

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.12800 of 2020
and W.M.P.Nos.15823, 16678 & 15821 of 2020

1.Basheer alias Abdulbasheer
2.Shyayeedha @ Shahidunnissa
3.Abida Begum @ Abidunnissa
4.Rasheeda @ Rasheedunnisa
5.Nasirabegum
6.Mohamed Zaheer
7.K.Mohammed Ariff
8.Nafeesa Begum Petitioners
(Petitioners 1 to 8 are represented by
their Power Agent K.Anitha)

Vs.

- 1.The District Collector,
Chengalpattu District,
(formerly Kancheepuram District),
Chengalpattu.
- 2.The District Revenue Officer,
Chengalpattu District,
(formerly Kancheepuram District),
Chengalpattu.
- 3.The Revenue Divisional Officer,
Chengalpattu Region,
Chengalpattu District,
(formerly Kancheepuram District),
Chengalpattu.
- 4.The Tahsildar,
Thiruporur Taluk,
Chengalpattu District.
- 5.The Superintendent of Police
(Anti Land Grab Cell),
Kancheepuram District.

6.The Sub Inspector of Police,
Anti Land Grab Cell,
O/o The Superintendent of Police,
Kancheepuram District.

7.The Inspector of Police,
E-8, Kelambakkam Police Station,
Chengalpattu District.

8.Muktharunnissa

9.Bhilal

10.Mohammed Jalal

11.Fahimda Banu

12.Saraunissa @ Saaru Begum

13.Tasimunisa @ Tasleem

14.Sheerin Mustaq

15.Mohamed Mustaq

16.Mohamed Ejaz

17.Thalasin Sulthana

18.Nasemunisa @ Naseema Begum

19.Adilaunisa @ Aadhila Begum

20.Farook Basha @ Parubhasha

21.Afsarunisa @ Apsar Fathima

22.Hilalunisa @ Hilal Fathima

23.Mohamed Siddique @ Siddique Basha

24.Meharunnissa

25.N.Mohan

26.N.Kandasamy ... Respondents

(Respondents 8 to 23 are represented by
their General Power Agent S.Chandrasekaran)

Petition filed under Article 226 of the Constitution of India for issuing a writ of certiorarified mandamus to call for the records relating to the enquiry summons of the 2nd respondent herein - the District Revenue Officer (Kancheepuram), Chengalpattu in No.2661/2016/A4 dated 19.11.2019 and quash the same as illegal and consequently direct the 4th respondent Office - The Tahsildar, Tirupporur Taluk to survey the petitioners land comprised in Survey No.219/6 - extent of 0.6.50 hec, S.No.219/5 - extent of 0.25.50 hec, S.No.219/4 - extent of 0.3.50 hec, S.No.219/2 - extent of 0.13.50 hec, S.No.219/1 - extent of 0.8.50 hec and S.No.217/3 - extent of 0.63.50 hec situated in Padur Village, Thiruporur Taluk, Chengalpattu District covered in Patta No.2215 based on the endorsement order dated 16.09.2020 passed by the 4th respondent in proceedings in Na.Ka.No.1533/2011/A2. (Prayer amended vide order dated 23.09.2020 made in W.M.P.No.16675 of 2020)

For Petitioners: Mrs.Ashwini Devi.K

For Respondents: Ms.A.Madhumathi,
Special Government Pleader (R1 to R7)
Mr.N.Manokaran (R8 to R23)
Mr.M.Gopi (R24)
Mr.K.Mahalingam (R25 & R26)

O R D E R

The petitioners have filed the above Writ Petition to issue a Writ of certiorarified mandamus calling for the records relating to the enquiry summons of the 2nd respondent - the District Revenue Officer (Kancheepuram), Chengalpattu dated 19.11.2019 and to quash the same as illegal and consequently to direct the 4th respondent Office - The Tahsildar to survey the petitioners' land comprised in Survey No.219/6 - extent of 0.6.50 hectares, S.No.219/5 - extent of 0.25.50 hectares, S.No.219/4 - extent of 0.3.50 hectares, S.No.219/2 - extent of 0.13.50 hectares, S.No.219/1 - extent of 0.8.50 hectares and S.No.217/3 - extent of 0.63.50 hectares situated in Padur Village, Thiruporur Taluk, Chengalpattu District covered in Patta No.2215 based on the endorsement order dated 16.09.2020 passed by the 4th respondent.

