

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.35700 OF 2003
W.M.P.No.43386 of 2003

Kaliammal

...Petitioner

..vs..

1. The District Collector,
Pudukkottai District.
2. The Revenue Divisional Officer,
Pudukkottai.
3. The Tahsildhar,
Taluk Office, Manamelgudi,
Avudaiyarkoil Taluk,
Pudukkottai District.Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent in B.M.No.1/2003, F-1413, dated 28.11.2003 and quash the same as illegal and consequently direct the first respondent to issue Patta to the petitioner.

For Petitioner : Ms.D.Kalai Selvi

For Respondents : Mr.K.Ravi kumar,
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the third respondent in B.M.No.1/2003, F-1413, dated 28.11.2003 and quash the same as illegal and consequently direct the first respondent to issue Patta to the petitioner.

2. The short facts, which are required to be noticed for the disposal of this Writ Petition are as follows:

The Petitioner claims to be a resident of Vettivayal Village, Avudaiyarkoil Taluk, Pudukottai District and she had been with her father in that Village for more than 20 years and thereafter with her husband for more than 5 years. It is the claim of the Petitioner that, her father originally and subsequently herself occupied the Government Poramboke land situated at Survey No.43/1, where they constructed a small house for dwelling purpose and in that house, they have been living for several years. The said place, according to the Petitioner, is 100 metres away from the Lake called Kuruthangudy Lake. It is the further case of the Petitioner that, not only the Petitioner and her family, but also a number of persons and families had similarly encroached or occupied the Government Poramboke lands, which are very adjacent to the said Lake. However, those persons who had been residing very adjacent to the Lake had been issued Patta by the Revenue Department, whereas, when such a move was made by the Petitioner and her father, they were not issued Patta.

3. It is the further case of the Petitioner that, Local Panchayat passed a Resolution stating that, the occupation on the part of the Petitioner in the Government Poramboke land in no way affected the Panchayat and therefore, the continuous occupation of the Petitioner can be permitted.

4. On the strength of the said Panchayat Resolution and also comparing with the other similarly placed persons, who had been given Patta by the Revenue Department, it is the case of the Petitioner that, she alone should not be singled out and therefore, she should have been given Patta.

5. While that being the position, the 3rd Respondent issued a notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 i.e. Act 3 of 1905 on 28.11.2003 directing that the Petitioner shall vacate the encroached portion immediately.

6. Aggrieved over the said Notice issued by the 3rd Respondent dated 28.11.2003, the Petitioner has filed this Writ Petition with the aforesaid prayer.

7. I have heard the learned counsel for the Petitioner, who would submit that the Petitioner is not the only person, who is in occupation of the Government land in that Village. Several such persons have occupied the Government land, where they have constructed houses and permanently residing there. Some of them had already been given Patta by the Revenue

authorities and therefore, same gesture can be shown to the Petitioner and her family also.

8. However, the learned Additional Government Pleader appearing for the Respondents would submit that, in respect of the very same property, the father of the Petitioner had filed a Writ Petition in W.P.No.35683 of 2003 and when the said Writ Petition came up for hearing, no one had appeared and therefore, it was dismissed for default. Subsequently, when the Restoration Petition was filed and when it was taken up for hearing, the learned Judge, who heard the matter, gave a direction to the Respondents therein to evict the Petitioner in that Writ Petition immediately and report before this Court.

9. Pursuant to the said directive issued by this Court, removal of encroachment drive had been undertaken in that Village, with the result, the entire occupation of the Petitioner's family had been evicted from the Lake Poramboke land and in this regard, the learned Additional Government Pleader has filed Photographs showing the eviction drive undertaken by the Revenue people. The Learned Additional Government Pleader also has filed the Revenue Records to show that, the S.No.43/1 is 'Eri Poramboke' land, as it denotes the land as under 'Kuruthankudy Eri' (Kuruthankudy Lake).

10. By relying upon the said document, the learned Additional Government Pleader would submit that, since it is admittedly a Poramboke land according to the Petitioner and the land in question is a Lake or Tank Poramboke land, therefore, the question of giving any Patta to anyone including the Petitioner does not arise.

11. Even though, it was so claimed by the Petitioner that a number of similarly placed persons in that Village had been given Patta, the said fact is denied by the learned Additional Government Pleader.

12. Be that as it may, admittedly, the Petitioner had been in occupation of the land in Survey No.43/1 in Vettivayal Village, Avudaiyarkoil Taluk, Pudukottai District. Merely because, this Writ Petition had been filed in the year 2003 and in fact, for the same relief, the father of the Petitioner had also filed a Writ Petition in W.P.No.35683 of 2003 and both the Writ Petitions were pending and an interim order of injunction was granted by this Court, all these years, the possession of the Petitioner was not disturbed.

13. Once it was brought to the notice of this Court in the other Writ Petition, the learned Judge had directed the Revenue people to remove the encroachments. Accordingly, the

Petitioner's encroachment had been removed and Photographs showing the removal of the encroachment have been produced before this Court.

14. It was argued by the learned counsel for the Petitioner that once the said Writ Petition gets restored, she will have a chance of agitating the issue on merits, as the Revenue people have evicted the Petitioner by demolishing the construction made by her, which was a dwelling house, where the Petitioner and her family was residing for several years and therefore, in that context, the learned counsel for the Petitioner would submit that the possession of the Petitioner cannot be dispossessed in the manner, as has been adopted by the Revenue people.

