

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.31724 of 2003

Murugesh

... Petitioner

vs.

1. The Special Commissioner and Land Administrative Commissioner, Chepauk, Chennai 600 005.
2. The District Collector, Coimbatore District.
3. The Tahsildar, Coimbatore North Taluk, Coimbatore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records in respect of the impugned order Pa.Mu.No.47195/98/A1, dated 23.09.2002, passed by the 2nd respondent and the consequent appeal R.C.No.3/45534/2002, dated 15.07.2003 passed by the 1st respondent and quash the same and direct the respondents to grant patta in respect of lands measuring about 60 cents situated at S.F.No.59/2, of Sarkar Samakulam Village, Coimbatore North Taluk, Coimbatore District.

For Petitioner : Mr.P.Wesley Isaac

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with the present Writ Petition seeking to quash the impugned order passed by the 2nd respondent/District Collector, Coimbatore vide Pa.Mu.No.47195/98/A1, dated 23.09.2002, and the consequent order passed by the 1st respondent/Special Commissioner and Land Administrative Commissioner, Chepauk, vide R.C.No.3/45534/2002, dated 15.07.2003 and for a consequential direction to the

respondents to grant patta in respect of lands measuring about 60 cents situated at S.F.No.59/2, of Sarkar Samakulam Village, Coimbatore North Taluk, Coimbatore District.

2. According to the petitioner, he is in possession of the land measuring an extent of 60 cents in S.F.No.59/2 of Sarkar Samakulam Village, Coimbatore North Taluk, which was assigned to him by the District Revenue Officer, Coimbatore, vide proceedings dated 06.10.1965. The case of the petitioner is that he made a representation to the 3rd respondent/The Tahsildar, Coimbatore North Taluk, Coimbatore seeking grant of patta in respect of the said land, but, the same was not considered. Hence, the petitioner filed a Writ Petition in W.P.No.12624 of 1998 before this Court seeking a direction to the respondents therein to consider and grant patta to him in respect of the land in S.F.No.59/2 and not to interfere with the possession and enjoyment of the land assigned to him and this Court, passed an order on 24.07.2001 directing the respondents therein to consider and grant patta to the petitioner in respect of the land assigned to him.

3. Pursuant thereto, the petitioner submitted a representation to the 2nd respondent along with the assignment order seeking grant of patta to the land assigned to him. But, the 2nd respondent passed an order on 23.09.2002 that the land in question cannot be assigned to the petitioner in view of the ban imposed by the Government. Aggrieved by the said order, the petitioner preferred an appeal to the 1st respondent herein, who vide order, dated 15.07.2003, dismissed the appeal. Challenging the same, the petitioner is before this Court.

4. Heard the learned counsel on either side and perused the case papers available on record.

5. According to the learned counsel for the petitioner, the land in question is not a water body and there are no chances of water stagnating in the said land. It is his contention that the petitioner is in possession of the land and the act of the respondents in dispossessing the petitioner from the said land is incorrect.

6. In the counter filed by the respondents, it is stated that an extent of 5.15.5 Hec. in S.F.No.59/2 in S.S.Kulam Village of Coimbatore North Taluk is classified as 'Vari' in Revenue Records, out of which, an extent of 0.60 acres of Land was assigned to the petitioner, at free of cost, vide Proceedings in D.Dis 206/65, dated 06.10.1965 of the District Revenue Officer, Coimbatore, based on the petitioner's encroachment in the said poramboke land, for cultivation purpose

under B.Memo No.3861/70. According to the respondents, the petitioner failed to get Land Assignment Patta in his favour within the stipulated time. Hence, the Transfer proposals for change of classification of Government Poramboke from 'Vari' to 'Assessed Waste' could not be initiated in time, due to which, the validity of land assignment in favour of the encroacher ceased to be in existence.

7. Pursuant to the order of this Court in W.P.No.12624 of 1998, the the District Revenue Officer, Coimbatore, recommended issuance of patta in favour of the petitioner. The above said land transfer proposals were scrutinized and field inspection was made by the DRO, Coimbatore on 21.06.2002. During the personal inspection of the above field by the District Revenue Officer, it was noted that the proposed land was lying vacant, that it was abutting the Village road and there were thorny bushes in the land. It was ascertained that rain water will stagnate in the land during rainy season, that the petitioner has got 1.81.5 hec. of patta land adjacent to the proposed land in S.F.No.52/2, etc. and that the petitioner has sold out 0.40.5 hec. of lands by converting the same into house sites in S.F.Nos.49/1A & 49/1D during the past. The respondents further clarified in the counter that there is a ban for assignment in water course poramboke and therefore, the request of the petitioner was rejected vide Collector's proceedings in D.Dis.47195/98 B1, dated 23.09.2002.

8. Admittedly, the petitioner's encroachment in 'Vari' poramboke land lies in S.F.No.59/2 of S.S.Kulam Village, which is classified as 'Vari' in Revenue records and this encroachment registered in B Memo has been deleted during F.1412. The so-called assignment dated 06.10.1965 granted in favour of the petitioner can be considered only as a permission to enter the field and it cannot be considered as a patta. No one muchless the petitioner can be allowed to claim patta, encroach and utilize the field. When the proposed land is classified as 'Vari' and 'Kuttai' and that is not fit for cultivation, the contention of the respondents that it cannot be assigned to the petitioner cannot be interfered with. Merely because there is an assessment order as early as in the year 1965 to enter the Kuttai water body, does not mean that a clean chit has been given to the petitioner to encroach the water body.

9. Hence, I find that there is no basis in granting the relief sought by the petitioner. It is made clear that encroachments, if any, in the water body needs to be removed within a period of one month from the date of receipt of a copy of this order and a detailed report shall be sent to the Registrar General of this Court on the action taken by the

respondents. If encroachments are not removed within the time stipulated by this Court, disciplinary action shall be initiated against the officials, who are responsible for complying with the directions of this Court.

This Writ Petition is dismissed with the above observation. No costs. Consequently, connected W.P.M.P.No.38513 of 2003 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Special Commissioner and
Land Administrative Commissioner,
Chepauk, Chennai 600 005.
2. The District Collector,
Coimbatore District.
3. The Tahsildar,
Coimbatore North Taluk,
Coimbatore District.
4. The Registrar General
High Court. Madras
5. The Assistant Registrar,
Legal Cell,
High Court, Madras.

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Order in
W.P.No.31724 of 2003

SS (CO)
CU (29/08/2017)