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W.P.(MD)Nos.13870, 13876, 13879,
13881 and 13882 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.10.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **N. KIRUBAKARAN**

and

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

W.P. (MD)Nos.13870, 13876, 13879,
13881 and 13882 of 2020

and

W.M.P. (MD)Nos.11518, 11525, 11526,
11529 and 11530 of 2020

- | | |
|----------------|---|
| 1. M.Subbaiya | ... Petitioner in
W.P. (MD)No.13870/2020 |
| 2. M.Manimaran | ... Petitioner in
W.P. (MD)No.13876/2020 |
| 3. A.Anandan | ... Petitioner in
W.P. (MD)No.13879/2020 |
| 4. T.Thangaiya | ... Petitioner in
W.P. (MD)No.13881/2020 |
| 5. C.Duraisamy | ... Petitioner in
W.P. (MD)No.13882/2020 |

versus

- | | |
|---|------------------------------|
| 1. The Commissioner of Land Administration,
O/o. Commissionerate of Land Administration,
Ezhilagam, Chennai. | |
| 2. The District Collector,
Pudukottai District, Pudukottai. | |
| 3. The Tahsildhar,
Viralimalai Taluk,
Viralimalai, Pudukottai. | |
| 4. The Commissioner/Block Development Officer,
Viralimalai Panchayat Union, Viralimalai,
Pudukottai District. | ... Respondents in all W.Ps. |

Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorari mandamus, to call for the impugned order passed by the 2nd respondent vide Na.Ka.No.E1/915/2018 dated 18.09.2020 and the consequential order passed by the 4th respondent in proceeding No.Nil dated 28.09.2020 and quash the same as illegal and as devoid of merits and direct the

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respondents to convert the portion of classification of the land in Survey No.40 of Kasavanur Village group, Kodumpalur Chattiram, Viralimalai Taluk, Pudukottai District as a natham house site and issue regular house site patta as per the Revenue Standing Orders and other Government Orders.

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For Petitioner
in all W.Ps.: Mr.Raja Karthikeyan
For Respondents
in all W.Ps.: Mr.K.Chellapandian,
Additional Advocate General,
assisted by Mr.M.Muthu Geethaiyan

COMMON ORDER

[Order of the Court was delivered by **N. KIRUBAKARAN, J.**]

These writ petitions have been filed by the petitioners, seeking for the issuance of writ of Certiorarified Mandamus, to call for the impugned order passed by the 2nd respondent vide Na.Ka.No.E1/915/2018 dated 18.09.2020 and the consequential order passed by the 4th respondent in proceedings No.Nil dated 28.09.2020 and quash the same as illegal and as devoid of merits and direct the respondents to convert the portion of classification of the land in Survey No.40 of Kasavanur Village group, Kodumpalur Chattiram, Viralimalai Taluk, Pudukottai District as Natham house site and issue regular house site patta as per the Revenue Standing Orders and other Government Orders.

2. According to the petitioners, their ancestors were residing in the land in Survey No.40 of Kasavanur Village, even before the independence period. The habitation site is termed as a water body as per the revenue records of the year 1952. But, it was the residence of service providers of Rani Mangammal Chathiram from 17th Century. In UDR Survey, the land was classified as a Government poramboke - *chathura kinaru*, but, the official respondents have not considered the UDR survey data. Therefore, it is continuously recorded as a water body. Even though the petitioners obtained various orders of this Court, the respondents went upon evicting the petitioners. Therefore, the petitioners and others have made an appeal before the District Collector, Pudukottai District, on 08.09.2020 to reclassify the said Survey No.40 of Kasavanur Village, Kodumpalur Chattiram, Viralimalai Taluk, Pudukottai District as Village Natham reclassifying the Arasu Poromboke Chathura Kinaru. However, without giving an opportunity, the District Collector, vide order, dated 18.09.2020, rejected the petitioners' claim. Therefore, they seek to set aside the order, dated 18.09.2020 and seek an opportunity to put forth their cases.



3. Heard Mr.Raja Karthikeyan, learned counsel for the petitioners and Mr.K.Chellapandian, learned Additional Advocate General appearing for the State.

