

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM

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

W.P.No.2819 of 2017

P.Chandramurthy

... Petitioner

Vs.

1. The Principal Secretary and
Commissioner of Survey and Settlement
Chepauk, Chennai-5.
2. The Assistant Settlement Officer
Office of the Commissioner of
Survey and Settlement
Chepauk, Chennai-5.
3. The District Collector
Salem.
4. The District Revenue Officer
Salem.
5. The Revenue Divisional Officer
Salem.

... 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 impugned orders of the (i) 2nd respondent dated 19.2.1975, (ii) 5th respondent vide Mu.Mu.4540/2016-A3, dated 7.9.2016 and (iii) 3rd respondent in Na.Ka.No.29042/2016 (K4), dated 31.10.2016, to quash the same and further direct the 3rd respondent to restore the patta of the petitioner's property to an extent of 37 cents in respect of land comprised in Survey No.123, Block No.20, Ward A of Hasthampatti Village, Salem.

For Petitioner

: Mr.Ashok Menon
for M/s.S.Govindraman

For Respondents

: Mr.T.N.Rajagopalan
Special Government Pleader

ORDER

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

The petitioner is the son of Poosari Gounder, who claims to have patta in respect of 37 cents of land since 24.1.1973. However, action for encroachment on the land based on the same being water body was sought to be taken and in the proceedings held before the Revenue Divisional Officer/fifth respondent, an order was passed on 7.9.2016 rejecting the case of the petitioner. The finding recorded is that the Assistant Land Settlement Officer had ordered removal of the patta in favour of Poosari Gounder as far back as 19.2.1975. We may note that the patta was given only on the basis of having occupied government land. The order also records that there has been further sub-division of the land which was also not permissible.

2. The Collector/third respondent has passed a separate order dated 31.10.2016 arising from proceedings under Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905. There also, while dealing with the case of the petitioner, it was opined that the pattas were incapable of being transferred and thus the alleged sub-division, including in favour of the petitioner during the life time of his father, was also not permissible. This is apart from the fact that the patta was cancelled in respect of 37 Cents on 19.2.1975 by the Assistant Land Settlement Officer as the area was classified as Eri Poramboke.

3. In the status report filed in W.P.No.36431 of 2016, it has been stated qua this property that the action for demolition and removal of the encroachments were taken on 2.2.2017, 3.2.2017 and 4.2.2017 and the petitioner has been evicted. Photographs have also been placed on record.

4. The petitioner, by the present petition, now seeks to assail the cancellation of the patta, the order passed by the Revenue Divisional Officer/fifth respondent as also the order passed by the District Collector/third respondent.

5. Insofar as the cancellation of patta is concerned, the petitioner really has no locus standi during the life time of Poosari Gounder (alive). Further, the patta was subject to restriction against any transfer or sale. Poosari Gounder never challenged the order of cancellation of patta.

6. The respondents have taken action in accordance with law for removal of the structures built on Eri Poramboke and that has also been implemented by removal of encroachments. It appears the only thing required to be done is that the rubble is removed and the area is protected.

We, thus, find no ground to interfere under Article 226 of the Constitution of India and, accordingly, dismiss the petition. No costs. Consequently, W.M.P.Nos.2755 and 2756 of 2017 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Secretary and
Commissioner of Survey and Settlement
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4. The District Revenue Officer
Salem.
5. The Revenue Divisional Officer
Salem.

+1cc to Mr.S.Govindaraman, Advocate, S.R.No.7268
+1cc to the Government Pleader, S.R.No.7496

W.P.No.2819 of 2017

GJ(CO)
CA(13/02/2017)

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