

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.34061 of 2017 and
W.M.P.Nos. 37792 of 2017, 3492 of 2018 and 4796 of 2018

G.Raja

.. Petitioner

Vs.

1. The State of Tamilnadu
Rep. By its Principal Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009
2. The District Collector,
Salem District, Salem
3. The Sub Collector, / Revenue Divisional Officer,
Mettur Revenue Division,
Mettur Dam,
Salem District
4. The Tahsildar,
Mettur Taluk,
Mettur,
Salem District
5. The Revenue Inspector,
Mecheri Revenue Pirka
Mecheri - 636 453
Salem District
6. The Village Administrative Officer,
Mecheri Village,
Mecheri - 636 453
Mettur Taluk,
Salem District.

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus forbearing the Respondents 2 to 7 and their subordinates from interfering into Petitioner's peaceful possession and enjoyment of property

(agricultural land) in Survey No.149/1, situated at Mecheri Village, Mettur Taluk, Salem District and consequently direct the Respondents 1 to 4 to issue patta or grant assignment to the Petitioner under the special scheme of the 1st Respondent within stipulated time.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Ms.M.Lalitha for R1 to R6
Government Advocate
Mr.N.Inbanathan for R7

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner, the Learned Government Advocate for the Respondents 1 to 6 and the Learned Counsel for the 7th Respondent. By consent the main Writ Petition itself is taken up for final disposal.

2. According to the Petitioner, he is residing at Door Nos.1/180 and 1/180-1, in Survey No.25/2 situated at M.Kalipatti Village, Mettur Taluk, Salem District and doing agricultural activities. As a matter of fact, the land in Survey No.149 was sub-divided into three parts, as S.No.149/1, 149/2 and 149/3 and his grand father, namely, Ramasamy Gounder was the owner of S.Nos.149/2 and 3 and S.No.149/1 is classified as Tharisu (Kallankuthu Poramboke) in the Revenue Register and that the same has been developed by him and his family members for cultivation. Soon after demise of his grand father, his father, viz, Govindaraj and the Petitioner are carrying out cultivation for his family livelihood in the said Land and he paid 2A charges to the Revenue Authorities, as per the Revenue Standing Orders and the same is accepted by the Revenue Authorities.

3. The stand of the Petitioner is that he is in possession and enjoyment of the said land and cultivating the same for several decades, which are ancestral in nature, right from the days of his forefathers. Originally, by paying kist to the Revenue Authorities, he is in possession and enjoyment of the said land and also cultivating the same. Now, he is doing cultivation in the same land in Survey No.149/1, along with his land, there are coconut trees, other crops etc., in the said land.

4. Based on the Government Orders and Revenue Standing Orders, the Petitioner made an application before the 2nd Respondent and the same is pending. The grievance of the Petitioner is that the Government of Tamilnadu issued several orders to provide Land to the poor persons based on their

possession and enjoyment and therefore, he is entitled to get patta, as per the Revenue Board's standing orders. His possession and enjoyment of the said property is not disturbed by the Respondents for several decades and without any interference from any one of the Respondents and their subordinates, except 7th Respondent. The property is in his enjoyment and by means of payment of kist charges to the Revenue authorities, the same is received by him. In fact, the 7th Respondent has no jurisdiction or right over the property and now, the 7th Respondent is trying to disturb his possession and enjoyment by putting up 'Waste Dumping Yard'. He is in enjoyment and possession of property uninterrupted, continuous for more than statutory period and when there is no reply from the Respondents concerned for the grant of patta and the 7th Respondent due to some reasons is trying to disturb his possession without any valid reasons. Hence the Petitioner has filed the present Writ Petition. Also that, he had requested the Respondents 1 to 3 to consider his representation dated 15.11.2017, as per Government Order and Revenue Standing Orders for grant of patta, however, there is no reply.

5. Per contra, it is the submission of the Learned Counsel for the 7th Respondent that before filing of the present Writ Petition by the Petitioner, the father of the Petitioner, viz., Govindaraj, had filed a suit in O.S.No.8 of 2014 on the file of Learned District Munsif Court, Mettur for a bare injunction restraining the 7th Respondent from interfering with the peaceful possession and enjoyment by him in Survey Nos.149/1, 149/2 and 149/3 in Mecheri Village, Mettur Taluk. In the writ affidavit, the filing of the aforesaid suit by the Petitioner's father has not been disclosed and the Land, which is in alleged occupation of the Petitioner is a huge tract of land measuring 1.82.5 Hectares.

