

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P. No.21567 of 2014
and
MP No.1 of 2013

Dhanlakshami ammal ... Petitioner

Versus

1. The Tashildar,
Kanchipuram Taluk,
Kanchipuram.
2. The District Collector,
Kanchipuram District,
Kanchipuram. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue writ of Mandamus directing the respondents to consider the representations of the petitioner dated 22.05.2013 and 18.07.2014 and issue patta to the petitioner in respect of land in survey No.296, Orikkai Village, Kanchipuram Taluk, Kanchipuram District of an extent of 1.53 acres and in survey No.292 of an extent of 1 acres 30 cents.

For Petitioner : Mr.S.N. Selvaraju

For Respondents : Mr. M. Karthikeyan,

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to consider the representations of the writ petitioner dated 22.05.2013 and 18.07.2014 and issue patta to the petitioner in respect of land in Survey No.296, Orikkai village, Kanchipuram Taluk and Kanchipuram District of an extent of 1.53 acres and in Survey No.292 of an extent of 1 acre and 30 cents.

2. The husband of the writ petitioner Mr.Vasudevan @ Vasudeva Rao was working as Teacher at Orikkai village Panchayat School, Kanchipuram Taluk, Kanchipuram as early as in the year

1970. The Orikkai village panchayat has honoured the services of the husband of the writ petitioner as a Teacher in Panchayat school in Kanchipuram and came forward to allot a poromboke land of 1.53 acres in survey No.296 and 1 acre and 30 cents in survey No.292 in Orikkai village, Kanchipuram Panchayat Union. In this regard, the Panchayat board passed a resolution on 05.12.1969 and the said resolution was forwarded to Kaveripakkam panchayat union for approval and accordingly the land was assigned. The petitioner claims that she is in possession and enjoyment of the property and cultivating the land. The husband of the writ petitioner paid the revenue tax in respect of the land which was in his possession and even now, it is under cultivation. The Revenue Inspector, Kanchipuram has issued a beam amount in favour of the husband of the writ petitioner. The writ petitioner sent a representation to the District Collector, Kanchipuram on 03.11.97 and to the Executive Engineer, PWD, Kanchipuram on 09.03.2007. However, no patta has been issued in favour of the writ petitioner inspite of the fact that she is in possession and enjoyment of the said property for long years.

3. The grievances of the writ petitioner is that the representation submitted by her for grant of patta under the provisions of the Patta Pass Book Act has not been considered at all. Thus, the petitioner is constrained to move the present writ petition for a direction.

4. The learned Additional Government Pleader appearing on behalf of the respondents strenuously opposed the contention by stating that the portion of the land in possession and enjoyment of the writ petitioner is classified as "Ari Ulavai" in revenue records. It is the water body, which is to be preserved in accordance with the provisions of the statute. Thus, the writ petitioner is not entitled for grant of patta under the provisions of the Patta Passbook Act. Section 3 of the Patta Passbook Act enumerates that an owner of the land alone is entitled to get Patta Passbook under the Act. It is the pre-condition under the provisions of the Act that the person who submits an application for grant of patta should establish that she is the owner of the property.

5. Thus, the writ petitioner has not established the fact that she is the owner. Petitioner is in possession of the water body, which belongs to the Government which cannot constitute a ground to claim patta in her favour.

6. This Court is of an opinion that the water body and water resources are to be protected in the interest of public at large. Encroachments in water bodies and water resources are

infringing the right of all other citizens in general. Article 21 of the Constitution of India ensures right to life. Water is life. Providing water to the citizens is an important duty which is to be performed by the State. There cannot be any violation in this regard. In the event of encroachments in water bodies and water resources, the same will affect the fundamental rights of all other citizens, who all are residing in that locality and therefore it is duty mandatory on the part of the State to ensure that water body and water resources are protected for the welfare of the people at large. Persons, who are infringing the right of others to be declared as grave offenders. In the event of allowing such encroachments in water bodies, the people are facing flood relates disasters and the same causes not only loss to the citizens at large and it creates a threat to life to all other citizens. Thus, it is the duty on the part of executives to maintain all such water bodies for preservation of water and for the supply of water both for drinking as well as for irrigation for the benefit of all the citizens at large. This being the factum, the encroachments made in water bodies can never be tolerated either by the Courts or by the executives. The growing instances in and around Chennai city, Kanchipuram District, Tiruvallur District and Chenglepet District that such water bodies are encroached mostly with the connivance of the officials, land mafias and local politicians. The District Collector is bound to identify all such encroachments in water bodies and water resources and evict all such encroachments by invoking the provisions under Tamil Nadu Land Encroachments Act, 1905 and Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The authorities are bound to follow the procedure contemplated under the above statues and evict all such encroaches in respect of water bodies and water resources.

7. In view of the fact that the writ petitioner is in illegal occupation of the water body, which is classified as "Ari Ulavai". The relief as such sought for cannot be considered at all and the claim of the writ petitioner is rejected. In view of the fact that the writ petitioner has encroached the water body, the following directions are issued :

a) the second respondent/District Collector, Kanchipuram District is directed to convene a review meeting of all the officials concerned within a period of two weeks from the date of receipt of a copy of this order and issue suitable orders to identify all encroachments in water bodies and water resources within his jurisdiction.

b) the second respondent/District Collector, Kanchipuram is directed to issue orders to initiate action to remove all such encroachments and to preserve the water bodies for the welfare of public at large.

c) In the event of any negligence or dereliction of duty on the part of the Government Officials / Public servants, the District Collector is directed to initiate appropriate prosecution and disciplinary proceedings against all such officials.

d) The District Collector, Kanchipuram is directed to take effective steps for the protection of all such water bodies and water resources within his jurisdiction.

8. With these directions, the writ petition stands disposed of. No costs, Consequently, connected miscellaneous petition is also closed.

Post this matter for reporting compliance after 12 weeks.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2
To

1. The Tashildar,
Kanchipuram Taluk,
Kanchipuram.

2. The District Collector,
Kanchipuram District,
Kanchipuram.

+1cc to Mr.N.Selvaraju, Advocate Sr.61162
+1cc to the Government Pleader Sr.62655

W.P. No.21567 of 2014

srg 1/10/2018