

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 15/12/2014

DATED: 22/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.15358 of 2014 &
M.P.No.1 of 2014

R.Lakshmi

.... Petitioner

Vs.

1. The Forest Settlement Officer,
Tiruvallur,
O/o.Tiruvallur Collectorate Office,
Tiruvallur.
2. The District Forest Officer,
Kancheepuram.
3. The Forest Ranger,
Velachery, Chennai-42.
4. The Tahsildar,
Sholinganallur,
Kancheepuram District.
5. The Councilor,
Ward 194, Corporation of Chennai,
Mettukuppam,
Chennai-600 097.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus, or any other appropriate writ, order or direction in the nature of writ, to forbear the respondents from interfering with the peaceful possession in S.No.657/3A2, 3A3E, 3A3K of the petitioner from the land in V.P.G.Avenue Extn., Mahalakshmi Nagar, Mettukuppam, Thuraipakkam, Chennai-600 097 and permit the petitioner to repair the damaged house.

For Petitioner : Mr.R.Chandrasekaran

For Respondents : Mr.M.K.Subramanian
Spl. Govt. Pleader for R1 to R3

Mr.M.S.Ramesh
Addl. Govt. Pleader for R4

Mr.V.Selvasekaran for R5

O R D E R

The petitioner submits that he is residing at No.3/639, VPG Avenue Extension, Mahalakshmi Nagar, Mettupkuppam, Thuraipakkam, Sholinganallur Taluk, Chennai-97 in S.Nos.657/3A2, 3A3E, 3A3K for nearly 30 years. The petitioner is a coolie worker settled down in the said area for the past 30 years. She has constructed a building and residing there with her family members. Except the present land, she does not have any other land for their livelihood. There are totally 352 families residing in the said area, but the respondents have wrongly considered this area as forest land and further, as per the revenue records, this land was classified as "Tharisu" land. Therefore, it is in no way connected with the respondents. The petitioner further submits that she is regularly paying house tax for her building and land. Further, ration card has also been issued to her by the Revenue Department. Electricity Service connection has also been given to her and voter identity card, Aadhar card have also been issued to her. Further, drinking water facility, road facility, street light facilities and all other basic amenities have been provided to her area by the Corporation of Chennai and her area is nearby to Old Mahabalipuram Road.

2. The petitioner further submits that in the Mettupkuppam, VPG Avenue Extension, Anganvadi is being run by the Government to cater for education needs to the children. Apart from that other schools like Little Angle School etc., are also functioning and the children in large are from the above said area and are studying in such schools. The petitioner further submits that the land in which she is residing is classified as "Tharisu" and Grama Natham. Further, the Government issued a Government Order in G.O.Ms.No.854, Revenue Department, dated 30.12.2006 and G.O.43 that those who are residing in the Government land for more than 10 or 5 years are entitled to get patta in their favour. On the basis of the said Government Order, the petitioner made representation to the respondents seeking issuance of patta in her favour, considering the vital fact that she is residing in the VPG Avenue Extension, for the past 30 years. Further, a representation made by her was forwarded by the Legislative Assembly of Tamil Nadu, to the Revenue Divisional Officer, Kancheepuram District, for granting patta and the said representation is under consideration for granting patta in her favour. The petitioner has also made another representation dated 10.08.2009, seeking patta and finally, she has given representation on 17.04.2014. The petitioner further submits that a private I.T. Park, Private Companies, an Engineering College in the name and style of Thangavelu Engineering College have been set up in that locality, wherein she is residing. The respondents have allowed the said I.T. Industry and Engineering College to function, but

disturbing her alone in the name of forestation and as such, all the people in the area are very much affected.