6. Further, in the counter affidavit, it is stated by the 7th Respondent that the present Writ Petition was filed by the Petitioner on 26.12.2017. However, even on 07.08.2012, the 7th Respondent / Panchayat passed a resolution bearing no.172(31) on 07.08.2012 in and by which they had proposed to transfer the land comprised in Survey No.149/1 in the name of the Mecheri Selection Grade Town Panchayat for the purpose of implementing a Scheme, i.e., Solid Waste Management Scheme. Before passing such resolution, a notice in Form A-1 was published in the Mecheri Village intimating the general public about the proposed scheme for handling Solid Waste Management in the land in Survey No.149/1, but, no individual notice was issued to any one (including the Petitioner) inasmuch as the land in Survey No.149/1 is classified as 'Tharisu' (waste Land) in the Revenue Records. Even assuming without admitting that the Petitioner and his forefathers were in occupation of the land in question,

there is no embargo for the 7th Respondent to use such land for implementing a public scheme for the benefit of the general public in the entirety. In the present days, finding a piece of land for 'Dumping Garbage' is an herculean task for Local bodies. Whenever and wherever a piece of land is identified, either the residents in the locality or the land which is in occupation of an individual where the garbage was sought to be dumped raise objections. Therefore, a field inspection on 12.12.2012 was conducted for identifying the Land for the proposed Solid Waste Management Scheme.

7. The Learned Counsel for the 7th Respondent brings it to the notice of this Court that after field inspection on 12.12.2012 and also inspecting various lands, the Land in survey no.149 was found to be more suitable one inasmuch as where there was no residential houses. In fact, the Petitioner is a trespasser, who had tress-passed into the land of the Government and it is contended on behalf of the 7th Respondent that as a trespasser, the Petitioner has no right to prevent the official Respondents from dealing with the Land in question, which is classified as Tharisu (waste land) in the revenue record.

8. The Learned Counsel for the 7th Respondent proceeds to point out that the Petitioner is in unlawful occupation of the Land in question and that the official Respondents cannot be expected to comply with the provisions of the Land Encroachment Act because of the reason that his name does not find a place in the revenue records. In any event, now, the official Respondents are contemplating transfer of the Land in Survey No.149 in the name of Mecheri Selection Grade Town Panchayat so as to enable the Panchayat to receive funds from the Government for implementing the Solid Waste Management, which is intended to benefit the public at large. Hence the funds allotted by the Government for implementation of the scheme is to be accepted at an earlier date, failing which it will cause prejudice and hardship to the Town Panchayat. The status quo order is causing much inconvenience to the 7th Respondent, in view of the fact it could not do anything to implement Solid Waste Management Scheme, as proposed by the Government and the Interim order dated 28.12.2017 is to be vacated by this Court in the interest of justice.

9. It cannot be lost sight of by any one that the compost yard is very much essential and one cannot dispense with the same, in view of the prevailing modern day context and especially keeping in view of the Solid Waste Management Scheme in mind. In this connection, this Court, aptly refers to the order dated 22.01.2018 in W.P.No.26581 of 2017 (passed by one of us, S.V.N.J.,) which speaks of importance of Solid Waste Management and Compost Yard and the same may be borne in mind by the concerned Authorities.

10. Also, it must be borne in mind that the payment of electricity charges, possession of Adhar Card, Voters Identity card, Paying to Government Authorities / Revenue Authorities, in respect of land, which is in occupation of the Petitioner, in the considered opinion of this Court cannot confer any benefit or has vested right to lay a claim in respect of the Petitioned property. When the Land in Survey No.149/1 has been identified by the 7th Respondent for the purpose of Solid Waste Management Scheme and that too the said land was identified after causing inspection to numerous lands and when the official respondents are only contemplating transfer of land in question in the name of Mecheri Selection Grade Town Panchayat, then, the Petitioner has no right to seek a direction by filing the present Writ Petition restraining the Official Respondents 2 to 7 from interfering with possession over the land in question. Further, when the Petitioner has no manner of right in the property, viz., in Survey No.149/1, where he resides along with his family members, then, his possession in land is an unauthorised one and also that it is an illegal one.

11. It is well settled principle in Law that when the Land is classified as 'Tharisu' (waste Land), then, the Petitioner cannot claim any manner of right, not even any semblance of right over the said property in question. Therefore, the authorities concerned also cannot consider the request of the Petitioner for issuance of patta in respect of Survey No.149/1. When the 7th Respondent is discharging / performing his statutory obligation as panchayat towards implementing the Government sponsored scheme for Solid Waste Management, the Petitioner, in the considered opinion of this Court is not entitled to seek any relief, as sought for in the Writ Petition. Consequently, the Writ Petition fails.

In fine, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Deputy Registrar

/true copy/

Sub Asst. Registrar

ssd

To

1. The State of Tamilnadu
Rep. By its Principal Secretary to Government,
Revenue Department,
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 6. The Village Administrative Officer,
Mecheri Village,
Mecheri - 636 453
Mettur Taluk,
Salem District
- + 1 cc to Mr.M.R.Jothimanian Advocate, SR.17080
- + 1 cc to Mr.N.Inbanathan Advocate, SR.17546
- + 1 cc to The Govt.Pleader, SR.17425

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