

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04..11..2015

Date of Reserving the Orders	Date of Pronouncing the Orders
30.10.2015	04.11.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE

and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.32224 to 32236 of 2015 &
W.P.No.31881 of 2015

T.Pappammal	..Petitioner in WP 32224/2015
T.Lourdhu Mary	..Petitioner in WP 32225/2015
T.Logamary	..Petitioner in WP 32226/2015
T.Jayamary	..Petitioner in WP 32227/2015
T.Lilly Mary	..Petitioner in WP 32228/2015
Amala Mary	..Petitioner in WP 32229/2015
A.Leema Rose	..Petitioner in WP 32230/2015
Caroline Priya	..Petitioner in WP 32231/2015
E.A.Jesintha Mary	..Petitioner in WP 32232/2015
Kannaikai Mary	..Petitioner in WP 32233/2015
E.Mithelda Mary	..Petitioner in WP 32234/2015
A.Lourdhammal	..Petitioner in WP 32235/2015
T.Premala	..Petitioner in WP 32236/2015
T.Savariammal	..Petitioner in WP 31881/2015

Versus

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The Tahsildar,
Maduranthakam Taluk,
Maduranthakam,
Kancheepuram District.

..Respondents in all Wps.

Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of writ of Certiorarified Mandamus to call for the records of the first respondent in proceedings No.Na.Ka.No.47605/2007/Aaa3, dated

04.09.2015, relating to rejection of the appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 against Section 6 notice, dated 17.07.2015, issued by the first respondent in so far as the same relates to the house and land situated in S.No.477/1, 507/1, 507/1, 507/1, 478/1, 480/3, 477/1, 507/1, 480/3, 477/1, 480/1, 477/1, 477/1, and 507/1 respectively in occupation of the petitioner measuring to an extent of 00160, 01092, 02269, 01217, 00861, 00763, 00704, 01147, 00100, 00750, 00538, 00100, 01442, and 00340 sq. meter respectively at Sagaya Nagar Village, No.149, Budhur Panchayat, Maduranthakam Taluk, Kancheepuram District and quash the same and direct the second respondent to issue patta in favour of the petitioner in the light of G.O.Ms.No.854, Revenue Department, dated 30.12.2006 as amended in G.O.Ms.No.34, Revenue Department, dated 23.01.2008 and in accordance with law.

For Petitioner :: Mr.D.S.Rajasekaran in All W.Ps.,

For Respondents :: Mr.S.T.S.Moorthy G.P., Assisted by
Mr.V.R.Kamalanathan AGP Assisted by
Mr.V.Shanmugasundar G.A.

O R D E R

T.S.SIVAGNANAM, J.

In all these Writ Petitions the prayer sought for by the petitioners are identical as the challenge is to the order dated 04.09.2015, passed by the District Collector, Kancheepuram District, in and by which the appeals filed by the petitioners against the orders of eviction passed against them under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, (hereinafter referred to as the 'Act'), were dismissed.

2. The case of the petitioners is that they are living in a small hamlet called 'Sagaya Nagar' within the limits of the Budhur village panchayat and claim to have been residing there for over 40 years. The petitioners would further state that the land in which they are presently residing, has been classified as "Meikkal Poromboke". The petitioners would admit that they have not been granted patta, however claim to have been remitting land tax. Relying upon the Government Order in G.O.Ms.No.854, dated 30.12.2006, the petitioners' requested for grant of patta stating that the Government has evolved a scheme for issuance of patta to occupants of Government Poromboke land including the lands classified as "Meikkal Poromboke". While so, the second respondent, Tahsildar, Maduranthakam, initiated proceeding for eviction of the petitioners and notices under Section 6 of the Act were issued to the petitioners during April

2010, directing them to vacate the land within a period of 15 days. Challenging the said notices, two Writ Petitions in W.P.Nos.9635 and 9636 of 2010, were filed by 32 petitioners including the petitioners herein and for a consequential direction to issue patta in terms of G.O.Ms.No.854, Revenue Department, dated 30.12.2006. The said Writ Petitions were admitted and an order of interim stay was granted. After about four years, the Writ Petitions were listed before this Bench on 08.12.2014, on which date, the Writ Petitions were disposed of with a direction to the respondents to examine the case of the petitioners whether they are eligible for the benefit under G.O.Ms.No.854 and if they are eligible, they would be entitled to the issuance of patta and if not eligible, proceedings to be taken in accordance with the provisions of the Act and aggrieved parties would have the legal remedy under the said Act. It is stated that after the Writ Petitions were disposed of, the petitioners submitted a representation to the respondents on 16.02.2015, requesting for grant of patta in terms of the said Government Order. At that juncture, the petitioners were issued a notice under Section 7 of the Act, calling upon them to explain as to why, they should not be evicted from the Government lands. The petitioners submitted their reply on 08.06.2015, in which a request was made for issuance of patta and it is stated that the request made by the petitioners for grant of patta is still pending. Orders of eviction were passed on 24.06.2015.

