



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) .No.19152 of 2018
and
W.M.P. (MD) .No.17004 of 2018

S.Mohamed Yousuf

... Petitioner

vs .

1.The District Collector,
Collectorate,
Pudukottai District,
Pudukottai.

2.The Revenue Divisional Officer,
O/o.The Revenue Divisional Officer,
Aranthangi Post,
Pudukottai District.

3.The Tahsildar,
Taluk Office,
Manamelkudi Taluk,
Manamelkudi Post,
Pudukottai District.

4.The Assistant Engineer,
Tamil Nadu Electricity Board,
Kottaipattinam Post,
Manamelkudi Taluk,
Pudukottai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to forbear the respondents from demolishing the petitioner's shop and house situated in Survey No.177/3 sub-clause 8, Kottaipattinam Village, Manamelkudi Taluk, Pudukottai District in the name of encroachment and consequently, direct the respondents 1 to 3 to issue Patta by considering the Sale Deed registered in Document No.54/1997 on the file of the Sub-Registrar Office, Manamelkudi.



For Petitioner: Mr.M.Saravanakumar

For R1 to R3 : Mr.V.Anand
Government Advocate

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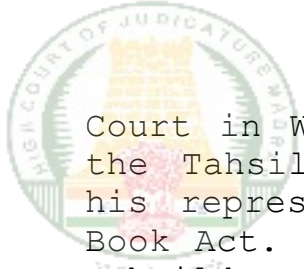
O R D E R

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

This Writ Petition has been filed seeking a writ of Mandamus to forbear the respondents from demolishing the petitioner's shop and house situated in Survey No.177/3 sub-clause 8, Kottaipattinam Village, Manamelkudi Taluk, Pudukottai District, in the name of encroachment and consequently, direct the respondents 1 to 3 to issue Patta by considering the Sale Deed registered in Document No.54/1997 on the file of the Sub-Registrar Office, Manamelkudi.

2.According to the petitioner, he has purchased a plot in Survey No.177/3, to an extent of 11 cents in the name of his son in the year 1997 and the same was registered in Document No.54/1997 before the Sub-Registrar Office, Manamelkudi. Thereafter, he has submitted a building plan with the local authorities to construct an Ice-plant and the same was approved by the Block Development Officer in his proceedings Na.Ka.No.3481/98 Thi 8, dated 06.08.1999. While so, one Mr.Jagubar Ali, filed a civil suit in O.S.No.76 of 1998 against the petitioner for permanent injunction from constructing the Ice-plant and restrained the Junior Engineer of Electricity Board from providing any electricity service connection. The said suit was dismissed by the learned District Munsif, Aranthangi, on 30.04.1998. Thereafter, the petitioner made a representation to the District Collector, Pudukottai, with a request to issue patta in his name on the basis of the sale deed dated 18.02.1997. The said application was forwarded by the District Collector, Pudukottai to the Tahsildar, Manamelkudi, in his memo in O.Mu.Aa3/10818/2013, dated 25.05.2013.

3.In spite of the communication sent by the District Collector, Pudukottai, the Tahsildar, Manamelkudi, has not taken any steps and therefore, the petitioner made a Monday petition with the District Collector on 01.02.2016 to consider his request to issue patta in his name. Again the District Collector, Pudukottai, on the basis of his representation dated 01.02.2016, forwarded the same to the Tahsildar for necessary orders. However, no action whatsoever has been taken. In the mean while, as per Rule 4 of the Tamil Nadu Patta Pass Book Rules 1987, the third respondent should have taken steps to conduct an enquiry within a period of 15 days from the date of receipt of a copy of the petition filed under the Tamil Nadu Patta Pass Book Rules 1987. Thereafter, the petitioner's son filed a writ petition before this



Court in W.P.(MD).No.15309 of 2016, seeking a direction against the Tahsildar, Manamelkudi, third respondent herein to consider his representation dated 01.02.2016 under Tamil Nadu Patta Pass Book Act. The said writ petition was disposed of and directed the Tahsildar, Manamelkudi, third respondent herein to consider the representation within a period of three weeks. In spite of the order passed by this Court, no order has been passed. However, the third respondent, taking note of the fact that the petitioner has purchased the land from his vendors, which is shown as Oorani poramboke in the Revenue Records, again the third respondent has requested the fourth respondent in his letter dated 30.08.2018 to disconnect the Electricity Connection. Therefore, the petitioner has been advised to approach this Court.

4.The learned counsel appearing for the petitioner would submit that it is an admitted fact that the petitioner is a bonafide purchaser of a plot to an extent of 11 cents for valid consideration dated 18.02.1997 in Survey No.177/3 situated at Kottaipattinam Village, Manamelkudi Taluk, Pudukottai District, that cannot be construed as a Tank as alleged by the third respondent. It is only Oorani and Vandipathai (Cart Tract). Further, he would submit that in Survey No.172, which is also Oorani Poramboke and Cart Tract road has been re-classified as Natham and patta has been issued to various encroachers, but the petitioner has been discriminated.

5.The learned Government Advocate appearing for the respondent Nos.1 to 3 opposing the above said prayer and drawing the attention of this Court to copy of the 'A' register enclosed along with the writ petition, contended that the survey No.172 has been shown as 'Mayanam'. Therefore, some of the encroachers were issued with patta from the lands adjacent to Mayanam, whereas, the case of the petitioner is covered in Survey No.177/3, which is Oorani and Vandipathai(Cart Tract) road.

6.It is well settled legal position that no water body can be re-classified for the purpose of issuance of patta by any authority. The petitioner cannot claim for issuance of patta in Oorani and also Cart Tract road. We are also impressed by the said submission made by the learned Government Advocate.

7.The Division Bench of this Court in L.Krishnan v. State of Tamil Nadu reported in 2005(4) CTC 1, while deprecating the persons encroaching Odai poramboke, water bodies like, ponds, lakes, tanks, etc., has laid down the law that it is the fundamental duty of every citizen under Article 51-A(g) of the Constitution of India to protect and improve natural environment including forests, lakes, rivers and wild life and on that basis, directed the Government to take necessary legal steps to remove

the alleged encroachments made on all water bodies. It is, in this context, relevant to extract hereunder paragraph 8 of the said decision:

"8.A reading of the above referred passages of the said Judgment shows that the endeavour of the State should be to protect the material resources like forests, tanks, ponds, hillock, mountain, etc., in order to maintain the ecological balance. The Hon'ble Supreme Court has highlighted that such maintenance of ecological balance would pave the way to provide healthy environment which would enable the people to enjoy a quality life which is essence of the right guaranteed under Article 21 of the Constitution. While on the one hand, the State is bound to maintain the natural resources with a view to keep the ecological balance intact and thereby provide a healthy environment to the public at large in the State of Tamil Nadu, having regard to the precarious water situation prevailing in the major part of the year, it is imperative that such noted water storage resources, such as tanks, odis, oornis, canals etc., are not obliterated by encroachers."

In the light of the above, any re-classification of water body as a residential area is against law.

8. In the case on hand, a perusal of the 'A' Register clearly shows that the survey No.177/3 is shown as Oorani and Cart Tract Road. The petitioner, as per registered sale deed dated 18.02.1997 before the Sub-Registrar Office, Manamelkudi, has purchased 11 cents in the name of his son in Survey No.177/3, which is shown in the 'A' Register as Oorani and Cart Tract road. Therefore, we are unable to find any merits in this writ petition. Accordingly, this writ petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar (CS-I)



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+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.82514

NS

BU/PM/SAR-I :10.10.2018 : 5P/5C

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and
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