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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA
and

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.21707 of 2018

and

W.M.P. (MD) .Nos.19626 and 19627 of 2018

P.Mahalakshmi

... Petitioner

Vs.

1.The Secretary to the Government
Revenue Department
Fort St. George,
Chennai.

2.The District Collector,
Office of the District Collector,
Madurai.

3.The Tahsildar,
Madurai East Taluk
Madurai.

4.The Assistant Engineer,
Public Works Department/W.R.O
Periyar Main Canal Section,
Sub Division No.1,
Madurai-2.

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of rejection of patta issued by the 2nd respondent in Na.Ka.No.39358/2018/J4 dated 24.09.2018 and the consequent order of the 4th respondent in letter No.Ko.23/2018/O.POU//Madurai dated 15.10.2018 whereby the petitioner has been directed to vacate from the portion of land occupied by her in Vandiyoor more fully an extent of 38 sq.metres, 71 sq.metres, 42 sq.metres, 32 sq.metres, 70 sq.metres comprised in S.No.43/1, Vandiyoor first bit village, Madurai East Taluk, Madurai District and quash the same and consequently direct the respondents to grant patta to the petitioner.



For Petitioner : Mr.G.Sankaran for
Mr.F.Deepak
For Respondents : Mr.V.R.Shanmuganathan
Special Govt. Pleader

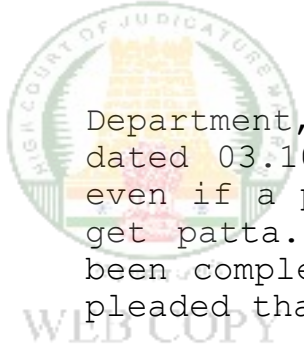
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ORDER**(Order of the Court was made by T.RAJA, J.)**

This writ petition has been filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of rejection of patta issued by the 2nd respondent in Na.Ka.No.39358/2018/J4 dated 24.09.2018 and the consequent order of the 4th respondent in letter No.Ko.23/2018/O.POU//Madurai dated 15.10.2018 whereby the petitioner has been directed to vacate from the portion of land occupied by her in Vandiyoor more fully an extent of 38 sq.metres, 71 sq.metres, 42 sq.metres, 32 sq.metres, 70 sq.metres comprised in S.No.43/1, Vandiyoor first bit village, Madurai East Taluk, Madurai District and quash the same.

2.This writ petition is fourth round of litigation.

3.The learned counsel appearing for the petitioner submitted that the petitioner is assailing the impugned order dated 15.10.2018, passed by the Assistant Engineer, Public Works Department/WRO, Periyar Main Canal Section, Sub Division No.1, Madurai, inter alia submitting that the impugned notice issued by the 4th respondent is opposed to law, as the petitioner is having a small extent of land, for which, she and her relatives are paying necessary taxes to the authorities concerned. The fourth respondent has not considered this vital aspect that the petitioner has been in peaceful possession and enjoyment of the land in question for a long time. He further submitted that the fourth respondent has passed the order without considering the fact that the revenue officials have granted patta for the same land ie Sy.No.43/1 in Vandiyoor first bit village, Madurai. Inasmuch as revenue lay out showing the lands which were granted patta in the year 2013 is concerned, it would also show that the fourth respondent is also discriminating the similarly placed persons by wrongly mentioning that the petitioner has been in occupation of land, which comes under "Marukkal Odai". When the fourth respondent proceeded on the basis of the report of the Tahsildar, Madurai East Taluk, Madurai, dated 10.09.2018, a copy of the said report has not even furnished to the petitioner. Moreover, no revenue record has been shown to the petitioner, where the revenue officials had given patta to the adjacent land lying next to her house. Roads were also laid for the ingress and egress of the villagers of J.J.Nagar Village. In this regard, citing all the aforementioned facts including the fact that some of her neighbours, who are living in the same survey No.43 were also issued with patta, she gave a representation to the Tahsildar, Madurai East Taluk, Madurai, based on G.O.Ms.No.854, Revenue



Department, dated 30.12.2006 and G.O.Ms.No.576, Revenue Department, dated 03.10.2008, wherein, it has been specifically mentioned that even if a person is in Government poromboke land, he is entitled to get patta. According to the petitioner, this crucial aspect has been completely overlooked by the fourth respondent. Therefore, he pleaded that the impugned order is liable to be quashed.

