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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.NO. 4570 OF 2019

AND

W.M.P.NOS.5157 AND 5159 OF 2019

Kasiyammal

..Petitioner

Versus

1.The District Collector of Tiruvannamalai,
Collector Office,
Vengikal,
Tiruvannamalai,
Tiruvannamalai District.

2.The District Revenue Officer,
Tiruvannamalai Taluk,
Tiruvannamalai District.

3.The Revenue Divisional Officer,
Tahsildar Office,
Tiruvannamalai Taluk,
Tiruvannamalai District.

4.The Tahsildar,
Kilpennathur Taluk,
Tiruvannamalai District.

5. Arumugam.

... Respondents

[5th respondent impleaded vide Order
dated 05.03.2019, made in W.M.P.No.6822/2019
in W.P.No.4570 of 2019 by KRCBJ]

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records and quash the order dated 16.11.2018 passed by the 2nd respondent vide Letter No.Aa2/942/2018 which cancelled the Assignment Patta of the petitioner for the property situated at Survey No.63/1 of an extent of 0.53.0 Hectare situated at Vedanthavadi Village, Kilpennathur Taluk, Tiruvannamalai District.



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For Petitioner : Mrs.S.Suseela Devi

For Respondents : Mr.V.Veluchamy
Government Advocate [R1 to R4]
Mr.P.Munuswamy [R5]

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorari, to call for the records and quash the order dated 16.11.2018 passed by the 2nd respondent vide Letter No.Aa2/942/2018 which cancelled the Assignment Patta of the petitioner for the property situated at Survey No.63/1 of an extent of 0.53.0 Hectare situated at Vedanthavadi Village, Kilpennathur Taluk, Tiruvannamalai District.

2. The case of the petitioner is that she is permanent resident of Vedanthavadi Village, Kilpennathur Taluk, Tiruvannamalai District. She is in possession and enjoyment of the poramboke land in Survey No.63/1 - 0.53.0 Hectares from 1986. She approached the authority to assign patta in the said land to her name and the 4th respondent has issued Assignment Patta in the year 1997 vide D.K.Gi.33/1407 dated 27.11.1997. After the said assignment, the petitioner was in continuous possession and enjoyment of the said land. There was a family dispute between the petitioner and her brother-in-law, the 5th respondent herein one Arumugam for decades. Therefore, he tried to create a cart track in the petitioner's land and hence, the petitioner had approached the Civil Court and filed a Suit for declaration of title and for permanent injunction against the defendants vide O.S.No.478 of 2003 on the file of Additional District Munsif Court, Tiruvannamalai. After trial, the suit was decreed in favour of the petitioner on 22.09.2005.

3. In the petitioner's patta land, she had dig a well and fixed one 5Hp electric motor pump set and having separate electricity connection vide No.1559 in her name and irrigating the agricultural land and doing cultivation. Therefore, she availed loan from Indian Overseas Bank, Vedanthavadi Village Branch by mortgaging the said land. In 1993, 5th respondent herein had filed a civil suit against the petitioner regarding the existence of the alleged cart track in her property on the file of the District Munsif, Tiruvannamalai in O.S.No.164 of 1993, the said suit was dismissed and the appeal was preferred against the decree also dismissed by the Additional District Court, Tiruvannamalai in A.S.No.36 of 1998. The 5th respondent herein had been attempted to evict the petitioner from her property by filing one case or the other. He had filed one Writ



Petition vide W.P.No.90 of 2018 before this Court and by order dated 04.01.2018, this Court has passed the order as follows:

''4. In view of the above, the relief sought for by the petitioner, as such, cannot be granted. However, it is open to the respondents/authorities concerned to measure the land in question (with the assistance of the Government Surveyor), in the presence of the petitioner, and other private parties, who are likely to be affected, and ascertain as to whether there is a cart track or not. The petitioner will have to pay the necessary charges for surveying the land. If the dispute is between two private parties, it is open to the petitioner to approach the appropriate civil forum.''

