



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2019

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.13176 of 2019

and

W.M.P.(MD) No.9815 and 9816 of 2019

Vairamani

...Petitioner

-Vs-

The Assistant Engineer,
Public Works Department (W.R.D)
Periyar Vaigai Basin Division,
T.Andipatti Village,
Vadipatti Taluk,
Madurai District.

...Respondent

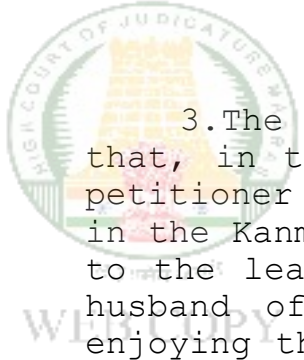
Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in letter No. Ko.13/00.Po-1/tha.Aa/2018 28.05.2019 stating auction will be held in respect of 50 coconut trees in Survey Nos.110/1A and 362/1 in Kattakulam Village, Vadipatti Taluk, Madurai District on 12.06.2019 and quash the same and further direct the respondent to issue 2C Patta to the petitioner within a time limit fixed by this Court.

For Petitioner : Mr.PT.S.Narendravasan
For Respondent : Mr.M.Murugan,
Government Advocate.

ORDER

The prayer in this writ petition is for a Writ Certiorarified Mandamus, to call for the records of the respondent in his proceedings in letter No. Ko.13/00.Po-1/tha.Aa/2018, dated 28.05.2019 stating auction will be held in respect of 50 coconut trees in Survey Nos.110/1A and 362/1 in Kattakulam Village, Vadipatti Taluk, Madurai District on 12.06.2019 and quash the same and further direct the respondent to issue 2C Patta to the petitioner.

2.Heard Mr.PT.S.Narendravasan, learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondent.



3.The learned counsel appearing for the petitioner submits that, in the year 1990, 2C Patta was issued to the husband of the petitioner for the usufructuary right of the coconut trees located in the Kanmai Poramboke of the Village called Kattakulam. According to the learned counsel for the petitioner, after the death of the husband of the petitioner, the petitioner has been continuously enjoying the usufructuary right by paying kist against 2C Patta for the said coconut trees and initially, very few number of coconut trees were given such 2C Patta and subsequently, the petitioner nurtured some more trees and now it is 50 according to the learned counsel for the petitioner.

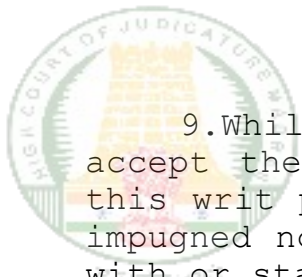
4.When that being the position, the respondent by the impugned notification dated 28.05.2019 proceeded to give it for open auction for having the usufructuary right of the coconut trees for one year from 01.06.2019 to 31.05.2020. Therefore, the impugned notification insofar as item No.5 consisting of 50 coconut trees at Kattakulam Kanmai, the present writ petition has been filed by the petitioner, on the ground that usufructuary right of those coconut trees is vested with the petitioner.

5.However, on instructions Mr.M.Murugan, learned Government Advocate appearing for the respondents submitted that, even during last year i.e., for the period from 01.06.2018 to 31.05.2019, the respondent had issued notification for the said 50 coconut trees at Kattakulam Kanmai for public auction for having the usufructuary right and in fact, in that auction, the petitioner's daughter one, namely, Sankareshwari participated and she paid a sum of Rs.4,830/- + tax Rs.240/- and she was the successful bidder and she enjoyed the usufructuary right as a lessee for one year period till 31.05.2019 insofar as the said 50 coconut trees are concerned, which is subject matter in the writ petition.

6.In this regard, it is the submission of the learned counsel for the petitioner that, since the petitioner is the wife of the original 2C Patta holder claiming right, the participation of the daughter of the petitioner, may not at any way affect the right being claimed by the petitioner.

7.Be that as it may, since the 50 coconut trees which are admittedly located in Kanmai Poramboke and the Kanmai i.e., tank belongs to the respondent (Public Works Department) and unless it is established by the petitioner that in all the 50 coconut trees, usufructuary right patta has been given and that too with the consent of the Public Works Department, such a right cannot be established by the petitioner.

8.Moreover during last year, auction was given and the petitioner's daughter participated and enjoyed the usufructuary right by paying the auctioning amount as set out above.



9.While that being the position, this Court is not inclined to accept the case projected by the petitioner before this Court in this writ petition. Therefore, the said challenge made against the impugned notification for the proposed auction cannot be interfered with or stalled.

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10.In that view of the matter, the prayer sought for in this writ petition cannot be granted and therefore, it is liable to be rejected. Accordingly, it is rejected.

11.However, this rejection shall no way preclude the petitioner from making any claim separately with regard to the right of usufructuary on the basis of the 2C Patta claimed to have been given initially in the name of the petitioner's husband and subsequently in the name of the petitioner and if any such claim is made by the petitioner, the same shall be decided and disposed of by the authorities concerned in the manner known to law.

12.With these observations, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Assistant Engineer,
Public Works Department (W.R.D)
Periyar Vaigai Basin Division,
T.Andipatti Village,
Vadipatti Taluk,
Madurai District.

+1CC TO Mr.PT.S.Narendravasan, Advocate, Sr No.68064

Order made in
W.P. (MD) No.13176 of 2019
and
W.M.P. (MD) No.9815 and 9816 of 2019
Dated:11.06.2019

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