

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2017

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.17368 of 2014

D.Thangamani

... Petitioner

Vs

1. The Secretary to Government
Revenue Department
Secretariat, Fort St. George
Chennai - 600 009.
2. The District Collector
Cuddalore District.
3. The District Revenue Officer
Cuddalore District.
4. The Revenue Divisional Officer
Cuddalore District.
5. The Tahsildar
Kurinjipadi.
6. The Village Administrative Officer
Kurinjipadi.
7. Vanitha
8. Kausalya
9. Vijaylaxmi
- 10.Amsa
- 11.Anjalai
- 12.Viji

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus calling for the records of the 2nd respondent with reference to his order in Na. Ka. V2. 86588/2013, dated 5.8.2013, quash the same and direct respondents 1 to 6 to remove the encroachments made by respondents 7 to 12 in Survey No.143/12 to an extent of 0.22.5 hectares in Ellappanpettai Mathura Muthukrishnapuram Village,

Kurinjipadi Taluk, Cuddalore District and cancel the pattas issued to respondents 7 to 12. (Prayer amended as per Order dated 23.09.2014 in M.P.Nos.3 & 4 of 2014 in W.P.No.17368 of 2014)

For Petitioner : Mr.Abdul Majeed for
M/s.G.Sumitra

For Respondents : Ms.Vasudha Thiyagarajan
Additional Government Pleader
for respondents 1 to 6
Mr.V.S.Sivasundaram
for R7 to R12

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner claims to be in possession of lands in S.No.148, Muthukrishnapuram Village, Kurinjipadi Post and Taluk and alleges encroachment of panchayat road by respondents 7 to 12, which has been given recognition and legality by issuance of pattas to them. The petitioner is aggrieved by the impugned order passed by the District Collector/second respondent dated 5.8.2013 conferring such rights on the private respondents.

2. It is not in question that the pattas issued to private respondents 7 to 12 is in respect of land which was earlier the village panchayat road, but was reclassified as Natham and then the pattas issued. In this behalf, reliance has been placed by the respondent authorities on G.O.Ms.No.142 of the Revenue Department, dated 25.3.2013 to the effect that the lands which are not required by the Government and enjoyed by individuals for more than five years may be granted patta on examination of a Committee consisting of Divisional Revenue Officer and officials of the concerned department and resolution passed by the Panchayat. It is in pursuance thereto the power is stated to have been exercised keeping in mind the provisions of Section 125(2) of the Tamil Nadu Panchayats Act, 1994. The provision reads as under:

"Section 125. Vesting of public roads in Village Panchayat.-

(1) All public roads in any village (other than roads which are classified by the Government as National Highways or State Highways or as major district roads or as Panchayat Union Roads) shall vest in the Village Panchayat together with all pavements, stones, and other materials thereof, all works, materials and other things provided

therefor, all drains, drainage works, tunnels and culverts whether made at the cost of the Village Panchayat or otherwise, in, alongside or under such roads, and all works, materials and things appertaining thereto.

(2) The Government may, by notification, exclude from the operation of this Act any such public road, drain, drainage work, tunnel or culvert and may also modify or cancel such notification."

(emphasis supplied)

3. The private respondents seek to state that they have been in occupation of the area for more than 30 years and it is after considerable endeavour that they have been given the pattas where small village huts exist. It is also submitted by producing photographs that there is a village road which is paved and exists and thus it is not as if there is any absence of road. It is also pointed out to us that before the benefit is granted under the government order, the five years continuous occupation is mandatory and that being the position, the petitioner never objected to that occupation earlier.

4. On the other hand, the learned counsel for the petitioner submits that the power has been illegally exercised and village panchayat road cannot be converted into natham for purposes of grant of patta. It is also submitted that nowhere does the impugned order say that the private respondents have been in continued occupation for more than five years. On our query, the learned counsel for the petitioner is not able to point out any averment in the petition qua the period for which the private respondents have been in occupation.

5. On hearing learned counsel for the parties, we are of the view that normally there should not be any conversion of a village panchayat road to some other use like natham land and then pattas be issued. This would be contrary to the planning for the village panchayat. However, in the facts of the present case, we are faced with a situation where nobody objected to the continuous occupation of the private respondents and there is an existing village panchayat road. The photographs produced before us substantiate this position and it is quite apparent that it is a small village with a road running through it. We reproduce hereunder the photographs for reference:



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It is apparent that it is a small village with basic ground construction and access is given through a village road of sufficient width and it is not a case where obstruction is caused to the access of the land of the petitioner, making his land inaccessible.

6. In the given facts of the case, thus, we are not inclined to interfere with the impugned order, which is an exercise of discretion of the Collector as per the government order dated 25.3.2013 read with Section 125(2) of the said Act.

The petition is accordingly dismissed. No costs. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary to Government
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Chennai - 600 009.

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Cuddalore District.

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4.The Revenue Divisional Officer
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5.The Tahsildar
Kurinjipadi.

6.The Village Administrative Officer
Kurinjipadi.

+1cc to Mr.G.Sumithra, Advocate, S.R.No.394

+1cc to Mr.V.S.Sivasundaram, Advocate, S.R.No.550

+1cc to the Government Pleader, S.R.No.809

W.P.No.17368 of 2014

RJ(CO)
CA(11/01/2017)



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