

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 1714 of 2010

SP Shanmugam

... Petitioner

Vs

1. The Settlement Officer-cum-Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai-600 005.
2. The District Collector, Pudukkottai District, Pudukkottai.
3. The Tahsildar, Pudukkottai District, Pudukkottai.
4. The Commissioner, Pudukkottai Municipality, Pudukkottai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 1<sup>st</sup> respondent herein in Na.Ka.No.2201/07/E1, dated 18.09.2009 and quash the same.

For Petitioner : Mr.AR.Karthik Lakshmanan  
for Mrs.AL. Gandhimathi

For Respondents : Mr.M.Elumalai,  
Govt. Advocate for R1 to R3

Mr. P.Srinivas for R4

O R D E R

This Writ Petition has been filed challenging the impugned order of the 1<sup>st</sup> respondent dated 18.09.2009 and quash the same.

2. The case of the petitioner is that originally, the lands comprised in Survey Nos.206/1A measuring an extent of 30 acres

and 5 cents, 205/2B of an extent of 35 cents, 206/1B of an extent of 6 acres, 212/2 of an extent of 4 acres and 90 cents, 213/2 of an extent of 16 acres and 96 cents, 212/3 of an extent of 45 cents and 219/2 of an extent of 96 cents, together with a private pond commonly called as "Maruppini Kulam" measuring an extent of 29.83 acres comprised in Survey No.205/1, of Pudukkottai Town, Pudukkottai District belonged to one Thanappa Pillai. The water from the aforesaid Pond is exclusively used for irrigation purposes by the said Thanappa Pillai for his above mentioned lands. As he was unable to pay certain debts, a Suit in O.S.No.1119/1924 came to be filed against him and he suffered a decree therein and for the purpose of settling the decretal amount, he got the permission of the court by an order dated 31.10.1926 for selling the property described above and released the same from attachment on payment of Rs.34,000/- in part satisfaction of the decree and in pursuance to such permission, which was obtained by him by a registered Sale deed dated 01.11.1926 registered as document No.273 of 1926 on the file of Sub-Registrar, Pudukkottai, he along with his sons sold all the aforesaid lands along with the Pond in favour of Mr.S.V.Lakshmanan Chettiar. Out of the aforesaid lands, an extent of 28.66 acres was sold by Mr.S.V.Lakshmanan Chettiar and his legal heirs on various dates subsequently. Now, the legal heirs of S.V.L.Lakshmanan Chettiar are in possession and enjoyment of 30.5 acres in Survey No.206/1A, 96 cents in Survey No.219/2 and the Private Pond measuring an extent of 29.82 acres in Survey No.205/1.

3. The petitioner has further averred that on and from the aforesaid date of purchase, the said S.V.L.Lakshmanan Chettiar was in possession and enjoyment of the same and after his death, his only son viz., (i) SP Lakshmanan Chettiar, (ii) SP Shanmugam Chettiar, the petitioner herein and (iii) SP Chidambaram Chettiar inherited the said property and after his death, his only son Chidambaram Chettiar has inherited the property and after his death, his three sons viz., Lakshmanan Chettiar, the petitioner herein have inherited the said property apart from other properties, each one having 1/3<sup>rd</sup> undivided share therein.

4. The petitioner has also averred that the property comprised in old Survey No.9929 is now comprised in T.S.No.9929 and lands in Survey No.205/1 are presently comprised in T.S.No.9930. The petitioner and his two brothers were entitled for Patta for the same. While they have been in possession and enjoyment of the property as stated above, a suit in O.S.No.37 of 2001 on the file of District Munsif, Pudukkottai came to be filed by one Kalif Nagar Jamath against the 4<sup>th</sup> respondent in respect of a portion of the land covered under the aforesaid Sale deed of an extent of 1.87 acres in Survey No.9930/2 praying for a decree for permanent injunction restraining the Municipality from, in any manner, interfering with the use of said area as a burial ground by the Muslims of that locality.

Immediately after came to know about filing of the said suit, the petitioner through his power agent has filed an application in I.A.No.294/2004. Thereafter, the plaint was amended and the petitioner herein and his brother, who were impleaded as defendants 2 and 3 had also filed their written statements in the said suit claiming title to the properties under the Sale deed dated 01.11.1926. Subsequently, the suit was dismissed on 31.08.2005. Aggrieved by the said order, the Muslim Jamath has filed an appeal in A.S. No.102 of 2007 on the file of Sub-Court, Pudukkottai and the lower appellate court has remanded the matter back to the lower court and renumbered the suit as O.S.No.37 of 2001. Thereafter, after conducting the appeal, the suit was dismissed on 31.03.2013. In the meanwhile, the power of attorney of the petitioner appears to have filed an application before the 1<sup>st</sup> respondent praying for restoration of lands in Survey Nos.9927, 9929 and 9930 in the name of the petitioner by deleting the changes that have been brought behind back of the petitioner and the co-owners at the instance of 4<sup>th</sup> respondent. After receipt of the said notice, the 1<sup>st</sup> respondent has issued notice to the respondents 3 and 4 and they have also appeared and produced certain documents, which was not given either to the petitioner or to the petitioner's power of attorney agent, who had filed the said application and thereafter, the 1<sup>st</sup> respondent had passed the final order dated 18.09.2009 rejecting the said application. Aggrieved by the said order of rejection, the petitioner has filed the present Writ Petition before this Court.

