

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11-07-2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.23496 and 23497 of 2015

And

M.P.Nos.1 and 1 of 2015

And

W.M.P.Nos.4412 and 9166 of 2018

Elangiam ... Petitioner in WP 23496 of 2015
M.Rajammal ... Petitioner in WP 23497 of 2015

Versus

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Adi Dravidar and Scheduled
Tribes Welfare,
Fort St. George,
Secretariat,
Chennai-600 009.
- 2.The District Collector,
Salem District.
- 3.The District Adi Dravidar and Schedules
Tribes Welfare,
The District Adi Dravidar and Schedules
Tribes Welfare Office,
Salem District.
- 4.The Special Tahsildar,
Department of Adi Dravidar Welfare,
Attur,
Salem District. ... Respondents in both WPs

WP No.23496 of 2015 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records with regard to the proceeding of the fourth respondent in Na.Ka.No.1036/98/A dated 16.7.2015 and quash the same and issue

further direction directing the respondents to issue re-patta to the petitioner's house site No.4, situated in S.R.No.349/6 of the Thammampatti Village, Gengavalli Taluk, Salem district.

WP No.23497 of 2015 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records with regard to the proceeding of the fourth respondent in Na.Ka.No.1036/98/A dated 16.7.2015 and quash the same and issue further direction directing the respondents to issue re-patta to the petitioner's house site No.5, situated in S.R.No.349/6 of the Thammampatti Village, Gengavalli Taluk, Salem District.

For Petitioner in both WPs : Ms.S.Sengkodi

For Respondents in both WPs : Mr.M.Elumalai,
Government Advocate.

C O M M O N O R D E R

The actions initiated against the encroachment of a Government poramboke lands are under challenge in these writ petitions.

2. The learned counsel, appearing on behalf of the writ petitioners, states that they are in possession and enjoyment of the property described in the writ petitions and they are living for long years. The writ petitioners state that they have no other property in the locality and living in poverty. The writ petitioners are in possession of pattas in plot Nos.4 and 5 in Survey No.349/6, in which the writ petitioners are living along with their family members. The writ petitioners are not in possession of two pattas as per the allegations of the third respondent.

3. The grievances of the writ petitioners are that the third respondent has not conducted any proper enquiry and came to an erroneous conclusion that the writ petitioners are possessing two pattas. Such findings made against the writ petitioners are not in accord with the records available and it is an erroneous decision taken by the third respondent. Based on the erroneous decision that the petitioners are in possession of two pattas, actions have been taken under the provisions of the Tamil Nadu Land Encroachment Act, 1905.

4. Earlier, the writ petitioner in WP No.23496 of 2015, namely, Elangiam, filed WP No.11195 of 2009 and this Court passed order on 30.6.2009, directing the writ petitioner to submit a representation to the respondents and the third respondent should consider the same and pass orders on the said representation. Under these circumstances, one another aggrieved

person, namely, Smt.Sangeetha, residing in that locality also filed a writ petition in WP No.9400 of 2009, which was also disposed of on 12.2.2010, directing the respondents to take fresh proceedings under the Tamil Nadu Land Encroachment Act, 1905 and pass appropriate orders.

5. Thus it is made clear that the writ petitioners were permitted to submit a representation and the authorities were directed to consider the representation. However, in another writ petition filed by an aggrieved person, this Court issued a direction to initiate appropriate proceedings under the provisions of the Tamil Nadu Land Encroachment Act. Thus, it is duty mandatory on the part of the authorities to conduct an enquiry and if there is any encroachment in respect of the Government land, then actions must be initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905.

6. The learned Government Advocate, appearing on behalf of the respondents, made a submission that the lands in question are the Government poramboke lands and the writ petitioners have been granted with one patta each. In spite of the fact that the writ petitioners are in possession of one patta each, they have made another application, seeking second patta. Thus, there is no reason to consider the representation of the writ petitioners and the writ petitioners are the encroachers and also they had been allotted lands at free of cost by the Government and pattas had already been issued in favour of the writ petitioners. This being the factum of the case, there is no reason to grant another patta in favour of the writ petitioners by the Revenue Officials.

7. This Court is of an opinion that the Revenue Officials are bound to protect the Government lands in all respects. If at all, a free patta is to be issued in favour of some poor people, a policy should be taken by the competent authorities with the approval of the Government and they should be responsible for granting free sites without any discrimination and uniformly to all the eligible candidates. There cannot be any discrimination in respect of the grant of free patta to poor people.

8. In the present writ petitions, the writ petitioners had already been granted with free sites and pattas were granted in their favour. Such being the factum of the case, any further encroachments by the writ petitioners are to be removed and the writ petitioners are liable to be evicted from the lands in question in the present writ petitions.

9. In this view of the matter, there is no infirmity in respect of the order passed by the respondents under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and the

authorities competent are bound to evict the encroachers under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and permit the Government land for the usage of public at large. All such Government lands are to be protected by the Revenue Officials and there cannot be any negligence on the part of the authorities in maintaining such Government lands. In the event of negligence or dereliction of duty on the part of the authorities concerned, the District Collector should take appropriate steps and initiate action against such erring officials, who have failed in their duties to take action against such encroachments and a periodical review of such matters, in this regard, are to be undertaken to protect the Government lands in the event of identifying any such encroachments. The District Collector should intervene and direct the subordinate officials to invoke the provisions of the Tamil Nadu Land Encroachment Act and evict all the encroachers without any further delay. In the event of inaction by the authorities, appropriate disciplinary proceedings are to be initiated against all the erring officials concerned.

10. In this view of the matter, the respondents are bound to proceed with the action under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and evict all the encroachers in respect of the Government lands and therefore, the grounds raised in these writ petitions are devoid of merits and the same are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Secretary,
State of Tamil Nadu,
Department of Adi Dravidar and Scheduled
Tribes Welfare,
Fort St. George,
Secretariat,
Chennai-600 009.

2.The District Collector,
Salem District.

3.The District Adi Dravidar and Schedules
Tribes Welfare,
The District Adi Dravidar and Schedules
Tribes Welfare Office,
Salem District.

4.The Special Tahsildar,
Department of Adi Dravidar Welfare,
Attur,
Salem District.

+1cc to the Government Pleader, S.R.No.46616

WPs 23496 and 23497 of 2015

VSNI (CO)
GSP (20/07/2018)



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