the Tamil Nadu Act 26 of 1948.

9. The learned Counsel appearing for the petitioners has further contended that even assuming that the petitioners have not approached the



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authority in time, it is the bounden duty of the authorities to find out the correct owner of the property and grant Rayotwari Patta. Even as per the present classification it is Assessed Dry Waste which means that it is a Ryoti land. Just because the land owner has not approached the authorities within time, the title to the land is not lost. The learned Counsel for the petitioners has further contended that the Tamil Nadu Act 26 of 1948 neither creates any new rights nor extinguishes any pre-existing right prior to the said Act. In view of the above said facts, the order impugned in the Writ Petition is bad in the eye of law.

10. Per contra, the learned Counsel appearing for the respondents had contended that in view of Section 64-C of the Tamil Nadu Act 26 of 1948, all orders passed have become final unless they are challenged as per provisions of the said Act. He further contended that in view of the G.O. (Ms).No.714, the Assistant Settlement Officers will not have any jurisdiction whatsoever to entertain fresh application for grant of settlement patta under the Tamil Nadu Act 26 of 1948. Hence, he prayed for sustaining the order impugned in the Writ Petition.



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11. I have carefully considered the submissions made on either side.

12. The petitioners' father has purchased the property by way of a registered sale deed, dated 25.10.1951. Admittedly, the village in dispute was taken over by the Tamil Nadu Act 26 of 1948 only on 14.07.1960. The survey numbers in dispute are reflected in the sale deed, dated 25.10.1951. The same survey numbers are also reflected in the final decree dated 21.03.1966, under which, the petitioners' father was allotted these properties. Hence, the petitioner has to establish his pre-existing right prior to the Tamil Nadu Act 26 of 1948. That apart, in view of the judgments referred to *supra*, G.O.(Ms).No.714, dated 29.06.1987, is applicable only to the appeal proceedings that emanate from the orders of the original authority.

13. In the present case, the writ petitioners are approaching the Assistant Settlement Officer for the first time for grant of patta. Hence, in view of the Judgments referred to *supra*, the said Government Order cannot be held against the writ petitioner and the applications for seeking patta cannot be rejected on the ground of limitation.



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14. Since the petitioners or their father have not approached the authorities under the Act for grant of patta, the lands have been classified as Assessed Dry Waste. The classification of the said lands cannot take away the title of the writ petitioner, if they are otherwise entitled to, on the basis of registered sale deed and the final decree passed by the competent civil Court.

15. In view of the above said facts, the order impugned in the Writ Petition is set aside and the matter is remitted back to the file of the first respondent herein for fresh consideration and for passing orders on merits and in accordance with law and the light of the judgments of the High Court cited *supra* and also taking into consideration the sale deed dated 25.10.1951 and final decree dated 21.03.1966.

16. With the above said observations, this Writ Petition stands allowed. There shall be no order as to costs.

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To

The Assistant Settlement Officer (North)
Office of the Principal Secretary/
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R.VIJAYAKUMAR,J.

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