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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.825 OF 2020

AND

C.M.P.NO.10480 OF 2020

The Tahsildar,
Pochampalli and Taluk,
Krishnagiri District.

.. Appellant/Respondent

Vs.

G.Chinnapillai Ammal

.. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 13.11.2019 passed in W.P.No.33466 of 2013.

Prayer in W.P.No.33466 of 2013: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records on the file of respondent made in Na. Ka. No. 3851/2010 dated 18.10.2013 and quash the same and consequently direct the respondent to issue the house site patta to the petitioner for the above mentioned land in Survey No.872/1, bearing Door No. Old No.45 M.G.R. Street, Velappatti Post, Pochampalli Taluk, Krishnagiri District.

For Appellant : Mr.D.Ravichander,
State Government Counsel

For Respondent : Mr.P.Chandrasekaran
for Mr.K.Balaji



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JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)

This intra-Court appeal is directed against the order passed by the learned Single Judge dated 13.11.2019 in W.P.No.33466 of 2013 allowing the writ petition thereby directing the respondent therein/the appellant herein to grant patta in favour of the writ petitioner/respondent.

2. For the sake of convenience, the parties are referred to as per their rank before the writ Court.

2.1. The writ petitioner sought to quash the order of the respondent dated 18.10.2013, wherein and whereby, her request to issue house site patta for Survey No.872/1, Pattai Prompoke was rejected stating that she had constructed a shop with house, on account of which, she is not entitled for the house site patta.

2.2. According to her, she is a septuagenarian and she has been living there for about 50 years even at the time of filing the writ petition in the subject property, as her husband put up a small dwelling house and they were regular in paying the tax and electricity charges. The neighbours of the writ petitioner and herself sought for issuance of free house site patta under the pretext that they were living in those lands for decades. Though some of them had been given patta, the petitioner was not issued with the free house site patta.

2.3. The writ petitioner filed W.P.No.26107 of 2009 seeking a direction to the respondent to consider her representation and this Court by order dated 01.04.2010, directed the authorities to pass orders on her representation within four weeks. Armed with the order, she approached the Collector, District Revenue Officer (DRO), Revenue Divisional Officer (RDO) and the respondent - Tahsildar in vain. When she filed Cont.P. No.2662 of 2013, the order impugned in the writ petition came to be issued negating her request. According to the writ petitioner, no such order was served on her.



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2.4. The petitioner stated in the affidavit filed in support of the writ petition that the shop erected in a portion of the house is the source of income for the entire family consists of her three sons and herself and she was willing to remove the shop, if the authorities directed to do so.

3. The writ petition was resisted by the respondent therein, inter alia, on the ground that the land being put to business purpose, the writ petitioner was not entitled for house site patta. It was the objection of the respondent that the writ petitioner owns a big dwelling house in Velampatti village and she has been living there only and her three sons are doing business and earning substantial money and hence, she is not eligible for free house site patta owing to the family income. It was further stated that since the petitioner has got 0.26.0 hectare of private patta land with a terraced residential house, which alone is valued at Rs.5,00,000/- and the family has enough income from agriculture business and coconut trees, her request was rejected. It was also contended that the subject land is required for widening of road, as it abutting the Highways and even before passing of the impugned order, on 24.02.2010 itself in Roc.No.2746/2009 (A2), the similar request of the writ petitioner was rejected, and questioning the said order, the writ petitioner also filed W.P.No.9536 of 2010. The respondent submitted that the Government instructions are clear to the effect that no patta should be issued for road, path, tank, burial ground, grazing ground and forest poraboke lands and the petitioner is in occupation of Battai land, which is nothing, but "road".

4. Heard the learned State Government Counsel appearing on behalf of the State and the learned counsel for the respondent/writ petitioner.

5. It is to be stated that the learned Single Judge in the order impugned made the following observations, while allowing the writ petition :

"5. But, this Court is unable to accept the above said contention. It is an admitted fact that the petitioner, aged about 76 years now, is a widow. It is the case of both parties that when the petitioner's husband was alive, they were granted license on 01.04.1996 to run the Idli Shop and thereafter, both



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the petitioner and her husband were eking-out their livelihood only by running Idli shop. Now, regrettably, the petitioner's husband also died on 31.08.2003. After the death of her husband, without any assistance, the petitioner has been ekingout her livelihood only by running Idli shop. If she gives an undertaking that she will not run Idli shop, she will not be able to lead her life, therefore, there is no harm for issuing patta for the widow to run Idli shop as it is going to take care of her life. It is also to be noted that in the same survey number, the respondent has granted patta in favour of three similarly placed persons, namely, Gowri, Suseela and Kalpana. That shows that the petitioner alone has been discriminated arbitrarily and the Article 14 of the Constitution of India does not permit such indiscrimination. Therefore, in such view of the matter, the impugned order passed by the respondent refusing to grant patta to the petitioner alone, is liable to be set aside and accordingly, the same is set aside."

6. The learned Single Judge proceeded on the basis that the similarly placed persons having been given patta, the writ petitioner cannot be discriminated. Even the writ petitioner filed a counter-affidavit listing out the persons, who are all carrying on flourishing business by putting up permanent structures but have been issued with the house site pattas, annexing the photographs, whereas, she had been discriminated. We are of the view that the illegality committed by the respondent cannot be taken advantage by the writ petitioner, as illegal precedents cannot become rule and the petitioner cannot claim equality in illegality. It is for the higher authorities to take action against the errant officials, who had issued free house site pattas to ineligible people scant regard to the mandates of the beneficial scheme. But the same do not confer any right on the part of the writ petitioner to seek issuance of free house site patta, when she has no valid title, but only seeks the patta on the ground that she is a widow with no help.

7. Besides the above, the learned State Government Counsel pointed out that the writ petitioner along with her three sons filed a suit in O.S.No.60 of 2017 on the file of the



District Munsif Court, Pochampalli, seeking 1/5 share in respect of 19 items of properties and the said suit is pending, which itself shows that she cannot be termed as landless poor lady to fit her within the ambit of the beneficial scheme of issuance of free house site patta for the people living below the poverty line. It is also brought to our notice that the writ petitioner filed another suit in O.S.No.70 of 2018 on the file of the District Munsif Court, Pochampalli, seeking permanent injunction against the Executive Officer, Nagojanahalli Town Panchayat and the District Collector, Kirshnagiri District, based on the interim order passed in the very same writ petition in W.P.No.33446 of 2013 and the suit is pending. In such view of the matter, the writ petitioner has to work out her remedy in the manner known to law and she cannot be allowed to invoke the discretionary powers of this Court under Article 226 of the Constitution.

8. It is pertinent to note that before before the impugned order, on 24.02.2010 itself in Roc.No.2746/2009 (A2), the similar request made by the writ petitioner was rejected, and questioning the said order, she filed W.P.No.9536 of 2010, however, for the reasons best known to her, she had withdrawn the same on 12.02.2018.

9. We are of the view that all these facts were not brought to the notice of the learned Single Judge, while allowing the writ petition.

10. For the foregoing reasons, this writ appeal is allowed and the order of the learned Single Judge impugned herein is set aside and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

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To

The Tahsildar,
Pochampalli and Taluk,
Krishnagiri District.

+1cc to Mr.K.Balaji, Advocate, S.R.No.47098

W.A.No.825 of 2020

PA(CO)
RLP(05/10/2021)