

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29793 of 2013

1.R.Nalayini

2.M.Lakshmi

... Petitioners

-Versus-

1.The District Collector,
Coimbatore District, Coimbatore.

2.Shanmugasundaram

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the 1st respondent to issue patta to the petitioners as recognised by the first respondent for their possession as per order passed in his proceedings Na.Ka.42609/2010/B1, dated 05.09.2013.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.D.Raghu

Government Advocate for R1

: Mr.C.R.Prasanan for R2

O R D E R

The relief sought for in this writ petition is for issuance of a writ of Mandamus directing the 1st respondent to issue patta to the petitioners as recognised by the first respondent for their possession as per order passed in proceedings Na.Ka.42609/2010/B1, dated 05.09.2013.

2. The learned counsel for the petitioners states that the writ petitioners are in peaceful possession and enjoyment of the land situated in S.No.167/2 & 168/3 Anupparpalayam Village and cultivating crops in the said land for their livelihood. The petitioners states that they are in possession and enjoyment in the said land for the past 70 years right from the days of their child hood. The claim of the writ petitioners is that they are entitled for

grant of patta on the ground that they are in possession for a considerable length of time. However the applications submitted by the writ petitioners in this regard for grant of patta has not been considered at all.

3. The learned Government Advocate appearing for the first respondent opposed the contention of the learned counsel appearing for the writ petitioners by stating that the writ petitioners are encroachers and the land in question is a water body. The writ petitioners cannot encroach the water body and thereby preventing all the owners of the adjacent lands to utilize the said land which is for the purpose of public usage.

4. The learned counsel for the second respondent submitted that on account of the encroachment in that particular locality, the other land owners are compelled to utilize the said land for public purposes, more so for irrigation purposes. The entire water body is in encroachment and causing much inconvenience and hindrance for other land owners cultivation in that locality.

5. It is seen that the District Collector, Coimbatore conducted an enquiry and passed orders in proceedings Na.Ka.42609/2010/B1, dated 05.09.2013 and the findings of the District Collector also states that the land in question is a "Government land" and the encroachers are in possession of water bodies in that land. However the District Collector expressed his opinion that for grant of patta, necessary particulars are to be submitted to the Government.

6. In the event of formulating a scheme by the Government, such lands can be allotted to the landless poor people in equal measures. Even in case of grant of free patta to landless poor people, the same is to be granted only if a Scheme is formulated by the Government. Even in case of a Scheme, the same is to be implemented uniformly and without causing any discrimination amongst the similarly placed persons. A scheme is to be implemented strictly in accordance with the terms and conditions stipulated in the Government Orders and providing equal opportunity to all the similarly placed landless poor people. However, in the absence of any scheme, the persons under the encroachment of the Government land cannot claim any right over the property, mere occupation or possession will not confer any legal right for the encroachers to claim patta or assignment in their favour. Encroachments are to be dealt with in accordance with the provisions of the encroachment act. There cannot be any leniency in respect

of the encroachments since the same causes inconvenience to the public as well as for the state to implement the welfare schemes for the purpose of public usage.

7. The first respondent is bound to evict all encroachments in that locality by following the procedures contemplated under the provisions of the Tamil Nadu Land Encroachment Act, 1905. In this regard, the 1st respondent District Collector is directed to conduct review meetings within a period of four weeks from the date of receipt of a copy of this order and issue suitable orders to the subordinate officials to remove all such encroachments in that locality by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905. If any encroachment of the Government land or water bodies are identified then the authorities competent are bound to initiate action in accordance with law. There cannot be any leniency in respect of the encroachments made by any person in Government land and the public properties are to be protected by the officials in accordance with law. The District Collector, Coimbatore in this regard shall ensure that the subordinate officials act promptly in respect of such encroachments and remove the same by following the procedures contemplated. If any negligence or dereliction of duty is found in respect of the action of the subordinate officials, then the District Collector is bound to initiate appropriate disciplinary proceedings against all such officials for their lapses, negligence or dereliction of duty. The District Collector is bound to oversee all these aspects and ensure that the water bodies and public land are protected in all respects without any deviation or dereliction.

