

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2019

PRONOUNCED ON : 03.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.27545 of 2019

J.Govindaraj

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Petitioner

Vs

1.The Additional Chief Secretary and
Commissioner of Land Administration,
Chepauk,
Chennai - 600 005.

2.The Assistant Settlement Officer (North),
Office of the Commissioner Survey and
Settlement,
Survey House,
Chennai - 600 005.

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Respondents

Prayer :- This Writ Petition is filed under Article 226 of the
Constitution of India for a writ of quo warranto or appropriate
Judicial enquiry in which the respondents holding an independent
substantive post without any authority disobeying the orders of
this Court.

For Petitioner :Rev.Dr.S.N.Amarnath

For Respondents 1 & 2 :Mr.V.Jayaprakash Narayanan,
Government Pleader

ORDER

The petitioner herein claimed grant patta for property
bearing S.No.192/1 T.S.No.21, Block No.5 extent of 4.23 acres in
Venkattapuram Village, Guindy, Mambalam Taluk, Chennai District,
was rejected by the Commissioner of land Administration vide
order dated 18.04.2016. Challenging the order, the petitioner
has preferred the present writ petition for quo warranto seeking
appropriate judicial enquiry in which the respondents holding
independent substantive post without any authority and for
disobeying the orders of the High Court and punish the
respondents for disobedience and insubordination.

2. When the matter came up for admission, this Court, to dispel doubt about the maintainability of the writ petition, relief sought the petitioner to substantiate his case. Accordingly, the learned counsel for the petitioner has made his submissions.

3. The petitioner claims himself as Zamindar of Solagiri in Hosur Taluk, Salem District. He claims that, his predecessors estate spread over 207 villages and out of which, 22 villages were under tenure grants for the loan obtained by Raja of Kalakasthi in the year 1996. Mortgage was executed in respect of village falling within Kanchinad Taluk which was later brought on Court auction in O.S.No.40 of 1910 on the file of the District Court North Arcot in the year 1914. Before the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 for which the village forming part of Kalakasthi - Kanchinad Zamin Estate where the Village in dispute was mentioned as part of Kalakashthi Kanchinad Zamin Estate.

4. The petitioner contends that, his predecessors did not apply for Ryotwari patta with respect to S.No.192/1 T.S.No.21 Block No.5 over an extent of 4.23 acres of Venkattapuram Village, Guindy, Mambalam Taluk, Chennai District, under the provisions of Act 26/48 which was wrongly classified as Kuttai Poromboke. Having come to know that no ryotwari patta was issued to the said land, he gave representation on 11.02.2013 to the first respondent to grant patta. The same was rejected on 02.05.2013 on the ground of limitation.

5. In view of the orders passed by this Court in W.P.No.3989 of 2012 and W.P.No.4980 of 2012 etc., the petitioner has given a representation to the respondents stating that without advertting to the point of limitation, the request for grant of patta in respect of the above laid should be considered. Based on his request, the respondents have considered his request and passed order on 18.04.2016 rejecting the same. Stating that the respondents who are not aware of the power of the High Court and how to comply with the order of the High Court is unfit to continue the office and therefore, the writ of quo warranto is filed.

6. The petitioner herein along with 10 others had filed W.P.No.24537 of 2013 wherein, he has sought for writ of mandamus calling for the records relating to the 1st respondent's letter No.K1/3439/2013 dated 07.05.2013 and quash the same and to direct the respondents to grant ryotwari patta as per provisions of Act 26/48 in favour of the petitioners for the land comprised in S.No.192/1 T.S.No.21, Block No.5, over an extent of 4.23 acres of Venkattapuram village, Guindy - Mambalam Taluk, Chennai District, pursuant to the petitioners representation dated

11.02.2013.

