

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.29869 of 2011

S.Rani ... Petitioner
Vs

1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

2.The Tahsildar,
Thandampattu Taluk,
Thiruvannamalai District. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.AA1/2856/2011 dated 23.09.2011 on the file of the 2nd respondent and quash the same as illegal and consequently, direct the respondents to allot the land in S.No.114/2, 114/3, 114/25 and 114/37 of Agarampallipattu Village, Thandalampattu Taluk, Tiruvannamalai District to the petitioner.

For Petitioner : Mr.S.Arokia Maniraj
For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

Heard Mr.S.Arokia Maniraj, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.AA1/2856/2011 dated 23.09.2011 on the file of the 2nd respondent and quash the same as illegal and consequently, direct the respondents to allot the land in S.No.114/2, 114/3, 114/25 and 114/37 of Agarampallipattu Village, Thandalampattu Taluk, Tiruvannamalai District to the petitioner. "

3. The case of the petitioner is as follows:-

The petitioner belongs to Adi Dravidar Community. The land in Survey No.114/2, 114/3, 114/25 and 114/37 of Agarampallipattu Village, Thandalampattu Taluk, Tiruvannamalai District, had been in her possession and enjoyment of the same for about 16 years without any interference. In view of uninterrupted possession and enjoyment of the property, the petitioner approached the respondents on several occasions for grant of patta for the land under her occupation. She had also requested for furnishing the copy of the Chitta and Adangal of the land.

4. However, her request was not acceded to by the respondents, therefore, the petitioner was constrained to file a petition under Right to Information Act, seeking the said information. As no information was forthcoming, the petitioner preferred an appeal to the Department and the second appeal before the State Information Commission. The State Information Commission was pleased to direct the second respondent to furnish the information immediately and forward the copy of the report to the Commission within 30 days.

5. According to the petitioner, even after the order was passed by the State Information Commission on 22.02.2010, the respondents did not obey the order. Therefore, the petitioner was constrained to once again approach the State Information Commission and on the basis of the submissions of the petitioner, the State Information Commission summoned the second respondent. According to the petitioner, an action initiated at the instance of the petitioner in summoning the official, has created an ill will and therefore, the first respondent vindictively cancelled the Adangal which originally contained the name of the petitioner and marked the same for common purpose and produced the same before the State Information Commission to make it appear as if the Adangal was already cancelled. On the basis of such submissions, the complaint was closed.

6. According to the petitioner, before the change was effected by the first respondent, no notice was given to her and the said change was made unilaterally by the first respondent in order to settle scores with the petitioner for approaching the State Information Commission, which resulted in summoning of the official from the Revenue Department.

7. In the said circumstances, the petitioner approached this Court in W.P.No.13987 of 2011 and this Court disposed of the writ petition, directing the second respondent to pass appropriate orders after affording opportunity to the petitioner. In pursuance thereof, the impugned proceedings dated 23.09.2011, was passed by the second respondent, stating that the people in the neighbourhood requested that the subject property was required for common purpose, not to be given to

individuals and therefore, necessary changes were effected in the Adangal.

8. The grievance of the petitioner herein is that the second respondent passed the impugned order without providing any opportunity to the petitioner, as directed by this Court vide its order dated 11.07.2011, in W.P.No.13987 of 2011. Moreover, she would submit that the reasons set forth in the impugned proceedings that the subject property was required for common purpose, cannot also be correct, in view of the subsequent action taken by the respondents in granting patta to the brother of the petitioner in respect of the same land. That being the case, the impugned action of the second respondent cannot be sustained in law and has to be set aside.

9. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a counter affidavit.

10. The learned Special Government Pleader appearing for the respondents would draw the attention of this Court to paragraph No.7 of the counter affidavit, is reproduced below:-

"7. I submit that it is submitted that this respondent passed the order in question, dated 23.09.2011, on the basis of the note made by the District Collector for namely the 1st respondent, dated 24.07.2010. The District Collector himself visited the land in question on 24.07.2010 and conducted enquiry with the petitioner and as well as one rival claimant (Thangaraj), brother of the petitioner and the villagers. At the time as the petitioner and the rival claimant- his brother Thangaraj were fought between themselves before the District Collector, regarding their respective enjoyment and the villagers requested the District Collector to spare the lands in question for the public use in future, the District Collector (1st respondent) made the above note on the 'Adangal' namely "cancelled this 'B' memos and reserve for common purpose"."

The learned Special Government Pleader would submit that the petitioner was given due opportunity, but, however, the first respondent had to accede to the request of the villagers in the larger interest of the common people.

11. At this, learned counsel for the petitioner would submit that the statement of the learned Special Government Pleader appearing for the respondents, cannot be factually and legally accepted, in view of the grant of patta to the petitioner's brother for the same land for obvious reasons.

12. This Court has considered the rival submissions of the learned counsel and perused the materials and pleadings placed on record. This Court, first of all, has to conclude that the impugned proceedings of the second respondent cannot be countenanced both in law and on facts for two reasons, which are stated below:-

1. The order was passed without affording any opportunity to the petitioner, as directed by this Court in the aforesaid writ petition.

2. The reason as set forth may not be correct, in view of the fact that the petitioner claims that her brother has been granted patta for the said land.

13. That being the case, this Court does not see how the respondents can come to a conclusion about the nature of the land. In any event, without going into all the rival merits and demerits of the case, this Court is of the considered view that the petitioner has not been given any opportunity of being heard by the second respondent and the impugned proceedings passed by the second respondent is contrary to the specific direction passed by this court dated 11.07.2011, in W.P.No.13987 of 2011 and also contrary to the established principles of natural justice.

14. Therefore, on this limited ground, the impugned proceedings in Na.Ka.No.AA1/2856/2011 dated 23.09.2011 on the file of the 2nd respondent, is set aside and the second respondent is directed to provide an opportunity of personal hearing to the petitioner and pass considered order on merits and in accordance with law. It is open to the petitioner to urge all contentions including the fact of patta being granted to her brother for the same subject land. On such contention being made, the second respondent shall consider the same and pass orders. Any decision taken thereof, shall be communicated to the petitioner. The order shall be complied with by the second respondent, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition stands allowed. No costs.

gsk

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

2.The Tahsildar,
Thandarampattu Taluk,
Thiruvannamalai District.

+1CC to the Government Pleader in SR.NO. 14514

+1CC to Mr.S.Arokiamaniraj, Advocate in SR.NO. 13946

W.P.No.29869 of 2011

SS[CO]
MLT-26/03/2018



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