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W.P.No.3485 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.3485 of 2023

A.Fatheema Bee

.. Petitioner

Versus

1. The District Collector,
Office of District Collector,
Kallakurichi, Kallakurichi District.
2. The District Revenue Officer,
Office of District Revenue Officer,
Kallakurichi, Kallakurichi District.
3. The Revenue Divisional Officer,
Kallakurichi, Kallakurichi District.
4. The Tahsildar,
Sankarapuram Taluk, Kallakurichi.
5. The Revenue Inspector,
Alattur, Kallakurichi.
6. The Village Administrative Officer
Alattur
Algapuram, Shankarapuram (Taluk)
Kallakurichi

.. Respondents



W.P.No.3485 of 2023

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of order dated 26.08.2022 vide proceedings in Na.Ka.Aa2/15664/2022 on the file of 1st respondent and quash the same and consequently direct 1st respondent to reassign the land comprised in S.No.80/1, 80/2, 78/6, 69/2, 52, 68/2, 71/1, 72/2 situated at Alattur Village, Kallakurichi District to the petitioner.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.P.Sathish
Additional Government Pleader

ORDER

The Writ Petition has been filed challenging the proceeding of the first respondent in Na.Ka.Aa2/15664/2022 dated 26.08.2022, quash the same and to consequently, direct the 1st respondent to reassign the subject lands to the petitioner.

2. The case of the petitioner is that the agricultural lands measuring an extent of 16.10 acres and cents comprised in S.Nos.64, 65/1, 65/2, 65 situated at Alattur Village, Kallakurichi District originally belonged to one Musthafa Shaibu, the great grandfather of the petitioner and he was in possession and enjoyment of the said lands during his life time and after his demise, his two sons namely Sayed Shaibu and Abdul Rahuman inherited the subject property and enjoyed the same. The said Abdul Rahuman is none



W.P.No.3485 of 2023

other than the grandfather of the petitioner. While so, due to famine, the legal heirs of the said Musthafa Shaibu left for Mumbai and therefore, for non payment of Land Tax dues for a long period of time, the respondents brought the subject property to public auction and as no one came up to purchase the said property, the same was retained with the Government with a classification of Government Tharisu. After knowing the same, the petitioner made a detailed representation dated 16.11.2021 before the respondents seeking for reassignment of the subject property with an undertaking to pay the entire arrears and necessary penalty charges for reassignment of the subject lands. On receipt of the said representation, though several correspondences have taken place in between the respondents, no final order has been passed on the said representation. Aggrieved by the inaction on the part of the respondents, the petitioner filed a Writ petition in W.P.No.10270 of 2022 and this Court, vide order dated 27.04.2022 directed the 1st respondent to pass orders on the petitioner's representation and in compliance of the same, the 1st respondent has passed the present impugned order, vide proceedings in Na.Ka.Aa2/15664/2022 dated 26.08.2022, rejecting the petitioner's claim for reassignment of the subject lands. Challenging the same, the present Writ petition is filed.



W.P.No.3485 of 2023

WEB COPY

3. Learned counsel for the petitioner fairly submitted that, it is true that some portion of the subject lands were occupied by the third persons, however, the major grievance of the petitioner is that, when the petitioner himself come forward to pay the entire arrears and sought for reassignment of the subject lands, it is the duty cast upon the Government to reassign the lands in favour of the petitioner, on receipt of the entire arrears amount and the necessary penalty charges and after evicting the encroachments made in the said lands. While so, in the case in hand, the 1st respondent, without doing so, has rejected the petitioner's claim merely on the ground that some third persons have encroached the major portion of the subject lands and they are in possession for a long period of time and some of them have also obtained patta in their favour and therefore, the petitioner is not entitled for reassignment of the subject lands, which is not sustainable. Hence, he prayed for allowing this Writ petition.

4. On the above said contentions, heard learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



W.P.No.3485 of 2023

5. A perusal of the impugned order reveals that, the subject lands were owned by the petitioner's great grandfather namely Musthafa Shaibu and due to non payment of the Land tax dues, the same were taken over by the Government, as has been seen from the South Arcot District Gazette dated 25.10.1922 and the same was also not disputed by the petitioner as well and there was no representation either from the said Musthafa Shaibu or from any of his legal heirs till 2020. While so, after a lapse of about 10 decades, the petitioner has approached the revenue officials, claiming to be the legal heir of the said Musthafa Shaibu and sought for reassignment of the subject lands, which is not sustainable. Further, the petitioner's application was rejected by the 1st respondent, vide the present impugned order, based on the report filed by the Deputy Tahsildar, in which it is clearly stated that, there are several encroachments in the subject lands and some of them have already obtained patta in their favour in respect of some portions of the subject lands and it is impossible for the Government to evict the persons, who are in possession of the subject lands and cultivating the same for the past several years and further neither the petitioner nor his family members are in possession of the subject lands. In view of the same, this Court finds no fault with the order impugned in this Writ petition.



W.P.No.3485 of 2023

6. Further, though the petitioner claims to be one of the legal heirs of the said Musthafa Shaibu, however, the act of the petitioner, as rightly pointed out by the officials, after a lapse of about 10 decades, without approaching the Civil Court to establish his right over the subject lands, straight away approaching the revenue officials merely by filing an application for reassignment of the subject lands, is not sustainable. Hence, this Court is not inclined to interfere with the order impugned in this Writ petition. However, liberty is granted to the petitioner to workout the remedy in the manner known to law in a Civil Court if his right is not extinguished by operation of Limitation Act.

7. For the reasons aforesaid, this Writ petition stands dismissed. No costs.

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dhk

Speaking Order : Yes/ No

Index : Yes/ No

Neutral Citation : Yes/No



W.P.No.3485 of 2023

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N.SATHISH KUMAR, J.

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W.P.No.3485 of 2023

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