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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.14615 of 2008 and
WMP.Nos.1 of 2008 and 2 of 2008
and WMP.No.1 of 2011

Mrs. S. Leelavathi

...Petitioner

-Vs-

1. The Special Commissioner &
Commissioner of Land Administration,
Chepauk, Chennai-5.

2. The District Collector,
Nilgiris District at
Udhagamandalam.

3. The Revenue Divisional Officer,
Coonoor,
Nilgiris District.

4. The Tahsildar,
Kundra Taluk,
Kundha, Nilgiris District.

... Respondents

PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus or any other appropriate writ order or direction in the nature of a writ of certiorarified mandamus calling for the records of the 2nd respondent herein in Rc.U.2 No.61977/97 dated 14.12.2002 as confirmed by the 1st respondent herein in his order Roc.No.F.3/3255/2006 dated 14.05.2008 and quash the same and direct the respondents to assign lands of an extent of 3.00 acres in Survey No.346/1 of Bikkatty Village, Kundha Taluk, Nilgiris District to the petitioner herein as the widow of an Ex-Service Man under Ex-Service Man category.

For Petitioner : M.Devaraj

For Respondents: Mrs.K. Bhuvaneswari, AGP

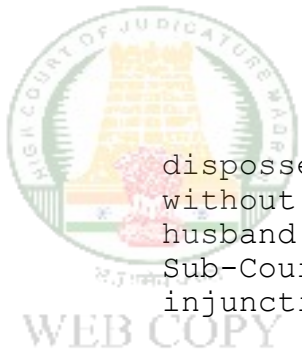


ORDER

Writ petition is filed to call for the records of the 2nd respondent herein in Rc.U.2 No.61977/97 dated 14.12.2002 as confirmed by the 1st respondent herein in his order Roc.No.F.3/3255/2006 dated 14.05.2008.

2. The learned counsel for the petitioner submitted that the petitioner is the wife of late one Y.K.Bheeman. The petitioner's husband served in the army for about 20 years from 1954 to 1973. He also participated in the China War in 1962 and 1971. After his retirement, he made an application to the second respondent requesting for assignment of some lands for the purpose of survival and for agricultural activities for rehabilitation as Ex Service Man. The second respondent District Collector advised the petitioner's husband to approach the Collectorate for assignment of land after his actual retirement from army. Accordingly the petitioner after his retirement in 1973 approached the 2nd respondent for assignment of lands in S.No.346/1 of Bikkatty Village. After considering the application, the second respondent directed the Tahsildar of Udagamandalam to take appropriate steps for assignment of the land of an extent of 3 acres in Survey No.346/1. Pursuant to the same then, the Tahsildar, Udagamandalam in letter No.RS.A.2/4468/75 dated 25.2.1976 directed the land Surveyor to survey and measure the land in Survey No.346/1 so as to enable the petitioner to get assignment. The petitioner's husband remitted the necessary fees for the purpose of demarcation of the said land. In pursuance to the demarcation, the Bikkatty Panchayat has also passed resolution dated 31.12.2007 expressing consent for assignment of land in favour of the petitioner's husband. The petitioner's husband submitted another petition to the Board of Revenue seeking patta in respect of the said land on 16.03.1979. The Board of Revenue forwarded the petition to the second respondent for further action. Thereafter, the second respondent directed the Tahsildar to conduct an enquiry and call upon the petitioner's husband to appear for enquiry on 25.10.1979. After several formalities, the second respondent would direct the petitioner's husband in memorandum dated 5.09.1989 permitted the petitioner's husband to carry on agricultural operations over an extent of 1.00 acre of land in Survey No.346/1 stating that such permission was temporary subject to final decision which may be taken by the Government in the matter.

