

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24-08-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.679 of 2018

And

W.M.P.No.850 of 2018

A.Pavadaisamy

.. Petitioner

Vs.

- 1.The State of Tamil Nadu Additional Chief Secretary, Represented by Commissioner of Land Administration, Ezhilagam, Chepauk, Chennai-600 005.
- 2.The District Collector, District Office, Cuddalore.
- 3.The Tahsildar, Cuddalore Taluk, Cuddalore.
- 4.The District Revenue Officer, Cuddalore District, Cuddalore.
- 5.The Cuddalore Municipality, Represented by the Municipal Corporation, Cuddalore New Town.
- 6.Tmt.Navaneetha Ammal
- 7.Tmt.Nagarathinam

.. Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records, relating to the impugned order passed by the first respondent in letter No.G1/21234/17 dated 5.10.2017 and the fourth respondent in his proceedings in VI/10374/2017 dated 29.7.2017 and quash the same and consequently directing the fourth respondent to

issue patta to the petitioner for suit property comprised in T.S.No.245/1 and bearing Door No.145, Kuthoos Gurusamy Salai, Cuddalore Mudhu Nagar, Cuddalore in his possession and enjoyment for the past 14 years.

For Petitioner : Mr.A.Pavadaisamy (Party-in-Person)

For Respondents-1to4 : Mrs.A.Sri Jayanthi,
Special Government Pleader.

For Respondents-5to7 : No Appearance

O R D E R

The order of the first respondent dated 5.10.2017 and the proceedings of the fourth respondent dated 29.7.2017, are under challenge in this writ petition.

2. A further direction is sought for to direct the fourth respondent to issue patta to the writ petitioner in respect of the property comprised in T.S.No.245/1 and bearing Door No.145, Kuthoos Gurusamy Salai, Cuddalore Mudhu Nagar, Cuddalore in the possession and enjoyment of the writ petitioner for the past 14 years.

3. The writ petitioner, appearing in person, states that he purchased the property in T.S.No.245/1 situated at Cuddalore O.T. on 12.11.2003 from one Anandhan. However, he admits that he could not able to register the same through his vendor and in possession and enjoyment of the same for the past about 20 years even before the year 2003. In view of the fact that the writ petitioner is in possession and enjoyment of the land and put up a thatched house, the writ petitioner is entitled for the grant of patta.

4. The writ petitioner claims that he constructed a house and paying property tax to the Cuddalore Municipality till 9.7.2014. Subsequently, under the instigation of the respondents 2 and 3, the Cuddalore Municipality refused to receive the property tax from the writ petitioner and thereafter, the writ petitioner came to understand that the name of the respondents 6 and 7 were inserted in the patta in respect of the house site belongs to the writ petitioner.

5. The claim of the writ petitioner is that an insertion has been done by including the name of the respondents 6 and 7 in the patta pass book for which the writ petitioner is entitled. Respondents 3 and 4 had committed irregularities by inserting the name of the respondents 6 and 7. In this regard, the writ petitioner has made several representations to the District Collector as well as to the third respondent, who in turn has

rejected the contentions raised by the writ petitioner.

6. The writ petitioner claims that he is entitled for patta as per G.O.Ms.No.854, Revenue Department, dated 30.12.2006 in view of the fact that he is residing in that area for more than 10 years.

7. The writ petitioner in person states that patta has been granted in respect of the similarly placed persons, who are all residing adjacent to the house of the writ petitioner. However, the same benefit has been not extended by the authorities on extraneous considerations. Thus, the writ petitioner is constrained to move the present writ petition.

8. Even earlier, the writ petitioner had filed WP No.32055 of 2014 and this Court directed to consider the case of the writ petitioner. Once again the writ petitioner had filed WP No.5086 of 2016, again this Court directed to consider the case of the writ petitioner. The writ petitioner in person states that thrice this Honourable Court directed the authorities to consider the case of the writ petitioner and finally the respondents have rejected the same through the impugned order.

9. The learned Special Government Pleader, appearing on behalf of the official respondents, opposed the said contention of the writ petitioner in person, by stating that the writ petitioner is an encroacher. This apart, the land is classified as Seashore road, Railway line cement sheet Godown and further it is a Government poramboke "Uppanaru" for which house site assignment cannot be granted as it is an objectionable water course poramboke. The area under occupation is classified as "Water Body" and therefore, patta cannot be granted even as per the judgment of the Hon'ble Supreme Court of India. The District Revenue Officer, Cuddalore also in his proceedings dated 29.7.2017 has clarified that the land in occupation of the writ petitioner and some other persons, are classified as "Sarkar Poramboke Uppanaru". Therefore, it is a water body and as per the judgment of the Hon'ble Supreme Court of India, patta cannot be granted in respect of the water bodies.

