

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2018

CORAM

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

W.P.No.2857 of 2015
and
M.P.No.1 of 2015

S.Arunachalam

.. Petitioner

.Vs.

1. The District Revenue Officer,
Office of District Collector,
Chennai-600 001.

2. The Tahsildar,
Perambur Taluk,
Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent's order dated 25.03.2014 in Na.Ka.No.J4/40178/2009 and quash the same and consequently direct the respondents to issue patta to the petitioner's land bearing Survey No.T.S.58, Block No.13, Door No.53/19, V.O.C.Nagar, Ayanpuram Village, Annanagar East, Block No.30, D.S.58 to an extent of 2,461 sq.ft.

For Petitioner : Mr.B.Nedunchezhiyan

For Respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

The relief sought for in the present writ petition is to call for the records in relation to the order passed by the District Revenue Officer in proceedings dated 25.03.2014 in Na.Ka.No.J4/40178/2009 for grant of Patta and to quash the same and further direct the respondents to issue Patta to the petitioner's land bearing Survey No.D.S.No.58 to an extent of 2,461 sq.ft.

2.The petitioner claims that he purchased the property bearing T.S.No.58 Block No.13, Door No.53/19, V.O.C.Nagar, Ayanapuram Village, Annanagar East, Block No.30, D.S.58 to an extent of 3,968 sq.ft by a sale deed dated 20.12.2000 in D.No.3763 of 2000 registered before the Sub-Registrar, Perambur. The petitioner has constructed a residential building to an extent of 700 sq.ft and the remaining area of the land is kept vacant. The petitioner claims that he is regularly paying the property tax and water charges as per the assessment made. It is contended that on account of a mass complaint against the then Tahsildar, who issued Patta in respect of the land in respect of the similarly placed persons, the 2nd respondent-Tahsildar has taken back the Patta granted in favour of the petitioner, and thereafter not returned the same. The allegation against the 2nd respondent is that he granted Patta in favour of the writ petitioner, and failed to return the Patta to the writ petitioner. It is contended that a new Patta in C.A.No.1206 of 2007 was granted in the name of the writ petitioner as well as his daughter's name to an extent of 269 sq.ft and another Patta in C.A.No.1207 of 2007 for an extent of 1198 sq.ft., totally an extent is 1467 sq.ft., and in respect of the remaining land, no Patta has been granted. The writ petitioner claims that he purchased the land by way of a registered Sale Deed and he is the owner of the property. Thus, the respondents cannot refuse to grant Patta under the provisions of the Patta Pass Book Act. It is further contended that the lands are not situated in water body Poramboke area. The first respondent has got power to re-classify the area and the respondents have not visited the petitioner's property so far to know the actual status of the property and mechanically rejected the application for grant of Patta in respect of the entire land. Thus, the writ petitioner constrained to move the present writ petition.

3.The learned Government Advocate appearing on behalf of the respondents opposed the contentions by stating that the land under occupation of the writ petitioner is classified as "Ciricar Poramboke Vodai", which is a water body and the said land is utilised as a water resource to develop ground water in that particular locality. Thus, nobody can be granted with Patta in respect of the said land. The impugned order dated 25.03.2014, also states that the land in question is a water body. It is to be used for the development of ground water in that locality, and further the water body is a livelihood for the people of that locality and thus Patta cannot be granted. The order of the District Revenue Officer is clear in this regard.

4.When the classification in the revenue records stipulates the land in occupation is "Ciricar Poramboke Vodai" this Court

is of an opinion, that nobody can be now granted Patta by invoking the provisions of the Patta Pass Book Act. Even on a reading of the affidavit filed in support of this petition, this Court is able to understand that initially Patta has been granted on extraneous consideration and on account of mass complaint against the then Tahsildar, it was cancelled. Further it is not made clear whether appropriate actions were initiated against such Officials or not. In respect of the water body and water resources, the Competent Officials are bound to maintain the same intact for the welfare of the people at large. Protection of water bodies and water resources are now important and violation is to be viewed seriously. Encroachers in water bodies and water resources ought to be construed as great offenders. In view of the fact that an encroachment in water bodies infringes the rights of all other citizens in general. Right to life enshrined under Article 21 of the Constitution of India includes free availability of water to all the citizens. Water is life, thus protection of water bodies are certainly necessary and there cannot be any compromise. When the water resources are encroached, the State will not be in a position to provide adequate water facility to the residents. Thus, the encroachers of water bodies ought to be declared as serious offenders and the encroachments infringes the rights of all other citizen. Article 21 of the Constitution of India guarantees right of life and right to live does not mean a mere existence. A decent life is to be provided by the State by maintaining ecology and removing encroachment and adequate water facility and also medical facility. Thus any violation in this regard must be construed as violation of the fundamental rights of all other citizen.