3. Thereafter the petitioner's husband made application on 12.12.1980 to the Ex-Servicemen Welfare Association for assignment of the said land. While that being so, all of a sudden, the second and third respondents attempted to forcibly



dispossess the petitioner's husband from the above said land without even issuing notice. Against this, the petitioner's husband filed the suit in O.S.No.477 of 1980 on the file of the Sub-Court, Udagamandalam praying for decree of permanent injunction.

4. The Learned Subordinate Judge disposed of the original application and directed the respondent to evict the petitioner after following the due process of law. While the matter stood thus, the petitioner's husband passed away on 12.04.1997. Thereafter the petitioner made a detailed representation on 09.09.2002 to the third respondent requesting to pass necessary orders for assignment of land in favour of the petitioner as widow of Ex Service man. While application was pending, the 3rd respondent the Revenue Inspector, Ithalur, Coonoor Division issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 calling upon the petitioner to show case on or before 05.12.2002 as to why the petitioner should not be evicted. Immediately, thereafter the petitioner filed Writ Petition before this Court in W.P.No.37526 of 2002. This Court by order dated 03.10.2002 disposed of the Writ Petition and directed the respondents to consider the petitioner's representation dated 09.09.2002. However thereafter on 14.12.2002, the respondent rejected the application for assignment stating that as per GO.Ms.No.1168 dated 25.07.1989 there was a ban on assignment of lands in Nilgiris District and as the ban order was in force, the petitioner's application was rejected. Against the said order, the petitioner preferred an appeal before the first respondent. The first respondent by proceedings dated 20.10.2005 rejected the appeal stating that the petitioner had encroached an extent of 2.35 acres of land in Survey No.346/1 and that the villagers had objected contending that out of 68.33 acres of land which was originally available, 50 acres was utilized for social forestry scheme and the balance 18.33 acres was not adequate for cattle feeding and pressed for removal of the encroachment. Challenging the above said order of the first respondent, the petitioner again approached this Court in W.P.No.243 of 2006. This Court by its order dated 26.09.2006 remanded back the matter to the first respondent for fresh consideration. Thereafter, the present impugned order was passed, against which the present Writ Petition is filed.

5. The Learned counsel for the petitioner would submit that though the petitioner and her husband have been fighting for assignment of land right from 1976 onwards, the respondent either one or the other lame excuse had been rejecting the applications of the petitioner, repeatedly though till date the petitioner is in occupation and enjoyment of the property. Initially the application was rejected on the ground that there was ban as per G.O.Ms.No.1168 dated 25.07.1989 and now that



there is no ban for considering the issue, the Government have power to exempt and reclassify the land as a recognition of petitioner's husband's service as ex serviceman. Accordingly, praying for allowing the present Writ Petition.

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6. The respondent filed a counter and the sum and substance of counter are as follows: As per the direction of this Court in W.P.375261 of 2002 dated 3.10.2002, the District Collector of the Nilgiris has examined the request of the petitioner Tmt. Leelavathy seeking assignment of the land in S.No.346/1 of Bikkatty village and rejected the same on the ground that the land in S.No.346/1 is classified "Village Grazing Ground" and diversion of this land for other purposes has also been banned by the Government in G.O.Ms. No.186, Animal Husbandry and Fisheries Department dated 11.12.2001. After such rejection, an appeal petition was filed by the petitioner before the Commissioner and the Special Commissioner of Land Administration has directed the Collector of the Nilgiris to evict all the existing encroachments in the field and keep the land free from further encroachment. As per the order of the Special Commissioner and Commissioner of Land Administration, an extent of 3.95 acres land in S.No.346/1 of Bikatty Village was evicted on 10.2.2006 and 11.02.2006 including the land encroached by the other people by way of tea cultivation unauthorizedly. Against this order, again the petitioner approached this Court in W.P.No.243 of 2006, wherein by order dated 26.9.2006, this Court remanded the matter and thereafter again the Special Commissioner and Commissioner of Land Administration has examined the request of the petitioner with connected records and passed orders as follows on 14.05.2008:

