

In the High Court of Judicature at Madras

Reserved on	10.09.2018
Pronounced on	14.09.2018

Coram:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mrs.Justice S.RAMATHILAGAM

W.P.No.11516 of 2018 and
W.M.P. No.13453 of 2018

R.Sachidhanandham ...Petitioner

Vs.

1. The District Collector,
Collectorate,
Vengikkal
Thiruvannamalai Taluk and District
 2. The District Revenue Officer,
Collectorate, Vengikkal,
Thiruvannamalai Taluk and District
- ...Respondents

Prayer: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records relating to the order dated 06.09.2016 bearing Na.Ka.No.A2/1671/2013 issued by the 1st Respondent addressed to the Petitioner and quash the same, as arbitrary and illegal and further, direct the Respondents, their men, agents, employees, subordinates to allot the Petitioner land under the allotment of land to the landless Harijans, more particularly the land comprised in Survey Nos.78/2, 77/3 of Kilpennathur Village, Thiruvannamalai District.

For Petitioner : Mr.S.Giritharan
Mr.G.Balachandar

For Respondents : Mr.R.Udayakumar
Additional Government Pleader

O R D E R

Heard both sides.

2. According to the Petitioner, he is residing at No.822 D, 2nd Street, Vanavil Nagar, Vengikkal Post, Tiruvannamalai Taluk and District for a period of more than 75 years right from the period of his father, viz/. Rangasamy. He along with his sisters, viz., Sampooram, Kalayarasi, Gunasundari and Mangai were in occupation and enjoyment of lands in Survey Nos. 78/2, 77/3 and 78/3 of Kilpennathur Village,

Thiruvannamalai Taluk, belonging to the Government by way of encroachment. They belong to downtrodden community and initially a 'Small Hut' was put up in the said land by his father, which later was replaced by a tiny structure 50 years ago.

3. The version of the Petitioner is that he and his family members were continuously residing at the aforesaid house as no other house or land was owned by him or any of the members of his family. Since he was in occupation and enjoyment of lands in the said village, he along with two others prayed for issuance of patta for a portion of the lands from the local administration. As a matter of fact, the Chairman of the Panchayat Union, Kilpennathur passed a resolution to that effect vide Resolution no.45 dated 30.12.1975. He had obtained a electricity service connection bearing no.725 in his name in the said house from the Tamilnadu Electricity Board in the year 1985. He had paid a security deposit and he is paying the necessary electricity charges till February, 2013. He had secured water connection in his name for the said house from Kilpennathur Panchayat bearing Connection no.113. He is paying the necessary water charges for more than two decades till February, 2013 without any demur. He had paid the necessary charges for such encroachment in 1985 to the Kilpennathur Panchayat. The said Panchayat had assessed the said house to property tax and No.2652 was assigned in his name.

4. Further, on 13.12.1995 the charges were collected from the Petitioner by the said Panchayat for construction of low cost toilet in the said house. He and other members were informed that their land was allotted in the Revenue Accounts for the construction of Sub-Registrar's Office without there being any personal visit by the officials concerned. They made a representation dated 18.01.1993 to the Revenue Secretary to the Government explaining their occupation and enjoyment in the said lands coming in Survey Nos.77/3 and 78/3 of the said village and also the fact of the earlier visit of the officials and their decision to drop the same due to the conclusion that the land is not fit for any construction for Government Offices. It was mentioned in the said representation / letter that the 'Commencement of Construction' earlier through Panchayat was also stopped due to the same reason. A request was made for issuance of patta in their individual names for the said land in their occupation. In reality, the patta was issued to others, who were in occupation of the land coming under 'Kulam Poramboke' behind his house, wherein pucca construction was made against him.

5. The stand of the Petitioner is that a communication dated 17.05.1993 by means of an endorsement was received by him from the Tahsildar as a reply to their request seeking issuance of patta, mentioning that the said land was already

allotted for construction of Registrar's Office and hence, as per Government Rules, the lands in Survey Nos.77/3 and 78/3 cannot be assigned. A similar letter dated 03.05.2000 was addressed to him by the Tahsildar informing the reason for inability to issue patta to him and others individually. Later, a letter dated 24.08.1993 was sent by him to the Secretary, Revenue Department of the State furnishing Tax Assessment to the said house was made wherein Special tax was ordered to be paid.