5. Mr.AR. Kathir Lakshmanan, learned counsel appearing for the petitioner would submit that since the original classification of "Maruppini Kulam" has lapsed its character, the petitioner is entitled to claim patta. However, without considering the title of the petitioner from the year 1926, the authority has mechanically rejected the application on the ground that the land is acquired in the year 1938, however, no records were produced to substantiate the acquisition proceedings against the petitioner or against any other persons. Hence, he prayed this Court to pass appropriate orders.

6. Mr.M.Elumalai, learned Government Advocate appearing for the respondents 1 to 3 has filed a counter statement and reiterated his submissions stating that the power of attorney of the petitioner Thiru N.Rajendran made an application to the Settlement Officer to grant patta to the lands comprised in Town Survey Nos.9927, 9929 and 9930 to the petitioners, and stated that some of the subdivisions of T.S.No.9929 were wrongly classified and registered in the name of Pudukkottai Municipality and T.S.No.9930 as "Maruppini Lake" and requested to conduct an enquiry and to now how these lands were acquired by Pudukkottai Municipality. When the petition was entertained, enquiry notices and field inspection notice were sent to the power agent of the petitioners and Pudukkottai Municipality. The

power agent was absent for the last two enquiries and as he has not challenged any of the Assistant Settlement Officer's order and as the petitioner had given petition after a lapse of 32 years, the appeal of the petitioner is rejected by the Settlement Officer on 18.09.2009. He has further submitted that the town planning officer of the Pudukkottai Municipality produced documents and evidences and stated that the petitioners ancestors were permitted to use the lands comprised in Survey No.205/1 subject to conditions and they did not have any absolute title. Moreover, they produced documents of the land comprised in old Survey No.206/1A1 with an extent of 27.56 acres, 206/1A3 with an extent of 2.24 acres totally measuring to 29.80 acres the lands have been acquired under the Land Acquisition Act and compensation had been paid in the year 1938 and possession was handed over to the Government and so, the petitioner is not entitled for patta.

7. Mr.P.Srinvas, learned counsel appearing for the 4<sup>th</sup> respondent Pudukkottai Municipality would submit that as per the direction of this Court dated 02.08.2019, the Commissioner, 4<sup>th</sup> respondent herein had appeared before this Court and explained about the portion of the land, which is used as STP and he has undertaken to file a status report about the original classification of the "Muruppini Kulam". Accordingly, he has submitted the status report stating that the bushes and other debris in the pond were cleared and with regard to the discharge of the treated water, a testing agency has been appointed by name M/s.Pure Enviro Engineering Pvt. Ltd., Chennai (with O & M Contractor) to test the discharge on a daily basis. In addition to TNPCS taken monitoring monthly basis, by monthly sample M/s.Enviro Care India Pvt. Ltd., Madurai. The learned counsel has further submitted that the Maruppini Kulam, which is of an extent of 28.27 acres is being used for the purpose of accommodating the treated water discharged by the STP after it flows through the grass cultivation in the ayacut of the kulam and the excess water from the Kulam regularly flows to the Gundar River in turn to the Vellar River and to sea finally. He has also stated that the required works for clearing the kulam have been carried out at huge expenses as set out above and the said expenses have been undertaken on an emergency basis. Hence, he prayed this Court to pass appropriate orders.

8. Considering the facts and circumstances of the case, though the petitioner is claiming title through a registered Sale deed dated 01.11.1926 vide document No.273 of 1926, they have not produced the title deeds before this Court. On perusal of the counter affidavit filed by the 1<sup>st</sup> respondent, it reveals that the 1<sup>st</sup> respondent has entertained the appeal filed by the power agent and initiated enquiry and conducted field inspection on 21.02.2009 in the presence of staff of Municipality of Pudukkottai. It would further reveal from the TSLR that Survey No.9929 is registered as patta land in favour of Municipality and

certain individuals. Similarly, survey No.9927 was registered as patta land and T.S.No.9930/2 was registered as Maruppini Kulam and state on ground there is grass and coconut trees and it has irrigation by way of kulam as per 'A' register. It also reveals that the Survey No.205/1, Maruppini Kulam had been granted as Muchalika to the predecessor of the petitioner by the Pudukkottai Samasthanam vide document No.1087 dated 10.09.1933 duly registered at the Sub-Registrar, Pudukkottai under certain condition for the benefit of the petitioner. Hence, it cannot be treated as a property of the petitioner as per para 5 of chapter XII in the Manual of Pudukkottai State an extent of 29.80 acres of land comprised in Survey No.206/1A1 and 206/1A3 was acquired under the provisions of Acquisition Act by the Government from the landowners, for which the concerned parties had received compensation. The Survey No.205/1 has already been treated as Maruppini Kulam and hence, the Settlement Officer has rejected the claim. Therefore, this Court do not find any error in the order passed by the 1<sup>st</sup> respondent.