2.It is the case of the petitioners that the 4th respondent issued patta in Patta No.2215 in favour of C.A.Kabeer and K.Anitha, who is the Power Agent of the Writ Petitioners. The said C.A.Kabeer is the descendant of the original title holder viz., Gulam Rasool. The respondents 8 to 11 are the legal heirs of C.A.Mallick, the only son of Zaharunissa, who is the patta holder of Survey Nos.219/1, 219/6, 219/4 in UDR Patta No.573 and the 1st plaintiff in O.S.No.8667 of 1985. The respondents 12 to 23 are the daughters and sons of late C.Hussain Basha, the grand-son of Gulam Mohideen, the patta holder of Survey Nos.217/3 & 219/2 in UDR Patta No.146 and the 3rd plaintiff in O.S.No.8667 of 1985 and the 24th respondent - Mrs.Meharunnissa, W/o.Late C.M.S.Hyathbasha is the unsuccessful 2nd defendant in O.S.No.8667 of 1985 vide decree dated 11.11.1989 on the file of the VI Assistant Judge, City Civil Court, Chennai.

3.According to the petitioners, the respondents 25 & 26 are the neighbours of the 24th respondent at Padur Village and are engaged in Real Estate business at Padur Village and owners of large extent of land in the said village since 1982 onwards. During the pendency of the Civil Suit in O.S.No.8667 of 1985, the respondents 25 & 26, knowingly, purchased the land in Survey No.219/1 and other lands from the 24th respondent under a registered Sale Deed Document No.2609 of 1986.

4.As against the grant of patta in the name of C.A.Kabeer and K.Anitha, the respondents 25 & 26 preferred an appeal before the 3rd respondent and the 3rd respondent - Revenue Divisional Officer, Chengalpattu, by order dated 10.11.2011, dismissed the appeal and confirmed the order passed by the 4th respondent. As against the same, the respondents 25 & 26 preferred an appeal before the 2nd respondent - District Revenue Officer and the 2nd respondent, by order dated 29.01.2014, dismissed the appeal and confirmed the order passed by the respondents 3 & 4. Challenging the same, the respondents 25 & 26 filed a Writ Petition in W.P.No.35714 of 2015 and this Court also, by order dated 11.03.2016, dismissed the Writ Petition and confirmed the order passed by the respondents 2 to 4. Challenging the same, the respondents 25 & 26 preferred an appeal in W.A.No.798 of 2016 and the Division Bench of this Court also, by order dated 19.07.2016, dismissed the appeal and confirmed the order passed in W.P.No.35714 of 2015 and also confirmed the order passed by the respondents 2 to 4. Further, this Court also, by order dated 06.02.2017 made in C.R.P.No.1781 of 2012, struck off the suit filed by the respondents 25 & 26 in O.S.No.195 of 2011 on the file of the District Munsif Court, Chengalpattu. Further, the suit in O.S.No.159 of 1986 on the file of the District Munsif Court, Chengalpattu filed for declaration and partition was compromised between the plaintiffs and defendants and the suit was dismissed as withdrawn on 17.02.2017.

5.Thus, from the above facts, it is clear that the issuance of patta in favour of C.A.Kabeer and K.Anitha had reached finality. Thereafter, on 18.04.2018, the 4th respondent had passed a detailed endorsement order in File No.Na.Ka.1533/2011/A2 after conducting enquiry and found that the respondents 25 & 26 are professional land grabbers, usurping the Government water-bodies and private lands at Padur Village and clarified with the 7th respondent - the Inspector of Police, Kelambakkam Police Station, who also attended the enquiry and stated that the possession of the lands in Survey No.219/1 and others, vide Patta No.2215, is with the petitioners' family.

6.This Court also, by order dated 04.12.2018, disposed of the 2nd Writ Petition filed by the respondents 25 & 26 in W.P.No.23853 of 2018 challenging the Tahsildar's order made in Na.Ka.No.1533/2011/A2, observing that the respondents 25 & 26 should not prosecute the same issue before two forums parallelly. Even thereafter, the respondents 25 & 26 filed the 3rd Writ Petition in W.P.No.4713 of 2019 challenging the order dated 26.07.2011 and 18.04.2018 passed by the Tahsildar in Na.Ka.No.1533/ 2011/A2.

7. In the affidavit filed in support of the Writ Petition, the petitioners have also stated that on 16.07.2019 and 01.08.2019, the 24th respondent - Mehrunnissa, the vendor of the respondents 25 & 26 preferred a complaint to the Bar Council of Tamil Nadu and Puducherry against her Advocate, who is appearing for the respondents 25 & 26, for impersonating her and fabricating false affidavits using forged signature and filing the same before the District Munsif Court, Chengalpattu. Further, the petitioners have stated that the Bar Council of Tamil Nadu, acknowledged the complaint and numbered as Complaint No.348/2019.

8. While the matter stands thus, the 2nd respondent - the District Revenue Officer, Kancheepuram, had issued a summons based on the representation of the respondents 25 & 26, calling upon the Power Agent of the petitioners to appear for an enquiry on 22.11.2019. Accordingly, the Power Agent attended the enquiry before the 2nd respondent and she was informed that the Kancheepuram District is being bifurcated as Chengalpattu District and further enquiry will be conducted only by the newly formed 2nd respondent - District Revenue Officer, Chengalpattu. However, the neither the Power Agent of the petitioners nor the petitioners received summons from the 2nd respondent thereafter.

