

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.3992 of 2012 and

M.P.Nos.1 and 2 of 2012

- 1.Vijaya
- 2.Mangammal
- 3.Valliamma
- 4.Kala
- 5.Murugammal
- 6.Ponmalar
- 7.Nagalakshmi
- 8.Gowri
- 9.Govindammal
- 10.Kaveri
- 11.Palaniammal
- 12.Radha
- 13.Rathina
- 14.Valarmathi
- 15.Sakundhala
- 16.Chandra
- 17.Rajamma
- 18.Santha
- 19.Santha
- 20.Chinammal

... Petitioners

Vs

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Backward Classes, Most Backward Classes and
Minorities Welfare Department,
Secretariat, Chennai-9.

- 2.The District Collector,
Dharmapuri District.

- 3.The District Backward Class and Minority Welfare Officer,
Dharmapuri.

- 4.The Special Tahsildar,
Land Acquisition (ADW),
Dharmapuri.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents herein to forthwith earmark the respective house site allotted to the petitioners herein as per the patta issued

on 24.12.2007, in the lands acquired in S.No.436/1 and 2 of Pappanahalli Village, Dharmapuri Taluk and District for providing house site patta to people belong to Boyar Community and put the petitioners herein in possession of the same.

For Petitioners : Mr.V.R.Rajasekaran
For Respondents : Mr.D.Venkatachalam,
Additional Government Pleader

O R D E R

Heard Mr.V.R.Rajasekaran, learned counsel for the petitioners and Mr.D.Venkatachalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioners have approached this Court, seeking the following relief:-

"To issue a Writ of Mandamus, to direct the respondents herein to forthwith earmark the respective house site allotted to the petitioners herein as per the patta issued on 24.12.2007, in the lands acquired in S.No.436/1 and 2 of Pappanahalli Village, Dharmapuri Taluk and District for providing house site patta to people belong to Boyar Community and put the petitioners herein in possession of the same."

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

The petitioners herein all belong to Boyar community. They were granted free house sites in the land acquired by the Government in Survey No.436/1 and 2 of Pappanahalli Village, Dharmapuri Taluk and District. The house sites were allotted to the members of the Boyar community viz., the petitioners herein, as they belong to backward community. For the said purpose, the Government had specifically acquired an extent of 2.04 acres of lands in the above said Survey Number vide G.O.(3-D) No.135, Backward Class and Most Backward Class Welfare Department, dated 30.07.1992, under the provisions of the Land Acquisition Act, 1894.

4. Originally, the fourth respondent had selected 35 beneficiaries for granting free house sites, belonging to Boyar community, in the first instance by proceedings dated 20.10.1993. Thereafter, the fourth respondent granted patta to 14 other beneficiaries belonging to the same community vide proceedings dated 23.08.1994. Totally, there were 49 beneficiaries who were granted patta by the fourth respondent. Since, the beneficiaries did not comply with the conditions prescribed in the allotment order, the third respondent by proceedings dated 30.11.2007, cancelled the pattas granted to the said 49 beneficiaries of Boyar community.

5. Thereafter, the third respondent selected 58 new beneficiaries from the Boyar community and granted patta to them vide proceedings dated 24.12.2007. In the meanwhile, it appears that the persons who were initially granted patta and subsequently cancelled, formed an Association and approached the Civil Court in O.S.No.43 of 2008, on the file of the Hon'ble District Muncif Court, Dharmapuri, for bare injunction against the respondent Nos.2 to 4 herein from interfering with the enjoyment and possession of the property.

6. While matter is pending before the Civil Court, the third respondent by order dated 31.01.2008, withdrawn the order of cancellation of pattas dated 30.11.2007, subsequently, the Civil Court has passed a judgment and decree on 26.11.2003, directing that the house sites should not be granted to other parties before cancelling the pattas granted to the plaintiffs therein. Thereafter, one of the beneficiaries of the first phase, Mr.K.Manickam, approached this Court in W.P.No.34125 of 2017. This Court disposed of the writ petition on 28.12.2017 and directed the respondents Nos.2 to 4 herein, to measure the land allotted to the said petitioner as per the patta granted to him and hand over the possession to him. However, no notice was given to the respondents by this Court and the above facts were not placed for consideration before this Court while the above order was passed in the said writ petition.

7. While matter stood thus, despite the allotment of house sites to these petitioners, they were not allowed to reside in the respective houses by the respondents, despite the fact that the house sites were allotted to them as early as in 2007. According to the petitioners herein, after the allotment of the house sites, the respondents have not initiated any steps to identify the respective house sites allotted to the petitioners and to hand over the possession of the same. In the said circumstances, the petitioners were prevented from developing the house sites allotted to them.

8. In the above circumstances, the petitioners submitted number of representations to various authorities concerned. Since, no action was forthcoming from the respondents, the petitioners are before this Court seeking issue of Writ of Mandamus, directing the respondents to forthwith earmark the respective house sites allotted to the petitioners herein as per the patta issued on 24.12.2007.

9. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a counter affidavit. In the counter affidavit, the facts as stated above, has been broadly accepted by the respondents. The substance of the submissions of the respondents has found in

paragraph No.4 of the counter affidavit is reproduced hereunder:-

"4. As regards the averments made in para No.1 of the affidavit, it is submitted that the petitioners were issued with patta for the lands already allotted to 35 beneficiaries from the same Boyar Community, by cancelling their old pattas, but the petitioners were not given possession. The said cancellation was challenged by the old beneficiaries in O.S.No.43 of 2008 and the Hon'ble District Munsif, Dharmapuri, by its order dated 26.11.2009, set aside the order of cancellation of pattas and restrained the respondents from alienating the same to any other persons. Further, there were procedural lapses in identification of beneficiaries in the subsequent lists, wherein the petitioners found place. Subsequently, R.E.P.No.41 of 2011 was preferred before the Hon'ble District Munsif Court, Dharmapuri, on behalf of those 35 old beneficiaries, when there was delay in handing over the possession of lands. Therefore, the lands were measured and possession was given to the 35 beneficiaries on 15.12.2011. Therefore, the patta issued to the petitioners became void and the process of cancellation of their irregular patta under due process."

10. It appears from the above averments that the respondents were to act in compliance with the judgment and decree of the Civil Court passed in respect of 35 original beneficiaries. However, from the records, it is seen that the suit which was filed by the said beneficiaries, was only a bare injunction suit and the Civil Court was not called upon to adjudicate the above issues, since the cancellation of patta was not the subject matter of the suit. The Civil Court has merely stated that till the cancellation had taken place, it cannot be allotted to any other persons. Be that as it may, this Court was confronted with the fact that there are two sets of beneficiaries who were granted house site pattas by the respondents. On direction from this Court, the respondents filed an additional counter affidavit in which it is clearly mentioned as follows:-

5. It is submitted that as on today the house sites allotted to all the beneficiaries are existing. Each house sites allotted to more than one person. Hence, it is creating lot of problems. Therefore, the respondents prayed that this Hon'ble Court may cancel all the pattas granted to the beneficiaries of the Boyar community. The respondents are ready to form a committee for allotting pattas to the eligible persons afresh. As on today totally 2.04 Acres (0.82.5 Hectares) of lands are available. Out of 2.04 Acres, 0.40 Acres lands would be allotted to the street road and 0.40 Acres land would be reserved for public

purpose. Remaining 1.24 Acres of land can be allotted to the beneficiaries by dividing into house sites. Normally the Government has policy of allotting 3 cents of land to the beneficiaries. In the present case, since so many beneficiaries are there, the 3rd respondent had allotted 2 cents of land to beneficiaries.

6. It is submitted that in the above said circumstances, this Hon'ble Court may cancel all the pattas granted to 107 persons in total. In the event of cancellation, the respondents will form committee and allot the 1.24 Acres of land by dividing into house sites to the eligible beneficiaries.

11. From the above averments, it is clear that the grant of house sites to various beneficiaries either in first phase or subsequently, have to be reviewed, so that the deserving beneficiaries are allotted the house sites. Although the pattas have been granted to these petitioners by the fourth respondent, however, they were not allowed to act upon the allotment made to them, in view of the intervention of the Civil Court as early as well as by this Court. There appears to be a state of uncertainty as to who are the eligible beneficiaries entitled to allotment of house sites, since all the beneficiaries are from the Boyar community. This fact was not disputed by the Government.

12. In the above said circumstances, the fairness demands that the respondents have to review the entire issue of allotment of house sites to the members of the Boyar community, by considering all the members of the Boyar community including the petitioners herein and select the most deserving of them for allotment of the house sites in terms of the norms fixed by the respondents. In fact, the respondents themselves have come forward with the additional counter affidavit, stating that a committee would be formed after cancellation of all the pattas granted to 107 persons including the petitioners herein and allot the house sites to the eligible beneficiaries from among the available land in the subject property. This Court is of the considered view that exercise will be fair and proper in the facts and circumstances of the case.

13. For the above said reasons, this Court accepts the additional counter affidavit filed on behalf of the fourth respondent and the respondents are directed to cancel all the pattas granted to 107 beneficiaries including the petitioners herein. The committee shall be formed comprising respondents 2 to 4 herein. The committee shall recall all the pattas granted to 107 beneficiaries. On such recall, the committee shall make a thorough enquiry and select the eligible beneficiaries from the members of the Boyar community for allotment of the house sites.

The committee shall also give an opportunity of personal hearing to all the members of the Boyar community beneficiaries and in case, the committee comes to a conclusion that any member is not eligible for grant of house sites, the reasons may be recorded and the same shall be communicated to the person concerned. The committee shall undertake the above exercise and complete the same, within a period of six months from the date of receipt of a copy of this order. The committee's decision either way has to be communicated to all the members of the Boyar community concerned.

14. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

gsk

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Backward Classes, Most Backward Classes and
Minorities Welfare Department,
Secretariat, Chennai-9.
- 2.The District Collector,
Dharmapuri District.
- 3.The District Backward Class and Minority Welfare Officer,
Dharmapuri.
- 4.The Special Tahsildar,
Land Acquisition (ADW),
Dharmapuri.

+1CC to M/S.V.R.Rajasekaran, Advocate in SR.NO. 15824

+1CC to the Government Pleader, High Court, Madras in SR.NO. 16290

W.P.No.3992 of 2012

MP [CO]
MLT-26/03/2018