

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2018

CORAM

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

W.P.No.40256 of 2016

W.M.P.No. 34278 of 2016

Nagalakshmi

... Petitioner

-Vs-

1. The Survey and Settlement Officer,
Survey House
3rd Floor, Chepauk,
Chennai - 600 005.

2. The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

3. The Revenue Divisional Officer (RDO),
Kodaikanal,
Dindigul.

4. The Tahsildar,
Kodaikanal,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus, calling for the records of the first respondent in Ni.Mu.No.A2 3638/16 dated 19.09.2016 and quash the same and consequentially direct the second respondent or anyone claiming through him, not to cancel the patta and disturb the peaceful possession and enjoyment of the said lands in old survey No.393 town survey No.55 in ward 18, Kodaikanal Municipality, Dindigul District by the petitioner.

For Petitioner : Ms.A.Madhumathi

For Respondents : Mrs.A.Shrijayanthi for R1, R3 & R4
Special Government Pleader
Mr.P.Srinivas for R2

O R D E R

The order dated 19.09.2016 passed by the Survey Settlement Officer is under challenge in this writ petition.

2. The writ petitioner is the wife of Late Thiyaagi.Senthilvel Servai who was a freedom fighter. During the lifetime of the husband of the writ petitioner, the property in old survey No.393 town survey No.55 in ward 18, Kodaikanal Municipality, Dindigul District was assigned to him in the year 1942 under the French Land Town Planning Scheme. The petitioner claims that the right from the date of such assignment, the family members of the writ petitioner are in possession and enjoyment of the said property. The husband of the writ petitioner constructed a house, obtained electricity connection etc., and in respect of the remaining land, the agricultural activities are going on. The husband of the writ petitioner preferred an application before the second respondent to assign the above referred land in his favour and as per the terms and conditions of the scheme of the year 1942. The second respondent considering the application and passed a Resolution in No.133 dated 12.09.1952, followed by Resolution No.298 dated 30.03.1959, Resolution No.308 dated 18.02.1970. In spite of the resolutions passed by Kodaikanal Municipality the lands were not transferred in the name of the husband of the writ petitioner until his demise on 10.06.1992. Even, thereafter the lands were not transferred in the name of the legal heirs of the husband of the writ petitioner. Under these circumstances, the writ petitioner filed W.P.(MD) No.14448 of 2014 for a direction to convey 1 acre and 32 cents in favour of the legal heirs of the husband of the writ petitioner. The writ petition was considered based on the resolution passed by the municipality and the recommendations and the Court passed an order on 02.09.2014, directing the Tahsildar, Kodaikanal Municipality to comply with the directions issued by the Assistant Land Tax Project officer (South) dated 29.06.2012 and implement the same and to transfer the revenue records in the name of the petitioner and the legal heirs of Late Thiyaagi.Senthilvel Servai within a period of 8 weeks from the date of receipt of copy of that order. After a lapse of 24 months from the date of order of this Court, the Tahsildar in proceedings dated 23.02.2015 directed sub-division and transfer of names and 10 months thereafter on 30.12.2015 patta No.2993 in Survey No.55/2 came to be issued in the name of the writ petitioner and the revenue mutation were also made. Under these circumstances, the second respondent, Kodaikanal Municipality submitted an appeal before the first respondent against the proceedings dated 29.06.2012 issued by the Assistant Land Tax Project Officer (South) and considering the same the first respondent passed an impugned order in proceedings dated 19.09.2016 setting aside the order passed in favour of

the writ petitioner in proceedings dated 29.06.2012. The present writ petition is filed challenging the said order.

3. The learned counsel for the writ petitioner states that the property in question is in possession and enjoyment of the writ petitioner and their family members. The husband of the writ petitioner was a freedom fighter and accordingly, by passing resolutions the land was assigned long back to the petitioners family. However, the transfer of the land has not been executed on account of lapses on the part of the respondents. Under these circumstances, the impugned order passed cancelling the revenue mutation and patta is contrary to the factual situation and the assignment made in favour of the husband of the writ petitioner.

4. It is further contended that the earlier writ petition filed by the writ petitioner was considered by the Court based on the materials available on record and a final order was passed on 02.09.2014 granting the relief to the writ petitioner. The Madurai Bench of Madras High Court passed an order of direction directing the Tahsildar to comply with the direction issued by the Assistant Land Tax Project officer (South) Chennai. Based on the orders of this Court, the Assistant Land Tax Project officer (South) passed the orders. Thus, the same cannot be now cancelled by the settlement officer in proceedings dated 19.09.2016.

5. The learned counsel appearing on behalf of the second respondent, Kodaikanal Municipality disputed the facts by stating that the land belongs to the municipality. The land in question was never assigned in favour of the writ petitioner nor the title was transferred. The property was under lease till the year 1990 in favour of the husband of the writ petitioner. The husband of the writ petitioner was enjoying the property only as a lease holder till the year 1990 and cultivating the said land. The title or rights were not transferred in favour of the husband of the writ petitioner after the year 1990 there was no cultivation and the Municipality has taken over the possession of the land. Now the portion of the land was allotted to All India Radio and the radio station is functioning as of now. This apart, another portion of the land was allotted to the Judiciary and now the District Munsif Court is also functioning in that locality and another portion of lands are allotted to the Revenue Department and office of the Revenue Divisional Officer is functioning in that locality. This apart, the residential quarters for the judicial officers and the revenue officials are also constructed and they are residing in the said officials quarters.

