

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 6.8.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.2622 of 2015

A.Vetriselvan ... petitioner

versus

- 1 The District Collector
Thiruvannamalai District, Thiruvannamalai.
- 2 The Tashildar
Thiruvannamalai Taluk,
Thiruvannamalai District.
- 3 The Block Development Officer
Thiruvannamalai Union, Thiruvannamalai.
- 4 A.Velmurugan,
S/o.Arunagiri Esukkazhi Katteri Village
Thiruvannamalai Taluk and District.
- 5 The Chairman-cum-Managing
Director TANGEDCO 144
Anna Salai Chennai-2.
- 6 The Junior Engineer/O&M
Tamil Nadu Electricity Board Rajanthangal
Thiruvannamalai Taluk and District. ...Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Mandamus Directing the first and second respondents to receive the Patta Land in respect of 0.02 Cents comprised in Survey No.55/2A2 in Esukkazhikatteri Village to be gifted by the petitioner and drop the proceedings commissioned under Section 6 of the Encroachment Act 1905 against the petitioner in respect of his house at Anna Nagar Esukkazhi Katteri Village and Post Thiruvannamalai Taluk and District.

For petitioner : Mr.R.Karunagaran
For Respondents : Mr.P.S.Sivashanmugasundaram, Spl.G.P.,
for respondents 1 and 2

Mr.R.Rajendra Narasimhan, for R-3
Mr.A.Arulmozhi, for R-4
Mr.M.Varun Kumar, for respondents 5 and 6

O R D E R

(made by K.K.SASIDHARAN, J.)

The petitioner, who is in illegal possession of a poromboke land, wanted the District Collector to accept an alternate land offered by him and permit him to retain possession of the site in question.

The facts :-

2. The petitioner constructed a residential house in S.No.51/2. The property belongs to the Government. According to the petitioner, about 17 people have encroached upon the Government lands. The encroachers have all been given patta by the Government. However, he was not given patta on account of a Writ Petition filed by the fourth respondent in W.P.No.28294/2013. The petitioner purchased two cents of land in S.No.55/2A in Esukkazhikatterri Village. The petitioner now wanted the district administration to accept the said land and permit him to retain the poromboke land.

3. Since the petitioner has taken up a contention that the Government have given patta to those who are in possession of Government land, which are said to be the adjacent land, we directed the District Collector, Tiruvannamalai, to file an affidavit.

4. The District Collector, Tiruvannamalai, in his affidavit dated 4 August 2015, submitted that patta was granted in accordance with the Government Order in G.O. (Rt.) No.854 Revenue Department, dated 30 December 2006, as a one time measure. The Government Order was in force till 30 June 2007. According to the District Collector, the petitioner constructed the house only about three years ago and as such, he is not entitled to the benefits of the said Government Order.

5. The 4th respondent in his counter affidavit contended that the petitioner is in possession of a residential house in another village, besides agricultural lands. According to the 4th respondent, the petitioner constructed a house in spite of objections raised by the local people. The petitioner obstructed the public pathway by constructing the residential house. According to the 4th respondent, failure on the part of the revenue administration to take action against the petitioner made him to file a Writ Petition earlier before the Court.

Submissions :-

6. The learned counsel for the petitioner contended that the construction in question is not objectionable and as such, there would not be any problem to regularize the encroachment. The learned counsel further submitted that the petitioner is offering two cents of land in view of his occupation of poromboke land. According to the learned counsel, the petitioner has already constructed a residential house and as such, he should be permitted to retain possession of the land in question.

7. The learned Government Pleader by producing a copy of the plan prepared by the Tahsildar, submitted that the land in question is

situated on the side of a pathway. In case the petitioner is permitted to retain the residential house, it would deny the villagers, pathway to reach their property. The learned Government Pleader further contended that patta granted to the other land owners relate to properties which are not objectionable.

8. The only question that arises for consideration is whether the petitioner is entitled to a Writ of Mandamus directing the first respondent to accept the alternate site offered by him for the purpose of permitting him to keep the Government land in his possession.

Analysis :-

9. The petitioner has come up with a contention that his father in law has been in possession and enjoyment of the property in question and it was subsequently given to him. Even according to the petitioner, he constructed a residential house only in 2012. The petitioner alleged that others were given patta, but however his case was not considered. The District Collector has explained the factual position in his reply affidavit. According to the District Collector, regularization of encroachment was made in accordance with the Government Order in G.O.Rt.No.854 Revenue Department dated 30 December 2006 and it was a one time measure. The grant was made even prior to the construction of residential house by the petitioner. Therefore, it cannot be said that the petitioner was singled out.

10. The reply affidavit filed by the District Collector clearly shows that the petitioner had constructed a building in an objectionable manner, blocking the pathway used by public. The petitioner is stated to be having house of his own in a different village. The petitioner is not a landless person. In fact, the fourth respondent has gone to the extent of contending that the petitioner is in possession of 1.96 acres of land, with a well, which was allotted to him as per registered partition deed No.531 of 1994.

11. The land in question is classified as Vodai poromboke. The local villagers have been using this property as a pathway. Such being the factual position, it is not open to this Court to direct the first respondent to accept the alternate site and permit the petitioner to possess the land in question.

12. The entire case of the petitioner rests on the ground that others were given patta. We direct the District Collector, Tiruvannamalai, to evict all those who are in possession of Vodai Poromboke / water body / road portion/ in case such encroachments have come up after the expiry of the time prescribed in G.O.Rt. No.854 Revenue Department dated 30 December 2006.

13. We do not find any ground to issue a Mandamus as prayed for by the petitioner. We grant three week's time to the petitioner, from the date of receipt of a copy of this Order, to vacate and handover vacant possession of the land in question to the second respondent.

14. In the upshot, we dismiss the Writ Petition. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are also dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1 The District Collector
Thiruvannamalai District, Thiruvannamalai.
 - 2 The Tashildar
Thiruvannamalai Taluk,
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 - 3 The Block Development Officer
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 - 4 The Chairman-cum-Managing
Director TANGEDCO 144
Anna Salai Chennai-2.
 - 5 The Junior Engineer/O&M
Tamil Nadu Electricity Board Rajanthangal
Thiruvannamalai Taluk and District.
- 1 cc to Mr. M.Varun Kumar,, Advocate Sr.No.40674
1 cc to Mr.A.Arulmozhi , Advocate Sr.No.40673
1 cc to Government Pleader.Sr.No.40824

सत्यमेव जयते

W.P. No.2622 of 2015

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