4. The petitioner further submits that the 3rd respondent had sent one summon vide Ka.No.Aa3/282/2018 dated 21.02.2018 and required her presence on 27.02.2018. On that day the petitioner appeared before the 3rd respondent and gave her submissions. But, without considering her explanation, the 3rd respondent had cancelled her assignment patta through proceedings dated 28.06.2018 vide No.Aa4/282/2018. Aggrieved by the said order of cancellation of her patta, the petitioner had preferred an appeal before the 2nd respondent on 16.07.2018 and in the meanwhile, the petitioner also sought permanent injunction against the respondents 1 and 4 restraining them from her peaceful possession and enjoyment of the suit property by forming road forever on the file of the Principal District Munsif at Tiruvannamalai in O.S.No.18 of 2018 and the same is pending. The 2nd respondent disposed of the appeal by an order dated 16.11.2018 stating that a civil suit connected to the property is pending, she should seek remedy through civil court vide letter No.Aa2/942/2018.

5. As against the above said impugned order passed by the 2nd respondent, the petitioner filed this writ petition on the following grounds:

i) The 2nd respondent failed to consider that the 3rd respondent had cancelled the Assignment Patta without any justifiable reason hence the impugned order suffers material irregularity and liable to be set aside.

ii) The 2nd respondent failed to consider the Civil Suit filed by the petitioner in O.S.No.18 of 2018 on the file of the Principal District Munsif, Tiruvannamalai is only seeking permanent injunction and nothing to do with the order of cancellation of the assignment Patta. Hence, the impugned order is liable to be set aside.

iii) She has also further submitted that the Authorities



have mechanically disposed of the appeal by non-application of mind and the petitioner is in possession and enjoyment of the property for more than 30 years and doing cultivation continuously without any disturbances. Without considering the genuineness and merits of the petitioner's representation, the 3rd respondent had cancelled the assignment patta.

iv) The petitioner further submitted that the petitioner decree being granted by the Courts, and the 5th respondent had not preferred any appeal against the said decree and judgment dated 22.09.2005, the decree became final. The respondents 2 and 3 had passed an order without considering the factual and legal positions. Hence, the impugned order is liable to be set aside.

v) Therefore, it is necessary to call for the records and quash the order dated 16.11.2018 passed by the 2nd respondent vide letter No.Aa2/942/2018 which cancelled the Assignment Patta for the property situated at Survey No.63/1, of an extent of 0.53.0 Hectare situated at Vedanthavadi Village, Kilpennathur Taluk, Tiruvannamalai District.

6. The petitioner has filed the typed set of papers stating that the 4th respondent had issued Assignment Patta in the year 1997 dated 27.11.1997. The order in W.P.No.90 of 2018 dated 04.01.2018, there is a prayer directing the respondents to restore the common path (Cart Track) in the size of six meter breadth and one seventy eight meter length in the above land situated in the land in Survey No.63/1, Vedanthavadi Village, Kilpennathur Taluk, Tiruvannamalai District by considering the representation made by the petitioner on 24.08.2017 with in the time to be stipulated by this Court.

7. This Court has not granted the relief but it is open to the respondents / authorities concerned to measure the land in question and find out whether there is a cart track or not and it is also made clear that it is open to the petitioner to approach the appropriate civil forum.