5. It is a growing trend that greedy men are attempting to encroach the public land, water bodies and water resources. The Authorities Competent, who all are duty bound to protect such water bodies have not acted in accordance with law. On the contrary, few executives, land mafias and local politicians are colluding each other and encroaching such water bodies and Government lands. It is not as if those executives are unaware of such duties and responsibilities. Day in and day out, the executives are witnessing such encroachments in water bodies. In spite of that, they are not showing any concern and taking any appropriate action in the manner known to law. Such inaction of the executives are to be viewed seriously. It is to be construed that they are the violators of the constitutional provisions and the Statutes in this regard. We have got enough Statutes to protect such water bodies and water resources and Government lands. However, the fact remains that those Statutes remain in paper and the executives who are supposed to implement the laws are failing in their duty to execute all such provisions. Thus, the inaction of the executives in this

regard must be viewed seriously and higher Authorities Competent are bound to over see such executives and initiate appropriate action against such Officials, who are committing negligence, lapses, dereliction of duty etc., in respect of all such encroachments. This being the principles to be followed, this Court is of an opinion that the encroachers in water bodies and water resources are evicted without any further lapse of time and by following the procedures contemplated under the procedures of the Tamil Nadu Land Encroachment Act 1905, and Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 200. In this regard, Show Cause notices are to be issued to all such Encroachers, and the encroachers ought to be evicted from the water bodies and water resources without any leniency or misplaced sympathy. In respect of the present writ petitioner on hand, the land in question is classified as "Circar Poramboke Vodai" and the water body is to be protected for the welfare of the entire locality and the livelihood of the people in that locality. This being the importance of the preservation of the water bodies and water resources, the following directions are issued to the respondents.

i) The relief as such sought for in this writ petition deserves no consideration, and accordingly rejected.

ii) The respondents are directed to identify all such encroachments on water body within their jurisdiction.

iii) Issue Show Cause Notices and by following the procedures evict all such encroachers who all are in occupation of the water bodies and water resources within their jurisdiction.

iv) In the event of any negligence or dereliction of duty on the part of the Officials concerned, then the appropriate disciplinary actions are to be initiated by invoking the discipline and appeal rules.

v) The respondents are directed to take appropriate actions to protect all the water bodies and water resources from encroachments by taking adequate measures.

6. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

// True Copy//

Sub Assistant Registrar

KP

To

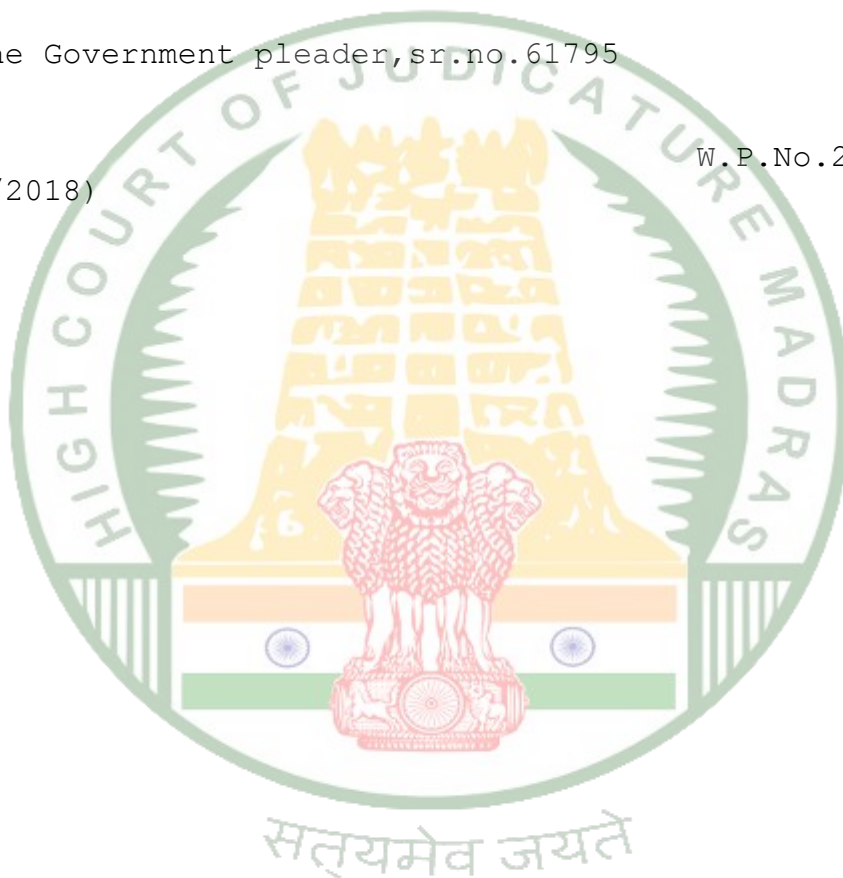
1. The District Revenue Officer,
Office of District Collector,
Chennai-600 001.

2. The Tahsildar,
Perambur Taluk,
Chennai.

+1cc to The Government pleader, sr.no.61795

RMP (27/09/2018)

W.P.No.2857 of 2015



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