

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.40076 of 2006

1.K.Sundaram
2.K.Natesan

..Petitioners

Versus

1. The District Collector,
Salem.
2. The Tahsildar,
Salem.
3. The Commissioner
Corporation of Salem,
Salem.

.. Respondents

R3-Suomotu impleaded as per
order dated 13.12.2012 by
NKKJ in W.P.No.40076/2006.

Prayer:

The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Memorandum dated 17.07.2006 in O.Mu.No.14672/2004 (B9) of the second respondent herein to grant patta in respect of the land of an extent of 0.80 acres in T.S.No.123/4, Block-20, Ward-A, Salem in favour of the petitioners.

For Petitioners : Mr.C.Santhosh Kumar
for Mrs.AL.Ganthimathi

For Respondents : Mr.K.Ravikumar
Additional Government Pleader

ORDER

The petitioners filed a Writ Petition, challenging the order dated 17.07.2006 in O.Mu.No.14672/2004(B9) of the second respondent herein. The second respondent has rejected the representation of the petitioners for claiming patta, against which the present Writ Petition is filed.

2. The case of the petitioners is that the petitioners are brothers and they jointly purchased the property of an extent of 0.80 acres in T.S.No.123/4 part, Block-20, Ward-A, Hasthampatti Village, Salem Taluk, by way of a registered sale deed dated 04.04.1981. Since the patta is not transferred from the original owners, the petitioners made a representation for transfer of patta in their names. However, the Tahsildar rejected the patta on the ground that as per the direction of the Government, the patta should not be granted pursuant to the order of the Assistant Settlement Officer.

3. The learned counsel appearing for the petitioners would submit that the petitioners purchased the said property under a valid sale consideration on 04.04.1981. In order to get the patta issued in their favour, they gave a representation to the Assistant Settlement Officer, Dharapuram, Salem, in his proceedings dated 22.03.1992 has recommended to issue patta in favour of the petitioners. In spite of such recommendation the representation of the petitioners was rejected on the ground that the Government has directed not to take into account the recommendation of the Assistant Settlement Officer and also to cancel all the patta issued on the basis of such recommendation made by the Assistant Settlement Officer.

4. According to the counsel for the petitioners, since the petitioners have purchased the property under valid sale consideration, the second respondent ought not to have relied on the order passed by the Government and instead considered the claim of the petitioners for issuing patta in their favour. In fact, even in the year 2002, the petitioners filed O.S.No.686 of 2002 on the file of the First Additional District Munsif, Salem for a permanent injunction and got a decree on 13.12.2002. Thereafter, the petitioners filed Writ Petition before this Court in W.P.No.4394 of 2003 to direct the second respondent herein to give effect to the proceedings dated 22.03.1992 of the Assistant Settlement Officer, Salem. This Court issued a direction to the first respondent on 10.03.2003 to consider the claim of the petitioner in accordance with law. However, the second respondent rejected the representation made by the petitioners stating that it has been advised by the Government that patta should not be granted on the basis of the

recommendation of the Assistant Settlement Officer and rejected the representation by passing the impugned order on 17.07.2006.

5. Per contra, the learned Additional Government Pleader, placing reliance on the counter affidavit of the respondent, would contend that the land in question was classified as Tank Poramboke as per "A" Register maintained by the official respondents. In the Revenue Accounts it is indicated that the land is located in T.S.No.123/4 measuring an extent of 2.12 acres in Ward-A, Hasthampatti Village, Salem Taluk. This land was purchased by the petitioners notwithstanding the fact that the land is classified as a Government Poramboke under the sale deed dated 04.04.1981 and made an application to the Assistant Settlement Officer, Dharapuram, for grant of patta to the extent of 0.80 acres. The Assistant Settlement Officer, Dharapuram also, without considering the classification of the land, recommended for issuing patta to the petitioners in his proceedings dated 22.03.1992. However, the recommendation was not taken into account by the second respondent especially when the land purchased by the petitioners is classified as Tank Poramboke and in such event, the recommendation made by the Assistant Settlement Officer will have no significance.

6. I have considered the rival submissions made by the learned counsel for the petitioners as well as the learned counsel for the respondents. Admittedly, the land in question is classified as Tank Poramboke land to which the government is the paramount title holder and so, the petitioner's purchase of Government Poramboke land itself is illegal. This Court also time and again issued direction to the Revenue Authorities not to grant patta in respect of the land which are classified as water resources or water bodies.