3. The petitioners would reiterate that they are eligible for grant of patta in the light of G.O.Ms.No.854, and inspite of the directions issued by this Court in W.P.Nos.9635 and 9636 of 2010, dated 08.12.2014, the respondents have not examined their claim in a proper perspective. Fearing that they will be forcibly evicted, the petitioners filed W.P.No.21641 of 2015, to prevent the respondents from evicting the petitioners, as they had preferred a statutory appeals before the first respondent against the order dated 24.06.2015. Before, the Writ Petition could be listed for admission, the first respondent rejected the appeal by order dated 17.07.2015. Challenging the same, the petitioners filed W.P.Nos.22594 to 22607 of 2015 to quash the order passed by the first respondent, dated 17.07.2015 and to forbear the respondents from interfering with their peaceful possession of the property in question. The said Writ Petitions were allowed by this Court by order dated 11.08.2015, thereby setting aside the order dated 17.07.2015, limiting the relief to 14 petitioners making it clear that the order will not have any impact on the impugned order to the extent, which dealt with the cases of the petitioners, who had filed W.P.Nos.9636 of 2010. The matter was remitted to the first respondent for dealing with the case of the petitioners who were 14 in number within a period of one month from the date of order after giving an opportunity of hearing to the petitioners. Thereafter, the

petitioners were heard in person and the first respondent by order dated 04.09.2015, rejected the appeal. The correctness of this order is assailed in these Writ Petitions.

4. The learned counsel appearing for the petitioner after reiterating the factual averments and the earlier orders passed by this Court submitted that the reasons assigned by the first respondent for rejection of the petitioners' appeal is arbitrary and unjustified and several of the reasons are absolutely vague. It is further submitted that the first respondent failed to take note of the various Government Orders, which have been issued to rehabilitate the persons like that of the petitioners and the petitioners having been residing in the property for nearly 40 years, the first respondent should have considered their request in a proper perspective, extended the benefit of the Government Order and issued pattas to them. It is further submitted that the details which have been furnished in the impugned order are incorrect and in certain cases, there is a mistake in the identity of the person. Thus, it is submitted that the impugned order is liable to be set aside and the respondents may be directed to consider the case of the petitioners and grant patta by extending the benefit of the Government Orders.

5. The learned Government Pleader submitted that the order and direction issued by this Court on 11.08.2014, was scrupulously followed and the petitioners were afforded sufficient opportunity and after conducting enquiry, it was found that none of the petitioners were eligible for grant of patta. The first respondent has assigned specific reasons for each petitioner as to why they are not eligible and those reasons are supported by documents and there is no error in the order passed by the first respondent. The learned Government Pleader has drawn our attention to the averments set out in the counter affidavits filed by the first respondent in W.P.Nos.32224 of 2015 to 32236 of 2015 and W.P.No.31881 of 2015.

6. Heard the learned counsels appearing for the parties and carefully perused the materials placed on record.

7. It is not in dispute that the petitioners are encroachers of Government land, classified as "Meikkal Poromboke", and have no vested right to claim that they can continue to be in possession of a Government property. The petitioners while admitting that they are encroachers of Government land, claim that they are entitled for grant of patta in terms of the Government Order in G.O.Ms.No.854, which provides for grant of free house site patta to encroachers. Thus, if the petitioners claim is based on a concession extended by the Government, then it goes without saying that the petitioners should satisfy the conditions stipulated for being entitled for such concession. In these Writ Petitions, we are

not examining the validity of the Government Orders, challenge to which is pending in other Writ Petitions, but are examining as to whether the first respondent considered the matter in a proper perspective; whether the petitioners were afforded fair and reasonable opportunity; and whether the impugned order suffers from any arbitrariness or illegality.

8. The definite stand of the first respondent in the counter affidavit is that the petitioners are not eligible for grant of house site patta. Though the petitioners would state that the order passed by the first respondent is arbitrary and unreasonable, we find that after our earlier order, dated 11.08.2015, the first respondent conducted an enquiry in which the petitioners or through their representatives have participated and based on records produced by the Revenue officials, the first respondent has passed the impugned order. Therefore, the petitioners cannot complain that they have been denied opportunity and we find that principles of natural justice have been followed.

