



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Petition (MD) No.10468 of 2016

Mrs.G.Mary Jennie

... Petitioner

Vs.

1.The District Collector,
O/o. The District Collector,
Nagercoil, Kanyakumari District.

2.District Revenue Officer,
O/o. The District Revenue Officer,
Nagercoil, Kanyakumari District.

3.Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Pathmanapuram, Thakkalai,
Kanyakumari District.

4.Thasildhar,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the Respondents herein to make necessary changes in the revenue records and assign the lands in Survey No.607/3, 606/1 in Kollamcode Village, Vilavancode Taluk, Kanyakumari District, within the time frame stipulated by this Hon'ble Court.

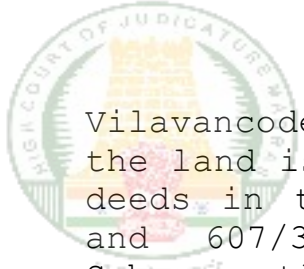
For Petitioner : Mr.T.Aswin Rajasimman
For Respondents : Mr.J.Gunaseelan Muthiah
Government Advocate

O R D E R

Heard both sides.

2.By consent, the main writ petition itself is taken up for final disposal.

<https://hcservices.ecourts.gov.in/hcservices/>
3.According to the petitioner, she is owning lands in Survey Nos.606/1, 606/2, 606/3, 607/3 at Kollamcode Village,



Vilavancode Taluk, Kanyakumari District and the total extent of the land is 74 cents and the same was purchased by her by two sale deeds in the years 1964 and 1968 respectively. Survey Nos.606/1 and 607/3 were classified as assessed waste dry lands. Subsequently, she is residing in the survey lands by constructing a house and by planting several trees such as coconut, jack fruit and by digging a well for the purpose of irrigation. The categorical case of the petitioner is that she is in continuous peaceful possession and enjoyment of the aforesaid extent of 74 cents for a quite long time and is regularly paying tax to the revenue authorities. She had applied for assignment of patta before the second respondent/District Revenue Officer, Kanyakumari District and the same was not considered. However, the residents near to the survey land of the petitioner were assigned patta as it is assessed waste dry land. Further, certain people who purchased pathless pieces of land around her Survey Nos.606/1, 606/2 & 3 and 607/3, claimed right of pathway to reach their properties and representations were made to the first respondent/District Collector, Kanyakumari District and consequently a Show Cause Notice was issued to her and explanation was sought with regard to the acquisition of the Survey Nos.606/1 and 607/3. Constrained by the same, she filed a Civil Suit in O.S.No.359 of 1993 on the file of the II Additional District Munsif and during the pendency of the suit, she arranged pathway for those who claimed pathway to reach their lands through her Survey Nos.606/1, 606/2 & 3 and 607/3.

4.The plea taken on behalf of the petitioner is that the trial Court granted order of injunction restraining the respondents from acquiring the Survey Nos.606/1 and 607/3 without following the due process of law. However, the trial Court failed to entertain the prayer with respect to declaration of the Survey Nos.606/1 and 607/3 as prayed for by her. Therefore, she was constrained to prefer an Appeal in A.S.No.93 of 2002 before the Sub Court, Kuzhithurai at Kanyakumari District, and after contest the first appellate Court passed a judgment granting the relief of declaration in her favour on a condition to deposit an amount twice the market value of land in Survey Nos.606/1 and 607/3 to the Government and on such deposit it directed the respondents to assign the Survey Nos.606/1 and 607/3 in her favour. Further, she had remitted a sum of Rs.87,674/- through Challan No.752454 dated 05.03.2007, before the Learned II Additional Munsif, Kuzhithurai as directed by the Sub Court, Kuzhithurai. In spite of the said deposit made by the petitioner and also several representations made by her, still the respondents have not made any steps to assign the lands in Survey No.606/1 and 607/3 in her favour. Hence the petitioner has filed the present writ petition seeking an order of this Court, directing the respondents to make necessary arrangements to assign the lands in Survey Nos.607/3, 606/1 in Kollamcode Village, Vilavancode Taluk, Kanyakumari District within the time determined by this Court.



