

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 30217 of 2007
and
M.P. 1 of 2007

Hamsammal @ Hamsaveniammal ... Petitioner

Vs

1. Special Commissioner and
Commissioner for Land of
Administration,
Chepauk, Chennai.

2. State of Tamil Nadu,
rep. by its District Collector,
Chennai-600 001.

3. Managing Director,
Tamil Nadu Adi Dravidar Housing
Developing Corporation (TAHDCO),
Tirumangalam,
Chennai-600 101.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in proceedings No.K1/24173/2004, dated 31.08.2007, quash the same and direct the respondents to grant patta outside the purview of the Tamil Nadu Estates Abolition Act XXVI of 1948 in favour of the petitioner for the property in Survey No.13 and resurveyed and cast in T.S.No.27, Block No.2, Ayanavaram Village, Perambur-Purasaiwalkam Taluk.

For Petitioner : Mr.AR.L. Sundaresan
Senior Advocate
M/s.M.Muthupandian
For Respondents : Mr.J.Ramesh,
Addl. Govt. Pleader

O R D E R

This Writ Petition has been filed challenging the impugned order of 1st respondent vide proceedings dated 31.08.2007, quash

the same and to direct the respondents to grant patta outside the purview of Tamil Nadu Estates Abolition Act XXVI of 1948 in favour of the petitioner.

2. The case of the petitioner is as follows :-

The petitioner's mother Jagadambal and her brother Chandrasekaran applied for patta in an extent of acre 1.88 corresponding to Paimash No.543/1, 543/1/1 and 144/1 in Ayanavaram Revenue village under the Estates Abolition Act, XXVI of 1948. The corresponding revenue survey No. was 13 and subsequently resurveyed in T.S.No.27, Block No.2. The Settlement Tahsildar granted patta only in respect of acre 1.26 and rejected the claim for remaining 62 cents in the same survey number on the ground that it was not a ryoti land and observed that it was a 'water spread poramboke'. Thereafter, the petitioner's mother prosecuted several proceedings before the Revenue officials for grant of patta, but they were of no avail in several litigations. Finally, she has approached this Court for a writ of mandamus, directing the respondents to dispose the representation of the petitioner dated 24.12.1999. This Court by its order dated 22.03.2006 has held that having regard to the nature of the grievance expressed by the petitioner and in the light of the order of the Division Bench dated 10.10.2000 in W.A.No.1589 of 1999, the 1st respondent is directed to dispose of the petitioner's representation on its own merits and in accordance with law. As per the order of this Court, the impugned order is passed on 28.12.2006 stating that the 1st respondent has rejected the request of the petitioner on the ground that in order to get patta outside the purview of the Tamil Nadu Estates Abolition Act XXVI of 1948 (hereinafter called as 'Act XXVI of 1948') and as per G.O.Ms.No.1300, Revenue Department, dated 30.04.1971, the petitioner must have her continuous possession and enjoyment of the land prior and from the notified date. The petitioner has not produced any valid document except the receipt of F.C.R. and Tahsildar letter. Hence, the 1st respondent has rejected the request of the petitioner for not extending the benefit under G.O.Ms.No.1300, dated 30.04.1971. Challenging the same, the petitioner has filed the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the order of Settlement Tahsildar dated 05.10.1959 was not challenged before any other forum, however, the Government itself has issued a G.O.Ms.No.1300, dated 30.04.1971 extending benefit stating that if a person, who occupied the property is continuously in possession and if the possession is proved as per clause 5, the Government have power to grant patta in favour of the petitioner. Further, it is an admitted case that the petitioner is in continuous possession and enjoyment of the property from the notified date of Estate Abolition Act to

till date. However, even though the petitioner has produced necessary documents in order to prove the land is not a water spread poramboke, the 1st respondent without considering all those things has rejected the request of the petitioner stating that no records produced before the Settlement Tahsildar is unsustainable one and accordingly, he prayed for allowing the Writ Petition.