3. The petitioner further submits that the Secretary to Government, Housing and Urban Development Department, has issued a letter dated 04.06.2012 to the petitioner in connection with the construction of houses under "Rajiv Aavas Yojana Housing Scheme" to develop the economically weaker sections in the land and locality wherein, the petitioner is residing at present. The above scheme is funded by World Bank. The petitioner further submits that the first respondent in his letter dated 23.08.2012 has informed her that patta would be granted to her very soon. Since the patta has not been granted to her so far, patta proceedings are initiated by the Revenue Authorities. In the mean time, the respondents are disturbing the petitioner. The petitioner further submits that the Executive Engineer of Tamil Nadu Slum Clearance Board has issued a letter dated 10.04.2013 to the petitioner that "Rajiv Aavas Yojana Housing Scheme" would be implemented in Division 15 of the Chennai Corporation and Ward No.194, wherein, the petitioner is residing and further even the respondents have accepted in the writ petition, wherein it has been stated that this particular land is not used for Government purpose. All the members are poor and daily wage earners, daily coolie workers.

4. The petitioner further submits that the Chennai Corporation has issued No Objection to retain the place, wherein, the petitioner is residing in that area. The petitioner further submits that many writ petitions have been filed before this Court and this Court has granted direction in her favour. The petitioner further submits that now the Government had taken steps to construct concrete houses under various schemes, funds has been sanctioned by the World Bank, Construction works is in progress, but the respondents are attempting to evict the petitioner from the said house. The petitioner further submits that in the name of Government officials, some unknown persons had entered into the houses and disturbing her family members and disturbed others in her locality. The petitioner further submits that she is a poor coolie and has constructed a house and living with her family members. The petitioner further submits that in her locality, there are 352 families residing in the VPG Avenue Exten., Mahalakshmi Nagar, Mettukukppam, Sholinganallur Taluk, Chennai-600 097. The petitioner further submits that her house falls within jurisdiction of the Chennai Corporation Limit, Ward No.194. Unnecessarily the Forest Ranger and other unknown persons are giving untold sufferings to her. Further, the Forest persons are coming with a Gang and trespassing into her house and even taken valuable things from her house and even the guests are being threatened.

5. The petitioner further submits that during the rainy season the roof of the house got damaged and the ladies are suffering without toilets and bathrooms. If the petitioner should put up any bathroom or toilet, the respondents would damage the toilet and bathroom. Further, they prevented her from repairing the damaged house and new construction, they are prevented to do works during the rainy seasons.

Now, the Slum Clearance Board and the Housing Board has taken steps to construct houses in that area under the Rajiv Avass Yojana Scheme and fund has been sanctioned by the World Bank. The petitioner further submits that already they have sanctioned one light scheme in that area and the Assistant Engineer, sanctioned the one light scheme in that area. The petitioner further submits that now the Chennai Corporation has sanctioned funds for putting up cement roads in the locality and further submits that street lights, metro water and sewerage board, PWD works, Corporation works have been prevented by some of the respondents. The local authority, the Councilor, Mettukuppam also provided local funds and developed her area.

6. The petitioner further submits that the Government also is taking steps to issue patta for the purpose of constructing group houses, green houses. All the Schemes were formulated by the World Bank. Further, the above developmental schemes initiated by the Government are located in the area, but the Forest officials have wrongly included her area and disturbing the petitioner and others. The petitioner further submits that as per the verdict of the Hon'ble Apex Court, "interference with the "Tharisu" land by the Government to evict the persons residing therein is unsustainable in law. Further, the said land is not connected with any forest land and the said Mettukuppam Village is oldest village and it is not the forest land and other private company has been allowed to run freely. The petitioner further submits that the respondents are adopting all illegal ways to threaten and to evict the petitioner from the present land which are causing irreparable loss and mental agony to the petitioner as the petitioner is a poor agricultural coolie worker and she is residing in that area for more than 30 years. Hence, the petitioner has filed the above writ petition to forbear the respondents from interfering with the peaceful possession in S.No.657/3A2, 3A3E, 3A3K of the petitioner from the land in V.P.G.Avenue Extn., Mahalakshmi Nagar, Mettukuppam, Thuraipakkam, Chennai-600 097.

