



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 29.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.10103 of 2010
and M.P.Nos.1 and 2 of 2010

Smt.L.Kokila

... Petitioner

-Vs-

1. State of Tamil Nadu
rep.by the Collector, Kancheepuram Taluk
Kancheepuram District
Kancheepuram.
2. The District Revenue Officer
Kancheepuram Taluk
Kancheepuram District
Kancheepuram.
3. Revenue Divisional Officer
Kancheepuram Taluk,
Kancheepuram District
Kancheepuram.
4. Thasildar
Kancheepuram Taluk,
Kancheepuram District
Kancheepuram.
5. Block Development Officer
Walajabad Union, Walajabad
Kancheepuram Taluk,
Kancheepuram District
6. Revenue Inspector
Walajabad Firka, Walajabad
Kancheepuram Taluk,
Kancheepuram District.
7. President, Palayaseevarum Panchayat
Kancheepuram Taluk, Kancheepuram District.
8. Village Administrative Officer (A Block)
Palayaseevarum Panchayat
Kancheepuram Taluk,
Kancheepuram District.

.. Respondents



Prayer : Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling the records pertaining to land of 17 cents Anathenam comprised in Survey No.378/8 situated Palayaseevarum Village Kancheepuram Taluk Kancheepuram District and quash the order dated 09.04.2010 NA.KA.1982/2010/B5 issued by the Tahsildar Kancheepuram Kancheepuram District.

For Petitioner : Mr.Sathish
for Mr.T.V.Krishna Kumar

For Respondents : Mr.Richardson Wilson, Government Counsel
- for RR 1 to 4, 6 & 8
Mr.M.Elumalai, Standing Counsel
- for RR 5 and 7

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling the records pertaining to land of 17 cents Anathenam comprised in Survey No.378/8 situated Palayaseevarum Village Kancheepuram Taluk Kancheepuram District and quash the order dated 09.04.2010 NA.KA.1982/2010/B5 issued by the Tahsildar Kancheepuram Kancheepuram District.

2. This writ petition has been tagged along with Contempt Petition No.1583 of 2015. When the said Contempt Petition came up for hearing today, since this writ petition also had been tagged, the writ petition itself was heard with the consent of the learned counsel for the petitioner as well as the learned Government Counsel Mr.Richardson Wilson, appearing for respondents 1 to 4, 6 and 8 and Mr.Elumalai, learned Standing Counsel appearing for respondents 5 and 7.

3. It is the case of the petitioner that, 17 cents of land at S.No.378/8 situated at Palayaseevarum Village, Kancheepuram Taluk, Kancheepuram District is the subject matter, where, according to the petitioner, the petitioner's father, subsequently petitioner's mother had been in possession and enjoyment of the property. Therefore, after them, the petitioner seems to have inherited the possession over the property in question and with that strength, the petitioner seems to have approached the fourth respondent Tahsildar for issuance of patta. The said move on the part of the petitioner was triggered against the fifth respondent as well as the seventh respondent, who have started putting up construction of a community hall in that land.

4. However, the said request made by the petitioner was rejected by the fourth respondent Tahsildar by an order dated 09.04.2010. In the said order dated 09.04.2010, the respondent



Tahsildar has stated the following reason for rejecting the plea of the petitioner.

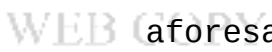
“காஞ்சிபுரம் வட்டம், பழைய சீவரம் ஊராட்சிக்குட்பட்ட சங்கராபுரம் கிராமம் புல எண் 378/8ல் புன்செய் நிலம் 0.07.0 ஏர்ஸ் திருமதி கோகிலா என்பவரின் அனுபவத்தில் என்பதற்கான ஆதாரம் ஏதும் இவ்வலுவலகத்தில் இது நாள் வரையில் தாக்கல் செய்யவில்லை. எனவே, தங்களது கோரிக்கையை பரிசீலனை செய்ய இயலாது என இதன் மூலம் தெரிவிக்கப்படுகிறது.”

5. Aggrieved over the said order dated 09.04.2010, the petitioner has preferred the present writ petition with the aforesaid prayer.

6. Mr.Sathish, learned counsel appearing for the petitioner would submit that, the land has been in the possession and enjoyment of the petitioner's parents and this is evidenced from the Adangal and other certificate issued by the Village Administrative Officer concerned, which has established the possession of the petitioner. When that being so, all of a sudden the respondents, especially the respondents 5 and 7, in the guise of constructing a community hall, entered upon the petitioner's land in order to put up the community hall. Therefore, at that juncture, when the petitioner approached the revenue Tahsildar for getting the patta, the same had been rejected in a short and cryptic order without giving any proper reason. Therefore, challenging the said order, the present writ petition has been filed.