4. Per contra, the learned Government Pleader appearing for the respondents has filed a counter affidavit stating that the Ayanavaram Village in Purasawalkam-Perambur Taluk, Chennai District was taken over by the Government under the provisions of 'Act XXVI of 1948' and during the final settlement enquiry, the petitioner and her brother Chandrasekaran have applied for a patta to an extent of 1.88 acres, however, in the Final Settlement Enquiry, the Settlement Tahsildar has allowed the patta to an extent of 1.26 acres and rejected the claim for the remaining extent of 62 cents. Against that order, the brother of the petitioner filed a revision petition before the Director of Survey and Settlement and the same was rejected as time barred. Thereafter, he has filed a revision petition before the erstwhile Board of Revenue and it was also dismissed. However, she has not challenged the above said order till date. In the meanwhile, the Assistant Settlement Officer, Chengalpattu has allowed the patta in favour of third parties viz., Tvl. Jayavelu, Somasundaram, Jadavan and Shanmugam, but on verification, it was found that the patta was subsequently cancelled and the entire land in the above said area is used as a water body and some trees are standing around the water body and no person is occupying the land. Further, as per the order of this Court, the Tahsildar has inspected the property and filed a report through inspection notes on 18.06.2019, which reads as follows :-

"Inspection notes of the Tahsildar, Date of inspection : 18.06.2019. Place of inspection T.S.No.27/1 and 27/2 of Block No.2 of Ayanavaram town situated in Chitharanjan colony of Chennai-82.

"Inspected the land bearing T.S.No.27/1 and 27/2 of Block No.2 of Ayanavaram Town along with the Deputy Inspector of Survey and the Maintenance Firka Surveyor of this office. The said piece of land was identified by the Deputy Inspector of Survey. The said land is in a quadrilateral shape. The said land is abutting Jambulingam Main Road on its northern side. Also there is a police booth set up by K5, Peravallur Police Station on the northern side of the said piece of land. A portion of land measuring 448.5 sq. metres of land and lying on the North East side is found subdivided and registered in the name of Government of

Tamil Nadu. The entire land is vacant on ground. But, there are no boundaries to show the field separately. The four side boundaries of both the lands are as follows :-

Village : Ayanavaram, Block No.2

Land T.S.No.	North by	South by	East by	West by
27/1	Jambulingam Main road	T.S.No.27/1	T.S.No.13/1	T.S.No.27/1
27/2	Jambulingam Main Road	T.S.No.12/2	T.S.No.27/2 and 13/1	T.S.No.12/1

The entire land is vacant on ground except one pipal tree, 3 drumstick trees, two almond trees and four neem trees on this land. There are no buildings, house or compound wall in this land. The land is low lying and water is logging area. The land is surrounded by Chitharanjan Nagar 1st Street on its Eastern side. The said land is preserved and protected. This land may also be taken to prohibitory order book for permanent protection."

5. In the present case, the undisputed facts are that the petitioner and her brother have initially applied for grant of patta under the 'Act XXVI of 1948' before the Assistant Settlement Officer in the year 1959, the authority under the 'Act XXVI of 1948' has arrived a conclusion that the petitioner is entitled to get patta for 1.26 acres, however, rejected to grant patta for 62 cents and observed that 62 cents is a water spread poramboke and also observed that the excess land of 62 cents is a clear encroachment land and disallowed the claim made by the petitioner. Thereafter, there are several litigations before several forums, ultimately, this Court in W.P. No. 7935 of 2006 issued a direction to consider the petitioner's representation in respect of patta in the land under G.O.Ms.No.1300, dated 30.04.1997 and the authority has rejected the request on the ground that no records were produced. Even on perusal of G.O.Ms.No.1300, in sub-clause (5) reads as follows:-

"(5) In respect of cases, where the land has been classified during settlement as communal poramboke, but on ground, it has been converted as dry or wet field and the applicant has been in continuous possession and enjoyment of the land, the appropriate authority may grant patta in respect of such land after following the classification of the land."

6. The above said clause makes it clear that a person, who is continuously in possession of communal land and the possession is established, the Government can grant patta in respect of such land after following the prescribed procedure.