6. The Learned Counsel for the Petitioner submits that the Petitioner was residing at Thiruvannamalai for the certain period for the purpose of education of his children. During his absence at the address mentioned in the Writ Petition, the house was in occupation of his close relative with his permission and further, they used to make a visit once in a week, when it is to be fact situation, a proceeding dated 12.02.2013 of the Sub-Registrar, Kilpennathur was issued to him and one Sampooram, wherein it was informed that it was an encroachment to a certain extent of Land in Survey Nos.77/3 and 78/3, which was allotted by the Government to have Sub-Registrar's Office and further, they were required to handover and vacate the premises within two days of such notice, since the Government Building was to be constructed there at once.

7. It comes to be known that the Petitioner through his Advocate issued a Notice dated 13.02.2013 to the Sub-Registrar requesting him to provide 15 days to give proper reply along with supporting documents, wherein instead of Sampooram and Sachidhanantham, against both of whom the said order was passed by the Sub-Registrar mistakenly due to oversight, notice was issued on behalf of Sampooram wife of Sachidhanantham. They were not served with any show cause notice from the side of any of the Respondents. Later, the Petitioner addressed representations dated 14.02.2013 to the Respondents with a request to defer from proceedings any further by narrating the facts.

8. The Petitioner was informed that the District Registrar, Tiruvannamalai had communicated to the other Respondents for taking enforcement actions, hence was forced to file W.P.No.4225 of 2013 seeking to quash the said notice issued by the Sub-Registrar, Tiruvannamalai. Even though the Writ Petition was pending and inspite of the knowledge about the pending Writ Petition, the demolition of the building in the subject premises was carried out on 19.12.2013 based on the Proceedings dated 12.02.2013 issued by the Sub-Register, which fact was informed by the District Registrar through the Counter Affidavit making untenable allegations etc.,

9. It appears that this Court passed an order on 30.04.2013 in W.P.No.4225 of 2013 by rendering a finding that the action of the Sub-Registrar in passing the Impugned Order and the consequential demolition carried out on 19.02.2013 was

a clear case of high handedness and this Court, while disapproving the action of the Sub-Registrar, granted liberty to the Petitioner to claim adequate compensation against the Officer for the loss suffered by him.

10. The Petitioner filed a Special Leave to Appeal [c] No.32774 of 2013 seeking further relief before the Hon'ble Supreme Court of India, wherein, ultimately, an order dated 10.05.2016 was passed in directing him to apply before the Competent Authority under any of the eligible scheme for allotment of land. Based on the orders passed in the Special Leave to Appeal by the Hon'ble Supreme Court, the Petitioner made a representation dated 07.06.2016 before the Respondents 1 and 2 requesting them to allot the land more particularly in the place where he was residing earlier and which is the subject matter of the present Writ Petition, under the Scheme of allotment of Land to the 'Landless Harijans/Downtrodden'

11. At this juncture, the Learned Counsel for the Petitioner proceeds to point out that the paper publication indicated that an alternative site was identified by the Registration Department for the construction of the Sub-Registrar's Office at Kilpennathur and also, he had indicated about the non-utilisation of the land by the Registration Department and as such, the Petitioner is entitled to the same place where he was residing earlier under the 'Allotment of Land to the Landless Persons'. Later, the statement was recorded from the Petitioner wherein he had stated that the backyard of the subject property was a 'Kulam Poramboke', viz., Vellakulam and those, who encroached 'Vellakulam' were granted pattas after the year 2006.

12. Continuing further, it is the contention of the Learned Counsel for the Petitioner that the 1st Respondent had rejected the Petitioner's request to allot the same subject land to him by means of an Impugned order dated 06.09.2016, which is not maintainable in law.

13. The Learned Counsel for the Petitioner forcefully takes a plea that the Petitioner is a senior citizen, aged more than 86 years and further, he is under treatment for age related ailments and he is being asked to run from pillar to post by the Respondents at this advanced age for getting allotment of the subject land.

14. The Learned Counsel for the Petitioner contends that the 1st Respondent having passed an Impugned Order is now endeavouring to construct shops and make the subject lands for commercial use and let it out to numerous persons. Moreover, the Learned Counsel for the Petitioner submits that the Impugned Order dated 06.09.2016 passed by the 1st Respondent is without due application of mind and further that, it is incorrect to state that the Petitioner had gone out of the property after 1991. Furthermore, the endorsement dated

03.05.2000 is very clear that the subject property was encroached by the Petitioner during that period of time. Also that the Notice dated 12.02.2013, which was impugned in W.P.No.4225 of 2013 was itself served on the Petitioner in the address of the subject land, which clearly establishes his possession in the subject land, much later till 2013.

