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W.P.No.24239 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.08.2023

DELIVERED ON: 27.09.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.24239 of 2016
and WMP.No.20709 of 2016

1.Sundaram
2.S.Lakshmi
3.S.Gopi
4.S.Kala
5.S.Sujatha
6.S.Priya
7.J.Kannammal
8.J.Suresh
9.J.Kalpana
10.J.Govindaraj

.. Petitioners

Vs.

1.The Additional Chief Secretary and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2.The Assistant Settlement Officer (North),
The Commissioner, Survey and Settlement,
Survey House, Chepauk,
Chennai-600 005.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in Order No.R.Dis.K1/WRS39/2015 (26228/13) dated 18.04.2016 and quash them as illegal, incomplete and unconstitutional and further direct the respondents to issue patta to the petitioners in respect of the lands in S.No.192/1 in Venkatapuram Village, Guindy, Chennai.

For Petitioners : Ms.Abiramee
for Mrs/V.Srimathi

For Respondents : Mr.R.Shunmugasundaram,
Advocate General
assisted by Mr.T.Arunkumar,
Additional Government Pleader

ORDER

D.KRISHNAKUMAR, J.

The petitioners, challenging the impugned order of the first respondent dated 18.04.2016, in and by which their claim for ryotwari patta came to be rejected, have filed the instant writ petition.

2. Facts, in brief, are as follows:

2.1. The petitioners claim to be the descendants of Zamindar of Solagiri in Hosur Taluk and they are the owners and cultivators of properties located at Venkatapuram Village, Guindy, Chennai. Originally



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the Kalakasthi Zamin Estates now in Andhra Pradesh, which was in Chengalpet District. Kanchinad consists of 207 villages, of which 22 villages were under the tenure grants. In the middle of 19th century, the Zamindar suffered huge debts and around the year 1899, the estate was taken over by the Court of Wards. The Zamindar / Raja of Kalahasti secured 8.5 lakhs from Tirumala Tirupati Devasthanam through a simple mortgage of the properties in Kanchinad Taluk to face the crisis.

2.2. As the debts were not discharged, a Suit was filed in O.S.No.40/1910 on the file of the District Court, North Arcot and a decree was obtained. The property was brought for auction sale and the Devasthanam purchased 191 villages for Rs.18,47,491/- and a few were purchased by Rama Nayagar. It was subsequently sold to the Devasthanam in the year 1915 through a registered sale deed. In all, 204 villages vested with the Thirumala Tirupathi Devasthanam, the Revenue Register includes the name of the purchaser as well as the latter purchasers. This was the earlier position prior to the introduction of the Madras Estates.



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2.3. The Government notified the village mentioned in the Schedule as forming part of the Kalakasthi-Kachinad Zamin Estate. As far as title is concerned, the petitioners predecessors' title is unquestionable. The petitioners predecessors have not applied for ryotwari patta in respect of S.No.192/1, T.S.No.21, Block No.5, over an extent of 4.23 acres of Venkatapuram Village, Guindy, Mambalam Taluk, Chennai under the provisions of Act 26/48 viz., Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 [hereinafter referred as "Act, 1948"].

2.4. According to the petitioners, during the course of settlement, without notice to the true owners, the patta lands were converted as "Anadheenam", despite the fact that the petitioners predecessors continued in possession over the property and the change of classification of the property from the patta land to "Anadheenam" is impermissible.

2.5. The petitioners filed an application seeking ryotwari patta on 11.02.2013 and the same was rejected by the respondents, vide order dated 07.05.2013 on the ground of delay by stating that the settlement



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was completed in the year 1953 and the petitioners have made claim nearly after 60 years. Challenging the same, the petitioners earlier filed W.P.No.24537 of 2013 and this Court, vide order dated 05.11.2015, has set aside the order of rejection and remanded the matter to the first respondent to consider the application afresh and in accordance with law, after affording opportunity to the petitioners within a time frame, without rejecting the same on the ground of limitation once again.

2.6. In pursuance of the said order, the petitioners made a representation to the first respondent on 23.12.2015, seeking to consider their claim and grant ryotwari patta by invoking section 7(c) of the Act, 1948 with respect to the lands comprised in S.No.192/1, T.S.No.21, Block No.5, over an extent of 4.23 acres in Venkatapuram Village, Guindy Mambalam Taluk, Chennai District. After hearing the matter afresh and after affording opportunity to the petitioners, the first respondent has passed the impugned order dated 18.04.2016, rejecting the claim of the petitioners seeking ryotwari patta. Challenging the same, the present writ petition has been filed by the petitioners.



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3. Ms.Abiramee, learned counsel for the petitioners made the following contentions:

(i) There is no limitation period prescribed for filing the application under Section 11 of Act, 1948.

(ii) The Government, not being the owner of the property and having not acquired the lands, has no legal authority to upset the title by wrongly classifying the property as Poromboke.