7. The fourth respondent has filed a counter affidavit and resisted the above writ petition. The fourth respondent submits that the petitioner in her affidavit wrongly noted the Survey No. 657/3A3E and 3A3K instead of Survey No.657/3E and 657/3K of Pallikaranai Village. There are no such Survey Nos.657/3A3E and 3A3K in the Village. The land in Survey No.657/3A2 classified as wet belongs to Chennai Corporation measuring 170.40.5 hectares was originally allotted to Corporation of Chennai in G.O.Ms.No.35, MAWS Department dated 17.02.1997 and was subsequently ordered to be transferred to Forest Department in G.O.Ms.No.127, MAWS Department, dated 24.12.2012. The above land was handed over to Forest Department on 11.06.2013 itself and reclassified as Reserve Forest. The other two lands in Survey Nos.657/3E and 657/3K classified as dry assessed waste measuring 0.40.5 hectares each forms part of constituted forest block approved by the Government in their G.O.Ms.No.52, Environment and Forest Department (FR18), dated 09.04.2007. Necessary notification under Section 4 of Tamil Nadu Forest Act, 1882 was also published in Tamil Nadu Government Gazette, Kanchipuram District Gazette on 01.08.2007. The above

notification empowers the Forest Settlement Officer, Thiruvallur to excise his powers under Clause R of Section 4 of Tamil Nadu Forest Act, 1882. The Forest Settlement Officer, Thiruvallur after due enquiry had rejected the request of petitioners in his proceedings RC/78/2007/FSO, dated 18.10.2012 and ordered that there is no specific admission or rights to enter upon the premises of Pallikkarana Forest Block under Section 11 of Tamil Nadu Forest Act, 1882. Any appeal against his order can be filed before District Court and Additional Personal Assistant to collector, Kanchipuram within 30 days from the date of the order. Hence, the writ petition is not maintainable. The fourth respondent further submits that the Forest Settlement Officer, Thiruvallur while passing orders under Section 11 of the Tamil Nadu Forest Act, 1882 was specific in his remarks in para 26 of his orders and extract of para 26 is as follows:-

Most of the encroachers / applicants are stating that they are residing at Survey No.657/3A3 in Mettu Kuppam, VPG Avenue, Pallikkarana Forest Block, there are no clear evidences as seen from the deposition of the encroachers and the enquiry in the Village, those voter identity cards disclose that the petitioner did not reside during the said period in Pallikkarana Forest Block and they resided at a totally different place which is far off and not connected with Pallikkarana Forest Block at all. The family card are for the period produced by them are in a different address which is very far off in the said place and the current consumption charges and B memo produced by the petitioner are Bogus which is not mentioned in the year, date and Fasli issued by the Revenue Inspector Pallikkarana Forest Block."

The fourth respondent further submits that in S.No.657/3E there was additional constructed building in damaged condition and Forest Settlement Officer had ordered for its eviction. In the same way, the encroachments in S.No.657/3K were also ordered to be evicted for the formation of Pallikkarana Forest Block. The fourth respondent further submits that there is no Anganvadi run by Government and Private Schools on these lands referred in this writ petition. The following lands in Pallikkarana Forest Block stands registered in the name of Chennai Corporation under patta No.1012.

S.No.	Classification	Extent
657/1B1	Dry	173.33.0
657/1B3	Dry	48.02.5
657/3A2	Dry	122.38.0
709	Dry	1.36.0
710	Dry	1.41.5
711	Dry	0.89.5

S.No.	Classification	Extent
712	Dry	1.65.0
713	Dry	1.60.5
Total		350.66.0

During the meeting of Eco-restoration works in Pallikkaranaï marsh held under the Chairmanship of Chief Secretary to Government, it was decided to take control of all the areas situated on the southern side of Pallavaram, Thoraipakkam Radial road which are under the control of Chennai Corporation and to immediately hand it over to Tamil Nadu Forest Department, as this area was ecologically sensitive and maximum number of migratory and resident aquatic bird population were being spotted there. The Chennai Corporation Council vide its resolution No.346/2011, dated 23.11.2011 had passed a resolution to seek an order of the Government for the above said alienation. The area proposed for transfer to forest Department is comprised in S.No.657/1B3 measuring 48.02.5 hectares and S.No.657/3A2 measuring 122.38.0 hectares totally measuring 170.40.5 hectares. The Commissioner, Chennai Corporation had originally requested the Government for the payment of present market value for alienation. However, on the request of the Environment and Forest Department, the Chief Secretary to Government on 17.05.2012 had decided to place the above lands under the control of Forest Department for maintaining a wet land without any payment of value for the lands. The Government after careful examination ordered alienation of 170.40.5 hectares of land in Pallikkaranaï Village, free of cost vide G.O.Ms.No.127, Municipal Admin and Water Supply Department dated 24.12.2012 and accordingly the above extent was handed over to Forest Department by Corporation of Chennai on 11.06.2013. The above land in S.No.657/3A2 involved in this writ petition is a patta land that originally belonged to Chennai Corporation and later alienated to the Forest Department.

