



W.P(MD)No.22352 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P(MD)No.22352 of 2019
and
W.M.P(MD)Nos.19121, 19123 and 19125 of 2019**

J.Malarselvan

... Petitioner

-VS-

1. The District Revenue Officer,
Collectorate, Dindigul.

2. The Tahsildar,
Nilakottai Taluk Office,
Dindigul District.

3. The Block Development Officer,
Batlagundu Union Office,
Dindigul District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the relevant records pertaining to the 2nd respondent proceedings in both Naa.Kaa.No.1582/2018/B5 dated 03/10/2019, Naa.Kaa.No. 5725/2019/B4 dated 16/10/2019 and subsequent proceeding of 3rd respondent in Naa.Kaa.No.1025/2019/thi 2, dated 11/10/2019 and quash it as illegal in respect of eviction notice to the private land in Survey No.244/1 stands in the name of the petitioner's father Mr.Jeyakodi and consequently direct the 2nd respondent to issue the



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patta under the section 15 of the Patta Pass Book Act, 1983, by considering the representation dated 12/04/2016.

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For Petitioner : Mr.K.K.Samy
For R1 & R2 : Mr.J.K.Jayaseelan, Government Advocate
For R3 : Mr.J.Ashok
Additional Government Pleader

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

This writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the relevant records pertaining to the 2nd respondent's proceedings in Naa.Kaa.No.1582/2018/B5 dated 03/10/2019, Naa.Kaa.No.5725/2019/B4 dated 16/10/2019 and the subsequent proceedings of the 3rd respondent in Naa.Kaa.No. 1025/2019/thi 2, dated 11/10/2019 and quash the same as illegal and consequently direct the 2nd respondent to issue the patta to the petitioner under Section 15 of the Patta Pass Book Act, 1983, by considering his representation dated 12/04/2016.

2. The petitioner has purchased a piece of land in Survey No. 244/1 of Sengattampatty Revenue Village in the year 1998. The document is also registered with the Sub Registrar, Nilakottai. It is



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seen that the petitioner's predecessors in interest had purchased the same landed property vide registered documents in Serial Nos.1342 of 1983 and 1404 of 1983. The fact that the aforesaid property comes within the residential portion of the village is not disputed. The classification of the land as grama natham is also not disputed. However, treating the petitioner's property which is classified as natham vacant land, as poramboke land, the 2nd respondent Tahsildar appears to have issued the impugned notice dated 03.10.2019 directing the 3rd respondent/Block Development Officer to remove the encroachment made by the petitioner in S.No.244/1 after issuing notices under Sections 7 and 6.

3. Based on the said order dated 03.10.2019, the 3rd respondent issued an eviction notice dated 11.10.2019 to the petitioner directing him to remove the encroachment by himself or otherwise, it will be removed with the help of revenue and police officials. Though the 2nd respondent by proceedings dated 03.10.2019, directed the 3rd respondent to remove the encroachment after issuing notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, the 3rd respondent without issuing show cause notice under Section 7, straightaway issued the eviction notice dated 11.10.2019. Few days later, the 2nd respondent/Tahsildar by proceedings dated



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16.10.2019 has rejected the representation of the petitioner seeking to grant house site patta in respect of 1470 sq.ft of lands in Survey No. 244/1 which is classified as natham vacant land and in occupation of the petitioner by putting up his construction. Challenging the aforesaid three proceedings, the petitioner has filed this present writ petition.

4. The specific stand taken by the petitioner in his affidavit filed in support of the writ petition is that the property in Survey No. 244/1 which is in his enjoyment, is classified as natham vacant land and it is a house site in which he and his predecessors in interest were in possession and enjoyment for several decades. He further submitted that at the time of purchase of the property in Survey No. 244/1, there was a thatched house. After purchase, he applied to the competent authorities for construction of a pucca house under Green House Scheme introduced by the State Government. He also submitted that during the pendency of his claim for getting financial assistance under Green House Scheme, 75% of the construction work had been completed and the impugned orders have been passed when the construction has reached the final stage.



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5. A counter affidavit is filed by the 2nd respondent *inter alia* admitting that the landed property in Survey No.244/1 which is in the enjoyment of the petitioner is classified as natham vacant land. However, nowhere in the counter affidavit, the respondents have indicated as to how the property in Survey No.244/1 classified as natham vests with the Government. Despite a catena of judgments of this Court pointing out that the property which is a house site in natham and which is in the enjoyment of the individual does not vest with the Government, the revenue officials still initiate summary proceedings for eviction by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905, ignoring that the property classified as natham cannot be classified as poramboke unless it is a communal land.

6. Having regard to the admitted facts as seen from the counter affidavit, this Court finds that the petitioner who is the person in possession of the property which is classified as natham vacant land, is entitled to be recognised as a person to hold the land in recognition of his possession for the purpose of constructing his residential house. In such circumstances, the respondents cannot presume the petitioner's land as poramboke land and they are not competent to take action either under the Tamil Nadu Land



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Encroachment Act, 1905 or to recover possession of the petitioner's land under any other enactments.

7. Therefore, the Writ Petition is allowed and the impugned orders are set aside. Considering the fact that the petitioner is entitled to claim ownership over the land which is in his possession and enjoyment as a house site for a long number of years, the respondents are directed to grant patta to the petitioner in respect of his land in Survey No.244/1, if there is no rival claim under Section 23 of the Tamil Nadu Patta Passbook Act, 1983. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

[S.S.S.R, J.] [D.B.C., J.]
22.08.2023

Index : Yes / No
Neutral Citation : Yes / No
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