

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 06.07.2018
ORDER PRONOUNCED ON : 11.07.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.4799 of 2009
and M.P.No.1 of 2009

1. Ponnammal
2. Kavitha
3. Suresh
4. Chitra
5. Devi
6. Parvathi
7. Chitra
8. Chinammal
9. Selvi
10. Mallika
11. Santhal
12. Lakshmi
13. Revathi
14. Gnanasundari

... Petitioners

Vs.

1. The District Collector,
Erode District, Erode - 11.

2. The Tahsildar,
Erode Taluk, Erode - 1.

3. The President,
Eenjampalli Village Panchayat,
Modakurichi Union,
Erode District.

... Respondents

PRAYER: The Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 12.12.2008 made in Oo.Mu.33571/2008/A5 passed by the 2nd respondent herein, quash the same, and consequently direct the respondents 1 and 2 herein to grant natham house patta to the petitioners to an extent of 3 cents in S.F.No.410/8 in respect of the property in Eenjampalli Village, Erode Taluk, Erode District by considering their representation dated 02.01.2009 and legal notice dated

30.01.2009 in the light of the G.O.Ms.854 dated 30.12.2006.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.N.Manikandan
Government Advocate

O R D E R

The present Writ Petition has been filed for a Writ of Certiorarified Mandamus, for quashing the order dated 12.12.2008 passed by the Tahsildhar, Erode Taluk, Erode District, rejecting the claim of the petitioners for grant of house patta.

2. The instant Writ Petition has been filed on the following averments.

(a) petitioners 1 to 13 belong to harijan community. They are eking their livelihood by agricultural labour. They have no permanent source of income. They have occupied for an extent of three cents of land in R.S.No.810/3, (Old S.No.410/8) in Eenjampalli Village, Erode Taluk, Erode District.

(b) Petitioners submitted a representation bearing No.15048/2008 for grant of patta for the land, which is under their occupation. The State Government has rejected the same on 12.12.2008 on the ground that the land is classified as Sarkar Promboke and patta cannot be granted.

(c) The ground of rejection is wrong, because the property is the Grama Natham and the authorities have the power issue pattas.

(d) The State Government has issued various government orders for regularising encroachments for the purpose of granting patta for house sites and the petitioners are entitled to patta.

(e) A committee was constituted under headed by the District Collector to formulate a scheme for regularisation of encroachment in G.O.Ms.854 dated 30.12.2006 and Persons similarly situated have been granted patta. The petitioners have been discriminated in as much as they have been singled out and their representation has been rejected without any valid reasons.

2. The State Government has filed a counter contending that Old S.No.410/8 in Eenjampalli Village, Erode Taluk, Erode District, has been sub-divided into number of survey numbers.

New S.No.810/3 is a sarkar poramboke and no patta can be granted for an area classified as sarkar poramboke. It is stated that the land for which, the patta has been claimed is not suitable for house patta. Paragraph Nos.3 and 7 of the counter reads as under:-

"3.With regards para 1 & 2 of the affidavit it is submitted that in the village accounts of the Enjampalli Village of Modakkurichi Taluk, Erode District the suit property Natham land bearing No.R.S.810/3 to an extent of 0.24.78 Sq. Mtrs. has been recorded as Sarkar Poramboke (Government Poramboke) - Natham Kaliyidam (Natham Vacant Place) and there was no changes involved in the classification on the said land till this date. The suit property is not suitable for dwelling purpose and thus kept in the name of the Sarkar Poramboke and vested to the Government, and which was objectionable land. It is aware that even though some of the petitioners have been living with their parent's shelter those who have additionally occupied some of the portions of the objectionable suit property land by making just small huts unwarrantedly during the period of the year 2008 as a mark of encroachment made artificially themselves as proof of encroachment enable them to pave a way for applying for regularisation them for patta. Subsequently, one Thiru Mayilsamy residing at that location have submitted an application on behalf of the public before the Collector, Erode District in the Grievance Day in which he had sought for the House Site Patta in the objectionable suit property and his application was numbered as 15048 of 2008 and then forwarded to the then Tahsildar, Erode for necessary action. On the application the then Tahsildar, Erode has replied to the petitioner that "since the land sought for the house Site Patta is an objectionable portion and hence it was not possible to issue House Site Patta in the objectionable land" in his Oo.Mu.33571/2008/A5 dated 12.12.2008 and a copy marked to the District Collector, Erode.