15. Per contra, it is submission of the Learned Additional Government Pleader for the Respondents that the lands in Survey No.78/3 measuring 0.12 cents and Survey No.77/3 measuring 0.08 cents in Kilpennathur Village and Taluk, Tiruvannamalai District are the subject matter in the Writ Petition. The said lands were originally Government Poramboke Land. Further, it is represented that in the year 1972, the aforesaid lands were allotted to the Registration Department for construction of Kilpennathur Sub-Registrar Office. In fact, in the revenue Records of Kilpennathur Village, the aforesaid lands were registered in the name of Kilpennathur Sub-Registrar's office under Patta No.805. However, for want of funds, building construction was not taken up by the Registration Department.

16. The Learned Additional Government Pleader for the Respondents contends that the Petitioner had put up a 'Hut' which was later constructed as a 'Tiled House' and was residing there for sometime and he applied before the Revenue Authorities for assignment of his land in his favour. However, his request was rejected because of the fact that the land was allotted to the Registration Department for construction of Kilpennathur Sub-Registrar's Office. In short, the Petitioner's occupation and construction of dwelling house in the subject land is a clear case of encroachment of Government Land.

17. As a matter of fact, for obtaining allotment of funds for construction of Sub-Registrar's Office, Kilpennathur, the District Registrar, Tiruvannamalai submitted a letter to the 1st Respondent / District Collector, Tiruvannamalai District seeking permission to demolish encroachments put up over the above land, as the entire land was surrounded with 'Bushes and Karuvelam Trees'. The 1st Respondent agreed with the District Registrar's views and passed an order dated 07.02.2013 granting permission to evict all encroachments over the aforesaid land by issuing proper notice of eviction to the encroachers, hence the Sub-Registrar, Kilpennathur had issued notice dated 12.02.2013 directing the Petitioner to vacate the land by removing the encroachments within two days, failing which, he was informed that he will be evicted forcibly. But the Petitioner filed W.P.No.4225 of 2013 before this Court and in the meantime, the illegal construction put up by him in the aforesaid lands was removed on 19.02.2013. Furthermore, the Petitioner was not in physical possession of the aforesaid lands on the date of eviction, viz., 19.02.2013.

18. In this connection, the Learned Additional Government Pleader for the Respondents brings it to the notice of this Court that in the Writ Petition No.4225 of 2013 [filed by the Petitioner] an order was passed on 30.04.2013 wherein among other things it is observed as under:

"7.....As the building is demolished as on today and the land belongs to the Government, we are not inclined to quash the order now. However, we are expressing our strong disapproval of the action of the Sub Registrar and give liberty to the petitioner to file appropriate suit claiming adequate compensation for the loss sustained as well as mental agony, against the officer, who passed the illegal order of eviction and if any such suit is filed, the competent civil court will decide the claim of compensation in accordance with law, within six months."

19. The Petitioner filed S.L.P.No.32774 of 2013 before the Hon'ble Supreme Court of India, being dissatisfied with this High Court's order in W.P.No.4225 of 2013 and on 10.05.2016, the following order was passed by the Hon'ble Supreme Court, which runs as under:

" In case the petitioner is otherwise entitled, he may apply to the competent authority within a period of one month from today under any of the eligible schemes for allotment of land. In case such an application is made by the petitioner, appropriate action in accordance with law will be taken by the competent authority within a period of three months thereafter..."

20. The Petitioner projected representations dated 07.06.2016 before the Respondents seeking to allot the aforesaid lands [from which the Petitioner was evicted on 19.02.2013] on the basis that no construction has been put up by the Sub-Registrar, Kilpennathur. After conducting enquiry, the 1st Respondent / District Collector, Tiruvannamalai recorded the statements of concerned parties and passed a speaking order rejecting the Petitioner's Claim for allotment of lands in question to him. Being aggrieved over the 1st Respondent's Order dated 06.09.2016, the Petitioner has filed the present Writ Petition.