10. This Court is of an opinion that a mere continuance in a water body or in a Government poramboke land will not constitute a cause of action for the encroachers to claim patta in their favour. The authorities competent, in this regard, have certainly failed in their duties to protect the water bodies as per the Statutes and as per the directives given by the Apex Court of India. Whenever, the authorities came to understand that the water bodies and the other Government lands are under encroachment, it is duty mandatory on their part to initiate appropriate action without causing any undue delay and by

invoking the provisions of the Tamil Nadu Land Encroachments Act, 1905. Thus, the official respondents have certainly failed in their duties to implement the law of the land in this regard.

11. The persons, who all are encroaching the public lands and water bodies are allowed to continue their encroachments for many number of years and thereby providing a hope for them for further continuance. Thus, the inaction of the Government officials, in this regard, resulted such unwarranted litigations before this Court. Encroachments in water bodies are to be evicted at the first instance and there cannot be any leniency or misplaced sympathy. Wherever the water bodies are under encroachments, the people at large are suffering heavy flood during the rainy seasons and the excess water during rainy seasons are unable to be saved and protected. Thus, the Apex Court in clear terms directed the authorities competent to protect all such water bodies so also the Government lands, which all are to be utilised for the purpose of public at large and in the interest of public. Failure on the part of the District Administration to ensure protection of such water bodies and Government lands resulted in denial of certain constitutional rights to the citizen of this Great Nation. Thus, such failures of the Revenue Officials are to be viewed seriously and the District Collector in this regard is bound to take responsibility and act swiftly without causing any undue delay.

12. The second respondent-District Collector is directed, in this regard, to conduct review meetings periodically and issue suitable orders to the Subordinate Officials to identify all such encroachments in the water bodies and other Government poramboke lands and initiate appropriate actions against all such encroachers and thereby protect the Government lands and water bodies for the interest of the public at large.

13. Thus, the District Collector is bound to ensure that all water bodies and Government poramboke lands and public properties are protected intact and the Subordinate Officials, if found committing any negligence or dereliction of duty, in this regard, to be prosecuted and suitable disciplinary actions are also to be taken against all such officials without any leniency. The District Collector has to identify all such encroachments within his jurisdiction within a period of eight weeks from the date of receipt of a copy of this order and thereafter, issue suitable orders to all subordinate revenue officials and other department officials to ensure that all such encroachers are evicted and water bodies and the Government poramboke lands are protected for the implementation of the welfare Schemes by the Government.

14. Thus, the writ petitioner, who is admittedly in occupation of a Government land, which is classified as "water body", can never claim patta in his favour. The party in person states that the similarly placed other persons are also in occupation of the water body, patta has been granted. If the said statement of the writ petitioner in person is correct, then the District Collector has to conduct an enquiry and initiate appropriate actions against all concerned and evict all those persons, who are in occupation of the water bodies and the Government poramboke lands, by invoking the provisions of the Land Encroachments Act, 1905.

15. Undoubtedly, this Court has to protect the interest of the citizens, who all are not having any other house or residence. The Government is introducing Schemes then and there to allot house sites or patta for the poor landless people. However, such Schemes are to be implemented in its terms and conditions and by providing opportunity to all similarly placed persons, without any discrimination. Whenever such Schemes like grant of free patta or house sites are introduced by the Government for the welfare of the poor landless people, then the writ petitioner and other similarly placed persons also are at liberty to submit their application and in the event of receiving any such application, the same shall be considered in accord with the terms and conditions and as per the Rules in force and without causing any discrimination. If the writ petitioner is otherwise eligible in accordance with the Scheme introduced by the Government, then the case of the writ petitioner also shall be considered on par with the other similarly placed persons.

16. However, the writ petitioner has not established that he is entitled for a patta in respect of the portion of the land now under his occupation, which is classified as "Water Body" and therefore, the relief, as such, sought for cannot be granted. In view of the fact that the writ petitioner has made a statement that large number of such encroachments are prevailing in that locality, the District Collector-second respondent is directed to initiate appropriate actions immediately and evict all those encroachments made in the water bodies and in the Government poramboke lands, within his jurisdiction by invoking the provisions under the Tamil Nadu Land Encroachments Act, 1905, within a period of twelve weeks from the date of receipt of a copy of this order.

17. With these directions, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Additional Chief Secretary/Commissioner
of Land Administration,
State of Tamil Nadu,
Ezhilagam,
Chepauk,
Chennai-600 005.

2.The District Collector,
District Office,
Cuddalore.

3.The Tahsildar,
Cuddalore Taluk,
Cuddalore.

4.The District Revenue Officer,
Cuddalore District,
Cuddalore.

5.The Cuddalore Municipality,
Represented by the Municipal Corporation,
Cuddalore New Town.

+1cc to Mr.A.Pavadaisamy (Party in Person), S.R.No.58003

+1cc to the Government Pleader, S.R.No.58406

+1cc to Mr.A.Pavadaisamy(Party in Person),S.R.No.58003 (01/10/18)

WP 679 of 2018

SPD(CO)
GSP(10/09/2018)