7.The petitioner has contended in that writ petition that, his request for issuance of ryotwari patta was rejected on the ground his representation belatedly made after decades. Therefore, it has to be re-considered in view of the orders passed by this Court. In the said case, this Court has passed the following order :-

"6.What the petitioner wants is an adjudication on merit. They are also claiming to be in possession for number of years. The decision relied upon by the learned counsel appearing for the petitioner in which the earlier orders were taken note of would govern the case. The period of limitation fixed is only directory but not mandatory being part of the procedure of law. Thus, the order impugned is hereby set aside and consequently, the first respondent is directed to decide the issues on merit after affording an opportunity to the petitioners, within a period of eight weeks from the date of receipt of copy of this order."

8.In view of the direction of this Court, the respondents herein have considered the appeal of the petitioner herein and have passed a detailed order on 18.04.2016. Whereas, the petitioner herein alleging that the respondents have rejected his appeal only on the ground of limitation which she could not harp on in view of the High Court direction in W.P.No.24537 of 2013 has come out with the present writ petition seeking quo warranto.

9.In *University of Mysore v. Govinda Rao* (AIR 1965 SC 491 (V 52 C 80)), quoting Halsbury's Laws of England, the Hon'ble Supreme Court has observed as under:-

"As Halsbury has observed* "An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, 'franchise, or liberty, to, inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined:"

Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not."

10. The contention of the learned counsel for the petitioner is that by dismissing his representation, the respondents have usurped the power of the High Court. The said submission is totally absurd. The respondents after considering the representation of the petitioner have passed a detailed order. Only as a passing reference, at the end of the order, the respondent concluded that the petitioner has made a claim for patta after several decades. This does not amount to usurping the power of the High Court and in fact, it is the petitioner herein sought for indulgence of the High Court to direct the respondents herein to consider his representation. Accordingly, the respondents have passed the order on the representation of the petitioner and dismissed it as frivolous. The respondents after discussing the claim of the petitioner and the documents relied by him have observed as under :-

"7. The arguments and written arguments along with the typed set of documents, submitted by the learned counsel for the petitioners have been carefully examined and

considered. Venkatapuram Village, now in Guindy Taluk of Chennai District was taken over by the Government on 03.01.1951 under the provisions of Tamil Nadu Estate (Abolition and conversion into Ryotwari) Act XXVI of 1948 as per G.O.Ms.No.3157, Revenue Department, dated 09.12.1950. In this village Ryotwari Settlement was introduced in fasli 1369(1959). During the settlement the land comprised in T.S.No.21 Block No.5 measuring 4.28 acres was classified as Government poromboke and recorded as Highways Department. Even prior to the Ryotwari Settlement, the Director Highways Research Station has requested Alienation of land measuring 4 acres in Paimash No.75/1 and 75/2 for the formation of Highways Research Station. The Board of Revenue in B.P.Mis No.313 dated 10.03.1959 recommended for the alienation of the land. The Government in G.O.Ms.No.2454 Revenue Department dated 26.08.1959 sanctioned the alienation of Land in favour of Director of Highways Research Station. Since then, the land continued to be under the possession of the Highways Department.

8. Before these petitioners have claimed patta for this land, the claim of Thiru.Manali Ramakrishna Mudliar for the suit land was rejected in various settlement forums, finally by the Board of Revenue on 31.12.1975. Thereafter, one Thiru.Manali R.Srinivasan has filed a petition seeking patta for the same land. This forum by its order dated 09.04.2008 has rejected his request. Against the said order Thiru Manali Srinivasan preferred a Writ Petition No.12425 of 2008 before the Hon'ble High Court and succeeded in it. Against the said Hon'ble High Court's order dated 29.04.2009 in W.P.No.12425 of 2008, the Commissioner of Land Administration has filed a Writ Appeal and the same is still pending in W.A.No.2041/2010. As the Hon'ble High Court in its order dated 05.01.2015 in W.P.No.24537 of 2013 has specifically directed this forum to examine the case of the petitioner on merits by affording

opportunity to the petitioners, the case has been taken up for enquiry."