8. The dispute is between two private parties. The petitioner has filed O.S.No.21 of 2018, before the District Munsif Court, Tiruvannamalai seeking for permanent injunction against the respondents 1 and 4 restraining them from any manner interfering with petitioner's peaceful possession and enjoyment of the suit property by forming road for ever. It is also seen that the patta was cancelled and the 3rd respondent has also sent a notice dated 21.02.2018 for the appearance of the petitioner before on 27.02.2018 to ascertain the details regarding cart track. After enquiry by the 3rd respondent dated 28.06.2018, it has been observed that the Tahsildar has granted assignment patta in No.33/1407 and as per the said enquiry, based on the report of the Tahsildar, it is seen that Survey No.63/1 of an extent of 0.54.0 ares situated at Vedanthavadi

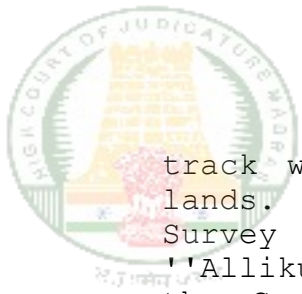


Village, Kilpennathur Taluk, Tiruvannamalai District has been classified as per village account in the name of Mrs.Kasiammal W/o.Murugesan. On 27.11.1997, patta land was assigned in favour of Kasiammal and from the said date the petitioner is in possession of the same. In the meanwhile, it is also observed that the petitioner doing cultivation in the said land.

9. It is stated that the petitioner is not a landless poor. She has got more lands. The said assignment patta is wrongly given to the petitioner.

10. After perusing the records and also the submissions made by the both the learned counsels, it is seen that as the judgment and decree in O.S.No.478 of 2003, wherein it has been clearly stated by the Court that except Government, no other private persons can raise any question regarding possession and enjoyment of the petitioner. It is seen that Mr.Murugesan, Husband of the petitioner and his family members having own lands in their name. There are totally 4.90.0 hectares of lands are owned by the petitioner's husband and in the name of the petitioner. As per the same, the petitioner is not a landless poor and her family already having patta in Survey Nos.375/3, 63/3A, 63/4A, 62/4A, 62/7 and 63/1. The petitioner is also assigned patta land in Survey No.63/1 - 0.54.0 Hectares from 1986. But, the petitioner is having more lands in totalling 4.90.0 hectares. The said assignment of patta land to the petitioner is not proper and therefore, the authorities cancelled the same. It is also further seen that the said above truth has been suppressed by the petitioner herein and she has got the assignment land and therefore, the Revenue Divisional Officer has cancelled the assignment patta in the name of the petitioner and the same resumed by the Government.

11. The petitioner herein has filed an appeal before the 2nd respondent and the same was also considered by the Authority and vide Letter No.Aa2/942/2018 dated 16.11.2018, given to the petitioner stating that there are a suit connected to the property is pending, due to which, if at all any title to be decided, the same has to be decided by the competent civil court and rejected the prayer of the petitioner. On going through the said averments made by the petitioner and the 4th respondent is also filed a counter stating that the suit has been filed in O.S.No.21 of 2018 and the 5th respondent is not a party only official respondents were made as a party. It is further submitted that originally, the landed property situated in S.No.63/1, was Government Tharisu Poramboke land and the said land had been used by the 5th respondent and the general public as cart track to access the respective agricultural lands. In S.No.62/6, all village people used the cart track as pathway to reach their land and the water body 'Alli Kulam'. The cart



track was also used by the petitioner's husband to reach his lands. The original classification of the land comprised in Survey No.63/1 was Tharisu Poramboke. The water body 'Allikulam' is lying on Survey No.62/6 which is the border of the Government Poramboke land. Survey Nos.63/1 and 62/6 have common boundary measuring a length of 166.0 links. The Tamil Nadu Electricity Board department has also erected the Transformer on the bund of Allikulam, much prior to the assignment of land in the year 1997. All the village people, family members including the husband of the petitioner had been using the same as cart track (pathway). Suppressing all these facts, and cart track, the petitioner also trying to state that the aid lands are assigned to her in S.No.63/1 even before 1997. The petitioner and her husband altered the nature of the land and tried to obstruct the villagers to use that land as cart track. The 5th respondent's objection was not considered and he had filed O.S.No.164 of 1993 for declaration that he was the absolute owner of the lands situated in Survey Nos.70/10, 70/13, and 70/15 and also for a declaration he has got easementary rights over the pathway on the western side of the Survey Nos.63/3A and 63/4A. Though the first relief was granted, the easementary right was rejected. Aggrieved the same, the 5th respondent filed an appeal in A.S.No.36 of 1998 and the same was also dismissed on 08.02.1999.