8. The fourth respondent further submits that both the lands in S.No.657/3E and 657/3K measuring 0.40.5 hectares each classified as Dry assessed waste in the Revenue Accounts of Pallikkaranaï Village, Sholinganallur Taluk. The District Forest Officer, Chengalpattu Division, Kanchipuram District in his letter dated 25.04.2003 had initiated the proposal to constitute Pallikkaranaï Forest Block for an extent of 317.00 hectares in 3 bits including this land. The notification under Section 4 of Tamil Nadu Forest Act, 1882 to constitute the above forest block was approved by the Government in their order G.O.Ms.No.52, Environment and Forest Department, dated 09.04.2007. The said notification was published in Tamil Nadu Government Gazette No.7 and Gazette No.5 published on 01.08.2007 in Kanchipuram District Gazette. In the above notification, the Special Tahsildar and Forest Settlement Officer, Tiruvallur has been appointed as Forest Settlement Officer to exercise the power under clause (e) of Section 4 of Tamil Nadu Forest Act, 1882 for the above area. The Forest Settlement Officer, Tiruvallur in his order dated 18.10.2012 ordered that there are 28 persons occupying an extent of

1.20.0 hectares in S.No.657/3H, 3I, 3J and 3K. The encroachments are by way of dwelling huts and cement sheet house except one in which George S/o.John had constructed a Church cum residential house and ordered for eviction of all these encroachments since ordered for the formation of Pallikaranai Forest Block. The order of Forest Settlement Officer is final for the formation of forest block and as such, the petitioner's prayer is not maintainable. The fourth respondent further submits that the Government have ordered for the regularization of encroachments as house sites in respect of cases encroachment for more than 10 years except in the case of water course related poramboke lands. Even though the land Survey No.657/3E and 3K classified as Dry assessed Waste they are likely to be submergible for six months in water in the form of a "Swamp". They are not fit for residential purpose. The other land in S.No.657/3A3 is a patta land belonging to Chennai corporation and the petitioner cannot claim title as a matter of right. Further, all these lands were notified and transferred to the Forest Department for the formation of Pallikaranai Reserve Forest Block. Hence, the prayer of petitioner for regularization cannot be done as per rules.

9. The fourth respondent further submits that no private company or IT park and college were allowed on these lands. Those lands are submergible for six months by water and never fit for dwelling purposes. It is evident that the petitioner is not residing there but somewhere else. The fourth respondent further submits that these lands were notified as Reserve Forest and the classification was also changed. The Forest Department controls entire Pallikaranai Forest Block. The housing schemes as stated by the petitioner cannot be implemented in Reserved Forest Area. The fourth respondent further submits that the required relief and assignment of house sites can be done only by Forest Settlement Officer, Thiruvallur under Section 4 of Forest Act 1882. But Forest Settlement Officer rejected the request and ordered for the formation of Forest Block in his proceedings dated 18.10.2012. Hence, the question of granting pattas are not feasible as per rules. The fourth respondent further submits that no Government agency like Tamil Nadu Slum Clearance Board can interfere in Reserve Forest Area and the request of the petitioner cannot be granted. The fourth respondent further submits that this Court in W.P.No.17233 of 2009 and W.P.No.7941 of 2010 had issued common order that none of the petitioners have given their residential addresses. This Court had observed that the land belongs to Chennai Corporation and it was not made as necessary party to writ petition. A few family cards issued by the Civil Supplies and Consumer Production Department and current consumption charges cards issued by TNEB and property tax receipts would not confirm any right to petitioner to seek relief. There is no material in support of their contention made in W.P.Nos.17233 of 2009 and W.P.No.7941 of 2010 that the petitioner is residing there for more than 30 years. The above para is the observation of this Court while disposing these writ petitions.

