

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.10.2018
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.31113 of 2017
and
WMP.No.34110 of 2017

Salai C.Dhamaraiselvi ... Petitioner

Vs

1.The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Vellore District,
Vellore - 632 009.

3.The Tahsildar,
Vellore Taluk,
Vellore District - 632 009.

4.The Village Administrative Officer,
Ariyur Village,
Vellore Taluk & District - 632 055.

5.The Commandant,
Station Headquarters,
Fort St.George,
Chennai- 600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records culminated in the second respondent's impugned proceedings in Ref.Na.Ka.pi.2/21864/2014 dated 25.11.2015 and quash the same and consequently, direct the respondents 2 and 3 to issue patta in respect of the land measuring 2.75 acres in S.No.765/2, Ariyur Village, Vellore Taluk and District in favour of the petitioner.

For Petitioner : Mr.R.Prabhakaran
For Respondents : Mr.J.Ramesh, AGP

ORDER

The petitioner has come up with this writ petition to quash the proceedings dated 25.11.2015 issued

by the second respondent and consequently, direct the respondents 2 and 3 to issue patta in respect of the land in S.No.765/2 of Ariyur Village, Vellore Taluk and District in her favour.

2.It is the case of the petitioner that her father by name T.G.Ganapathy served in Indian Army and during the Chinese Aggression in 1962, he sustained 100% disability, as a result of which, he was discharged from service. While so, vide order dated 06.11.1965, he was assigned the aforesaid land under the rehabilitation Scheme. After the demise of her parents, the petitioner has been in possession and enjoyment of the said land. On 06.12.2010, she made a representation to the second respondent, requesting to issue patta in respect of the aforesaid land. Following the same, she sent another representation dated 04.07.2011, however, none of the representations was considered by the second respondent. Hence, she filed a writ petition in WP.No.28790 of 2014, which was disposed of by this Court, vide order dated 07.09.2015, wherein, it has been observed as follows:

□5.It is not dispute about the services rendered by the petitioner's father and the agony suffered by him. A decision was made on 05.10.1966 based upon relevant materials. Mere because the classification is there as water course, there cannot be any absolute bar for assignment. It is to be seen that the petitioner's family has been in possession from 1966 onwards. Thus, atleast from that year onwards, the land has not been used as a water course or channel.

6.Considering the above, this Court directs the 2nd respondent to pass appropriate orders on the request made by the petitioner for assignment of the land in S.No.765/2 for an extent of 2.75 acres in Ariyur Village, Vellore District, within a period of eight weeks from the date of receipt of copy of this order. The petitioner is also at liberty to give another representation within a period of two weeks from the date of receipt of copy of this order by enclosing a copy of this order. The writ petition is disposed of accordingly. No costs.□

Pursuant to the aforesaid order, the second respondent, by order dated 25.11.2015, considered the petitioner's representation and rejected the same, on the ground that the property, for which the patta is sought for, is a water course. Aggrieved against the same, the petitioner is before this Court.

3.The learned counsel for the petitioner submitted that the land in S.No.765/2 cannot be classified as a water course, as the same is surrounded by other lands, which are used for all other purposes, other than as a water course. The learned counsel further drawing the attention of this Court to the documents enclosed in the typed set of papers, submitted that as per the revenue records, the aforesaid land is declared as Government Poramboke land. He also submitted that the revenue officials had already completed the inspection and filed a report to the effect that the land in question is nothing but a Government poramboke land. Thus, the learned counsel sought appropriate orders in this writ petition.

4.On the other hand, the learned Additional Government Pleader submitted that according to the revenue records, the land in question is classified as a water course and hence, the second respondent rightly rejected the claim of the petitioner.

5.Heard both sides and perused the records.

6.The issue involved herein is with regard to issuance of patta in respect of the land in S.No.765/2, Ariyur Village, Vellore Taluk and District in favour of the petitioner. The said claim of the petitioner was rejected, by the second respondent, on the ground that the said land is classified as a water course, whereas, in the order impugned herein, it has been stated that the land in S.No.765/1 is classified as a water course and patta was issued to various individuals in respect of the land in S.No.765/2. Further, the revenue documents enclosed in the typed set of papers mentioned the land in S.No.765/2 as ryotwari land. That apart, the petitioner produced a copy of the map relating to the survey numbers in question by way of additional typed set of papers, which denotes S.No.765/1 only as a water course poramboke. Thus, the documents produced before this Court, prima facie, lies in

favour of the petitioner.

7.However, this Court cannot lose sight over the decision passed by the Full Bench of this Court in T.K.Shanmugam v. State of Tamil Nadu and others [order dated 30.12.2015 made in WP.No.1294 of 2009], wherein, in para 45, it has been held as follows:

□45. In the light of the above, we answer the reference on the following terms:- The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations/directions issued in L.Krishnan vs. State of TamilNadu reported 2005 (4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh vs. State of Punjab, reported in (2011) 11 SCC 396, and the observations contained in paragraph 20(d)(e) of the judgment of the Division Bench in T.S.Senthil Kumar, vs. Government of Tamil Nadu, reported in 2010-3-MLJ-771 and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905.□

8.In view of the given facts and circumstances and also in the light of the aforesaid decision of the Full Bench of this Court, this writ petition stands allowed by setting aside the order dated 25.11.2015 passed by the second respondent. The matter is remanded back to the second respondent for fresh consideration, after examining all the documents produced by the petitioner as well as the respondents and after affording due opportunity of personal hearing to all the parties. It is needless to state that if the documents produced show the disputed land in S.No.765/2 as a poramboke land other than water course, the second respondent would necessarily consider the claim of the petitioner and if not, follow the decision of the Full Bench as referred to above and pass orders, rejecting the claim of the petitioner. Such an exercise shall be completed by the second respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

09.10.2018

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Index: Yes/ No

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R.MAHADEVAN, J.

rk

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