7.With regards to para 6 of the affidavit it is submitted that it is aware that even though some of the petitioners have been living with their parent's shelter those who have additionally occupied some of the portions of the objectionable suit property and claim for the House Site Patta which was rejected by the Tahsildar, Erode already. Since there are no encroachments of the petitioners in the suit property, the petitioners have not any right on the suit property for the regularization and also for

assignment of house site on the objectionable land. The Government Orders as said in the para are not fit to the petitioners claim and the grounds are liable for dismissal."

3.It is further stated that house site patta has not been given to any person in S.No.810/3 and that it is wrong to contend that the petitioners have been discriminated. It is also contended that even otherwise, the petitioners are not entitled to house patta, because their family already owned houses and they are not eligible to get patta as land less persons.

4.Heard the learned counsel appearing for both parties and perused the records.

5.The material on record shows that Old S.No.410/8 in Eenjampalli Village, Erode Taluk, Erode District, had been subdivided into various survey numbers. The petitioners have filed pattas given by the Government to land less persons in old survey No.410/8. The pattas produced by the petitioners would show that pattas have been issued in new survey Nos. 810/4, 812/3, 810/6, 812/6, 812/5, 814/3, 814/16, 814/6, 814/2 which were in old survey No.410/8. No patta has been produced by the petitioner to show the pattas have been issued for new survey Nos. 810/3 which according to the state has been classified as Sarkar Poramboke.

6.The affidavit also discloses that the petitioners are living with their parents and therefore, they are not eligible for land available for distribution to the land less.

7.Be that as it may. The land on which, house patta is being sought is not available for grant of patta as it is classified as sarkar poramboke. The Writ Petition therefore deserves to be dismissed. However, it is open for the petitioners to submit fresh representation for any other land and the Government would consider the same, if the petitioners are otherwise eligible.

8.The Writ Petition is disposed of in the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Erode District, Erode - 11.

2. The Tahsildar,
Erode Taluk, Erode - 1.

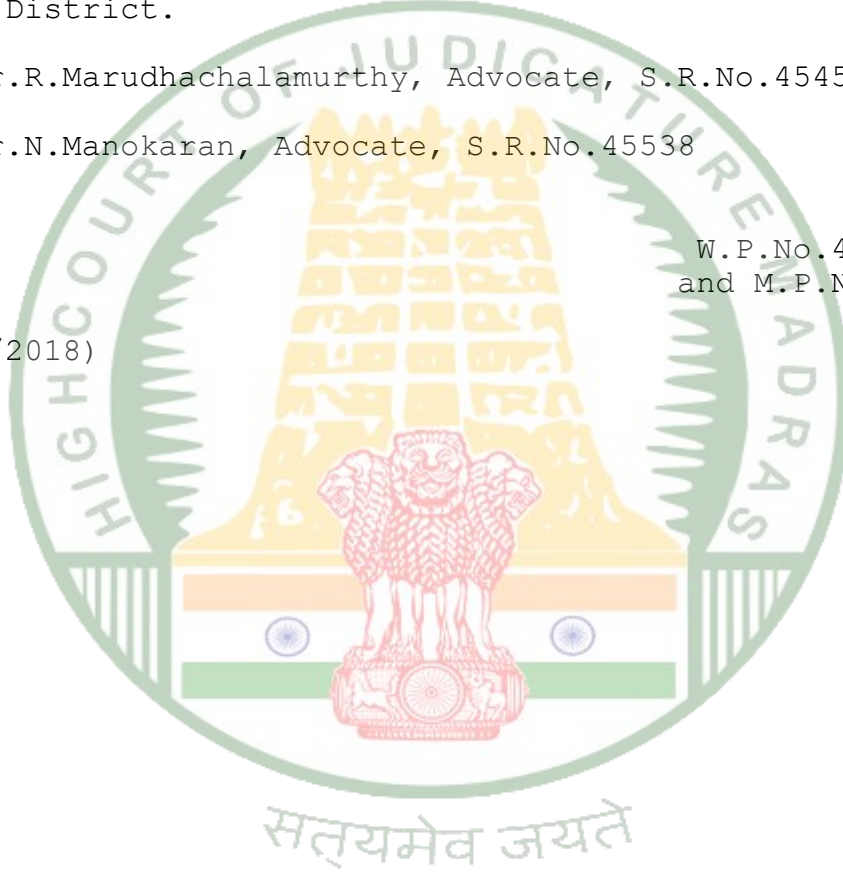
3. The President,
Eenjampalli Village Panchayat,
Modakurichi Union,
Erode District.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.45458

+1cc to Mr.N.Manokaran, Advocate, S.R.No.45538

W.P.No.4799 of 2009
and M.P.No.1 of 2009

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



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