"The classification of the land in question as per the Revenue record is Village Grazing Ground Poramboke. The individual has encroached an extent of 2.35 acres land in this field. Apart from this, there are also other encroachments by way of house/burial ground/tea plantation etc. As per provisions of Revenue Standing Order 15(24) Ex-Servicemen are eligible for assignment of land only if they are landless poor persons. The question of assignment shall be taken up after considering the claims of other landless and poor persons and after ensuring that the Ex-servicemen are likely to take up direct cultivation but subject to other conditions and observation of all formalities. The assignment of land in hill areas for cultivation purpose has been banned by the Government in G.O.Ms.No.1168 Revenue dated 25.7.89. The ban orders are still in force. Further diversion of Village



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Grazing Ground lands for other purposes has also been banned by the Government in G.O.Ms.No.186 Animal Husbandry and Fisheries Department dated 11.12.2001. The individual was temporarily permitted by the Collector to cultivate 1.00 acre of land and no assignment orders were granted. The temporary permission granted to the appellant pending finalization of the appellants request for assignment which cannot be taken as a basis for claiming right over the land. The contention of the appellant that the policy of the Government to utilize waste land for cultivation has not been considered by the Collector is not relevant to this issue. The classification of the land is Village Grazing Ground Poramboke which is meant for cattle feeding and it is not a waste land as contended by the petitioner. Long encroachment in the Government land will not confirm any title over the property. Considering all these reasons the orders passed by the Collector of the Nilgiris are hereby confirmed and the appeal petition of Tmt.S.Leelavathy was dismissed as devoid of merits."

7. Retracting the above counter, the learned Additional Government Pleader appearing for the State would submit that as the land is classified as Village Grazing Ground that cannot be alienated in favour of the individual for the purpose of cultivation, otherwise in future there may not be available any land in order to feed the cattle and hence order of the Special Commissioner need not be interfered with on the undisputed fact that the petitioner's husband has encroached the land in Survey No.346/1 and then submitted application for assignment.

8. The request made by the petitioner's husband as well as petitioner could not be granted on the ground that the Gracing Poramboke land cannot be alienated in favour of individual and further he relied upon the G.O.Ms.No.1168, Revenue Department, dated 25.07.1989 which imposed ban for assignment of classified land in favour of the individual.

9. On perusal of the entire records, it is seen that initially the petitioner's husband filed application for assignment of agricultural land. However, the said request was not considered. Thereafter, the petitioner pursued the request before the Authority. Ultimately, the Authority arrived at a conclusion that the land sought for by the petitioner is classified as grazing ground poramboke land which is meant for



cattle feeding and the said land is not wasted as contented by the petitioner. On that reason, the request of the petitioner was rejected.

10. It is a settled view that the Grazing Poramboke land and the land meant for water resources cannot be alienated in favour of any individual. It has to be maintained for the purpose of feeding the cattle and storing the water. If this classification lands are alienated for individual purpose or any other purpose, this type of classification of land may not even exist in future. In the present case, the petitioner has encroached Survey No.346/1 which is a Gracing Poramboke land and was evicted on 10.2.2006 and 11.02.2006 and the petitioner has also not re-occupied and the entire land is now vested with the Government and the said land is kept as Gracing Paromboke land for feeding the cattle. Hence, in view of the above, I am not inclined to interfere with the order passed by the authorities. Accordingly, Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

mrn

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The Special Commissioner &
Commissioner of Land Administration,
Chepauk, Chennai-5.

2. The District Collector,
Nilgiris District at Udthagamandalam.

3. The Revenue Divisional Officer,
Coonoor, Nilgiris District.

4. The Tahsildar,
Kundra Taluk,
Kundha, Nilgiris District.

+1cc to Mr.M.Devaraj, Advocate, SR.No.52545

W.P.No.14615 of 2008
WMP.Nos.1 of 2008 and 2 of 2008 and
WMP.No.1 of 2011

Kak(10/10/2019)