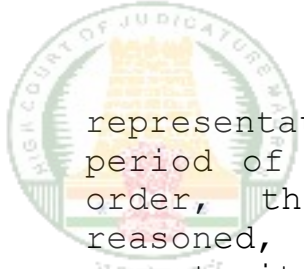
5. It is not in dispute that the judgment passed in A.S.No.93 of 2002 by the Learned Sub Judge, Kuzhithurai, Kanyakumari District, between the parties has become final, conclusive and binding. In fact in the said judgment, the respondents were directed to assign the subject Survey Nos.606/1 and 607/3 in favour of the petitioner on the deposit of the amount as directed by the Court of law. Therefore, it is quite evident that the respondents are duty bound to assign the property in favour of the petitioner as per the judgment of the first appellate Court dated 05.01.2006, passed in A.S.No.93 of 2002.

6. Per contra, it is the submission of the Learned Government Advocate that the petitioner is not entitled to the relief of change of entries in the Revenue Records in respect of the lands in Re-Survey Nos.606/1 and 607/3 of Kollemcode Village of Vilavancode Taluk as she has not complied with the requirements stipulated in the order of Sub Court, Kuzhithurai. Further, the lands in R.S.Nos.606/1 and 607/3 are Government Poramboke lands set apart for public utilities and that the petitioner has not purchased the Government land and the said land has not been assigned to her by the Government. Also that the petitioner is not in possession of the entire fields in R.S.No.606/1 and 607/3. Apart from that, a public pathway is passing through the land.

7. The core contention advanced on behalf of the respondent is that if the entire fields in the above Survey Numbers are assigned to the petitioner, it will jeopardise public interest and further the petitioner and her husband, who were Government servants have violated the Tamil Nadu Government Servants Conduct Rules, 1973. Further more, the petitioner is not in need of the entire field in Re-Survey Nos.607/3 and 606/1.

8. The Learned Government Advocate projects the argument that no proceedings were initiated by the Court to fix the market value and such remittance of Rs.87,674/- by the petitioner is not proper and in this regard the unilateral action of the petitioner is not to be appreciated. Further more, the claim of the petitioner in respect of the title, namely, the relief of declaration on the ground of adverse possession was rejected by the Sub Court, Kuzhithurai.

9. On a careful consideration of respective contentions and also this Court taking note of the divergent stand taken on behalf of the respondents and also this Court keeping in mind that the petitioner had addressed a detailed representation dated 23.02.2016, to the respondent Nos.1 to 4 in the subject matter in issue, namely, to hand over the lands which are in her enjoyment, at this stage, this Court, without expressing any opinion on the merits of the contents of the representation of the petitioner, dated 23.02.2016, simpliciter, in the interest of Justice and Fair Play, directs the respondents, to look into the



representations of the petitioners dated 23.02.2016, within a period of two weeks from the date of receipt of a copy of this order, thereafter, the respondents are directed to pass a reasoned, speaking order on merits (by affording necessary opportunity to the petitioner and others concerned, in the subject matter in issue by adverting to the principles of Natural Justice), within a period of three weeks. The petitioner is required to lend her assistance and unstinted co-operation to the respondents, so as to enable them to dispose of her representation dated 23.02.2016, within the time determined by this Court. In case, the respondents are in need of any copy of document(s)/record(s), then it is incumbent on the part of the petitioner to supply the same to the respondents, and soon after receipt of the said document(s)/record(s), the respondents are directed to pass necessary orders based on the representation of the petitioner dated 23.02.2016, within the time determined by this Court as afore stated.

10. With the aforesaid observation(s) and direction(s), the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
O/o. The District Collector,
Nagercoil, Kanyakumari District.
2. District Revenue Officer,
O/o. The District Revenue Officer,
Nagercoil, Kanyakumari District.
3. Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Pathmanapuram, Thakkalai,
Kanyakumari District.
4. Thasildhar,
Vilavancode Taluk,
Kuzhithurai, Kanyakumari District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 40570

SJ

<https://hccs.courts.gov.in/hccs/2016> : 4P/6C

Writ Petition (MD).No.10468 of 2016
28.07.2016