7. Learned counsel would further submit that, in an earlier occasion ie., during the pendency of this writ petition, the seventh respondent Village Panchayat represented by its President filed a writ petition in W.P.No.17184 of 2015 to remove the encroachment from the subject land of the petitioner, who stood as fourth respondent in that writ petition, where, a Division Bench of this Court, by an order dated 17.06.2015, directed the revenue authorities to consider the representation given by the Village Panchayat represented by the then President for removal of the petitioner and other encroachers from the subject land. The learned counsel has pointed out that, in the said order of the Division Bench dated 17.06.2015, a direction also had been given at Paragraph 4 that, any action shall be subject to providing an opportunity of hearing to the alleged encroachers including the fourth respondent ie., the fourth respondent in that writ petition, who is the present petitioner.

8. However, in no consonance with the said direction issued by the Division Bench of this Court as referred to above, the official respondents ie., the revenue department had removed the petitioner as if that the petitioner had encroached the property, without affording any opportunity and therefore on that ground itself, the impugned action on the part of the



9. That apart, when this writ petition was filed with the aforesaid prayer, challenging the order passed by the Tahsildar dated 09.04.2010, initially an interim order of status quo as on that date was passed. The said interim order of status quo had been extended further. However, in violation of the said interim order of status quo since the respondents, especially the Block Development Officer as well as the Village President of the Panchayat concerned and the Revenue Inspector as well as the fourth respondent Tahsildar, in violation of the said interim order of status quo, started putting up construction. Therefore, in order to punish the respondents for that action, Contempt Petition No.1583 of 2015 had also been filed. Therefore, the learned counsel for the petitioner would submit that, the said contempt petition shall be proceeded against the respondents and the impugned order passed by the fourth respondent Tahsildar in this writ petition shall be quashed and the matter may be remitted back to the Tahsildar for re-consideration for giving patta to the petitioner in respect of the subject land.

10. I have heard Mr.Elumalai, learned Standing Counsel for the Block Development Officer as well as the Village Panchayat President, who would submit that, insofar as the Contempt Petition No.1583 of 2015 is concerned, well before the order of status quo passed by this Court, the encroachment made by the petitioner had been removed and in this context, the learned counsel relied upon the following paragraphs of the counter affidavit filed by one Leema Rose, who was the Block Development Officer, Walajabad Panchayat Union at that time.

" 8. It is respectfully submitted that even according to the petitioner in Para No.19 of the affidavit filed in support of the present contempt petition, she has stated that on 01.05.2010 and 02.05.2010, the seventh respondent - President of the Panchayat, brought the JCB and levelled the land on 02.05.2010. Therefore, it is evident that even before the order of status quo dated 05.05.2010, the petitioner was removed from the alleged possession of the land in question. However, it is made as if the petitioner's possession was disturbed only after knowing the order of status quo, which is factually incorrect. When the petitioner herself admitted that on 01.05.2010 and 02.05.2010 the land in her alleged possession was levelled with a JCB vehicle, it could be evident that as on the order of status quo on 05.05.2010, the writ petitioner was not in possession of the land at all. Consequently, there is no violation of the order passed by this Honourable Court by the respondents in the writ petition."



11. He would also submit that, insofar as the land in question is concerned, it is the Anadeenam land ie,, Government land and at no point of time, the land was in the possession and enjoyment of the petitioner or his parents or any other person as a lawful owner. Moreover, the land is not a Village Natham Poramboke, even the possessory right cannot be claimed for seeking Patta by those who are in possession of the land concerned and whatever be the occupation or for how long period by any individual or group of individuals in any Government land, that can only be treated as an encroachment. Therefore, that kind of encroachment cannot be approved by issuance of Patta by the revenue authorities. Therefore, when such an attempt was made by the petitioner to seek Patta from the Tahsildar concerned, that was dealt with and has been rejected, of course, rightly by the said Tahsildar, as against which only the present writ petition has been filed. Therefore, the learned Standing Counsel appearing for the Block Development Officer and the Village Panchayat would submit that, the petitioner has no right whatsoever in the property in question, as it is a Government Anadeenam land and moreover insofar as the contempt petition is concerned, since the petitioner has already been removed from the subject land well before the order of status quo was passed by this Court, the question of initiating contempt proceedings against the respondents does not arise. Therefore, he seeks dismissal of this writ petition and the closing of the contempt petition.

12. I have also heard Mr. Richardson Wilson, learned Government Counsel appearing for the other official respondents, who would submit that, admittedly it is an Anadeenam land. Since it was Anadeenam land, which was required for public purpose ie., construction of community hall, for that purpose the encroachments were removed.