12. In spite of upholding the validity of the registered partition deed dated 23.07.1986, wherein it is clearly stated that there is a cart track on the western boundary of Survey Nos.63/3A and 63/4A and the petitioner should not prevent the 5th respondent from using the said cart track to reach his lands. A part of the said land to be used as cart track for the 5th respondent and the general public. From the year 1993 onwards, the petitioner's husband exerted pressure on the Government officials and all of them refused to come to Court and give evidence on the existence of cart track. They not only refused to come to Court and depose on the existence of the cart track but also helped the petitioner to obtain assignment patta in the year 1997 vide D.K.Gi.33/1407 dated 27.11.1997 bearing Patta No.1852. This patta was obtained by the petitioner by suppressing material facts such as the existence of a cart track and the large holding of agricultural lands by the husband of the petitioner. The issue of patta emboldened the petitioner to perpetuate her illegal act of encroaching the Government poramboke land which was used as cart track by the villagers. The dismissal of the suit and the appeal have no impact on the cart track in Survey No.63/1 as the Survey Numbers involved in the said suit is 63/3A and 63/4A. The petitioner is making mention of the dismissal of the said suit and appeal in paragraph 5 of the affidavit with an intention to prejudice this Court. The petitioner is making further submission that she had



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no agricultural lands for raising crops by suppressing the fact she has obtained patta and there is a registration on 23.07.1986, through which all the brothers have divided the property and the petitioner herein has filed a suit in O.S.No.478 of 2003 against the 5th respondent only and used the said proceedings as a weapon to stall all further proceedings on the assigned land. The scheme of the Government is to assign Government lands to landless farmers to uplift their livelihood. The scheme is not meant for people who are holding large area of land for cultivation. A reading of the terms and conditions of the assignment would establish that the assignment made in favour of the petitioner can be cancelled for suppression of material facts as confirmed by the 3rd respondent's proceedings dated 28.06.2018. Therefore, the order of the 3rd respondent is valid in law. In the above suit in O.S.No.478 of 2003, the petitioner herein filed the F.M.B.Extract with regard to the Survey No.63 and in which she has made insertion of a Well and a channel between the land in S.Nos.62 and 63. In the original F.M.B., Extract, the said Well and Channel were not mentioned and thereby the petitioner manipulated the F.M.B. No one can alter the Government records only the concerned officials of the Revenue Department.

13. The petitioner alleges in paragraph No.4 of her affidavit that she has dug a well in the petition mentioned property and has installed 5 HP electric motor pump for irrigation purposes. But, in the plaint in O.S.No.478 of 2003, she has alleged that she had put a thatched shed in the suit property and she had been living there with her husband and children. The change in usage of the land is to escape from the condition of the assignment that the land has to be irrigated within three years from the date of assignment. The land should not be used for any other purpose, including putting up a hut and habitat. The petitioner herein had filed a suit in O.S.No.21 of 2018 dated 07.02.2018 against the respondents 1 and 4 before the learned Principal District Munsif, Tiruvannamalai seeking permanent injunction restraining the defendants from any manner interfering with her peaceful possession and enjoyment of the suit property without impleading the necessary parties and obtained exparte decree dated 04.07.2018 and thereafter, the respondents 1 and 4 had filed interlocutory application in October 2018 to set aside the exparte decree along with detailed written statement and the set aside decree application was allowed and the said suit is pending. The 5th respondent herein seeks to restore the cart track in the petition mentioned property. He further submitted that the Authorities have cancelled the assignment patta based on the petition given by the concerned respondent. He further submitted that the petitioner's prayer to measure the property and ascertain as to whether there is a cart track or not has been decided by the



Authority and the action taken by the authority to conduct enquiry and had come to the conclusion as the land was Punjai Tharisu and allotted to poor people.