6. The learned counsel for the second respondent contends that the entire land was taken possession by the municipality and allotted to the Central Government as well as to the State Government for construction of Government offices and also All India Radio.

7. The learned Special Government Pleader states that the facts and details were not brought before the Madurai Bench of Madras High Court while dealing with the earlier writ petition filed by the writ petitioner in W.P.(MD) No.14448 of 2014. The facts in relation to the allotment of the said land to the All India Radio and to the Judiciary as well as to the Revenue Department were not brought to the knowledge of this Court. However, when the appeal was preferred by the Kodaikanal Municipality before the Survey and Settlement Officer all those facts were placed and the Settlement Officer considered the factual details and passed an order in proceedings dated 19.09.2016. It is stated that the documents produced by the Kodaikanal municipality were considered and decision was taken.

8. It is brought to the notice of this Court that the lease granted in favour of the husband of the writ petitioner was not renewed nor extended. Thus, the husband of the writ petitioner was an authorized lease holder till the year 1990. Thereafter, the land was taken over by the second respondent municipality and the same was allotted to the judiciary for construction of District Munsif Court and All India Radio and to the Revenue Department for construction of Revenue Divisional Office and the Government offices, Courts and All India Radio are functioning in the said land and therefore, the same cannot be assigned in favour of the writ petitioner. The claim of the writ petitioner is to assign the said land based on the ground that her husband was the lease holder. A mere lease will not confer any right on the lessee to claim assignment or patta. Assignment can never be claim as a right. Assignment of Government lands are to be made only with reference to the schemes if any formulated. If such welfare schemes are to be implemented without causing any discrepancy and by considering all the similarly placed persons who all are landless and poor. Thus, such a vast extent of land measuring more than 1 acre cannot be assigned in favour of individual by the Government even such an assignment cannot be done by the Government at their whims and fancies. The state is bound by the legal principles and all such assignment of land to the house less poor people are to be made only by formulating the schemes and by

considering all the eligible persons who all are similarly placed. This being the principles to be followed, the writ petitioner if at all eligible, her case also shall be considered on par with other similarly placed persons, whenever, such welfare schemes are formulated and implemented by the State. However, the writ petitioner is not entitled to claim assignment in respect of the land in question, which is now in occupation of the District Munsif Court, All India Radio and Revenue Divisional Office. The vacant land is to be utilized by the respondents for implementing the public welfare schemes and for the interest of the public administration. The land cost being exorbitant in that locality, this Court is of an opinion that all such valuable public lands are to be utilized for the welfare of the public and the same cannot be assigned at the whims and fancies of the authorities. Accordingly, the writ petitioner is not entitled for any relief and the order passed by the first respondent in proceedings dated 19.09.2016 stands confirmed.

9. Accordingly, the writ petition stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

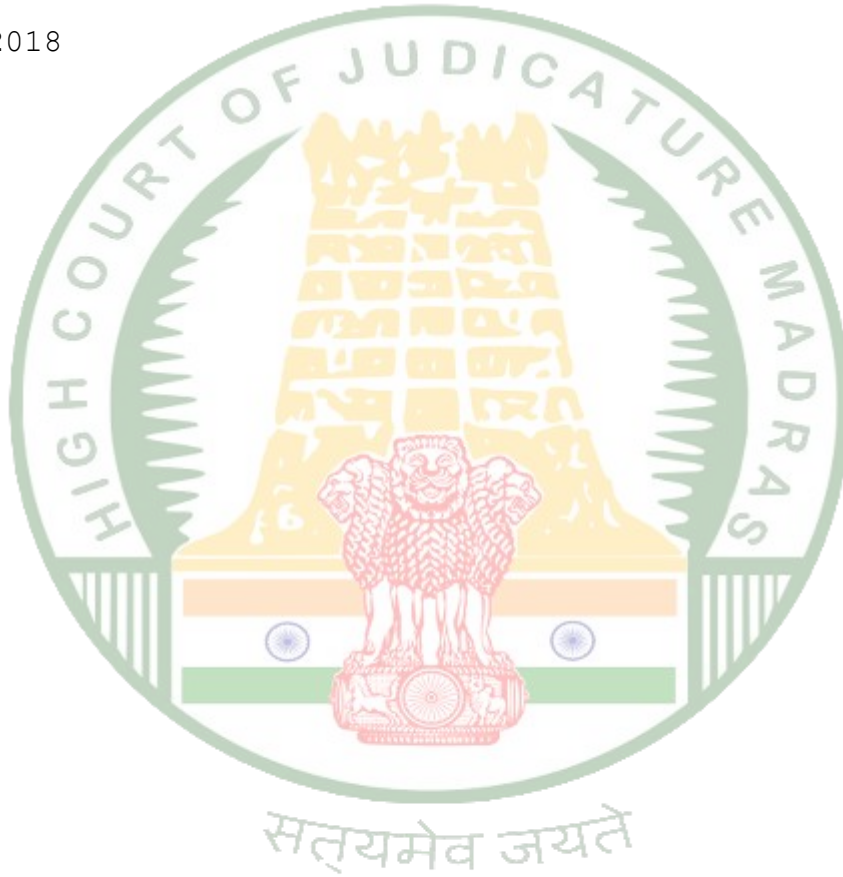
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+1cc to M/s.C.P.Palanichamy, Advocate sr.no.72537
+1cc to Mr.P.Srinivas, Advocate sr.no.72480
+1cc to Government Pleader sr.no.72437

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