10. The fourth respondent further submits that the Reserve Forest area cannot be considered for construction of houses by the Government. Further, the Forest Settlement Officer who is competent, passed appropriate orders on their request, had not considered their prayer and rejected their request and the same has become final. The fourth respondent further submits that the Forest Settlement Officer, Thiruvallur who conducted enquiry on the representation of an encroacher had categorically stated that none of the encroachers are residing there. The family card, electoral identity card, electric charges are having different addresses he added in his order. The orders of Forest Settlement Officer, will prove that the alleged 320 families are not residing there. The fourth respondent further submits that the Government have already notified the formation of Forest Block and the land were handed over to Forest Department in 2013 itself. These lands are now under the control of Forest Department. The fourth respondent further submits that the Forest Settlement Officer, Thiruvallur while issuing orders under Section 11 of the Tamil Nadu Forest Act, 1882 had specifically stated that there are no cart track, burial ground, percolation tank operated by the Panchayat, Church, Temple or Mosque, water tank, pathway used by the public in their lands.

11. The fourth respondent further submits that the lands are already transferred to Reserve Forest and the Corporation Authority have no control over this area. The fourth respondent further submits that the question of granting house site in Reserve Forest Area does not arise. The fourth respondent further submits that the Government have already transferred the subject land as Reserve Forest and notified in the Gazette. The regular assignment Rules will not apply to Reserve Forest encroachments. Further, the Encroachment Act, 1905 will not apply to Forest Area. The fourth respondent further submits that these lands were already transferred to Forest Department for the formation of Pallikaranai Reserve Forest. The Forest Settlement Officer, Thiruvallur has been authorized to exercise his powers under Section 4 of the Tamil Nadu Forest Act, 1882. The Forest Settlement Officer, Thiruvallur after a statutory enquiry had passed orders for the formation of Reserve Forest under Section 11 of Tamil Nadu Forest Act, 1882. Any appeal against his orders can be preferred only to District Court / APA to Collector. Hence, this respondent entreats the Court to dismiss the above writ petition.

12. The highly competent counsel Mr.R.Chandrasekaran appearing for the petitioner submits that the petitioner is residing at No.3/639, at VPG Avenue Extension, Mettukuppam for nearly 30 years, without any interference. The petitioner has constructed a residential building and living along with her family members. In the said area, comprised in Survey Nos.657/3A2, 3A3E, 3A3K at Mahalakshmi Nagar, about 352 families are residing. Now, the respondents have wrongly concluded that the lands are classified as Forest lands, but as per the Revenue Records, the lands have been originally classified as Tharisu lands. Therefore, the respondents 1, 2 and 3 have no locus standi to interfere with the petitioner's residential building and other 352 families residential

areas since they have occupied Tharisu lands belonging to the Government and the same is suitable for occupation to the poor people, as per the Government G.O. issued by the Revenue Department. All the families are categorized as weaker sections and landless poor people / no house sites. Therefore, the poor people should not be disturbed at any cost. The highly competent counsel further submits that the occupants have been issued ration card, voter identity cards, Aadhar cards, besides, the Government has provided basic amenities viz., road formation, street lights and drinking water etc. The occupants have been remitting mandatory taxes to the statutory authorities. The Government had also established educational institutions and nutritious meal scheme to the poor people. As per the Revenue Authorities statement, the land has been classified as Tharisu and Nathan poromboke. Further, as per G.O.Ms.No.854, and G.O.Ms.No.43, issued by the Revenue Department, the occupants are entitled to receive patta from the Government.