21. The Learned Additional Government Pleader for the Respondents points out that in fact, the Petitioner along with his family, his wife, son and daughter-in-law is residing at No.29, Kayithe Millath Street, Tiruvannamalai town. Their Family Card No. is 06/G/0230638, their Voter ID Cards Nos. are ALF 0074856, FCW 5690227, FCW 592774, FCW 5690292, which were registered in the aforesaid address. In fact, the Petitioner's

Adhar Card No.6638 1080 5363 was issued at his earlier residence at No.893/D, 1st Street, Vanavil Nagar, Vengikkal, Tiruvannamalai. In short, it is the plea of the Respondents that the Petitioner is not residing in the subject land. It is the clear cut stand of the Respondents that the subject land will be used only to construct Sub-Registrar's Office, Kilpennathur and the same will not be used for any other purpose than the purpose for which it was allotted to the Registration Department.

22. As far as the present case is concerned, the Petitioner had admitted that the Tahsildar issued a communication dated 17.05.1993 mentioning that the land in question was already allotted to Registration Department for construction of Sub-Registrar Office and as per Government Rules, the aforesaid lands cannot be assigned in his favour. Even the said Tahsildar, had sent a letter dated 03.05.2000 to the Petitioner informing him about the reason for non issuance of Patta to him and others.

23. There is no two opinion of a prime fact that no individual can live without the means of living, viz., the 'Means of Livelihood'. There is no absolute fetter in our constitution in regard to the deprivation of 'Life or Personal liberty'. However, the same is subject to the procedure established by Law. Further, this Court aptly points out the decision that no one has a right to make use of a public property for a private purpose without any valid authorisation. If a person uses a public property unauthorisedly, then, he becomes a 'Trespasser'. Moreover, in the English Decision Hickman V. Maisey reported in (1900) 1 Queens Bench at page 752, it is observed that 'If a person while using Highway for passage, sits down for a time to rest himself by the side of the road, he does not commit a trespass. But, if a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind the said act, the 'Pavement is an unauthorised one'.

24. It is to be remembered that the term 'Trespass' is a 'Civil Wrong'. The trespasser may be evicted forcibly, the force must be employed in a reasonable manner quite appropriate to the situation. What is essential is that a 'Trespasser' is to be provided with a reasonable opportunity to vacate / depart from the place of encroachment before taking any other coercive action against him.

25. It is to be noted that in the Impugned Order dated 06.09.2016, the 1st Respondent / District Collector, Tiruvannamalai had among other things mentioned that the Tahsildar, Kilpennathur in his report had mentioned that the Petitioner from the year 1991 had settled in Tiruvannamalai and that he is not in enjoyment of the said land. Apart from that, the 1st Respondent / District Collector, Tiruvannamalai had categorically taken a stand in his counter that the

Petitioner was not residing in the subject land on the date of eviction on 19.02.2013 and that his Family Card, Voter I.D., Wife's I.D., son and daughter-in-law I.D. Cards registered in the address at No.29, Kayithe Millath Street, Tiruvannamalai town. In fact, the Petitioner's Adhar Card was issued at his former residence No.893/D, 1st Street, Vanavil Nagar, Vengikkal, Tiruvannamalai. Suffice it for this Court to point out that the 1st Respondent had passed an Impugned Order dated 06.09.2016 after recording statement of the concerned parties and upon conducting due enquiry. Indeed, the records were perused by the 1st Respondent and a 'Reasoned Speaking Order' was passed on 06.09.2016. Besides the above, the 1st Respondent in his counter had in a crystalline fashion stated that the subject land concerned in the Writ Petition will only be used to construct Sub-Registrar office, Kilpennathur and the same will not be used for any purpose other than the purpose for which it is allotted for the Registration Department and the same is recorded by this Court.

26. In pith and substance, when the Petitioner's occupation and construction of the dwelling house in the subject Land is a clear case of encroachment upon the Government Land and when the said land was already allotted to the Registration Department for construction of Sub-Registrar's office, the said Land cannot be assigned or granted in favour of the Petitioner at any cost. Looking at from any angle, the Writ Petition sans merits.

In fine, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.
ssd

Sd/-

Assistant Registrar (CS VI)

// True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Collectorate,
Vengikkal
Thiruvannamalai Taluk and District.
2. The District Revenue Officer,
Collectorate, Vengikkal,
Thiruvannamalai Taluk and District.

+ 1 CC TO THE GOVT. PLEADER, SR 64163
+ 1 CC TO S.GIRITHARAN, ADVOCATE SR 63867

KR/4/10/18

W.P.No.11516 of 2018 &
W.M.P. No.13453 of 2018