(iii) The petitioners and their predecessors in title were never evicted or ejected by the Zamindar after Court Sale of Zamin rights and they were also not evicted under Section 3(b) of Act, 1948 and therefore, the lands cannot vest with the Government.

(iv) The petitioners' predecessors had purchased the subject lands by way of registered sale deed and that they had been in possession and enjoyment over the subject lands. Further, during the course of settlement, the predecessors in title were never given opportunity by the Settlement Authorities to put for their claim for grant of ryotwari patta.

(v) Non approach of the land owners during the settlement periods shall not alter the character of the land and hence, the classification of land as Highways Poromboke is contrary to law.

(vi) Despite submission of all relevant documents, the



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Assessment Officer, without considering the issue in proper perspective, rejected vide Letter No.R.Dis.K1/WRS 39/2015(26228/13) dated 18.04.2016 on the ground of limitation by citing G.O.Ms.No.714, Commercial Tax and Religious Endowment dated 29.06.1987. The said Government Order has nothing to do with the invoking of Suo- moto Revision powers provided under section 7(c) of Act 26/48.

4. *Per contra*, Mr.R.Shunmugasundaram, learned Advocate General assisted by Mr.T.Arunkumar, learned Additional Government Pleader appearing for the respondents would contend that the petitioners herein applied for ryotwari patta under Act, 1948 only in the year 2013, with delay of some six decades and the same was dismissed. In fact, earlier they had filed W.P.No.24537 of 2013, which was allowed and remanded to the respondents to consider afresh and as per the direction this court, the petitioners again filed a fresh application before the 1st respondent and the same was rejected on merits in terms of the impugned order, against which the instant writ petition is filed. It is further contended by the learned Advocate General that the petitioners' predecessors remained silent in the settlement procedures, and after



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delay of several decades, is now claiming ryotwari patta on the ground that the settlement was not conducted properly and their predecessors were not given sufficient opportunity, which is totally unacceptable. The learned Advocate General further submitted that if the petitioners' predecessors had any rights, they would have approached the settlement authority and got ryotwari patta during the currency of the settlement itself and the petitioners did not explain, as to why they have not raised their objection during settlement or even after the completion of final settlement enquiry and they have not filled appeal before the tribunal as contemplated under the act within the stipulated time of two months and therefore, prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the materials on record.

6. The point for consideration in this writ petition is whether the application submitted by the petitioners under Section 11 of Act, 1948 is barred by limitation?

7. The fact remains that the petitioners, who claims to be the



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owners of lands in S.No.192/1, T.S.No.21, Block 5, admeasuring 04.23 acres in Venkatapuram Village, Guindy, Chennai, filed application under Section 11 of Act, 1948 on 11.02.2013 seeking ryotwari patta. It was rejected on 07.05.2013 on the ground that the settlement proceedings was completed in the year 1953 and the petitioners have made their claim after 60 years, which by no stretch of imagination can be treated as normal delay, as per the rules amended in G.O.Ms.No.714, Commercial Taxes & Religious Endowment Department dated 29.06.1987 dated 29.06.1987.

8. The said order of rejection dated 07.05.2013 was challenged in W.P.No.24537 of 2013, wherein this court, vide order dated 05.11.2015, has allowed the writ petition by remanding the matter to be considered afresh after affording opportunity to the petitioners. Pursuant to the said order, the petitioners once again submitted a representation dated 23.12.2015, which was rejected vide impugned order dated 18.04.2016, on the ground of delay and laches, against which the instant writ petition is filed.



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9. The primordial contention of the petitioners is that there is no time limit prescribed in the Act No.XXVI of 1948 to apply for ryotwari patta under Section 11 of Act, 1948 and therefore, the impugned order of the first respondent rejecting the claim of the writ petitioners on the ground of delay is unsustainable.

Limitations on Settlement Authorities

10. Grant of ryotwari pattas to a ryot in respect of ryot land in an estate and to a landholder in respect of his private lands in such estate is dealt with in Sections 11 to 15 of the Act, 1948. Section 11 deals with the grant of a ryotwari patta to a Ryot in ryoti land and Sections 12 to 14 deals with grant of a ryotwari patta to a landholder in respect of his private lands in Zamindari Estate, Inam Estate and Under Tenure Estate respectively.

11. The Government has extended the timeline for submitting the application and appeal for seeking ryotwari patta. Under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, XXVI of 1948, the appeal time was for 30 days either as per originally framed rules vide



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G.O.Ms.No.3190, Revenue dated 17.10.1955 with respect to Section 11 of the Act. The appeal time for the claims under Sections 12, 13 & 14 is 3 months before the Estate Abolition Tribunal / Principal Subordinate Court. This appeal time had been extended vide amended rules published in G.O.(Ms.)No.1400, Commercial Taxes and Religious Endowment Department dated 21.11.1975 and as per further amendment to the said Rules published in G.O.714, CT& RE Department dated 29.06.1987 for 30 days, the extended time ended on 20.08.1987.

