

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.1679 of 2022
and
WMP Nos.1822 and 1823 of 2022

Fahath

...Petitioner

Versus

1. Union of India,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.
2. The Custodian of Enemy Property of India (CEPI),
O/o, the Custodian of Enemy Property of India,
New Delhi Head Office, 1st Floor, East Wing,
Shivaji Stadium (Annex Building), Connaught Place,
New Delhi - 110 001.
3. The District Collector,
District Collectorate Office,
Kallakurichi.
4. The District Revenue Officer,
Kallakurichi.
5. The Revenue Divisional Officer,
Kallakuriichi.
6. The Revenue Tahsildar,
Sankarapuram,
Kallakurichi District.

...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare that the properties comprised in Survey Nos.50/2B now sub-division No.50/2B3 measuring an extent of 2.06 Acres; 52/2A now sub-division No.52/2A2 measuring an extent of 2.15Acres; 52/3 measuring an extent of 1.41 Acres and 52/2A1 measuring an extent of 0.05 cents situated at Pootai Village, Sankarapuram Taluk, Kallakurichi District belongs to Dr.Azisudeen are not enemy properties and consequently direct the respondents 1 and 2 not to deal with the said properties in any manner.

For Petitioner : Mr.R.Bharath Kumar

For Respondents: Mr.Rajesh Vivekanandan
Asst.Sol. General
For R.1 and R.2

Mr.K.H.Ravi Kumar
Govt.Advocate
For R.3 and R.4

ORDER

This writ petition has been filed for a declaration to declare that the properties comprised in Survey Nos.50/2B now sub-division No.50/2B3 measuring an extent of 2.06 Acres; 52/2A now sub-division No.52/2A2 measuring an extent of 2.15Acres; 52/3 measuring an extent of 1.41 Acres and 52/2A1 measuring an extent of 0.05 cents situated at Pootai Village, Sankarapuram Taluk, Kallakurichi District belonging to Dr.Azisudeen are not enemy properties and consequently direct the respondents 1 and 2 not to deal with the said properties in any manner.

2.According to the petitioner, the aforementioned lands are agricultural lands, absolutely belonging to the petitioner and having purchased the same under the following sale deeds:-

- a) Sale Deed dated 27.05.2008 registered as Doc.No.2229/2008 on the file of SRO, Sankarapuram;
- and
- b) Sale Deed dated 29.05.2008 registered as Doc.No.2257/2008 on the file of SRO, Sankarapuram.

3.According to the petitioner, all the revenue records are in the name of the petitioner and his predecessor-in-title Dr.Azisudeen. The second respondent has initiated the proceedings against the petitioner for cancellation of patta on the ground that the property is Enemy Property coming under the purview of The Enemy Property Act, 1968 and there has been no declaration or any certificate issued under Defence of India Rules, 1962 and 1971, declaring the properties as enemy properties. According to the petitioner, the proceedings initiated by the respondents to cancel the petitioner's patta is arbitrary and illegal as the second respondent has not followed the mandatory procedure contemplated under The Enemy Act, 1968.

4.A counter affidavit has been filed by the respondents stating that the writ petition is not maintainable on the ground that if the petitioner is aggrieved, he will have to redress his remedy only by approaching the Central Government as per the provisions of Section 18 of the Enemy Property Act, 1968.

5.Learned counsel for the petitioner submits that if the possession of the petitioner over the property is protected till final orders are passed by the Central Government, the petitioner is willing to approach the Central Government as per Section 18 of the Enemy Property Act, 1968.

6.After giving due consideration to the fact that the petitioner has purchased the property in the year 2008 by registered sale deeds and his predecessor-in-title was also in possession of the same from 1964 onwards and the Revenue records are also standing in the name of the petitioner, the petitioner's possession over the property will have to be protected till final orders are passed by the Central Government under Section 18 of the Enemy Property Act, 1968. However, the petitioner will have to approach the Central Government within a time frame to be fixed by this Court.

7.Learned Assistant Solicitor General appearing for the respondents has also not raised any serious objection for such a direction being passed by this Court.

8.For the foregoing reasons, this Court directs the petitioner to approach the Central Government as per the provisions of Section 18 of the Enemy Property Act, 1968 as against the proceedings initiated against him for cancellation of patta on account of their claim that the property is an Enemy Property within a period of two weeks from the date of receipt of a copy of this order.

9.The Central Government authorities on receipt of the representation from the petitioner shall pass final orders on merits and in accordance with law after affording a fair hearing to the petitioner, including granting him the right of personal hearing within a period of twelve weeks thereafter.

10. Till final orders are passed by the Central Government, the petitioner's right to retain possession of the following properties shall not be disturbed by the respondents:

- (a)Survey No.50/2B now sub-division No.50/2B3 measuring an extent of 2.06 Acres;
 - (b)Survey No.52/2A now sub-division No.52/2A2 measuring an extent of 2.15Acres;
 - (c)Survey No.52/3 measuring an extent of 1.41 Acres
- and
- (d)Survey No.52/2A1 measuring an extent of 0.05 cents situated at Pootai Village, Sankarapuram Taluk, Kallakurichi District.

11.With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sr

To

1. Union of India,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.
2. The Custodian of Enemy Property of India (CEPI),
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3. The District Collector,
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Kallakurichi.
5. The Revenue Divisional Officer,
Kallakurichi.
6. The Revenue Tahsildar,
Sankarapuram,
Kallakurichi District.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.42500

+1cc to the Government Pleader, S.R.No.42353

W.P.No.1679 of 2022

GPL(CO)
RGA(21/07/2022) (27/07/2022)