



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.(MD) No.7614 of 2015
and
M.P.(MD) Nos.1 and 2 of 2015

M.Packiabai

... Petitioner

versus

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Revenue,
Secretariat,
St. George Fort,
Chennai - 6.
2. The Commissioner of Land Administration,
Chepauk,
Ezhilagam,
Chennai - 600 005.
3. The District Collector,
Collectorate,
Kanyakumari District.
4. The Revenue Divisional Officer,
Boothapandi, Boothapandi Taluk,
Kanyakumari District.
5. The Tahsildar,
Thovalai Taluk,
Boothapandi,
Kanyakumari District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorarified mandamus to call for the records of the impugned order in Na.Ka.No.A4/1696/2015 on the file of the respondent No.5 dated 28.02.2015 and quash the same as illegal and consequently direct the respondent No.1 to direct the respondent No.5 to issue patta to the petitioner for the land in Survey No.543 to an extent of 19.83.0 Hectare in Therisanamcope Village, Thovalai Taluk, Kanyakumari District within the time stipulated by this Court.



For Petitioner : Mr.T.Cibi Chakraborty
For Respondents : Mr.B.Bhagawathi,
Government Advocate

WEB COPY

ORDER

Mr.T.Cibi Chakraborty, learned counsel on record for the Writ Petitioner and Mr.B.Bhagawathi, learned Government Advocate on behalf of all the five respondents are before this Court. With the consent of the learned counsel on both sides, the main Writ Petition is taken up, heard out and is being disposed of.

2. Central theme of this Writ Petition is, Writ Petitioner claims patta for land admeasuring an extent of 19.83.0 hectares in Survey No.543 in Therisanamcope Village, Thovalai Taluk, Kanyakumari District (hereinafter 'said land' for brevity).

3. It is the case of the Writ Petitioner that she along with her spouse occupied said land sometime in 1979 and is doing agricultural activity in said land. It is the further case of the Writ Petitioner that thereafter, the Writ Petitioner and her spouse had been repeatedly seeking patta for said land. This Court is informed that the Writ Petitioner's spouse died sometime in 2006 and thereafter, the Writ Petitioner continues to be in possession of said land.

4. Considering the narrow scope and narrow compass on which the instant Writ Petition now turns, it is not necessary to advert to factual matrix in great detail. Suffice to say that the Writ Petitioner had given a representation dated 17.11.2014, seeking patta for said land and the Writ Petitioner thereafter filed a Writ Petition in this Court being W.P.No.20682 of 2014 complaining of inaction qua her representation dated 17.11.2014 and this Court disposed of the said Writ Petition by an order dated 18.12.2014 after hearing both sides. The most relevant part of the earlier order of this Court is paragraph 3 and the same reads as follows:

"3. In view of the fact that the petitioner's representation dated 17.11.2014, pending on the file of the second respondent has not seen the light of the day, this Court, in the interest of Justice and Fair Play, directs the second respondent to look into the representation of the petitioner dated 17.11.2014 and dispose of the same on merits in a Fair, Just and dispassionate manner, within a period of four weeks from the date of receipt of a copy of this order. (of-course after providing necessary opportunities to the petitioner and others concerned if any, by following the principles of natural justice)."



(Parenthesis forms part of the order, but underlining has been made by this Court to supply emphasis and highlight).

5. Thereafter, the 5th respondent passed an order dated 28.02.2015 bearing Reference Na.Ka.No.A4/1696/2015 (hereinafter impugned order) vide which the 5th respondent pursuant to the order of this Court rejected Writ Petitioner's representation dated 17.11.2014. Assailing the impugned order, instant Writ Petition has been filed.

6. Perusal of the impugned order reveals that it has been made after inspection of said land and examination of documents concerned. The impugned order has rejected the aforementioned representation on three main grounds and they are, a) that said land according to revenue classification is objectionable water source Government Promboke, b) that the Writ Petitioner is not in occupation of said land and c) that said land is now water laden and is a source of irrigation for said land as well as adjacent lands.

7. In this backdrop, under normal circumstances, this Court would not have interfered with the impugned order, but, there is only one reason which impels this Court to send the matter back to the 5th respondent and that reason is, the direction contained in paragraph 3 of the previous order of this Court which has been extracted and reproduced supra.

8. Vide previous order, this Court has made it clear that the Writ Petitioner should be given an opportunity by following Natural Justice Principles (NJP). From the counter affidavit dated 08.10.2015 filed by the 5th respondent and from the submissions made in Court today, it comes to light that the Writ Petitioner was not put on notice before the impugned order was passed. In any event, nothing is articulated in the impugned order to show that the Writ Petitioner was put on notice before the impugned order was passed.

9. Learned counsel for the Writ Petitioner today submits that the Writ Petitioner would have been able to demonstrate some points on facts, if she had been given an opportunity.

10. Without expressing any opinion on merits of the matter, as the earlier order of this Court directs the 5th respondent to give an opportunity to the Writ Petitioner and in fact to all others concerned by following NJP, the impugned order is set aside solely on the ground of NJP, i.e., without expressing any opinion on merits of the order.

11. In the light of the discussion, thus far the following order is passed:

a) impugned order is set aside solely on the ground that the Writ Petitioner was not put on notice in accordance with earlier



order of this Court. In other words, the impugned order is set aside not on merits but only on NJP ground.

b) by consent, personal hearing before the 5th respondent is now fixed on 24.09.2019 at 12.00 noon in the Office of the 5th respondent and the Writ Petitioner's counsel undertakes that the Writ Petitioner will go before the 5th respondent on the said day and time and produce any document, i.e. relevant to the representation dated 17.11.2014 qua the said land.

c) the 5th respondent shall thereafter pass orders afresh within fortnight there from as expeditiously as possible, in any event, two weeks there from.

d) if the Writ Petitioner does not avail the personal hearing opportunity on the aforesaid date, time and venue, the impugned order will stand revived without reference to this Court.

12. It is made clear that in cases of this nature, personal hearing is not imperative and this order shall not be cited as a precedent to claim personal hearing in cases of this nature. This course is adopted only owing to the earlier order passed by this Court being order dated 18.12.2014 in W.P.No.20682 of 2014.

13. This Writ Petition is disposed of with the aforesaid directions. M.P.(MD) Nos.1 and 2 of 2015 are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Secretary,
Department of Revenue,
Secretariat,
St. George Fort,
Chennai - 6.
2. The Commissioner of Land Administration,
Chepauk, Ezhilagam,
Chennai - 600 005.
3. The District Collector,
Collectorate,
Kanyakumari District.



4. The Revenue Divisional Officer,
Boothapandi,
Boothapandi Taluk,
Kanyakumari District.

5. The Tahsildar,
Thovalai Taluk,
Boothapandi,
Kanyakumari District.

+1 CC to M/s.GP (SR-86276[F] dated 12/09/2019)

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-86336[F] dated
12/09/2019)

W.P. (MD) No.7614 of 2015
10.09.2019

ogy
JMN(13.09.2019) 5P : 8C