



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA
W.A.(MD)No. 66 of 2018

and
C.M.P(MD)No.306 of 2018

1.The District Collector,
Madurai District,
Collectorate Buildings,
Madurai - 20.

2.The Thasildar,
Madurai South Taluk,
Collectorate Buildings,
Madurai - 20.

.. Appellants/Respondents
Vs.

O.M.Kamala

.. Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act, to set aside the order dated 14.12.2016 passed in W.P(MD)No.1671 of 2010.

Prayer in WP(MD). 1671/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for records relating to the order of 2 nd respondent dated 03/08/2009 in his proceeding in Na.Ka. No.33803/08/C3 dated 03/08/2009 and quash the same and in consequence direct the 2nd respondent to issue house site pattas in favour of the petitioner for house plots bearing plot Nos. 13,14 and 15, measuring 3 cents each totaling 9 cents situated in L.K.T. Nagar comprised in S.NO.46/1 in Puliankulam Village, Madurai South Taluk Madurai District and thus render justice

For Appellant	: Mr.A.K.Baskarapandian,
	Special Government Pleader
For Respondent	: Mr.K.Vijay Anand for
	Mr.R.Suriyanarayanan

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, the main Writ Appeal itself, is taken up for final disposal.

<https://hcservices.ecourts.gov.in/hcservices/>

2. Mr.K.Vijay Anand for Mr.R.Suriyanarayanan, learned counsel



on record for the respondent, appears for the respondent/writ petitioner.

3. The respondent/writ petitioner made a challenge to the order of the second respondent dated 03.08.2009, in and by which, her request for transfer of patta in respect of Plot Nos.13, 14 and 15 in Survey No.46/12 of Puliyankulam village, Madurai South Taluk, came to be rejected.

4. The learned Single Judge of this Court, vide impugned order dated 14.12.2016, allowed the Writ Petition and thereby, quashed the order passed by the second respondent, with a direction to issue patta in favour of the writ petitioner, within the stipulated time and challenging the legality of the same, the official respondents had filed this Writ Appeal.

5. The facts leading to the present litigation, have been narrated in detail in the impugned order, which is the subject matter of challenge in this Writ Appeal and therefore, it is unnecessary to re-state the same.

6. The petitioner along with her husband, namely, Mr.O.T.S.Mani, filed W.P(MD)No.2832 of 2009, challenging the order of the Tahsildar, Madurai South Taluk, dated 19.01.2009, with a consequential direction, directing the official respondents to issue house-site patta to her husband in respect of Plot No.14 and for her, in respect of Plot Nos.13 and 15, measuring three cents each totalling nine cents, situated at Survey No.46/1 in Puliyankulam Village, Madurai South Taluk, Madurai District.

7. The said Writ Petition was allowed and the order of the second respondent was set aside and the matter was remanded to the second respondent, to consider the case of the writ petitioners and pass orders in accordance with law, within a period of twelve weeks from the date of receipt of a copy of that order and in compliance of the same, the second respondent has passed the impugned order dated 03.08.2009.

8. The learned Single Judge, after taking note of the factual aspect, found that though it was the stand of the official respondents that the conditions for assignment granted, have been violated and the writ petitioner had purchased the assigned lands, has recorded the finding that in case of any any violation, it is for the Government to cancel the assignment or to resume the subject lands and admittedly, the said process is yet to be carried out.

9. The learned Judge further found that despite a positive direction given in the order dated 02.07.2009 in W.P(MD)No.2832 of 2009, the second respondent has not properly conducted the enquiry and has also taken note of the factual aspect that the Writ Petitioner/respondent, has not put up any construction in the subject lands and also found that the reasons recorded by the second respondent that the respondent/Writ petitioner did not put up any construction in the subject lands even after a lapse of seventeen



years, is wholly unsustainable.

10. Mr. A.K. Baskarapandian, learned Special Government Pleader appearing for the appellants would submit that since the conditions of assignment have been violated and the respondent/writ petitioner, without due diligence, had purchased the lands in question and in the absence of transfer of patta in favour of the predecessor in title, the respondent/writ petitioner, is not entitled to get patta.

11. Per contra, the learned counsel appearing for the respondent/writ petitioner, would submit that the respondent/writ petitioner, is not the first purchaser from the original assignee and it was changed very many hands and she is the fifth purchaser and she is in possession of the said lands for nearly seventeen years and for want of patta, she is not able to enjoy the property and it is also in violation of Article 300-A of the Constitution of India.

12. This Court has carefully considered the rival submissions and perused the materials placed before it.

13. In the considered opinion of this Court, unless and until the original assignment is cancelled for having violated the assignment conditions, the stand taken by the second appellant/second respondent in the impugned order dated 03.08.2009, is unsustainable and it is also pertinent to point out at this juncture that original assignment was granted on 10.05.1972 and 15.06.1972 respectively and the first sale took place on 31.12.1979 and therefore, it may be difficult for the official respondents, to go for cancellation of the original assignment dated 10.05.1972 and 15.06.1972 respectively.

14. This Court on an independent application of mind on the overall facts and circumstances of the case, is of the considered opinion that there is no error apparent or any infirmity in the reasons assigned by the learned Judge for allowing the Writ Petition and finds no merit in this Writ Appeal and therefore, the Writ Appeal is dismissed, confirming the order dated 14.12.2016 passed in W.P(MD)No.1671 of 2010. No Costs. Consequently, connected Civil Miscellaneous Petition, is closed.

15. The second respondent is directed to take appropriate steps in accordance with law, to comply with the order dated 14.12.2016 made in W.P(MD)No.1671 of 2010, within a period of eight weeks from the date of receipt of a copy of this judgment and communicate the decision taken, to the respondent/writ petitioner.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

+1cc to Mr.K.SURIYANARAYANAN, Advocate, SR. 49197

W.A. (MD) No.66 of 2018
15.02.2018