However, in the present case, the Settlement Tahsildar has arrived a conclusion that the said disputed land is a water spread poramboke and if it is a water spread poramboke, no authority have right to convert it to a communal land and the remaining extent has to be maintained as water separate poramboke. It is also relevant to note that though the petitioner's brother challenged the order of Settlement Tahsildar passed in the year 1959 before the appropriate authority under the said 'Act XXVI of 1948', however, the petitioner did not challenge the order passed by the Settlement Tahsildar before any other forum except filing the Writ Petition before this Court. Hence, without challenging the decision arrived by the Settlement Tahsildar in the year 1959, filing of Writ Petition and claiming the land is unsustainable one. Accordingly, the Writ Petition stands dismissed.

7. This Court perused the affidavit filed by the 2nd respondent viz., District Collector, Chennai and the District Collector in his affidavit dated nil.June 2019 makes it clear that the Government land can be utilised for storing water during rainy season to keep the ground water level in a good condition.

8. In the recent past, the water bodies are converted to public purpose or house sites. The remaining water bodies are only 40% to satisfy the need of the people. In the present case, the petitioner sought for patta in water spread poramboke land, which cannot be granted. This Court perused the affidavit filed by the District Collector, Chennai and in his affidavit, he has stated that the Government land can be utilised for storing the water during the rainy season to keep the ground water level in good condition. Hence, I am inclined to issue further direction to the District Collector to protect the water body by fencing and further maintain the said land as a water body (Pond).

9. In the result, the present Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-v)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Commissioner and
Commissioner for Land of
Administration,
Chepauk, Chennai.

2. The District Collector,
State of Tamil Nadu,
Chennai-600 001.

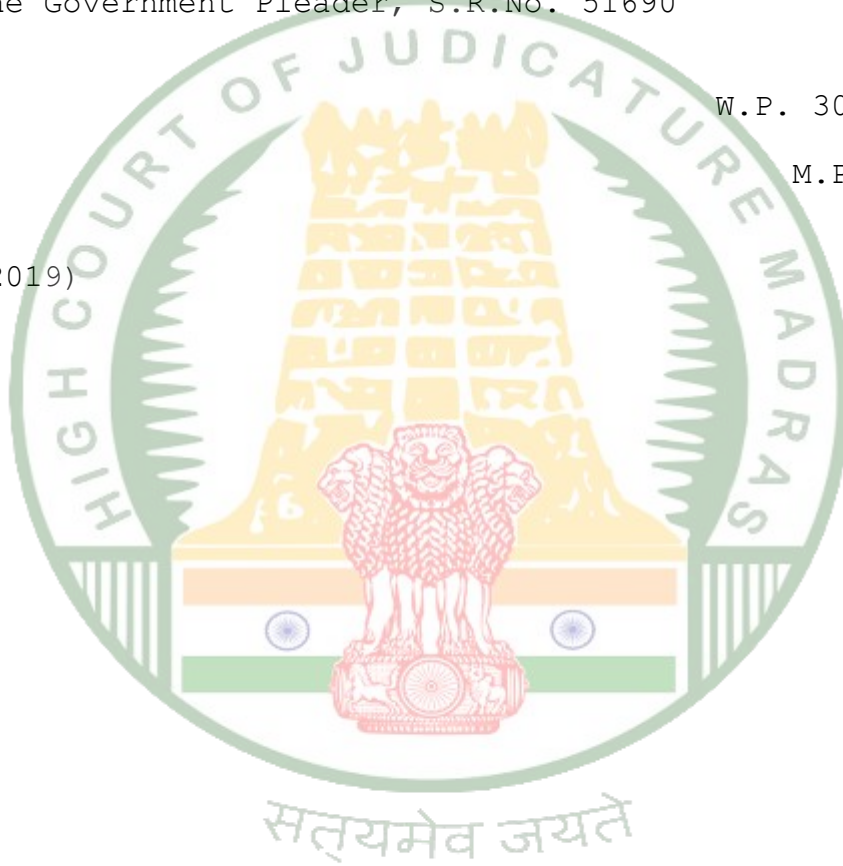
3. Managing Director,
Tamil Nadu Adi Dravidar Housing
Developing Corporation (TAHDCO),
Tirumangalam,
Chennai-600 101.

+lcc to Mr.M.Muthapandian, Advocate, S.R.No. 51628

+lcc to the Government Pleader, S.R.No. 51690

W.P. 30217 of 2007
and
M.P. 1 of 2007

SVI (CO)
GN(24/07/2019)



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