14. The respondent further submitted that this writ petition has to be dismissed on the ground that the petitioner is not a small farmer to get the benefits under the Government scheme.

15. It has to be seen that the above process has been forwarded to SDC (GDP) Collectorate, Tiruvannamalai, by the Tahsildar, Taluk Office, Kilpennathur and the same has been recorded on 22.01.2019 by the SDC (GDP), Collectorate, Tiruvannamalai and recommended that the Taluk Head Surveyor may record the 6 meter width cart track by sub-dividing the survey number and reclassify it as cart track in the F.M.B.Extract and other relevant revenue records. Further, all the other proceedings namely O.S.No.164 of 1993, A.S.No.36 of 1998 and O.S.No.21 of 2018 all are nothing to do with the said assignment of the petitioner and they were filed only regarding cart track and prayed for dismissal of the said writ petition. The petitioner has approached with unclean hands.

16. The counter affidavit filed by the Government states that the petitioner was in possession and enjoyment of the said land and the 5th respondent applied to restore the cart track on the above land and the petitioner has filed O.S.No.478 of 2003 for declaration of title and for permanent injunction against the defendant which was declared in favour of the petitioner is not aware of this respondent. The respondent has not given any information by the petitioner as they were not made as a party she took up the Will has to be proved. Further, the respondent has not a party in O.S.No.1841 of 1993 and A.S.No.36 of 1998 and that the 5th respondent has filed W.P.No.900 of 2018 before this Court for a prayer to direct the respondents to restore the cart track on this land. This Court, vide its Order dated 04.01.2018, ordered to measure land and as certain as to whether there is a cart track or not.

17. The 3rd respondent summoned the petitioner on 27.02.2018 to ascertain the details regarding the cart track. But, the enquiry revealed that the petitioner's husband was holding an extent of 3.21.5 Hectares of 7.94 acres at the above said village and concealed the very fact and managed to get the land assigned by representing that she owns no lands. As this is in violation of condition for assignment of Government. Waste land for agriculture to landless poor people at free of cost and the assignment of land at S.No.63/1 of the above village over an extent of 0.54.0 hectare in favour of the petitioner has been cancelled by the 3rd respondent in Proceedings No.A4/282/2018, dated 28.06.2018. Further, the respondent submitted that the



petitioner's appeal presented before the 2nd respondent as against the 3rd respondent on 16.07.2018, the petitioner also filed Civil Suit before the Principal District Munsif Court, Tiruvannamalai for permanent injunction against the respondents 1 and 4 restraining them from any manner interfering with her peaceful possession and enjoyment of the said land. The said suit was pending, the 2nd respondent in the appeal presented by the petitioner has informed that the petitioner to seek remedy through the pending suit in 2nd respondent's endorsement No.B2/942/2018 on 16.11.2018.

18. It is further submitted that the 5th respondent is to restore the so called cart track on the land and the petitioner is for title over the land, both the issues reached the finality by cancellation of the assignment made on violation of rules for assignment and restoration of the land itself to Government to be used by the public at large as pathway and further stated that the petitioner cannot be allowed to enjoy the said property only for the reason that the assignee family was a wealthy pattadar at the time of assignment.

19. On going through the assignment, it is seen that the lands will be assigned to the poor people who are landless people and the landless people who are doing agricultural activities and these lands are assigned with free of costs to the poor people who seeking lands, they should not have any lands in the said Government assigned village or any other village and only the persons whose annual income is Rs.12,000/-. Even assignment to be assigned to the poor people who is having the small portion of land which shall not exceed more than 3 acres of punja land or 1 ½ acres of Nanja lands in their names. Considering the said scheme the land assigned to the petitioner who had having more lands in her name and also in her husband's name the patta was cancelled only on the ground she has suppressed the fact and obtained patta.

