IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.2046 of 2022

1. The Principal Commissioner &
   Commissioner of Land Administration,
   Ezhilagam, Chepauk, Chennai – 5.

2. The Principal Secretary /
   Commissioner of Survey and Settlement,
   PWD Estate, Chepauk,
   Triplicane, Chennai – 600 005.

3. The Director of Survey and Settlement,
   Survey House, Chepauk,
   Chennai – 600 005.

4. The District Revenue Officer, Master Plan Complex,
   NH-205, Chennai – Tiruttani Highway,
   Tiruvallur – 602 001. … Appellants

Vs.

1. P.Krishnamurthy

2. Ms.P.Vanaja ... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 19.11.2021 made in W.P.No.5702 of 2021.

For Appellants : Mr.T.Arunkumar,

Additional Government Pleader
For Respondents : Mr.V.Ramesh

O R D E R

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The intra court appeal on hand has been instituted challenging the order of the learned Single Judge dated 19.11.2021 passed in W.P.No.5702 of 2021.

2. The representation / petition submitted by the petitioner for grant of patta was rejected in limine by the respondents by proceedings dated 02.12.2020, invoking the amendment effected through G.O.Ms.No.714, Commercial Taxes & Religious Endowments Department dated 29.06.1987.

3. The learned Single Judge set aside the impugned order mainly on the ground that it is non-speaking and further on the ground that an adjudication is required on merits and remanded the matter back to the authorities for adjudication of issues. The Commissioner of Land Administration is the appellant before us, who would submit that Kanjivoyal Village Hamlet in Thirupalaivanam Village in Ponneri Taluk of Tiruvallur District (erstwhile Chengalpet District), which is the subject matter of the present lis was originally a Zamin Estate Village, which was taken by the Government of Tamil Nadu with effect from 03.01.1951 under the Tamil Nadu Estates

(Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act No.XXVI of 1948) (hereinafter referred as Act XXVI of 1948) as per G.O.Ms.No.3157, Revenue Department dated 09.12.1950, Serial No.234, published in Part-I, Page 3279 of Fort St.George Gazette.

4. The appellant would further contend that the Thirupalaivanam and Onbakkam Village have reserved their alleged right to seek patta separately. The said villages were originally inam Villages taken by the Government on 01.10.1951 under the provisions of the Act XXVI of 1948 as per G.O.Ms.No.2302, Revenue Department dated 01.09.1951 and therefore, the appellants would contend that patta cannot be sought for after a delay of more than 70 years.

5. The issue to be primarily considered in the appeal is the limitation and the entertainability of the representation submitted by the respondent / writ petitioner on 22.09.2020 before the Commissioner of Land Administration, which was rejected.

6. The learned Additional Government Pleader, Mr.T.Arunkumar would submit that the ground raised in the Writ Petition is that the original impugned

order is untenable in view of the fact that the Commissioner of Land Administration rejected the representation in limine by invoking the amendment effected through G.O.Ms.No. 714, Commercial Taxes & Religious Endowments Department dated 29.06.1987 Adjudication on merits in the present case would be unnecessary in view of the fact that the representation submitted by the petitioner after 70 years and more so after notification of amendment in the year 1987 is not entertainable. By remanding the matter, the issues cannot be reopened, since the amendment prevents the authorities from entertaining any representation after the cut-off date, as stipulated in G.O.Ms.No. 714, Commercial Taxes & Religious Endowments Department dated 29.06.1987.

7. The learned counsel for the respondent/writ petitioner, Mr.V.Ramesh would oppose the contention by stating that the amendment notified in G.O.Ms.No. 714, Commercial Taxes & Religious Endowments Department dated 29.06.1987 is inapplicable with reference to the facts on hand, since the amendment is all about appeals and revisions and not relating to original petitions filed by the aggrieved persons. He also relied on Section 5 of the Act XXVI of 1948. The respondent had filed a petition in the year 1969 itself. The representation of the year 2020 is not a first representation and therefore, the

petitioner is entitled for an adjudication on merits.

8. The learned Single Judge remanded the matter in view of Section 7 of the Act XXVI of 1948, which provides power of control to the Board of Revenue. In lieu of the Board of Revenue, now powers are being exercised by the Commissioner of Land Administration. When the Commissioner of Land Administration is empowered to adjudicate the issues by exercising the powers of erstwhile Board of Revenue under Section 7 of the Act XXVI of 1948, the learned Single Judge remanded the matter for deciding the issues on merits, which would not provide a cause for the Government to file the present appeal. Thus, the appeal is to be rejected.

9. We have considered the rival submissions made between the parties to the lis. Section 3 of the Act XXVI of 1948 denotes the consequences of the notification of estate. Section 3(b) enumerates that “the entire estate (including all communal lands; porambokes; other non-ryoti lands; waste lands; pasture lands; lanka lands; forests; mines and minerals'; quarries; rivers and streams; Substituted and were deemed always to have been [tanks and ooranies

(including private tanks and ooranies) and irrigation works]; fisheries and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances and the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864), the Tamil Nadu Irrigation Cess Act, 1865 (Tamil Nadu Act VII of 1865), and all other enactments applicable to ryotwari areas shall apply to the estate"

10. The learned counsel for the respondents / writ petitioners would state that objective and the provisions of the Act XXVI of 1948 would amplify that the powers to deal with the applications are not curtailed but the amendment was notified only for entertaining appeal and revision and therefore, the learned Single Judge is right in remanding the matter back to the Commissioner of Land Administration for deciding the issues on merits.