9. In these batch of cases, there are 14 petitioners and their requests for grant of patta have been examined by the first respondent in the light of the directions issued by the Government in G.O.Ms.No.854, dated 30.12.2006 and the instructions given by the Government vide letter dated 13.05.2007. The reasons for rejection have been furnished in a tabular form in the counter affidavit from which we find that the second petitioner's husband is working in the Tamil Nadu Electricity Department and he is the son of the fourth petitioner Jaya Mary, who owns an extent of 1.39.5 hecsts., of land in patta No.242 in Esoor village. Further, the husband of the 4th petitioner is owning 2.35.0 hecsts., of land in Kunnathur village; the third petitioner owns an extent of 0277 sq.mts., of land in Kunnathur village in Patta No.406 and there is a house constructed on the said land. According to the Revenue officials, the fifth petitioner is not residing in the encroached site; the 6th petitioner is owning an extent of 2.01.0 hecsts., of land bearing patta No.397, apart from that her husband is stated to own an extent of 533 sq.mts of land in Kunnathur village and 2.17.5 hecsts., in Bhudhur village with patta No.267; the 7th petitioner is stated to be not a resident of the village as on 01.06.2007, the cut of date prescribed by the Government; the 8th petitioner is stated to be not residing in the encroached place and she is having a house in survey No.376/22, in patta No.296, which stands in her husband's name; the 9th petitioner is stated to be owning 5.90.0 hecsts., of land and she is a joint-pattadar in patta No.26 and there is a tiled house and she has transferred her family card only in 2013; the 10th petitioner's husband is working as Pump Operator in Budhur Panchayat; the 11th petitioner's husband owns an extent of 2.17.5 hecsts., of land bearing patta No.267, and her father-in-

law owns an extent of 533 sq.mts., in survey no.379/1, Kunnathur village and her mother Amala Mary, who is the sixth petitioner herein owns an extent of 2.01.0 hect., of the land in patta No.397; the 12th petitioner is owning an extent of 0.41.0 ares of land in patta No.218 in Esoor village. Thus, out of the 13 petitioners in W.P.Nos.32224 to 32236 of 2015, the first respondent has assigned specific reasons as to why the 11 petitioners are not entitled for the benefit under the order.

10. So far as the remaining two petitioners namely the 1st petitioner and the 13th petitioner, the first respondent has stated that the 1st petitioner is ineligible as she is having own house at Pondicherry and 13th petitioner is ineligible as she is having house in Madhavaram. In respect of the petitioner in W.P.No.31881 of 2015, her husband is a retired Sub-Inspector of Police, who is drawing monthly pension and therefore, ineligible for grant of house site patta. Thus, out of the total 14 petitioners (13+1), 12 petitioners have been found to be ineligible and in almost all cases they owned lands/houses. The details of such holding have been furnished with patta numbers.

11. The learned Government Pleader has produced the copies of the Revenue records and the certificates issued by the Revenue officials to substantiate the reasons given for rejection of the petitioners' requests. The 12 petitioners, whose requests have been rejected for the reasons as mentioned above have neither rebutted the same by producing any documents nor they have specifically stated that such information is false or untrue. As mentioned above, there is no vested right for the petitioners to seek for patta having encroached Government land. In such circumstances, this Court will not convert itself into a second Appellate Authority over the factual findings recorded by the first respondent, who is the Appellate Authority under the Act. We find that the principles of natural justice have been followed and the petitioners have had a fair opportunity before decision was taken. Therefore, we reject the challenge to the impugned order insofar it pertains to the 12 petitioners.

12. This leaves us with the case of two of the petitioners namely, the petitioner in W.P.No.32224 of 2015, T.Pappammal and the petitioner in W.P.No.32236 of 2015 namely, T.Premala. In respect of these two petitioners, the reason for rejection is that they own a house at Pondicherry and Madhavaram respectively. The Revenue officials have come to such a conclusion based on a statement given by the Village Administrative Officer of Budhur village. However, there are no details furnished by the first respondent in respect of these two cases as to the location of the property or the basis on which they have come to a conclusion that these two petitioners are ineligible for grant of house site patta, as they already own houses. We find the reasons for rejection in these two

cases to be vague. This calls for further enquiry in these two cases so as to ascertain the truth and these two petitioners should be afforded an opportunity so that they would be in a position to put forth their plea and establish that they do not own any house or property in any other place. However, the enquiry cannot be commenced in the abstract, since these two petitioners have not taken a categorical stand in the Writ Petitions that they do not own any house at Pondicherry/Madhavaram, but their plea is that the details have not been furnished, the survey number, the location has not been disclosed and the finding is based on hearsay.

