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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 15.12.2021

Orders Pronounced on : 23.12.2021

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.6606 and 7962 of 2020

and

W.M.P.Nos.7828 and 9400 of 2020

W.P.No.6606 of 2020

SM.Subbaiah

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep.by its Secretary,
Industries Department,
Fort St.George,
Chennai - 600 009.

2.The District Collector,
The Collectorate Buildings,
Salem - 636 001.

3.The Additional chief Secretary (Lands)
and Commissioner for Land Administration,
Chepauk,
Chennai - 600 005.

4.The Revenue Divisional Officer,
Attur,
Salem District - 636 102.

5.Selvan

6.The Commissioner,
Department of Geology and Mining,
Guindy, Chennai - 600 032.

... Respondents

Prayer in W.P.No.6606 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents to lay a parallel road on the adjacent land provided by the petitioner in Survey Nos.789/2, 791/1, 791/2, 789/1 and 788/2 in an extent of 5.08.5 hectares, within such period as this Court may deem fit and proper.



W.P.No.7962 of 2020

SM.Subbaiah

... Petitioner

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Vs.

1.Government of Tamil Nadu,
Rep.by its Secretary,
Industries Department,
Fort St.George,
Chennai - 600 009.

2.The District Collector,
The Collectorate Buildings,
Salem - 636 001.

3.The Additional chief Secretary (Lands)
and Commissioner for Land Administration,
Chepauk,
Chennai - 600 005.

4.The Revenue Divisional Officer,
Attur,
Salem District - 636 102.

5.Selvan

... Respondents

Prayer in W.P.No.7962 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents 1 to 4 from interfering with petitioner's peaceful possession and enjoyment of petitioner's land in Survey Nos.789/2, 791/1, 791/2, 789/1 and 788/2 in Chinnakalrayan Therkunadu Village, Athur Taluk, Salem District, ad-measuring about 5.08.5 hectares, other than by due process of law including observing principles of natural justice.

For Petitioner
in both W.Ps : Mr.G.P.Bhavani

For R1 to R4 & R6
in W.P.No.6606 of 2020
& For R1 to R4 in
W.P.No.7962 of 2020 : Mr.V.Jeevagiridharan
Additional Government Pleader



COMMON ORDER

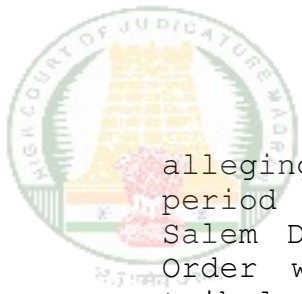
W.P.No.6606 of 2020

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W.P.No.6606 of 2020 is filed to issue a Writ of Mandamus, to direct the respondents to lay a parallel road on the adjacent land provided by the petitioner comprised in Survey Nos.789/2, 791/1, 791/2, 789/1 and 788/2 in an extent of 5.08.5 hectares, within such period as this Court may deem fit and proper.

2. The learned counsel for the petitioner submitted that the properties comprised in Survey Nos.789/2, 791/1, 791/2, 789/1 and 788/2, ad-measuring an extent of 5.08.5 hectares situated at Chinnakalrayan, Therkunadu Village, Athur Taluk, Salem District, are owned by the petitioner. The petitioner made quarry lease application on 31.07.2012 seeking permission to quarry black granite in his patta land. The petitioner was informed that the second respondent and Commissioner of Geology and Mining, the fifth respondent herein, have recommended his application and directed the petitioner to furnish the approved mining plan as per sub Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. When mining operations were suspended for a temporary period, the petitioner put to disuse the road formed by him and utilizing the said circumstances, neighbouring villagers trespassed into the patta land and started using the aforesaid road as pathway. Therefore, the petitioner filed a Writ Petition before this Court in W.P.No.194 of 2018 for a direction to direct the respondents to lay a parallel road on the Government land already inspected and surveyed, adjacent to the subject properties. It was allowed by order dated 28.11.2018 and the impugned order was set aside and the matter was remanded back to the second respondent to consider afresh. While pending the Writ Petition, the fourth respondent, by communication dated 27.11.2018, has admitted that if the petitioner is willing to lay a road afresh in his patta land beyond 50 meters of the mining area, the granting of mining lease could be considered by the second respondent. The petitioner had sent his proposal for laying the adjacent road on 09.10.2019. However, there was no response to the representation.

3. While that being so, the fifth respondent, with mala-fide intention, started to open up the issue of ownership of the subject lands. However, the fourth respondent has sent his report to the second respondent to cause impediment to the grant of quarrying licence and to cancel the patta granted to his vendor outside the scope of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act 26/1963 (hereinafter referred to as 'the Abolition Act', for short)



alleging that such a grant was made beyond the stipulated period and also on the allegation that the Kalrayan Hills, Salem District, has since been included in Revenue Standing Order which prohibited alienation of tribal lands to non-tribal. When the petitioner's vendor failed to get Ryotwari Patta, they applied to the fourth respondent to get patta outside the Abolition Act as per G.O.Ms.No.370, Commercial Taxes & Religious Endowments Department, dated 03.10.1974, read with G.O.Ms.No.1300, Revenue Department, dated 30.04.1971. The fourth respondent issued patta to the petitioner's vendor on 12.03.1979. All these years, none of the Revenue Authorities have raised their objections as against his ownership of the subject lands and when that being so, it is now alleged that the patta is conditional one and the Tribals cannot alienate the land to and in favour of a non-tribals. The patta in question does not fall within the purview of Revenue Standing Order. Therefore, the petitioner submitted his representation to lay a parallel road on the adjacent land provided by the petitioner comprised in Survey Nos.789/2, 791/1, 791/2, 789/1 and 788/2, ad-measuring an extent of 5.08.5 hectares.