11. The learned Additional Government Pleader would reply by stating that such an argument is untenable in view of the fact that the application/appeal/revision are inter-connected and further G.O.Ms.No.714, Commercial Taxes & Religious Endowments Department dated 29.06.1987 clarifies that such applications are also to be entertained within a period of 30 days from the notification of the amendment vide G.O.Ms.No.714, Commercial

Taxes & Religious Endowments Department dated 29.06.1987 and therefore, the Writ Petition ought to have been rejected by the learned Single Judge.

12. Admittedly, the subject lands were originally inam lands and taken over by the Government on 01.10.1951 under the Act XXVI of 1948, as per G.O.Ms.No.2302, Revenue Department dated 01.09.1951. Almost 70 years lapsed when the Commissioner, Land Administration received the representation from the petitioner. Though the respondent states that the application was filed in the year 1969, no further action was taken by the respondents to pursue the application and therefore, the cause aroused in the year 1969 would not provide any ground to sustain the application submitted was prior to the amendment. That apart, the respondents / writ petitioners have not produced any proof to establish that an application was filed in the year 1969. Even presuming that any such application was filed prior to the amendment in the year 1987, admittedly the respondents have not pursued the application, but abandoned the same. Therefore, the representation submitted in the year 2020 is not entertainable.

13. Section 7 of the Act XXVI of 1948 cannot be read in isolation, since in the present case, the inam lands were taken over by the Government in the

year 1951 by issuing an order. Thereafter, the lands absolutely vest with the Government under Section 3(b) of the Act XXVI of 1948. Thus, the property right of the petitioner was taken away by the authority of law. Therefore, it cannot be construed that the property right of the respondents/ writ petitioners had been infringed.

14. The amendment and its objectives stated in G.O.Ms.No.714, Commercial Taxes & Religious Endowments Department dated 29.06.1987 is crystal clear. The report of the Commissioner of Land Administration was considered. The reason for issuing an amendment in G.O.Ms.No.714, Commercial Taxes & Religious Endowments Department dated 29.06.1987 would clarify that the Commissioner of Land Administration has stated that the claim rejected during the settlement proceedings are reopened within the provisions of the Act by way of a revision petition along with petition for condonation of delay. Considering the ample opportunities given to get the claim for the lands established under the Governmental Order relating to assignment outside the scope of the abolition of Acts, then no real need to provide for condonation of delay for consideration of claims under the provisions of the Act XXVI of 1948 after such a long lag. Therefore, the Commissioner of Land Administration opined that there should be some

finality to these settlement proceedings and that reopening of cases on one ground or other by the authorities by virtue of the powers conferred on them would unsettle the settled issues and land the same in continuing the litigation and expenditure in contesting such cases in Courts. Therefore, the Commissioner of Land Administration suggested that the amendments issued in G.O.Ms.No.1400, Commercial Taxes and Religious Endowments dated 21.11.1975 made suitably modified to that effect. That amendment notified would unambiguously stipulate that the Director of Commissioner of Land Administration may condone the delay upto a period of 30 days. Beyond the period aforesaid, if he is satisfied that the petitioner has sufficient cause for non-presenting the petition within the prescribed time; provided that in respect of cases disposed of prior to the date of publication of the amendment in the Tamil Nadu Government Gazette, the 30 days from the date shall be counted from date of such publication. Therefore, 30 days time was given from the date of amendment for submitting an application / petition before the competent authorities.

15. When the amendment was effected in the year 1987 and the matter reached finality and the amendments remain unchallenged, the question of entertaining any application / appeal / revision beyond the period of limitation

is not entertainable / maintainable. Such application, if entertained would unsettle the settled issue after a lapse of several years. Such lands declared under the Act XXVI of 1948 absolutely vest with the Government and in the present case, after a lapse of about 70 years, the claim of the petitioner, if entertained would result in an anomalous situation. Therefore, the authorities are incompetent to adjudicate the issues on merits in view of the amendments notified through G.O.Ms.No.714, Commercial Taxes & Religious Endowments Department dated 29.06.1987. Such matters must reach finality and in the present case, it has reached finality long before and reopening of the issues at this length of time would lead to opening of Pandora's box and many such owners will also claim the lands back from the Government, which may not be practically workable and thus, were are of the considered opinion that the learned Single Judge ought not to have remanded the matter in view of the amendment effected through G.O.Ms.No.714, Commercial Taxes & Religious Endowments Department dated 29.06.1987.

16. Remanding such matters would result in multiplicity of proceedings. An order of remand is to be made only in exceptional cases. Issues are to be decided on merits. In the present case, further reasons are not required, since there is a bar under law to entertain an application. Therefore, it would be

sufficient if the law applicable for entertaining the application is stated while rejecting the petition. More so, the original order impugned dated 02.12.2020 is a reply to the representation submitted by the respondent / writ petitioner under the Right to Information Act and such a reply would provide no cause for filing a Writ Petition in view of the amendment effected under the provisions of the Act XXVI of 1948. Furthermore, the rules of natural justice has no role to play, since the impugned reply is only under the Right to Information Act and therefore, hearing of the respondents / writ petitioners would not arise at all.

17. For all these reasons, we are inclined to consider the appeal and consequently order under challenge dated 19.11.2021 passed in W.P.No.5702 of 2021 is set aside and the Writ Appeal stands allowed. No costs.

(S.M.S.,J.) (K.R.S.,J.)
12.02.2024

skr
Index : Yes
Speaking order

To

The Sub-Registrar,
Punjai Puliyambatti,
Gobichettipalayam,
Erode District.

S.M.SUBRAMANIAM, J.
and

K.RAJASEKAR, J.

skr

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