

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19521 of 2015
and M.P.No.1 of 2015 and
W.M.P.No.6651 of 2017

1.Angammal
2.A.T.Nawinshankar
3.T.Elangovan
4.Malathi

..Petitioners

vs

1.The State of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Secretariat,
Chennai - 600 009

2.The District Collector,
Collectorate,
Salem District

3.The Revenue Divisional Officer,
Sankari,
Salem District

4. The Tahsildar,
Taluk Office,
Sankari,
Salem District

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent pertaining to the proceedings in G.O.No.189 Revenue (Ni.Mu.3(2)) Department dated 30.04.2015 and quash the same and consequently direct the respondents to assign the land situate in Survey No.202/2, Manjakkalpatti Village, Sankari Taluk, Salem District to the petitioners.

For Petitioners: Mr.P.Valliappan

For Respondents: M/s.A.Sri Jayanthi,
Special Government Pleader

O R D E R

The order impugned issued by the first respondent in G.O.No.189 Revenue (Ni.Mu.3(2)) Department dated 30.04.2015 is sought to be quashed in this writ petition.

2. The second writ petitioner has filed his own affidavit before this Court stating that the first petitioner is his mother and the petitioners 3 and 4 are his brother and sister. The second petitioner claims that his father was in occupation of the punjai tharisu land measuring an extent of 1.27 acres situated in Survey No.202/2, Manjakalpatti Village, Sankari Taluk, Salem District. The second petitioner claims that they belong to Most Backward Community. The petitioners are in possession and enjoyment of the aforesaid land and residing there by putting up two asbestos roof houses and also carrying on agricultural activities. Electricity service connection was provided to the house as well as for agricultural purposes and the petitioners are paying house tax and electricity consumption charges. The father of the second writ petitioner had planted many mango, tamarind, neem and palm trees in the said land. The land in occupation of the petitioners was classified as "Kuttai Poramboke" that lies more than 100 feet away from the bank and no perennial water is collected as even during rainy season water does not stagnate. Under these circumstances, the application was submitted seeking assignment of the said land from the Government. The third respondent / Revenue Divisional Officer recommended the case of the writ petitioners more specifically on the basis of the application submitted by the father of the second petitioner. Based on the recommendation, the petitioners and his family members moved the application for assignment with the strength of the recommendation made by the third respondent to assign the said land in favour of the petitioners. The fourth respondent / Tahsildar in proceedings dated 15.07.2004 rejected the request of the petitioners for assignment on the ground that the land was classified as "Kuttai Poramboke". Thus, the father of the second writ petitioner filed W.P.No.23179 of 2004 challenging the said rejection order and thereafter, the father of the second writ petitioner passed away on 31.12.2007. This court passed an order in W.P.No.23179 of 2004 on 05.07.2013 and the operative portion of the order is extracted as below.

"9. In view of the above, the writ petition stands disposed of with a direction to the first respondent to consider the proposal submitted by the second respondent in his letter No.F2/35571/91 dated 20.04.2001 and pass appropriate orders strictly in accordance with law after affording sufficient opportunity to the petitioners, within a period of six months from the date of receipt of a copy of this order. For any reason, if the Government changes the

classification of the said land measuring an extent of 0.49.5 hectares as "punjai tharisu", then it is open for the petitioners to make a fresh request to the Tahsildar seeking patta and if any such request is made, it is for the Tahsildar to consider the same afresh in accordance with law. It is further directed that until final order is passed by the Government as directed in this order, the possession of the petitioners shall not be disturbed, if as on today they are in possession of the property. Consequently, the connected miscellaneous petition is closed. No costs."

3. Even after the direction issued by this Court to consider the claim of the writ petitioners based on the recommendation made by the third respondent, the land was not assigned to the writ petitioners and subsequently, the fourth respondent and his subordinates interfered with the peaceful possession and enjoyment of the said land which is in occupation of the writ petitioners. On 25.05.2015, the fourth respondent made a forcible attempt to dispossess the writ petitioners. Thus, the petitioners filed a civil suit in OS.No.109 of 2015 before the District Munsif Court at Sankari for injunction and to restrain the dispossession. During the pendency, the first respondent served the order dated 30.04.2015 on 19.06.2015 rejecting the proposal submitted by the third respondent to grant assignment of the said land in favour of the writ petitioners. Thus, the writ petitioners are constrained to move the present writ petition.