12. According to the Rule Amendment under the powers conferred by Section 67(2)(d) of the Act issued in the notification in G.O.Ms.No.714, CT& RE Department dated 29.06.1987, the last date to apply for condonation of delay to get patta u/s.11(a) of the Act, 1948 was fixed as 20.08.1987. This Court in many judgments had upheld the limitation / cut-off date for entertaining the appeal/revision under Act, 1948 as prescribed in G.O.Ms.No.714, CT & RE Department dated 29.06.1987, more illustratively in W.A.No.739 of 2019 dated 19.08.2021 and in W.A.Nos.844, 845 and 1314 of 2011 dated 30.11.2022. Further in W.A.No.96 of 2015 dated 09.02.2016, a Division Bench of this Court



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has elaborately discussed the provisions of the Act, confirming the suo motu powers of the Commissioner of Land Administration under Section 7 of the Act, 1948 and also the limitation prescribed under G.O.Ms.No.714, CT & RE Department dated 29.06.1987 and upheld the orders passed by the Commissioner of Land Administration rejecting the request made by various petitioners therein under the Act, as time barred, which was also validated by the Hon'ble Supreme Court of India in SLP(C) No.13454 of 2016 dated 13.05.2016.

13. Thus, it is settled that,

(I) Any application after 20.08.1987 for grant of patta is not to be entertained, and any order passed by any settlement authority granting patta is void ab-initio. This Court has held that such grant of pattas by settlement authority beyond limitation amounts to fraud and set aside such grants under the maxim 'fraud vitiates all proceedings'.

(II) Neither the Director of Survey and Settlement nor the Commissioner of Land Administration has powers to



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condone the delay and remand the case to the Assistant Settlement Officer / Settlement Officer for statutory enquiry and no settlement authority can entertain such applications.

14. Admittedly, in the case on hand, Venkatapuram village, now in Guindy Taluk of Chennai District was taken over by the Government on 03.01.1951 under the provisions of Act, 1948, as per G.O.Ms.No.3157, Revenue Department, dated 09.12.1950. During the settlement, the lands comprised in T.S.No.21, Block No.5, measuring 4.28 acres was classified as Government Poromboke Land and recorded as Highways Department. The Government in G.O.Ms.No.2454, Revenue Department, dated 26.08.1959 sanctioned the alienation of land in favour of Director of Highways Research Station. Since then, the land continued to be under the possession of the Highways Department. This shows that the land claimed by the petitioners could not have been under the continuous possession and enjoyment of the petitioners' predecessors or themselves.

15. In the case on hand, admittedly the application for grant of ryotwari patta was submitted at the first instance only on 11.02.2013,



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whereas the settlement proceedings were concluded long back during the year 1959 and nearly after a delay of more than 5 decades, they have approached the authorities seeking ryotwari patta, which is hopelessly barred by limitation. If the predecessors of the petitioners or the petitioners have any rights over the lands claimed by them, they should have applied before the Settlement Authorities on or before 20.08.1987, however they did not avail the opportunity within the time limit stipulated under G.O.Ms.No.714 dated 29.06.1987 i.e., 20.08.1987. Even in the written arguments submitted before the first respondent, the petitioners have conceded that due to lack of education and knowledge of law, the petitioners did not approach the authority within the time prescribed as per G.O.Ms.No.714 dated 20.08.1987. Therefore, this Court has no hesitation to hold that the claim of the petitioners is time barred.

16. It is pertinent to point out at this juncture that the petitioners earlier had filed W.A.No.96 of 2015, raising the similar ground in respect of Padianallur Village situated in Tiruvallur District. A Division Bench of this Court, vide order dated 09.02.2016 in W.A.No.96/2015, has



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elaborately discussed the provisions of the Act and upheld the order passed by the respondents rejecting the request of the petitioners as time barred. In the case on hand, the petitioners had never come forward to apply for ryotwari patta under the provisions of the Act, 1948 or under the extended time granted by the G.O.Ms.No.714 dated 29.06.1987, which stipulated the last date as 20.08.1987.

17. The first respondent has considered all these aspects in a proper perspective and rightly rejected the claim of the petitioners on the ground of delay and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, finds no reason to interfere with the impugned order passed by the first respondent.

18. In the light of the reasons assigned above, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

[D.K.K., J.,] [P.B.B., J.]
27.09.2023

Index :yes



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Internet:yes

Jvm

To

1.The Additional Chief Secretary and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2.The Assistant Settlement Officer (North),
The Commissioner, Survey and Settlement,
Survey House, Chepauk,
Chennai-600 005.

**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

Jvm

**Order in
W.P.No.24239 of 2019**



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