

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.33261 and 33262 of 2016

Hema Anandhan .. Petitioners in both writ petitions

Vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram - 631 501.
2. The Thasildar,
Thiruporur. ... Respondents 1 & 2 in both WPs
3. The Commissioner,
Land Administration,
Chepauk, Chennai-600 005... Respondent 3 in WP No.33261/16

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Prayer in W.P.No.33261 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Na.Ka.28321/2015/N4, dated 10.06.2016 and quash the same and direct the respondents to grant patta in favour of the petitioner in respect of Plot No.49 comprised in Survey No.26/2 measuring 4950 sq.ft. situate in Karungullipallam Village, Thiruporur Taluk, Kancheepuram District.

Prayer in W.P.No.33262 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Na.Ka.28320/2016/N4, dated 30.06.2016 and quash the same and direct the respondents to grant patta in favour of the petitioner in respect of Plot No.50 comprised in Survey No.26/1A1A2 of Karungullipallam Village, Thiruporur Taluk, Kancheepuram District.

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For Petitioners in : Mr.D.Ferdinand
both the W.Ps for M/s.Bfs Legal

For Respondents : Mr.N.Inbanathan
in both the W.Ps Additional Govt. Pleader

O R D E R

The petitioner, who is the owner of Plot Nos.49 and 50 comprised in Survey No.26/2 and 26 measuring an extent of 4950 and ***7200** sq.ft. respectively in Karunkuzhipallam Village, Thiruporur Taluk, having purchased the same by virtue of sale deeds dated 12.04.2007, 04.01.2008 and 02.09.2009, seeks to quash the orders of the first respondent refusing to grant patta.

2. The petitioner applied for grant of patta on 29.09.2012 and 01.12.2014 to the second respondent, for which, the second respondent had sent a communication dated 04.12.2014 stating that the land comprised in Survey No.26/2 is classified as Anatheenam land and that the patta could not be granted. The petitioner again sent a representation on 08.12.2014 contending that survey No.26/2 has wrongly been classified as Anatheenam land and the same is a patta land of her predecessors-in-title who were also issued with patta in respect of the Plot No.49. Hence, the petitioner had requested the first respondent to carry out the necessary changes in the land register and consequently grant patta to her. An enquiry was conducted on 22.01.2015, wherein, the petitioner submitted all the documents pertaining to the property in Plot No.49 comprised in Survey No.17/6 and 26/2 in Karunkuzhipallam village. As there was no response, W.P.No.31367 of 2015 was filed for a Mandamus to consider her representation for a grant of patta. The said petition was disposed of on 06.10.2015 and thereafter, an enquiry was conducted.

3. It is stated that the predecessor of the petitioner had purchased 56 cents of lands, which includes the above mentioned property, from one K.L.Ramachandran in the year 1966 and he was given patta in the year 1978. The UDR Survey No.26/2 is now mistakenly entered as Anatheenam, which relates to the survey number of the Plot No.49 of the petitioner. The predecessor-in-title Mr.K.L.Ramachandran in the year 1998 was again issued patta No.247, which is reflected till date in the revenue records, for Survey No.17/6 to an extent of 11 cents. The verification of FMB records shows that survey No.17/6 and 26/2 are adjoining lands. As stated above, prior to the issuance of patta No.247 in favour of the said Ramachandran, there was a patta issued in his favour in Patta No.115. Upon the request made by the petitioner, the Commissioner of Land Administration, who is the third respondent in W.P.No.33261 of 2016, directed for an enquiry by the District Revenue Officer, Kancheepuram.

4. The petitioner also tried to get the land records before the UDR Survey, but in vain. The Deputy Tahsildar, Thiruporur, seems to have sent a communication dated 03.08.2015 stating that

they are not having the records with regard to the Survey No.26/2 before the UDR and issued 1403 Fasli. The petitioner also had submitted that the Deputy Tahsildar, Thiruporur, produced the records prior to UDR, which was ignored by the first respondent and passed the impugned order.

5. According to the petitioner, the Survey No.26/2 is wrongly entered as Anatheenam in the UDR and thereafter, the further sub-divisions had not occurred. As the petitioner is having clear title and has been in possession of the property for more than 50 years, by no stretch of imagination, the land can be classified as Anatheenam. It is further stated that it is only a residential lay out, which cannot be declared as Anatheenam. Hence, the challenge to the orders of the first respondent.

6. The second respondent had filed his counter stating that the patta, as requested by the petitioner could not be granted, as the land has been classified as Anatheenam in the revenue records, even before updating the revenue Survey. Earlier, it is stated that it was classified as Kazhuvali, which also is a poromboke land. As it is stated that it is already classified as Anatheenam, the respondents could not issue patta, as claimed by the petitioner and prayed for dismissal of the writ petitions.