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4. A perusal of the records would show that the petitioners along with others filed writ petitions in W.P.(MD)No.21787 of 2017, W.P.(MD)No.4560 of 2018 and W.P.(MD)No.21277 of 2018, W.P.(MD)No.18588 of 2019 and W.P.(MD)No.9303 of 2020.

5. Mr.Raja Karthikeyan, learned counsel for the petitioners submits that even though the petitioners and others are occupying the premises right from pre-independence period and the document shows that they are in possession by way of sale deeds, without giving an opportunity for re-classification, the respondents rejected the re-classification petition filed by the petitioners. However, Mr.K.Chellapandian, learned Additional Advocate General, relies upon 'A' Register, which reflects the Survey No. 40 of Kasavanur Village as "சத்திரம் ஊரணி குழநீர் சதுரக் கிணறு" and submits that when it is classified as water body, re-classification could not be done. Therefore, the District Collector has rejected the claim petitions filed by the petitioners for re-classification.

6. It is true that the document produced by the learned Additional Advocate General shows the Survey No.40 of Kasavanur Village as "சத்திரம் ஊரணி குழநீர் சதுரக் கிணறு".

7. However, taking into consideration the fact that 'A' Register filed by the petitioners shows the Survey No.40 of Kasavanur Village only as "'சதுரக் கிணறு'", this Court sets aside the order passed by the District Collector, Pudukottai and remands the same so as to enable the parties to produce the documents to strengthen their claim for re-classification.

8. This Court also takes into consideration the observation made by this Court in W.P.(MD)No.9303 of 2020, etc., in which, the petitioners are also the parties and this Court, by order dated 03.09.2020, disposed of the said writ petitions filed by the writ petitioners and others, stating that it is open to the petitioners to approach some other forum and not in these writ petitions. Paragraphs 11 and 12 of the said order are extracted as follows:

"11. A perusal and consideration of the averments made in the affidavits filed in support of the Writ Petitions and the Contempt Petition would disclose that the land in S.No.40 of Kasavanur Village Group, Kodumpalur Chattiram, Viralimalai Taluk, Pudukottai District is classified as "சத்திரம் ஊரணி குழநீர் சதுரக் கிணறு". Though it is the vehement and forceful submissions of the learned counsel for the petitioners that a mistake had



crept it while updating the Register, in the considered opinion of this Court, the said issue cannot be dealt with by this Court for the reason that the remedy open to them, if any, is before some other forum and not in these writ petitions.

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12. Insofar as the claim made by the petitioners that their fore-fathers came into occupation of the land in question during 1947 and after their demise, the petitioners remained in possession by way of prescriptive right is concerned, in the considered opinion of the Court, the said issue also cannot be gone into in exercise of its jurisdiction under Article 226 of the Constitution of India for the reason that the issue requires pleading and evidence and it is always open to the petitioners to work out his remedy in accordance with law in this aspect also."

9. Based on the observation of this Court only, the petitioners and others have preferred an appeal on 08.09.2020 before the District Collector, Pudukottai. When such an appeal has been filed, the District Collector is expected to give an opportunity and pass a speaking order and despite the repeated orders of this Court, the Collector cannot reject the petitioners' claim. If it is a water body, it is always open to the District Collector to give the details based on records that it is a water body and therefore, the property cannot be reclassified.

10. In view of that, the order dated 18.09.2020 passed by the District Collector, Pudukottai, is set aside and the matter is remanded to the District Collector, Pudukottai and the District Collector shall give an opportunity to the petitioners to put forth their case with supporting documents and thereafter, it is open to the District Collector to pass appropriate orders. The opportunity should be given within a period of two weeks and the District Collector shall pass orders within a period of two weeks thereafter. Till such time, the petitioner's possession and enjoyment should not be disturbed.

11. Accordingly, the writ petitions are allowed as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Commissioner of Land Administration,
O/o. Commissionerate of Land Administration,
Ezhilagam,
Chennai.
2. The District Collector,
Pudukottai District,
Pudukottai.
3. The Tahsildhar,
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