8. Under these circumstances, the relief sought for in this writ petition cannot be granted as the writ petitioners has not established their legal right. Mere possession or enjoyment of the property will not construe cause of action for grant of patta or assignment in favour of the writ petitioners. Thus the relief sought for in this writ petition is rejected. However, District Collector is directed to initiate appropriate action against all such encroachments and water bodies in Government Poramboke land and such exercise shall be done within a period of four weeks from the date of receipt of a copy of this order and thereafter all action to be initiated to ensure that the water bodies are protected for the welfare of the public at large and to maintain ecology and environment in that location. Even as per the Hon'ble Supreme Court judgment, the patta granted in respect of the water bodies the same are liable to be cancelled and such water bodies are to be

preserved as water resources for the benefit of the public at large.

9. With the above direction the writ petition stands dismissed. No costs.

dpq

Sd/-

Deputy Registrar

// True Copy//

Sub Assistant Registrar

To

The District Collector,
Coimbatore District, Coimbatore.

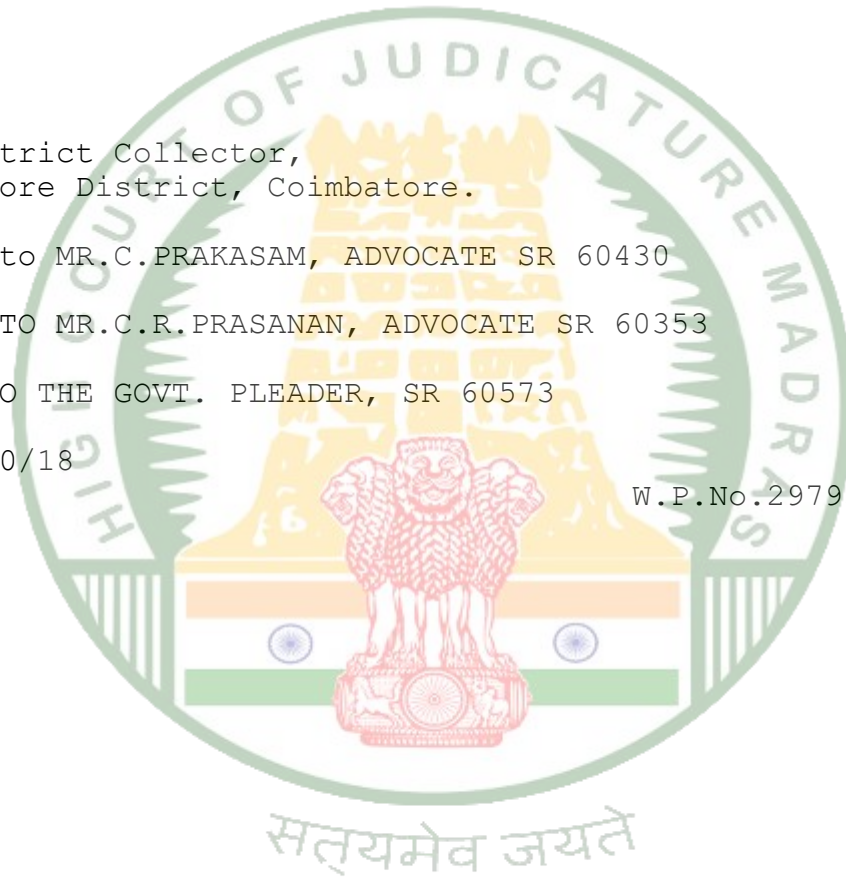
+ 1 cc to MR.C.PRAKASAM, ADVOCATE SR 60430

+ 1 CC TO MR.C.R.PRASANAN, ADVOCATE SR 60353

+1 CC TO THE GOVT. PLEADER, SR 60573

KR/11/10/18

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