9. If at all, the petitioner wants any particulars with regard to the acquisition proceedings initiated by the State Government, it is open to him to file an appropriate application before the concerned authority for securing the document and proceed the matter further. It is pertinent to note that the Survey No.205/1 has already been treated as Maruppini Kulam and this Court had perused the counter affidavit filed by the 4<sup>th</sup> respondent. Based on the direction of this Court, the 4<sup>th</sup> respondent has undertaken to clear the bushes by restoring Maruppini Kulam and the petitioner is not entitled to claim any right over the Maruppini Kulam land. Further, though the 4<sup>th</sup> respondent has undertaken to clear the bushes for restoring the Maruppini Kulam for its original position based on the order passed by this Court, the 4<sup>th</sup> respondent is directed to complete the task undertaken by him within a period of three months from the date of receipt of the copy of this order. However, the petitioner is granted liberty to work out his remedy in the manner known to law and it is open to the petitioner to file an appropriate application before the concerned authority after securing the documents, and if he establishes that he is having title over the property, he is entitled to initiate appropriate proceedings in accordance with law.

10. With the above observation, the present Writ Petition stands disposed of. No costs.

Sd/-  
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

rpp

To

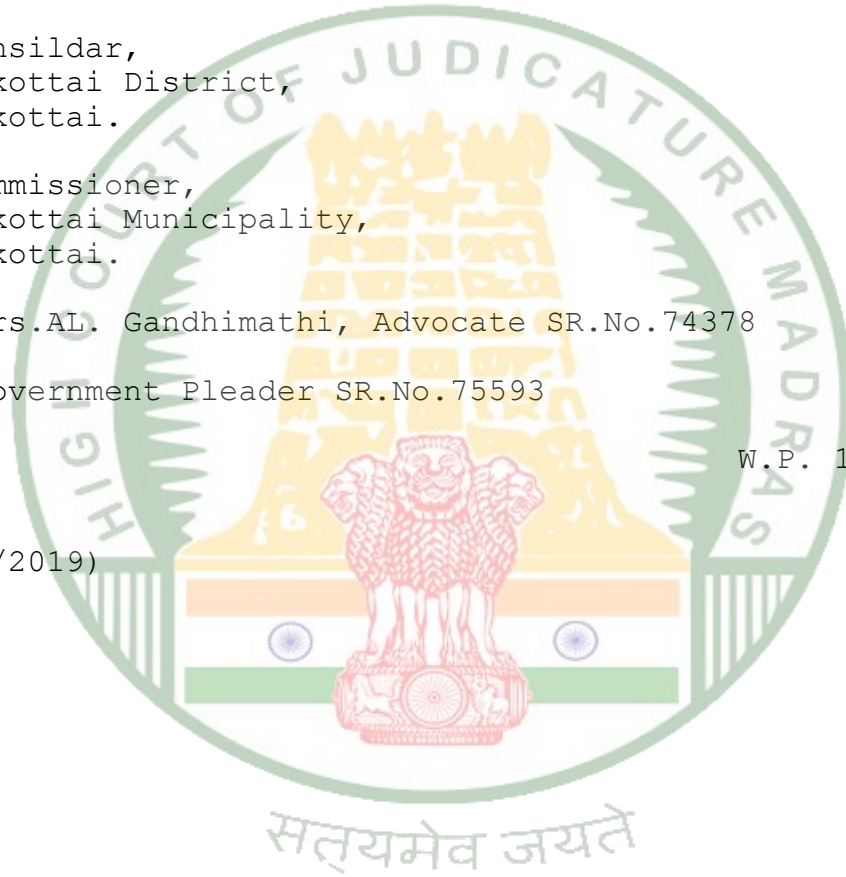
1. The Settlement Officer-cum-Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai-600 005.
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3. The Tahsildar, Pudukkottai District, Pudukkottai.
4. The Commissioner, Pudukkottai Municipality, Pudukkottai.

+1cc to Mrs.AL. Gandhimathi, Advocate SR.No.74378

+1cc to Government Pleader SR.No.75593

W.P. 1714 of 2010

PM(CO)  
GMY(14/10/2019)



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