



W.P.(MD) No.3111 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2023

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD) No.3111 of 2014
and
M.P.(MD) Nos.2 and 3 of 2014**

1.A.Periyakaruppan

2.K.Chinnammal

3.C.Andichi

... Petitioners

/vs./

1.The Principal Secretary,
and Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai.

2.The District Revenue Officer,
Sivagangai District,
Sivagangai.

3.The Tahsildar,
Sivagangai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to



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the order of the 1st respondent in K1/14408/2013, dated 07.01.2014 and quash the same and consequently direct the 1st respondent to grant ryotwari patta to the petitioners for the lands in S.No.286 of Soorakulam Village, Sivagangai Taluk, Sivagangai District.

For Petitioners : Mr.VR.Shanmuganathan for
Mr.AL.Kannan

For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The writ petition has been filed challenging the order passed by the first respondent rejecting the claim of the petitioners under the Tamil Nadu Estate (A&CR) Act, XXVI of 1948 (*herein after referred to as Act XXVI/1948*).

2.Heard Mr.VR.Shanmuganathan, learned counsel for Mr.AL.Kannan, learned counsel for the petitioners and Mr.M.Prakash, learned Additional Government Pleader for the respondents.

3.Mr.VR.Shanmuganathan, learned counsel for Mr.AL.Kannan, learned counsel for the petitioners would submit that the petitioners claim that their



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ancestors were the land holders of the land in S.No.286, measuring an extent of 6.66 acres at Soorakulam Village, Sivagangai Taluk and District. When the proceedings were initiated under Act XXVI/1948, survey of the land has been made and the petitioners' ancestors were shown as the land holders in such survey. However, it has not known as to why the petitioners' ancestors were not given pattas. Hence, they had approached the first respondent by way of an application to grant ryotwari patta in their favour.

4.The said application was rejected as time barred and therefore, the first petitioner had approached this Court by way of filing a writ petition in W.P.(MD) No.5719 of 2013 and this Court, by order dated 10.04.2013, had set aside the order of rejection and remanded the matter back to the first respondent to decide the issue on merits and in accordance with law after affording an opportunity to all the parties concerned within a period of eight weeks from the date of receipt of a copy of that order. Thereafter, after hearing the parties concerned, the first respondent again had held that the claim of the petitioners is barred by limitation. Apart from that, the first respondent had held that the petitioners are not in possession of the property at any point of time.



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5.The further reason assigned by the first respondent is that during the settlement proceedings, the land has been recorded as Government Assessed Waste Dry land and since no appeal or claim for patta was filed for more than 15 years after the settlement proceeding, it cannot now be said that the land was not belonging to them.

6.He would further submit that the order passed by the first respondent is not in accordance with the provisions of the Act XXVI/1948 and therefore, the order passed by the first respondent is liable to be set aside and the first respondent should be directed to consider the case of the petitioners inconsonance with Act XXVI/1948.

7.Countering his arguments, Mr.M.Prakash, learned Additional Government Pleader for the respondents would submit that the case of the petitioners had been considered in all aspects. The petitioners had failed to provide any documentary evidence to substantiate that they are in continuous possession of the property. They have also not produced any document to



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substantiate their title over the property. Therefore, he would pray this Court to dismiss this writ petition.

8.I have considered the rival submissions made by the learned counsels appearing on either side.

9.A perusal of the order impugned in this writ petition would clearly show that the first respondent had not applied his mind as provided under Act XXVI/1948. The petitioners in this case had made a claim under Section 11 of the Act. Even though the names of the petitioners' ancestors have been included in the survey land records prior to initiation of proceedings under Act XXVI/1948, the same has been brush aside, as it is a preliminary document. This, in my view, is not correct. When the names of the petitioners' ancestors have been recorded as land holders under the survey land records prior to the invocation of the Act XXVI/1948 to the said Village, the first respondent, who is now exercising the power of the Settlement Officer has to consider the claim of the petitioners, will have to apply his mind as provided under Act XXVI/1948, but not on the basis of the present position.



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10.The further reason assigned by the first respondent that there has been no claim or any appeal and that the lands have been recorded as Government Assessed Waste Dry lands cannot be sustainable. During the settlement proceedings, if the land has been recorded as Government land or an 'Anadhinam land', if there had been no claim during the relevant point of time and when a claim by a person is made in future, the authority has to look into his right and then proceed further. Just because during the settlement proceedings, the land has been recorded as Government land, the claim of an individual cannot be refused.

11.In the light of the above, the order passed by the first respondent, which is impugned in this writ petition, namely proceedings No.K1/14408/2013 dated 07.01.2014, is set aside and the claim of the petitioners is remanded back to the first respondent and the first respondent shall consider the same in accordance with Act XXVI/1948 and pass appropriate orders on merits and in accordance with law after affording an opportunity to the petitioners within a period of twelve weeks from the date of receipt of a copy of this order.



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12. With the above directions, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

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K.KUMARESH BABU, J.

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