11. Having gone through the materials placed by the petitioner, the respondent has found that, the petitioner herein with some self serving documents without any cogency and relevancy has tried to make out a claim over the property which is in possession of the Highways Department of the Tamil Nadu Government for more than 50 years. While so, the contention of the petitioner that the respondents have disposed of the representation usurping the power of the high Court is not only unfound but also malicious.

12. This Court is bound to place on record that the land which the petitioner tries to get patta is a very prime land in the city of Chennai located just opposite to Rajbhavan, the adobe of the Governor of Tamil Nadu. This Court takes judicial notice of the fact that, for several years, the said land is in possession of the Highways Department, Government of Tamil Nadu and no cultivation is carried on by any person. The order of the first respondent has also discussed about to the various persons who have made claim over the property under different pretext. This petitioner is one such person who wants to take advantage of some documents in his possession which is very remote and no relevance of the subject land. He having been exposed by the respondent in the order dated 18.04.2016, the petitioner has filed this writ petition seeking writ of quo warranto that too after nearly 3 years of passing the impugned order. Hence, the writ petition is liable to be dismissed.

12. In the result, the writ petition is dismissed with cost of Rs.25,000/- (Rupees twenty five thousand only) payable to the Red Cross Society, Egmore, Chennai within a period of two weeks from today.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Jbm

To

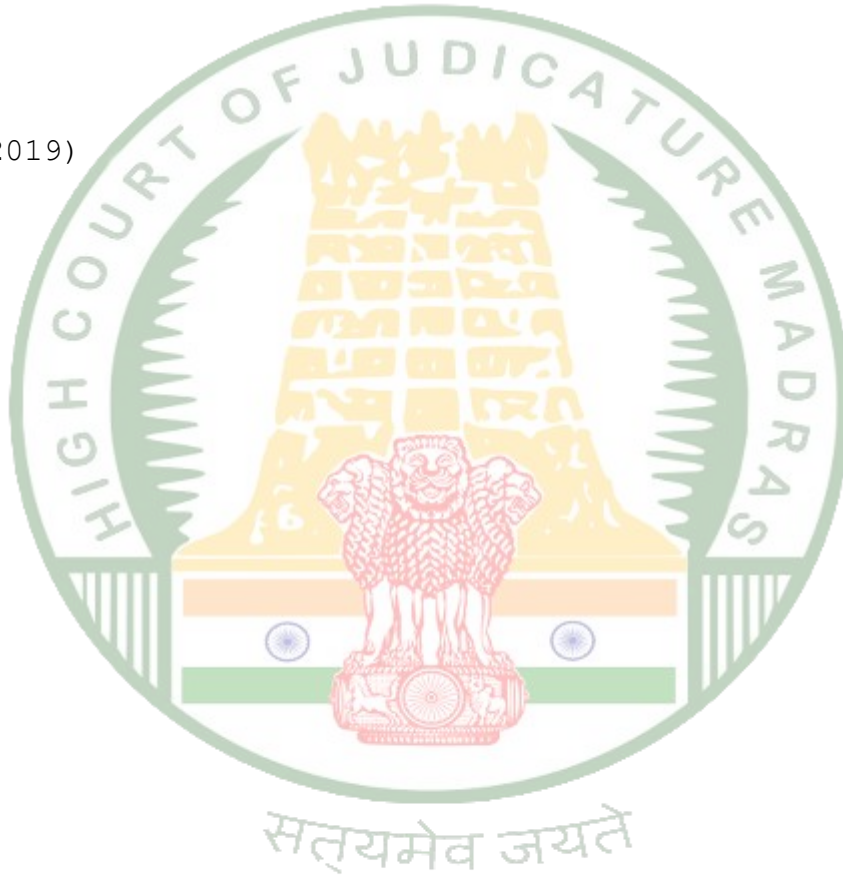
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2.The Assistant Settlement Officer (North),
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Survey House,
Chennai - 600 005.

3.The Secretary,
Red Cross Society,
Egmore, Chennai.

W.P.No.27545 of 2019

GP(CO)
GN(01/11/2019)



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