13. In this context, it is to be noted that, by an order dated 17.06.2015, the Division Bench has already given a direction to the revenue authorities to consider the request by way of representation by the Village Panchayat for removal of any encroachment and what has been directed by this Court through the Division Bench order has been complied with. Therefore, the same cannot be construed as an action against the interest of the petitioner, as the petitioner cannot claim title over the property or patta in respect of the property under any circumstances, because the land itself is classified as Anadeenam land. Therefore, in that land, the petitioner or any other person do not have any right to claim Patta. Hence, the said plea raised by the petitioner has been rightly rejected by the Revenue Tahsildar through the impugned order. Learned Government Counsel would also submit that, as against the order passed by the Revenue Tahsildar, which is impugned herein, if at all the petitioner is aggrieved, he can very well prefer an



appeal under Section 12 of the Patta Passbook Act before the Revenue Divisional Officer, if the petitioner is able to satisfy the appellate authority that he is entitled to get patta for the said land. Even that appeal remedy has not been exhausted and the petitioner since has come before this Court by filing the present writ petition seeking a writ of certiorari, even on that ground also, the writ petition is liable to be rejected, he contended.

14. I have considered the submissions made by the learned counsel for all the parties and have gone through the materials placed on record.

15. It is a fact that, during the pendency of the writ petition, the Village President has filed a writ petition in W.P.No.17184 of 2015, wherein the Division Bench has passed an order on 17.06.2015 with the following directions,

" 2. On a perusal of the documents submitted before us, it appears that the petitioner has made a representation to the respondents 1 to 3 alleging that despite clear order dated 15.12.2009 passed by this Court in W.P.No.23966 of 2009 directing the respondents therein to take action against the fourth respondent herein in accordance with law for removal of the alleged encroachment, no steps have been taken till date. Thereafter, on 03.02.2015, the petitioner has made another representation to the authorities.

3. The learned Special Government Pleader appearing for respondents 1 to 3 submits that necessary action, on proper inspection, shall be taken and appropriate orders would be passed on merits and in accordance with law, adverting to each and every averment made in the representation, within a period of four weeks from the date of receipt of a copy of this order.

4. It is accordingly ordered. Needless to state that any action taken has to be subject to a proper opportunity of hearing to the alleged encroachers, including the fourth respondent.

5. The writ petition stands disposed of with the above observation. Costs made easy."

16. Only pursuant to this direction, the revenue authorities were duty bound to remove the encroachment not only by the petitioner, but also other encroachers in the Government land.



17. Insofar as the main issue raised in the writ petition, where the petitioner has challenged the order passed by the revenue Tahsildar dated 09.04.2010, where the Tahsildar has rejected the plea of the petitioner for issuance of patta on the ground that absolutely there has been no document on the part of the petitioner to satisfy that she has been in possession and enjoyment of the property.

18. Moreover, since the land in question has already been categorised or classified as Government Anadeenam, in that land, the petitioner cannot claim Patta as a matter of right as if that is claimed in a Village Natham Poramboke.

19. If at all the petitioner is a landless poor, if she is able to establish before the revenue authorities under the Revenue Standing Orders, she can make an application to the Government for getting Patta under landless poor category and for the said purpose, the petitioner cannot stick on any particular land to get patta.

20. Even that exercise has not been undertaken by the petitioner. She has simply approached the revenue authorities seeking for a Patta in respect of the subject land knowing well that it is an Anadeenam land. Therefore, for the Anadeenam land, the petitioner as a matter of right cannot claim Patta.

21. Nevertheless, still if the petitioner feels that she has got any right over the property in question to get patta as against the order impugned passed by the Tahsildar, she can file an appeal before the Revenue Divisional Officer and if such an appeal, even after this length of time is filed before the Revenue Divisional Officer, that can be considered and orders can be passed by the Revenue Divisional Officer on merits and in accordance with law. Therefore, insofar as present prayer sought for in this writ petition challenging the impugned order dated 09.04.2010 is concerned, this Court feels that absolutely there is no merit in the said prayer.

22. Accordingly, for the aforesaid reasons, this Court is inclined to reject this writ petition. The writ petition is therefore dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

KST



To

1. The Collector,
The State of Tamil Nadu
Kancheepuram Taluk
Kancheepuram District
Kancheepuram.
2. The District Revenue Officer
Kancheepuram Taluk
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Palayaseevarum Panchayat
Kancheepuram Taluk,
Kancheepuram District

+1CC to M/s.T.V.Krishna Kumar, Advocate, SR.No. 37011

W.P.No.10103 of 2010

PMK(CO)
B.VC (23/09/2021)