20. The meaning of the family is consisting of the husband, wife, children and parents. Regarding cart track, at the earlier point of time, as per the same, directed th authority to measure the land and as certain as to whether there is cart track or not. Authorities can measure the cart track in case, an y dispute to make it as to enable the people to use the same to make agricultural products.

21. The second point is that the suit filed by the petitioner in O.S.No.478 of 2003 for declaration of title and for permanent injunction against the 5th respondent for not to disturb the petitioner's peaceful possession and enjoyment of the property. The Government has got every right to raise any questions regarding claim over the property and there is no



other observation made by the authority that the Government is also prohibited from entering into the property and it is also further seen that O.S.No.478 of 2003 has been filed and also filed O.S.No.21 of 2018 before the Principal District Munsif, Tiruvannamalai where plaint filed against the Tahsildar and the District Collector, Tiruvannamalai District, prayed for granting a permanent injunction restraining the defendant, his men, agents, servants and henchman from any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property by forming road for ever and the same is pending adjudication. The petitioner cannot seek for permanent injunction restraining the Government and the same cannot be canvassed before this Court. Regarding the order passed by the Authority dated 28.06.2018 vide proceedings No.Aa4/282/2018, the Revenue Divisional Officer, Tiruvannamalai District, the 3rd respondent herein, after holding an enquiry and based on that the petitioner has not entitled for assignment patta for free of cost and irregularities have been found that the petitioner has got patta illegally. It is the duty of the Authority to cancel the same and accordingly, the right order is passed by the 3rd respondent in proceedings No.(m4)/282/2018.

22. The writ petitioner has filed an application before the Authority, namely, the 2nd respondent wherein the Authority has not gone into the merits of the case but simply come to the conclusion that the petitioner has filed the suit against the Authority and she has no right over the title of the property based on the circular in G.O.(Ms) No.55, Revenue [LD2(1)] Department, dated 24.02.2017, issued by the Secretary to Government, Land Administration and directed the authorities to consider the claim based on the judgment and decree passed in competent civil Court. The order dated 16.11.2018, passed by the 2nd respondent is a cryptic order which is not proper and the same is set aside and it is found that the Authority shall pass appropriate order on the said representation made by the petitioner as per the enquiry and based on the same the Authority has got right to cancel the patta but the Authority has simply come to the conclusion that only the competent civil Court will decide the title regarding assignment of land.

23. The petitioner has suppressed the facts that her husband is owning more lands and the petitioner also got own land and obtained assignment patta and saying that the petitioner separated with her husband.

24. Considering the same, the Revenue Divisional Officer, the 3rd respondent had cancelled the assignment patta issued to the petitioner but the District Revenue Officer, the 2nd respondent has failed to exercise his duty. Hence, the order passed by the District Revenue Officer, the 2nd respondent herein



is vide Letter No.Aa2/942/2018, is set aside and the 2nd respondent is directed to pass appropriate orders on the representation made by the petitioner, after considering the Revenue Records and also the objections raised by the 5th respondent herein, namely Mr.Arumugam, within a period of four months from the date of receipt of a copy of this order.

25. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The District Collector of Tiruvannamalai,
Collector Office,
Vengikal,Tiruvannamalai,
Tiruvannamalai District.

2.The District Revenue Officer,
Tiruvannamalai Taluk,Tiruvannamalai District.

3.The Revenue Divisional Officer,
Tahsildar Office,
Tiruvannamalai Taluk,Tiruvannamalai District.

4.The Tahsildar,
Kilpennathur Taluk,Tiruvannamalai District.

+2ccs to Mr.P.Munuswamy, Advocate, S.R.No.56300
+1cc to Yes S Associates, Advocate, S.R.No.56396
+1cc to the Government Pleader, S.R.No.56652

W.P.No. 4570 of 2019
and

W.M.P.Nos.5157 and 5159 of 2019

RGN (CO)
PM/14/12/2021