4. Per contra, the second respondent filed counter affidavit and stated that Chinnakalrayan Village, Attur Taluk, Salem District was previously an Inam Village and taken over by the Government under the provisions of the Abolition Act on 24.06.1966. At the time of Ryotwari settlement, the lands bearing S.No.789/2 etc. were classified as "Government Assessed Waste Dry". The applicants (Malayalees) applied for grant of patta outside the scope of the Abolition Act only on the basis of their possession and effective enjoyment. The Revenue Divisional Officer, Salem, had passed orders outside the scope of the Abolition Act under G.O.Ms.No.1300, Revenue Department, dated 30.04.1971 read with G.O.Ms.No.370, Commercial Taxes and Religious Endowments Department, dated 03.10.1974 for the lands comprised S.Nos.788/2, an extent of 0.88.0 Hectares, the land comprised in S.No.789/1 an extent of 1.54.0 hectares, the land comprised in S.No.789/2 an extent of 0.60.0 hectares, the land comprised in S.No.791/1 an extent of 1.16.0 hectares and the land comprised in S.No.791/2 an extent of 0.90.5 hectares in total extent of 5.08.5 hectares, to grant patta to Malayalees along with 20 conditions for assignment. According to one of the conditions in Serial No.10, the lands which were granted to Malayalees, should not be sold out other than Malayalees (Non-Tribals), even after 20 years and above, whereas, the subject lands were purchased by non-tribal and as such, the mandatory condition has been violated. The lands assigned to Tribals (Malayalees) were sold to non-tribal people, based on the instructions issued by the letter dated 21.02.2007 by the Principal Secretary & Commissioner of Land Administration and Circular No.K4/35687/2015 dated 12.06.2015. Therefore, the assignment granted by the Revenue Divisional Officer, Salem dated



31.03.1979 had been cancelled and the subject lands were resumed back by the Government, by proceedings of the second respondent dated 13.01.2020.

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5. It is further evident from the counter affidavit of the second respondent that the second respondent also has ordered that the subject lands stands vest with the Government only without any encumbrance and prohibitory order was also passed. Accordingly, the necessary changes were carried out in the Revenue Records. Therefore, the petitioner cannot claim ownership rights on the subject lands. The petitioner, while applying quarrying lease for granite, concealed the fact of land purchased from Malayalees under conditional assignment. That apart, a pucca black-top road runs on the patta lands and also connecting with the Government lands in Arampoondi Village, Kallakurichi Taluk, Villupuram District of hill village of Kuruthalpattu and Pagadupattu in Salem District, via the subject lands. The said road is under utilization of the Tribal villagers and it is in existence for more than 30 years. Therefore, the request made by the petitioner cannot be considered and the Writ Petitions are devoid of merits.

6. In the result, the Writ Petition in W.P.No.6606 of 2020 is dismissed. However, the second respondent is directed to serve the copy of the proceedings dated 13.01.2020 in Na.Ka.8256/2018/K4 and 20.01.2020 in Na.Ka.8256/2018/K4 to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the petitioner is at liberty to challenge the said proceedings issued by the second respondent dated 13.01.2020 and 20.01.2020 in the manner known to law, within a period of four weeks thereafter. Consequently, the connected Miscellaneous Petition is closed. No costs.

W.P.No.7962 of 2020

7. W.P.No.7962 of 2020 is filed to issue a Writ of Mandamus, to direct the respondents 1 to 4 from interfering with petitioner's peaceful possession and enjoyment of petitioner's land comprised in Survey Nos.789/2, 791/1, 791/2, 789/1 and 788/2 in Chinnakalrayan Therkunadu Village, Athur Taluk, Salem District, ad-measuring about 5.08.5 hectares, other than by due process of law including observing principles of natural justice.

8. In view of the order passed in W.P.No.6606 of 2020 as above, the Writ Petition in W.P.No.7962 of 2020 is disposed of. The respondents are directed to maintain status quo in respect of dispossession of the petitioner in the property comprised in Survey Nos.789/2, 791/1, 791/2, 789/1 and 788/2 in Chinnakalrayan Therkunadu Village, Athur Taluk, Salem District, ad-measuring about 5.08.5 hectares, till challenge



is made as against the proceedings passed by the second respondent in Na.Ka.8256/2018/K4 dated 13.01.2020 and 20.01.2020. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Government of Tamil Nadu,
Industries Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector,
The Collectorate Buildings,
Salem - 636 001.
- 3.The Additional chief Secretary (Lands)
and Commissioner for Land Administration,
Chepauk,
Chennai - 600 005.
- 4.The Revenue Divisional Officer,
Attur,
Salem District - 636 102.

+1cc to Government Pleader SR. No.69915

W.P.Nos.6606 and 7962 of 2020

EV (CO)

PR (11/01/2022)