4. The learned counsel appearing on behalf of the writ petitioners states that the similarly placed persons were granted with the benefit of assignment in respect of the nearby lands, more specifically in the same survey number. The said order produced is dated 30.10.2000. Since the benefit of assignment had been granted in favour of the other similarly placed persons, more specifically in the same Survey Number, the same benefit has to be extended to the writ petitioners also.

5. The learned Special Government Pleader appearing on behalf of the respondents states that the assignment in respect of the other persons were granted during the year 2000 based on the G.O.Ms.No.168 Revenue (LD-12) Department dated 27.03.2000. However, the said Government Order has been cancelled subsequently and for the past 18 years, no assignment or otherwise has been granted to any other person in respect of "Kuttai Poramboke Land".

6. Mr.K.Arul Kumar, Tahsildar, Sankari is present before this Court to assist the Special Government Pleader. The Tahsildar also clarified that no assignment has been granted in respect of any other person for the past 18 years. The

assignment order was passed in the year 2000 and the said Government Order also had been cancelled. Thus, no assignment was given as per the present Government Orders. Therefore, no assignment can be granted in favour of the writ petitioners.

7. This Court is of an undoubted opinion that assignment or allotment of a public land can never be done in a routine manner. Only on exceptional circumstances, the State shall formulate a policy for assignment of public land in favour of the private individuals based on certain criteria and in the interest of public at large. Even the State cannot assign public lands in favour of private individuals in a routine manner. Various factors and the necessity for grant of such assignment are to be considered in the light of the principles laid down under the Constitution of India and under various statutes. In all circumstances, public lands are to be utilized only for the public purposes and in the interest of the public at large. Thus, Government itself has no power to assign the land in favour of the private individuals for their personal usage in a casual manner or such individuals cannot file a writ petition for the purpose of seeking assignment.

8. Assignment of a public land can never be claimed as a matter of legal right. A mere occupation or possession of a public land by certain individuals for a considerable length of time would not confer any legal right or ownership on such individuals who all are in illegal possession and enjoyment of the public land. Only in the event of establishing any legal right in accordance with law, the writ petitioners are certainly not entitled to claim the relief as such sought for in the present writ petition. Thus, the petitioners have absolutely no locus standi to claim assignment as a matter of legal right by filing the present writ petition. Even, the land owned by the citizen of this Country are subject to Acquisition Laws in force.

9. Such being the legal principles, the present writ petition is misconceived.

10. This Court has taken note of the factual scenario prevailing in various parts of the State. The Revenue officials and some other officials serving in other Departments, on many occasions, certainly colluding with these private individuals and illegally allowing them to continue in possession and enjoyment of the Government lands for long years. It is made clear that the respective District Collectors, Revenue officials and other public officials are duty bound to initiate appropriate action for the eviction of all such encroachments under the provisions of the Tamil Nadu Land Encroachments Act, 1905 within their territorial jurisdiction.

11. The public authorities are not supposed to allow the encroacher's for long years and thereafter providing scope for these encroacher's to claim some legal rights or otherwise by filing various writ petitions or by filing civil suits before the Courts. It is duty mandatory on the part of the District administration to be vigil in respect of maintaining the public lands and if any encroachments are found, suitable and immediate actions are to be initiated by the competent authorities. The encroacher's and land grabbers in respect of public lands are to be dealt with strictly and the authorities competent can never show any leniency in respect of such encroacher's.

12. Undoubtedly, on certain occasions, humane approach may be required. Even in such circumstances, the State has to formulate a policy for providing any alternate land or alternate area only for the purpose of dwelling and to the limited extent for the purpose of leading their livelihood. Allotting or assigning vast areas of land are certainly illegal, unconstitutional and oppose to public policy. In this regard, the respective District Collectors shall conduct periodical Review Meetings with all the public officials concerned and identify the encroachment and initiate immediate actions for the eviction of such encroachment and illegal occupations. If there is any negligence or dereliction of duty for initiating action by the public officials, then the disciplinary authority is directed to initiate appropriate disciplinary action against all the public officials, who have committed the act of negligence and dereliction on duty.