7. After hearing the parties for sometime, the respondents were directed to produce the original records relating to the above said lands, namely, "A" Register old and new. Accordingly, the same were produced before this Court.

8. A perusal of the Old 'A' Register would go to show that Survey Nos.17 and 26 have been classified as Kazhuvali, which means, Backwater. The officials had also brought the new 'A' Register, in which, the sub-divisions also have been entered. The Survey No.17 have been sub-divided and pattas have been issued in favour of several parties. Survey No.17/6 is classified as Ryotwari Punjai and patta was issued in favour of Ramachandran in Patta No.247, who is the petitioner's vendor. Similarly, Survey No.26, which also underwent several sub-divisions is classified as "others". As per the new 'A' Register produced by the official respondents, both the survey No.17 as well as Survey No.26 are only shown as patta lands belonging to others. It is only in the old 'A' Register, it was shown as Kazhuvali, which means Poromboke land. Therefore, it can be presumed that what was classified as backwater (Kazhuvali) earlier has been subsequently sub-divided and pattas have been issued to several persons. The petitioner is one of the purchasers from such pattadar. Once the patta is issued in favour of the individuals, the character of the lands ceased to be a Kazhuvali and it is treated as a private land.

9. The learned Additional Government Pleader appearing on behalf of the respondents also could not deny the fact that the Survey No.26/1C and other sub-divisions have been classified as ***“மற்றவை”** (others) and each of the sub-division belong to each individuals, who have been issued with the patta. On 30.03.2019, the Tahdildar had sent a communication in Na.Ka.No.2505/2015/A1 to the Additional Government Pleader, in which, it has been stated that for seeking patta, certain registered documents were produced by the petitioner to show that she had purchased an extent of 4950 sq.ft. land in Plot No.49 (part) in Survey Nos.17 and 26, which is assigned patta in 49. It is further stated that since the said survey No.26/2, is shown in the village account as Anatheenam, the patta could not be issued. Similarly, the petitioner had purchased 4500 sq.ft. and 2700 sq.ft. land under document Nos.64/2008 and 3147/2009 in Plot No.50 in Survey No.17, but the Tahsildar has stated that the entire property purchased by the petitioner in Plot No.*50 lies within Survey No.26 and that the petitioner had wrongly registered the same as Survey No.17.

10. The only reason assigned by the first respondent to refuse the grant of patta is that during the settlement survey, the property purchased by the petitioner has been classified as Anatheenam. However, the second respondent / Tahsildar has stated that so far as Plot No.50 is concerned, the same is mentioned as Survey No.17 in the sale deed, whereas, the officials have stated that ***“இந்நிலையில் மனுதாரர் கிரையம் ஆவணத்தின்படி மனை எண்-50 ஆனது தற்போது சர்வே எண்-26/A1A2-வில் வருகிறது.”** As the said Survey No.26/A1A2 belongs to one K.Mahalakshmi bearing patta No.178, the petitioner has to file a rectification deed, which would enable her to get the grant of patta.

11. A perusal of the documents filed along with the petition goes to show that the deed of declaration as required by the Thasildar has been filed as early as on 14.11.2014. As the declaration deed has already been executed by the petitioner, it is open to the authorities to compare the documents and there cannot be any impediment for the respondents in granting patta with respect to the plot No.50 in Survey No.26.

12. So far as the Plot No.49 is concerned, in the absence of any valid reason to show that the lands have been classified as Anatheenam, despite the fact that Survey No.26 has already been sub-divided and sold to many individuals and as per the new 'A' Register, it is shown as “Others”, the petitioner is entitled for issuance of patta.

13. Accordingly, these writ petitions are allowed and the

orders of the first respondent are set aside. Consequently, the second respondent is directed to issue patta in favour of the petitioner in respect of Plot Nos.49 and 50 comprised in Survey No.26/2 and 26/1A1A2 of Karungulipallam Village, Thiruporur Taluk, Kanchipuram District, in accordance with law. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. There will be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

Dated: 09/07/2019

*** Corrected vide Order dated 26.06.2019,
made in WP.No. 33261 & 33262/16**

Sd/-Assistant Registrar(Insp Cell)

Dated: 09/07/2019

\\True Copy\\

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District,
Kancheepuram - 631 501.

**To be Substituted to the
earlier Order despatched on
14/06/2019**

2. The Thasildar,
Thiruporur.

3. The Commissioner,
Land Administration,
Chepauk, Chennai-600 005.

+1cc to Mr.BFS Legal, Advocate, S.R.No. 37168
+1cc to the Government Pleader, S.R.No. 37720

W.P.Nos.33261 & 33262 of 2016

PA(CO)
GN(30/05/2019)