

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 6518 of 2013
and
M.P.No.1 of 2013

K.Abdul Kalam

...Petitioner

Vs

1.The District Collector
Krishnagiri

2.The Sub Collector,
Hosur, Krishnagiri District

3.The Tahsildar
Hosur, Krishnagiri District

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to issue Patta in the Petitioner's name for the petition mentioned lands in Chennathur Village, Hosur Taluk, Krishnagiri District.

For Petitioner : Mr.M.V.Krishnan

For Respondents : Mr.D.Ragu
Government Advocate

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to issue patta in the petitioner's name for the petition mentioned lands in Chennathur Village, Hosur Taluk, Krishnagiri District. The land is comprised in Survey No.718, measuring to an extent of 0.34.5 hectare and in Survey No.719, measuring to an extent of 0.91 hectares, in Chennathur Village, Hosur Taluk, Kishnagiri District.

2. The learned counsel for the petitioner states that the writ petitioner is in possession and enjoyment of the land

described in the writ petition for long years, more specifically, for more than 50 years. The father of the writ petitioner was cultivating the lands till his death. Subsequently, the writ petitioner is cultivating the said lands without any hindrance from anybody. Under these circumstances, the writ petitioner claims that he is entitled for grant of patta based on his possession for a considerable length of time.

3. The learned counsel for the petitioner states that he filed a Civil Suit in O.S.No.20 of 2001 before the District Munsif Court Hosur, for grant of injunction, restraining the respondents from evicting the petitioner without following the due process of law. In the said suit, an exparte decree was issued against the District Collector, Sub Collector and the Tashildar.

4. The learned counsel for the writ petitioner states that the respondent Government has not preferred any appeal or filed any petition to set aside the exparte decree and, hence, the same became final.

5. The learned Government Advocate appearing on behalf of the respondents, disputes the claim raised by the writ petitioner, by stating that the writ petitioner is an encroacher. The lands in question are classified as "pattai poramboke" and a portion of the lands is a water body, which is under the occupation of the writ petitioner in an unlawful manner. The decree is of no avail to the writ petitioner in view of fact that, it is an exparte decree and subsequently it is only an injunction granted not to evict the writ petitioner without following due process of law.

6. The respondents are empowered to evict the encroacher by following the due process of law. The writ petitioner has not established any legal right for grant of patta for the lands. He is not the owner of the lands and the lands in question are "pattai poramboke". The respondents have every right to evict the petitioner by following the procedures contemplated under Law. In the event of evicting the writ petitioner by following the rule of law and procedures contemplated under the Act, the same will not be a bar even as per the decree passed in the Civil suit in O.S.No. 20 of 2001. Thus, the writ petition is liable to be rejected.

7. Considering the rival submissions as advanced by the learned counsel for the petitioner as well as respondents, this Court is of an opinion that patta can be granted to a owner under provisions of the Patta Pass Book Act, 1983. Section 3 of the Act enumerates that the owner of the property is entitled to submit an application for grant of patta under the provisions of

the said Act. The Competent Authorities are empowered to conduct an enquiry and grant patta by following the procedures. Thus, in the event of establishing that a person is the owner of the property, then, he is entitled for grant of patta. When it is brought to the notice of this Court that the land in question is classified as "pattai poramboke", out of which a portion of the land is a water body, then the revenue officials cannot grant of patta under the Act. When the Act says that patta can be granted to the owner, the petitioner has to establish that he is the owner of the property and then alone, patta can be granted under the provision of the Patta Passbook Act.

8. The petitioner throughout his affidavit has not stated that he is possessing any document to show that he is the owner of the property. Contrarily, it is contended that the writ petitioner is in possession of the property for more than 50 years and is paying kist and other charges. Mere possession of an immovable property will not confer any right on the person to claim ownership or Patta. For grant of patta, the person has to establish his ownership and title in respect of an immovable property. In the absence of any such documents, no patta can be granted.

9. The learned Government Advocate brought to the notice of this court that the land in question is a poramboke land and the writ petitioner is an encroacher. When that is the fact, the writ petitioner is not entitled for any relief as such sought for in the present writ petition.

10. This Court is of an opinion that, the Government poramboke land, water bodies and the water resources are to be maintained by the District Administration for the welfare of the public and no encroachment can be permitted in respect of the Government Poramboke lands. Water bodies and water resources are to be preserved. The Apex Court time and again emphasized that water bodies and water resources should be regularized for the benefit of this great nation.

11. This being principles to be followed, this court is of the opinion that the respondents are bound to conduct an enquiry in respect of the classification of the lands and if it is "pattai poramboke" and water bodies, then the petitioner is liable to be evicted.

12. There can be no leniency in respect of the encroachment in water bodies and in the Government lands. All such lands are to be utilized for the public welfare and to implement welfare scheme in the interest of the public administration. This being the principles to be followed, the following order is passed.

(1) The relief sought for in this writ petition is rejected.

(2) The first respondent/District Collector is directed to conduct a review meeting within a period of two weeks and issue suitable orders /instructions to the officials concerned to identify the Government Poramboke lands, water bodies and water resources within his jurisdiction, including the lands under the possession of the writ petitioner.

(3) In the event of ascertaining that the writ petitioner is an encroacher, the District Collector has to initiate appropriate proceedings and evict the encroacher by following the procedures contemplated under the provision of the Tamil Nadu Land Encroachment Act 1905, within a period of 4 weeks from the date of receipt of a copy of this order.

(4) In the event of any negligence or deliberate on the part of the officials concerned, the District Collector is bound to initiate disciplinary proceedings against them in accordance with law. The District Collector is directed to issue circular to all the officials concerned to maintain and protect all such Government lands and water bodies within his jurisdiction.

13. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

kmm/rst
To

- 1.The District Collector, Krishnagiri
 - 2.The Sub Collector, Hosur, Krishnagiri District
 - 3.The Tahsildar, Hosur, Krishnagiri District
- +1cc to Mr.M.V.Krishnan, Advocate SR.No.65576
- +1cc to Government Pleader SR.No.65524

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GMY (16/10/2018)