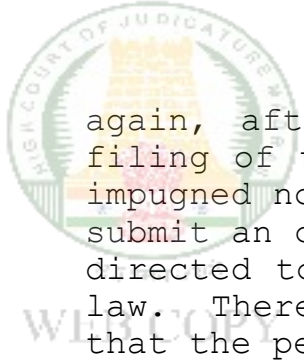
4.The learned Special Government Pleader, who takes notice on behalf of the respondents, submitted that sy.No.43 has been subdivided into 43/1, 43/2 and 43/3, whereas the petitioner is in occupation of Sy.No.43/1, which is an odai and waterbody. Therefore, the petitioner cannot compare herself with others who are not occupying Sy.No.43/1, which is classified as water body viz., "odai", as per A-Register and other revenue records.

5.We are also able to find out some merits in the submissions made by the learned Special Government Pleader.

6.On perusal of records, it is seen that in the order dated, 18.07.2018 passed by this Court in W.P.(MD).No.14966 of 2018, a Division Bench of this Court, clearly indicates that a Writ petition (MD).No.4535 of 2017 was already filed challenging the eviction notice, dated 28.02.2017, issued against one P.Mahalakshmi (present petitioner). In the said order, this Court directed the petitioner herein to vacate from the portion of the land in Vandiyur first bit village, Madurai East Taluk, Madurai. While entertaining the said writ petition, this Court, accepting the case of the respondent that there was an encroachment made by the petitioner in W.P.(MD).No.4535 of 2017, gave a direction to remove any encroachment. Further, an observation was made that eviction will have to be carried out in accordance with law and such exercise will have to be completed within three months from the date of receipt of a copy of that order.

7.Therefore, we are of the view that when the Writ petitioner filed a Writ Petition (MD).No.4535 of 2017 before this Court, challenging the notice, dated 27.02.2017, issued against her for eviction from the present place, she suffered an order. Further, a direction was issued to carry out eviction only in accordance with law. Thereafter, the lands were surveyed on 30.12.2017 and again, notices were issued on 26.12.2017 by the third respondent to vacate and leave the places, following which, action will be taken within 21 days. In the said notice, it was specifically mentioned that the encroachers made some constructions in the waterbody.

8.Against which, it appears that the petitioner has made unsuccessful third attempt by way of filing W.P.(MD).No.2945 of 2018, challenging the proceedings of the respondent therein/the Assistant Engineer, P.W.D/WRO, Periyar Main Canal Section, Madurai-2/4th respondent herein, dated 08.02.2018, calling upon her to evict from the portion of land occupied in Vandiyur I bit village in Madurai East Taluk, very specifically in Sy.No.43/1. This Court



again, after traversing all the facts and circumstances, lead to filing of third writ petition, directed the petitioner to treat the impugned notice as show cause notice for removal of encroachment and submit an objection within 7 days and thereafter, the respondent was directed to consider the objection on merits and in accordance with law. Thereafter, the impugned order has been passed making it clear that the petitioner is in occupation of "Kulam", water body.

9. In view of the above facts and circumstances of the case, we are of the view that this Court has repeatedly on more than three occasions, has given time to both the petitioner and respondent to consider the case of the petitioner and after completing all the exercises, the fourth respondent has passed the impugned order, on the basis of revenue records, holding that the petitioner has encroached Marukkal Odai, water body. Hence, we are not able to find any merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10. If the petitioner is a houseless person either in the same village or in the neighbouring Village or in any other place, either in her name or in her husband's name, the second respondent/District Collector, Madurai will consider her request for alternate accommodation.

Sd/-

Assistant Registrar (RECORDS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

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

2. The District Collector,
Office of the District Collector, Madurai.

3. The Tahsildar,
Madurai East Taluk, Madurai.

4. The Assistant Engineer,
Public Works Department/W.R.O
Periyar Main Canal Section, Sub Division No.1, Madurai-2.
+1 cc to Special Government Pleader, SR.No.91414.

Vs

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