15. The said submission made by the learned counsel for the Petitioner does not deserve to be accepted nor it gives any impression upon this Court.

16. It is a settled legal proposition that, wherever Poramboke land is in occupation, the Revenue people should take stringent action to evict such encroachments.

17. If such an encroachment has taken place in water course or water bodies like Lake, Tank Poramboke, Canal etc., the Revenue people must be doubly vigilant and in fact, they should not allow the people to occupy and encroach the water bodies Poramboke land.

18. In the recent years, we have come across several flood havocs in the length and breadth of Tamil Nadu, where, the main reason, according to the Experts was, the blocking of water courses by occupying the water bodies and its channels. Because of the welfare of the individuals, if this kind of menace by permitting them to occupy the Government Water Bodies Poramboke land continues, that will have a great impact and repercussion in the society, as it will create so much of ecological imbalance and that will go for a long way. Therefore, no leniency can be shown by this Court to encroachers of Government Poramboke land that too in Water Bodies.

19. Though it was claimed by the Petitioner that similarly placed persons, who are in occupation of the same Village in Water Bodies Poramboke land had been given Patta, that illegality, if any taken place, will not make the Petitioner entitled to claim the same illegal benefit. However, in this context, the learned Additional Government Pleader appearing for the Respondents submits that, in the particular Survey Number, not only the Petitioner, but some other occupants had been in encroachment and that when the drive had taken

place, the entire encroachers including the Petitioner had been removed.

20. In view of the aforesaid observation and in view of the discussion made above, the relief sought for by the Petitioner cannot be granted.

21. Since the Petitioner had already been removed, as per the earlier Encroachment Removal Drive undertaken by the Revenue Authorities pursuant to the order passed by this Court in the connected Writ Petition in W.P.No.35683 of 2003, the question of giving further time to the Petitioner pursuant to the impugned order, does not arise. Therefore, the Writ Petition completely fails and it deserves to be dismissed.

22. At the same time, this Court wants to give a direction to the Respondents herein to verify whether any similar encroachment had been available in that Village either in Water Bodies Poramboke Land, or otherwise, if so, immediate measures to remove the said encroachments, especially in Water Bodies Poramboke Land, shall be taken by the Respondents herein with iron hands.

23. At the same time, if the Petitioner makes any Application to the Revenue Authorities to consider her request for assignment of land or issuance of Land Patta under the 'Landless Poor category' in a Waste Land or any other Poramboke Land, either in the same Village or in the nearby Villages, it is open to the Revenue Authorities to consider the same and decide it on merits and in accordance with law.

With the above observations and directions, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

aeb/mbi

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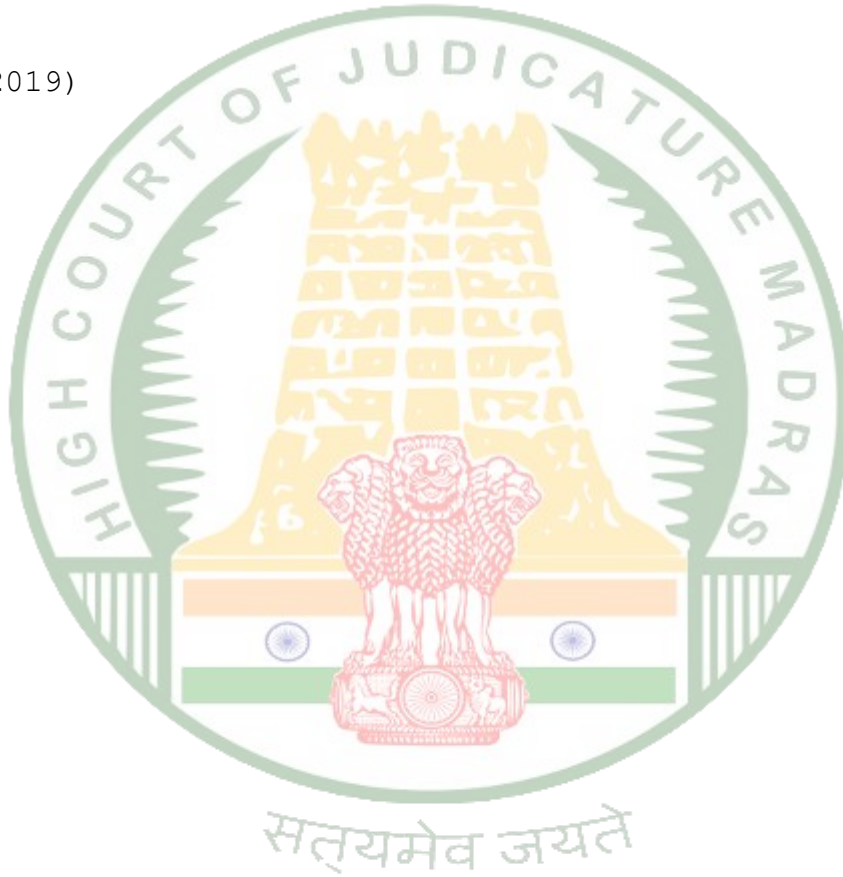
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+1cc to Mr.D.Kalaiselvi, Advocate, S.R.No. 69928
+1cc to the Government Pleader, S.R.No. 70161

W.P.No.35700 of 2003

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