7. The learned Additional Government Pleader appearing for the respondents referred the decision of this Court in W.P.No.20186 of 2000, wherein, the Division Bench of this Court has passed the following order in paragraph Nos.12, 13 and 14, which reads as follows:-

12. Apart from the above we may also refer to Article 51A(g) of the Constitution which makes it a fundamental duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life". This duty can be enforced by the Court, vide Animal and Environment Legal Defence Fund Vs. Union of India (supra, vide para-15).

13. In M.C.Mehta Vs. Union of India, (1997) 3 SCC 715 (vide para-10) the Supreme Court observed"-

"Articles 21,47,48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes."

14. Therefore, we direct the respondents 1 to 5 to take necessary legal steps to remove the alleged encroachments made by the respondent 6 to 12 as well as the petitioner over Odai Poramboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurchi Taluk, Villupuram District measuring 5 acres and 70 cents. Inasmuch as this writ petition has come before us by way of a public interest litigation, we take this opportunity to direct the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.

8. Apart from the above, even the second respondent rejected the representation for transferring the patta on the ground that the Government has issued an advisory not to take into account the recommendation of the Assistant Settlement Officer as a condition precedent for grant of patta. Even otherwise, as against the order dated 17.07.2006 of the second respondent, the petitioners has an remedy by way of appeal before the Appellate Authority under the Patta Pass Book Act. On perusal of the Patta Pass Book Act, it could be seen that there is a mechanism available for filing appeal before the Revenue Divisional Officer. The petitioners, without exhausting the appellate remedy available, have filed the present Writ petition under Article 226 of the Constitution of India, which is not maintainable. In such view of the matter, it is open to the

petitioners to file an appeal before the appropriate Authority as against the order of the second respondent, if they are so advised.

9. In the result, the Writ Petition is dismissed as not maintainable. No Costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dna

To

1.The District Collector,
Salem.

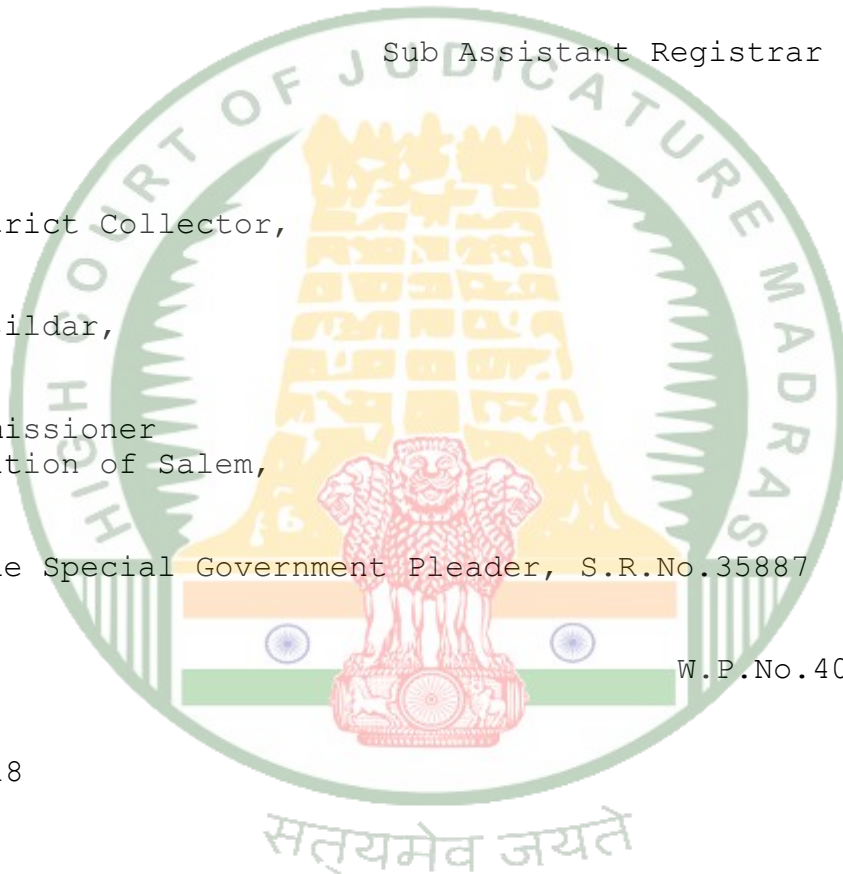
2.The Tahsildar,
Salem.

3.The Commissioner
Corporation of Salem,
Salem.

+1cc to the Special Government Pleader, S.R.No.35887

W.P.No.40076 of 2006

SVN(CO)
CS/27/06/18



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