

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

C O R A M

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.456 OF 2014
and M.P.No.1 of 2014

K.Arumugam

... Petitioner

Vs

1. The District Collector,
Collector Office
Vengikkal
Thiruvannamalai
Thiruvannamalai District.

2. The Tahsildar
Taluk Office
Polur
Thiruvannamalai District

3. Lalitha Muniyandi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India pleaded to issue a writ of mandamus to direct the second respondent to issue patta to the petitioner for the vacant lands comprised in survey No.109 to the extent of 50 cent and 127/1B to the extent of 45 cent situated at Pappambadi village, By Pass Road, Venmani Post, Polur Taluk, in Thiruvannamalai district.

For Petitioner ... Mr.K.L.Sekar

For Respondents ... M/s.A.Sri Jayanthi
Spl.Govt.Pleader for R1 & R2
No appearance for R3

ORDER

The relief sought for in this writ petition is to issue a writ of mandamus to direct the 2nd respondent to issue patta to the petitioner for the vacant lands comprised in Survey No.109

to the extent of 50 cent and 127/1B to the extent of 49 cent situated at Pappampabadi Village, By pass Road Venmani Post, Polur Taluk in Thiruvannamalai District.

2. The learned counsel for the petitioner states that the petitioner is in possession and enjoyment of the lands comprised in Survey numbers S.No.72 to the extent of 1.72 acres, Survey No. 127/3 to the extent of 3 acres and S.No.127/4 to the extent of 2 acres. This apart it is stated that the father of the writ petitioner has purchased the said lands by duly registering a sale deed in Sub Registrar office, Polur in Thiruvannamalai District. The lands purchased by the father of the writ petitioner was being maintained by him and after his demise the petitioner inherited the property and in peaceful possession and enjoyment of the said property. The grievance of the writ petitioner is that patta has not been granted in his favour in spite of the application submitted by him before the Tahsildar/second respondent herein. Thus the writ petitioner is constrained to move the present writ petition.

3. The learned Special Government Pleader appearing for the respondents 1 & 2 opposed the contention of the learned counsel for the petitioner by stating that the submission made in the affidavit are incorrect. The extent of 0.71.5 hectare of land at S.No.109/2 of Pappambadi Village is classified as "Government Poramboke-odai". When the petitioner tried to encroach and raise wall over a portion of the odai and ryots, the Village Administrative Officer of the village prevented the attempt of the petitioner. Except this, the petitioner has not enjoyed or in possession of the odai land in any manner. Another extent of 40.88.5 hectare at S.No.1271B is classified as "Government poramboke- Eri (irrigation tank)". The petitioner has not encroached over the land and not enjoyed in any manner so far. The petitioner has applied for assignment of 50 cents at odai poramboke and 45 cents at Eri Poramboke in his petition dated 29.07.2013. As these lands are water course Porambokes of Government, which are listed as banned category for assignment, the request of the petitioner has not been considered. Thus the petitioner has filed the writ petition to assign the above lands and accordingly the writ petition is liable to be disposed of. Further it is stated that there was two vacant lands at S.No.109-0.50 cents and S.No.127/1B 0.49 cents which were under enjoyment of one Jayarani, is not true. In fact the land measuring 0.71.5 hectare at S.No.109/2 is classified as "Government Poramboke - odai" and another extend of 40.88.5 hectares at S.No.127/1B is classified as "Eri-Government Poramboke". The above land was not under the enjoyment of the said Jayarani and she could not sell the lands to the father of the writ petitioner. The submission made by the petitioner that he encroached up the Government Poramboke lands and raise

seedlings are not correct. In fact he has not at all encroached these lands, he made an attempt to encroach upon the land at S.No109/2 which has been averted by ryots and Village Administrative Officer of the Village. As these lands are banned category for assignment the request of the petitioner has not been considered.

4. On perusal of the entire facts and circumstances, this Court is of the opinion that the water bodies and Government Poramboke lands can never be allowed to be encroached by any person. Water bodies are to be protected for the welfare of the public at large and the Hon'ble Supreme Court has reiterated that all encroachment in water bodies are to be removed and those persons are to be evicted without any delay. As far as the present writ petition is concerned writ petitioner has claimed patta in respect of the land which is classified as "Eri-Poramboke and Odai-Poramboke", both are classified as water bodies and therefore the petitioner is not entitled for grant of patta or assignment in his favour. Possession and enjoyment of the writ petitioner in respect of the property has also been denied by the respondents in their affidavit.

5. May that be.

6. The first respondent is bound to evict all encroachments in that locality by following the procedures contemplated under the provisions of the Tamil Nadu Land Encroachment Act, 1905. In this regard, the 1st respondent District Collector, Tiruvannamalai is directed to conduct review meetings within a period of four weeks from the date of receipt of a copy of this order and issue suitable orders to the subordinate officials to remove all such encroachments in that locality by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905. If any encroachment of the Government land or water bodies are identified then the authorities competent are bound to initiate action in accordance with law. There cannot be any leniency in respect of the encroachments made by the private parties in Government land and the public properties are to be protected by the officials in accordance with law. The District Collector, Tiruvannamalai in this regard shall ensure that the subordinate officials act promptly in respect of such encroachments and remove the same by following the procedures contemplated. If any negligence or dereliction of duty is found in respect of the action of the subordinate officials, then the District Collector is bound to initiate appropriate disciplinary proceedings against all such officials for their lapses, negligence or dereliction of duty. The District Collector is bound to oversee all these aspects and ensure that the water bodies and public land are protected in all respects without any deviation or dereliction.

7. Under these circumstances, the relief sought for in this writ petition cannot be granted as the writ petitioner has not established his legal right. Mere possession or enjoyment of the property will not constitute cause of action for grant of patta or assignment in favour of the writ petitioner. Thus the relief sought for in this writ petition is rejected. However, District Collector is directed to initiate appropriate action against all such encroachments and water bodies in Government Poramboke land and such an exercise shall be done within a period of four weeks from the date of receipt of a copy of this order and thereafter all action to be initiated to ensure that the water bodies are protected for the welfare of the public at large and to maintain ecology in that location. Even as per the Hon'ble Supreme Court judgment, the patta granted in respect of the water bodies the same is liable to be cancelled and such water bodies are to be preserved for free flow of water and for the benefit of the public at large.

8. With the above direction the writ petition stands dismissed. No costs. Connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The District Collector,
Collector Office
Vengikkal
Thiruvannamalai
Thiruvannamalai District.

2. The Tahsildar
Taluk Office
Polur
Thiruvannamalai District

+1cc to the Government Pleader, S.R.No.60592

W.P.No.456 OF 2014
and M.P.No.1 of 2014

RJ(CO)
GSP(24/10/2018)