13. In our view if the petitioners have to be afforded an opportunity, they at the first instance should make a declaration before the first respondent that they do not own any house property or property either in Pondicherry/Madhavaram or elsewhere. The declaration should also state that their respective spouse also does not own any property and they would fall within the parameters prescribed by the Government for being eligible for grant of free house site patta. On such solemn declaration being filed by these two petitioners, the first respondent shall direct an enquiry to be done, verify the details and after affording an opportunity of personal hearing to the petitioners decide the matter afresh. In the event these petitioners fail to furnish such a declaration, then the benefit of this order will not enure to the petitioners and the Writ Petitions will also suffer the same fate as that of the other 12 petitions and would be automatically dismissed.

14. In the result,

(i) W.P.Nos.32225 to 32235 & 31881 of 2015 are dismissed.

(ii) W.P.Nos.32224 and 32236 of 2015 are allowed and the impugned orders are set aside, insofar as the two petitioners and the matter is remanded for fresh consideration to the first respondent. The said two petitioners shall file a solemn declaration before the first respondent within a period of two weeks from the date of receipt of a copy of this order, declaring that they or their respective spouse do not own lands in Pondicherry/Madhavaram or in other place or places. On such declaration being filed, the first respondent shall cause an enquiry to be conducted to ascertain the facts and thereafter afford an opportunity of personal hearing and pass fresh orders on merits and in accordance with law expeditiously. If the petitioners fail to furnish the solemn declaration as directed above, within the time prescribed, the benefit of this direction

shall not enure to the petitioners and the Writ Petitions would stand automatically dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

pbn

s/d-

Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar

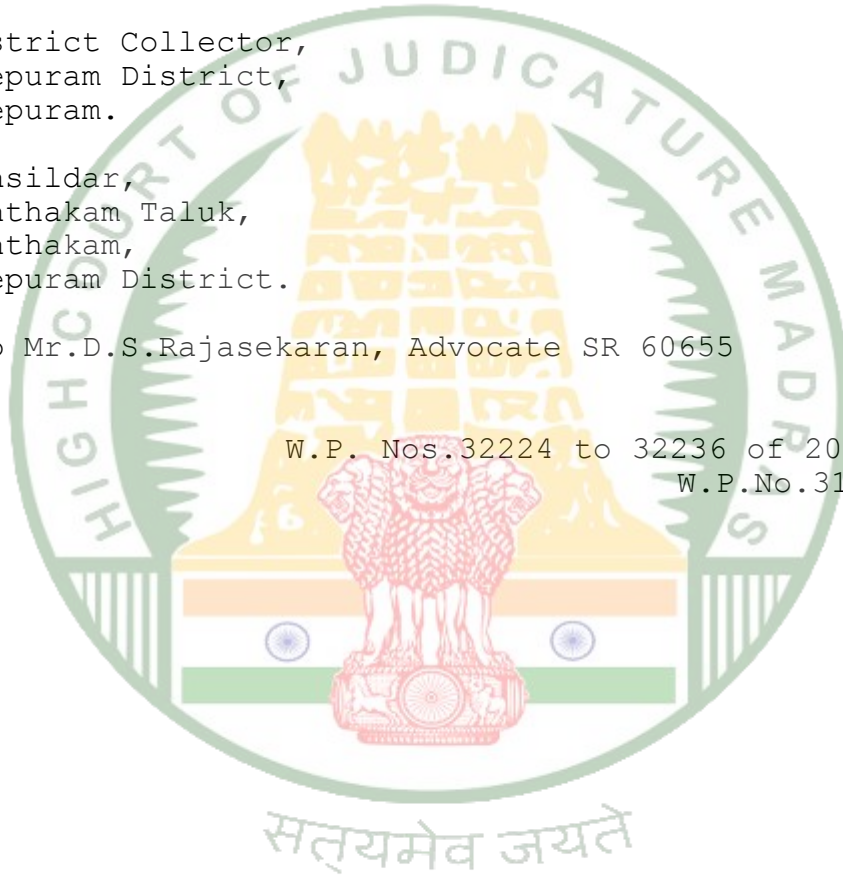
To

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Tahsildar,
Maduranthakam Taluk,
Maduranthakam,
Kancheepuram District.

+ 2 ccs to Mr.D.S.Rajasekaran, Advocate SR 60655

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W.P. Nos.32224 to 32236 of 2015 &
W.P.No.31881 of 2015



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