9. The petitioners have made an application to the 4th respondent on 10.08.2020 to measure the lands, which is in their possession since 2011. On 11.08.2020, on the complaint made by Hussan, son of the 24th respondent, the 7th respondent registered a case in FIR No.3436 of 2020 under Sections 419, 420, 465 & 120 (b) of the Indian Penal Code against K.Mahalingam and respondents 25 & 26. Further, the petitioners have stated that based on the application made by K.Anitha on 19.08.2020, the Revenue Officials visited the property at Padur and when they were about to commence the work, the respondents 25 & 26 prevented them from measuring the lands by stating that they have preferred an appeal to the 2nd respondent - the District Revenue Officer, Chengalpattu and is pending in File No.Na.Ka.2661/2016/N4.

10. The respondents 25 & 26 filed their counter, again and again re-iterating the stand taken by them in the earlier round of litigation.

11. Ms.A.Madhumathi, learned Special Government Pleader fairly submitted that since the issue had already been decided by this Court in the Writ Petitions and Writ Appeal, the respondents 25 & 26 cannot re-open the very same issue.

12. When the issue had already been decided, not only by the respondents 2 to 4, but also by this Court in the Writ Petitions in W.P.No.35714 of 2014 dated 11.03.2016, W.P.No.23853 of 2018 dated 04.12.2018 as well as in the Writ Appeal in W.A.No.798 of 2016 dated 19.07.2016, the very same issue cannot be re-agitated by the respondents 25 & 26 before the 2nd respondent. The 2nd respondent should not have entertained the appeal in view of the orders passed in the Writ Petitions and in the Writ Appeal. The 2nd respondent cannot sit over the order passed by this Court in the Writ Petitions and the Writ Appeal as an appellate forum. The parties are bound by the order passed by this Court and the very same issue cannot be re-agitated again and again. Merely because the respondents 25 & 26 have submitted a representation to cancel the patta, which claim was already rejected by this Court, cannot be re-appreciated by the 2nd respondent. By virtue of the orders passed in the Writ Petitions W.P.No.35714 of 2014 dated 11.03.2016, W.P.No.23853 of 2018 dated 04.12.2018 and the Writ Appeal in W.A.No.798 of 2016 dated 19.07.2016, the issuance of patta in favour of C.A.Kabeer and K.Anitha has become final. The correctness of the issuance of the patta in favour of the said C.A.Kabeer and K.Anitha cannot be once again canvassed by the respondents 25 & 26 and decided by the 2nd respondent.

13. In such view of the matter, I am of the view that the 2nd respondent should be directed to dispose of the appeal preferred by the respondents 25 & 26, taking into consideration the orders passed in W.P.No.35714 of 2014 dated 11.03.2016, W.A.No.798 of 2016 dated 19.07.2016 and W.P.No.23853 of 2018 dated 04.12.2018. Accordingly, I direct the 2nd respondent to dispose of the appeal filed by the respondents 25 & 26, taking into consideration the orders passed in W.P.No.35714 of 2014 dated 11.03.2016, W.A.No.798 of 2016 dated 19.07.2016 and W.P.No.23853 of 2018 dated 04.12.2018, within a period of one week from the date of receipt of a copy of this order.

14. Ms.A.Madhumathi, learned Special Government Pleader appearing for the respondents 1 to 7 submitted that she would instruct the 2nd respondent to dispose of the appeal within a week's time.

15. For the reasons stated above, I also direct the 4th respondent to measure the lands in Patta No.2215 as per the application dated 10.08.2020 submitted by the petitioners and the respondents 5 to 7 are directed to give adequate police protection to the revenue officials for conducting the survey.

16.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Chengalpattu District,(formerly Kancheepuram District),
Chengalpattu.
- 2.The District Revenue Officer,
Chengalpattu District,(formerly Kancheepuram District),
Chengalpattu.
- 3.The Revenue Divisional Officer,
Chengalpattu Region, Chengalpattu District,
(formerly Kancheepuram District),
Chengalpattu.
- 4.The Tahsildar,
Thiruporur Taluk, Chengalpattu District.
- 5.The Superintendent of Police (Anti Land Grab Cell),
Kancheepuram District.
- 6.The Sub Inspector of Police, Anti Land Grab Cell,
O/o The Superintendent of Police,
Kancheepuram District.
- 7.The Inspector of Police,
E-8, Kelambakkam Police Station,
Chengalpattu District.

+5cc to M/s.Sathyabama, Advocate Sr.32785
+5cc to M/s.M.Gopi, Advocate Sr.32186
+5cc to M/s.Aswini Devi, Advocate Sr.32187
+1cc to Mr.M.Rajasekaran, Advocate Sr.32389
+1cc to the Government Pleader sr.32148

W.P.No.12800 of 2020
and W.M.P.Nos.15823, 16678,15821 of 2020

rld[co]
srg 05/10/2020