

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.04.2019

Coram

THE HON'BLE MR. JUSTICE G.R.SWAMINATHAN

W.P.No. 35635 of 2007

1. A.S. Abdul Sathar

2. A.S. Abdul Ghani

3. I. Akbar Basha Petitioners

Versus

1. The Revenue Divisional Officer,
Salem, Salem District.

2. The Tahsildar,
Salem Taluk,
Salem District. Respondents

PRAYER:

This writ petition is filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No. 9036/2006(B2) dated 13.07.2007 and quash the same and consequently direct the respondents to issue No Objection Certificate to the petitioners and pass orders.

For Petitioners : (No appearance)

For Respondent : Mr.N. Karthikeyan

Additional Government Pleader

O R D E R

None appeared for the writ petitioners. Mr.N.Karthikeyan appeared for the respondents. Counter affidavit has been filed by the first respondent.

2. This Court thought it fit and appropriate to go through the materials on record and dispose of the matter.

3. The petitioners question the order dated 13.07.2007 passed by the Revenue Divisional Officer, Salem. The petitioners claim is that they are the owners of the land comprised in S.No.18/6 in Asthampatti Village, Salem Taluk, Salem District to the extent of 0.49 hectares(1.21 Acres). The petitioners have filed O.S.No.480 of 1983 on the file of the Additional District Munsif, Salem seeking the relief of declaration that the respondents cannot apply the Land encroachment Act and evict them. They also sought permanent injunction restraining the defendants/ State of Tamil Nadu, represented by the District Collector, Salem from interfering with the possession and enjoyment of the property in question. The said suit was decreed on 08.12.1989.

4. On the strength of the decree dated on 08.12.1989 passed in O.S.No.480 of 2009 on the file of Additional District Munsif, Salem, the petitioners applied for issuance of patta from the Assistant Settlement Officer, who in turn on 22.03.2001, issued patta in favour of the writ petitioners. Based on these developments, the petitioners herein wanted to develop their property by letting out the same. For doing so, they need No Objection Certificate from the Tahsildar, Salem/2nd respondent herein. Therefore, they submitted an application in this regard. The matter was considered by the Revenue Divisional Officer Salem, who declined to issue the No Objection Certificate sought for by the writ petitioners and that order is put under challenge in this writ petition.

5.The prayer made in the writ petition cannot be granted for one reason. The reliance placed by the writ petitioners on the decree dated 08.12.1989 in O.S.No.480 of 1990 is totally misplaced. In the typed set of papers, the petitioners have enclosed the said Judgment which reads as follows.

Plaintiff present. Defendants called absent. Set Exparate P.W.1 examined. Ex.S.A1 and A2 marked. Claim proved. Suit is decreed as prayed for with costs.

7. This Court is of the considered view that such a cyptic and non speaking judgment has to be ignored as a nullity. That apart it is seen, that in the Revenue records the property in question has been classified as water bodies.

8. One another subsequent development has taken place in this case. One Subramanian filed W.P.No.27545 of 2016 for removing all encroachments made in Kollankuttai Eri, Survey No.18/3 and the Hon'ble first Bench directed the District Collector, Salem to clear all the encroachments in the water body. Following the direction given by the Hon'ble Division Bench all the encroachments have been cleared.

9. Since, S.No.18/3 is classified as a water body all the pattas issued were also cancelled. Hence, the patta issued in favour of the writ petitioner by the Assistant Settlement Officer also cancelled. Therefore, the issuance of No Objection certificate will not arise at all. In fact, in the counter addidavit, it has been mentioned that a mistake has been committed by the Assistant Settlement Officer, Salem who issued patta in favour of the writ petitioner herein.

10. In this view of the matter I find no merits in the writ petition. Hence, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

smn

To

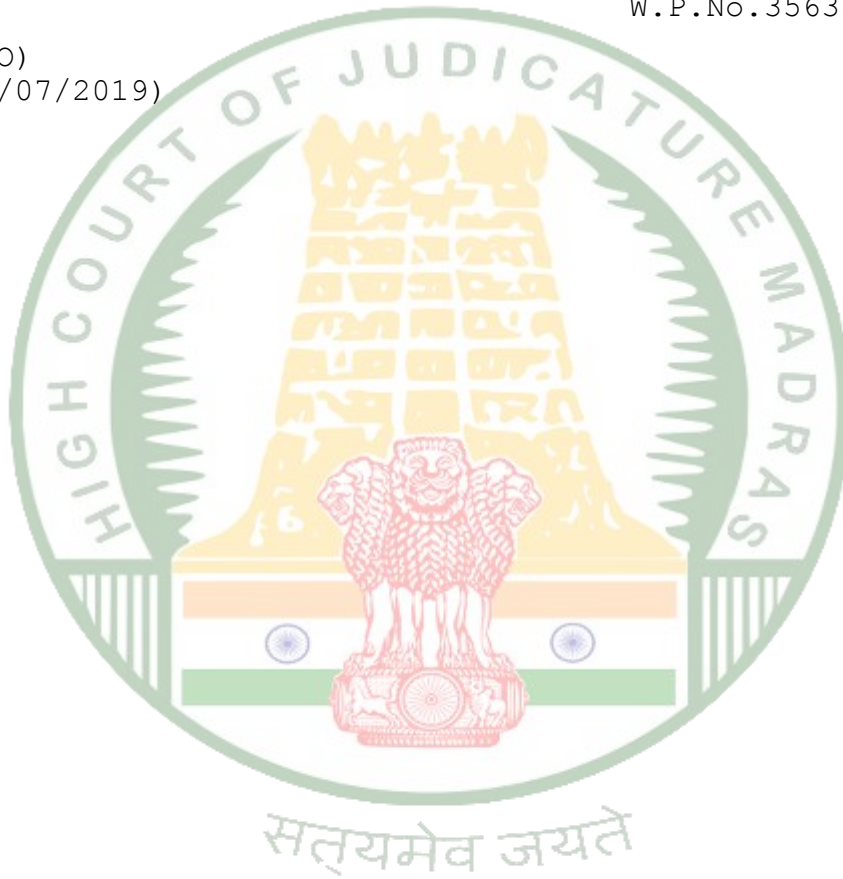
1. The Revenue Divisional Officer,
Salem, Salem District.

2. The Tahsildar,
Salem Taluk,
Salem District.

+1cc to Mr.C.Prakasam , Advocate SR.No. 35263
+1 cc to Government Pleader Sr.No. 35290

W.P.No.35635 of 2007

vd (CO)
A.SK(15/07/2019)



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