13. Thus, this Court is of an opinion that the writ petitioners have not established even a semblance of legal right for the purpose of grant of relief as such sought for in the present writ petition on hand.

14. Taking note of the factual circumstances and growing trend of encroachments by private individuals in respect of the public lands, this Court is inclined to issue the following directions to the respondents.

(i) The first respondent is directed to issue Circular/consolidated instructions to all the District Collectors and other public officials to maintain the public lands intact.

(ii) The District Collectors shall be directed to conduct periodical Review Meetings to assess the encroachments prevailing in their respective jurisdiction and submit a status report to the Government. The respective competent authorities shall be directed to initiate immediate action for the purpose of evicting the encroachments and illegal occupants of the public land.

(iii) The Circular shall contain that in the event of any failure on the part of the District administration or on the part of the other public officials, then the disciplinary authority shall initiate appropriate disciplinary action against the officials concerned for negligence and dereliction on duty under the Disciplinary and Appeal Rules.

(iv) The said Circular shall contain all other instructions/guidelines for the purpose of maintaining the public lands and the same is to be utilised for the purpose of public at large and in the interest of public administration.

15. With the above directions to the respondents, the claim of the writ petitioner is rejected and accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

18.06.2018
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To

1. The Secretary,
The State of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai - 600 009

2. The District Collector,
Collectorate,
Salem District

3. The Revenue Divisional Officer,
Sankari,
Salem District

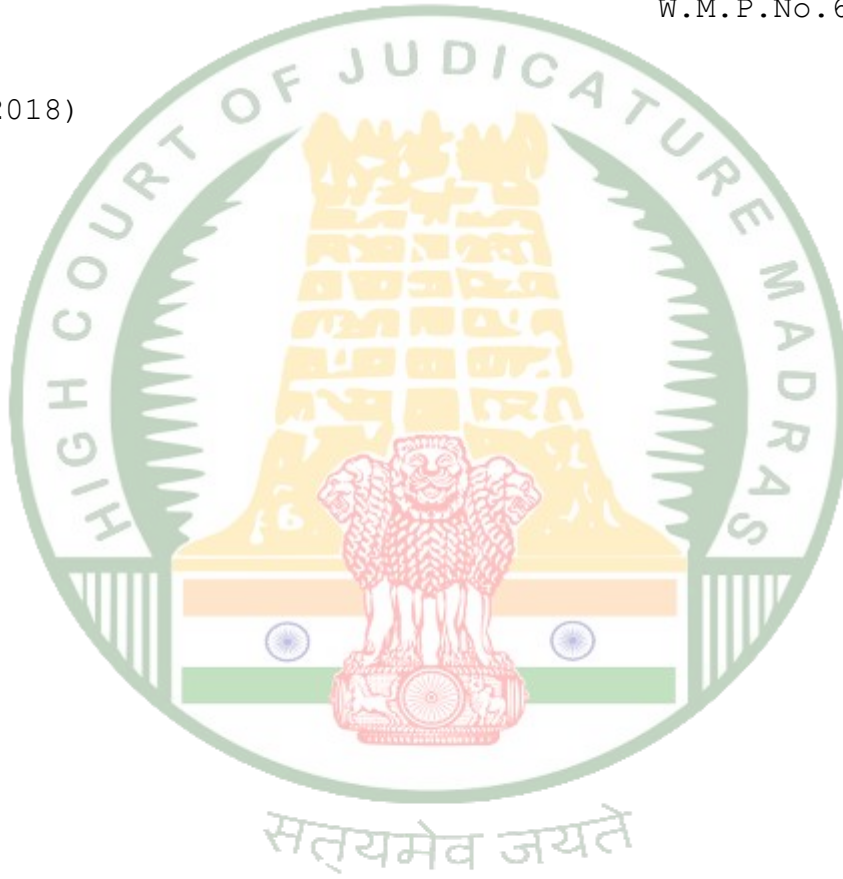
4. The Tahsildar,
Taluk Office,
Sankari,
Salem District

5.The Chief Secretary to Government,
Secretariat,
St.Fort George,
Chennai-9

+2 Ccs to Mr.P. Valliappan, advocate sr 38122.
+1 CC to The Govt. Pleader sr 38277.

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W.M.P.No.6651 of 2017

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