13. The highly competent counsel appearing for the petitioner further submits that the Tamil Nadu Slum Clearance Board had implemented Rajiv Awas Yozana Housing Scheme in order to provide pucca construction residential building to the petitioner and other occupants of the said area. The occupants are involved in the construction work, road formation work and other hard manual works and they are depending upon their physical power for their livelihood. The duty of the Government is to protect the poor and downtrodden people. Therefore, the respondents should not be permitted to interfere with the occupation of the petitioner and other occupants residential areas. The petitioner and other occupants possession are the lawful possession and renamed as permissible possession, but not unlawful possession. Hence, the highly competent counsel entreats the Court to prevent the respondents from interfering with the petitioner's peaceful possession.

14. The highly competent Special Government Pleader Mr.M.K.Selvamanian appearing for the respondents 1 to 3 submits that the same petitioner had filed another writ petition with the same prayer. As such, the present writ petition is not maintainable. The respondents had filed detailed counter statement and resisted the said writ petition. This Court had disposed the earlier writ petitions and passed common orders stating that the petitioners are not entitled for any relief, but the petitioners are at liberty to make representation before the Forest Settlement Officer. The petitioner did not make any application before the Forest Statement Officer. The petitioner is an encroacher and occupied the respondents property which has been classified as Forest land. The election commission had issued voter identity card in the year 2004-2006. Further, the petitioner has not constructed any pucca building over the subject land. About 60 encroachers are occupying the said property and the allegation that 322 families are residing is not correct. The Forest Settlement Officer has dismissed the claim made by the 60 encroachers. Therefore, the petitioner's occupation is an unlawful one and she is an encroacher. Therefore, law does not permit to grant injunction restraining the respondents.

15. The highly competent Special Government Pleader Mr.M.K.Selvamanian appearing for the respondents 1 to 3 further submits that the District Collector clearly mentioned in his proceedings that the property is free from encroachment. The land has been declared as Reserve Forest Area as per G.O.Ms.No.52, dated 09.04.2007. The same was published in the Gazette. The highly competent Special Government Pleader further submits that regarding civil disputes or claiming any civil rights over the said property, the petitioner cannot invoke Article 226 of the Constitution for her remedy. Further, there is no nutritious meal schemes or any educational institutions in the said area. Hence, the highly competent Special Government Pleader entreats the Court to dismiss the above writ petition.

16. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the fourth respondent submits that the subject land has been classified as forest land. Further, the petitioner made representation to the Tahsildar. After a comprehensive enquiry, the petitioner's claim was rejected. Further, the petitioner is not residing in the said area. The B Memo produced by the petitioner is a bogus one. Hence, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

17. The highly competent counsel Mr.V.Selvasekaran appearing for the fifth respondent submits that the land had been allotted by the Chennai Corporation to the Forest Department since the land has been classified as Reserve Forest. Therefore, the subject lands are under the care and maintained by the Forest Department and to that effect, notification has also been issued and the same was published in the Gazette. The petitioner has earlier filed the writ petition and the present writ petition has also been filed on the same cause of action, against the same respondents on the same property with the same prayer. As such, the writ petition is not maintainable. The writ petitioner has misconceived the case in order to grab valuable property belonging to the Government.

18. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers, it is seen that the same writ petitioner has filed writ petition in W.P.No.20469 of 2009, before this Court. Besides, some other petitioners have also filed similar writ petitions viz., W.P.No.17233 of 2009, W.P.No.21461 of 2009, W.P.No.7941 of 2010 and the same were dismissed by this Court. Therefore, for the

same issue, the above writ petition has been filed. Hence, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

r n s

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Forest Settlement Officer,
Tiruvallur,
O/o.Tiruvallur Collectorate Office,
Tiruvallur.
2. The District Forest Officer,
Kancheepuram.
3. The Forest Ranger,
Velachery, Chennai-42.
4. The Tahsildar,
Sholinganallur,
Kancheepuram District.
5. The Councilor,
Ward 194, Corporation of Chennai,
Mettukuppam,
Chennai-600 097.

+1 C.C. to Special Government Pleader (Forest) in Sr.No.51374

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Pre Delivery Order made in
W.P.No.15358 of 2014 &
M.P.No.1 of 2014

VSN(CO)
sd : 05/10/2015