



W.P. No.36209/2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
17.11.2022	24.11.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.36209 OF 2015
AND
W.M.P. NOS.19369 & 22712 OF 2017**

R.Indhira

.. Petitioner

- Vs -

Ezhilagam, Chepauk
Chennai 600 008.

Namakkal District, Namakkal.

Thiruchengode, Namakkal District.

Tiruchengode Taluk, Namakkal Dt.

1. The Commissioner of
Land Administration

2. The District Collector

3. The Revenue Divisional
Officer

4. The Tahsildar
.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records of the 2nd respondent in Na. Ka. No.649/2015/L1 dated 04.03.2015 and entire records of the 1st respondent in Letter No.F2/9132/2015 dated 23.04.2015 and entire proceedings of the eviction notice dated .10.2015 (not clearly shown) issued by the 5th respondent and quash the same as illegal, incompetent and and ultra vires and consequently direct the respondents to issue Grama Natham patta to the petitioner house at Door No.2/108, Grama Natham in S.F. No.482/3, Mamarapatti, Mallasamudram, Melmugam Village, Tiruchengode Taluk, Namakkal District.

For Petitioner : Mr. V.Raghavachari, for
M/s. Ma.Pa.Thangavel

For Respondents : Mr. U.Bharanidharan, AGP

ORDER

Assailing the rejection of the patta sought for by the petitioner in respect of the Grama Natham property in S.F. No.482/3, Mamarapatti, Mallasamudram, Melmugam Village, Tiruchengode Taluk, Namakkal District by respondents 1 and



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2 as also the consequential eviction notice issued against the petitioner, the present writ petition has been filed.

2. It is the case of the petitioner that she along with her family is residing in the subject property and are in possession and enjoyment of the same, which property measures an extent of 2.59 cents and is classified as 'Grama Natham' in the revenue records and that the petitioner is in possession of the property for the past seven years by putting up a pucca residential house. It is the further case of the petitioner that she is in possession of the property for more than 36 years and that electricity service connection has been granted and the house is assessed to house tax and water tax and that the petitioner is paying the same regularly to the panchayat for the past four years.

3. It is the further case of the petitioner that she approached the respondents, viz., the 3rd and 4th respondents for issuance of 'Grama Natham' patta in her favour from the year 10.2.1999 and 12.3.1999. It is the further case of the petitioner that as per the Government Orders in force, the petitioner is entitled for 'Grama Natham' patta in respect of house sites, which are upto 4



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cents and, therefore, there was no impediment for the respondents to issue the said patta in favour of the petitioner. The petitioner made a detailed representation to the respondents seeking 'Grama Natham' patta based on possession of the property for several years and also on account of the property being assessed to statutory taxes, which is being paid by the petitioner.

4. It is the further case of the petitioner that one of the family friend of the petitioner, who sought for the portion of the land of the petitioner, on refusal of the petitioner to part with the portion of the lands, made frivolous representation and allegations against the petitioner and her family and also colluding with the official respondents from issuing patta in favour of the petitioner. In the above circumstances, the petitioner filed W.P. No.34 of 2014 in which this Court, by order dated 17.11.2014, directed the respondents to consider the representation of the petitioner, which resulted in the impugned order being passed rejecting the request of the petitioner. The reason shown by the 2nd respondent for refusing to grant patta to the petitioner is on account of the fact that the husband of the petitioner is a government employee and



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earning a good income and, therefore, the petitioner is not eligible for grant of patta.

5. It is the further averment of the petitioner that challenging the aforesaid order of the 2nd respondent dated 4.3.2015, the petitioner filed appeal before the 1st respondent. However, the 1st respondent without appreciating the merits of the case, simply concurred with the order passed by the 2nd respondent holding that no appeal will lie against the order passed by the 2nd respondent. It is the further averment of the petitioner that 'Grama Natham' is residential property which is set apart for house and is reserved as house sites, which has been held by the Division Bench of this Court in the case of ***The Executive Officer, Kadathur Town Panchayat – Vs – V.Swaminathan & Ors. (2004 (3) CTC 270)***. In view of the above, as the petitioner claims only house site patta in respect of lands which has been in her possession and occupation for a long time, the rejection of the representation of the petitioner for patta is wholly impermissible and the same deserves to be interfered with.



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6. Learned counsel appearing for the petitioner submits that respondents 1 and 2, without adverting to the Government Orders and the ratio laid down by this Court as well as the Apex Court with respect to issuance of patta in respect of lands, which have been classified as 'Grama Natham' have erroneously dismissed the claim of the petitioner. It is the further submission of the learned counsel that though the petitioner has been in possession and enjoyment of the property for more than 35 years, however, without any valid reason and without taking into consideration the long possession of the petitioner, the 2nd respondent has rejected the claim of the petitioner on the only ground that the petitioner's husband is working as a government servant and is earning good salary. It is the further submission of the learned counsel that without considering the Revenue Standing Orders in proper perspective, the 1st respondent has concurred with the order passed by the 2nd respondent, which is wholly unsustainable.

7. It is the further submission of the learned counsel that only to benefit the third parties, who have wielded pressure on the respondents, the authorities have passed this order, when the Grama Natham patta sought for by the petitioner is only to an extent of 3 cents. It is the further submission of the



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learned counsel that the act of the respondents is in total defiance of Article 300-A of the Constitution.

8. In support of his submissions, learned counsel appearing for the petitioners placed reliance on the following decisions :-

- i) *A.K.Thillaivanam – Vs – District Collector (1998 (3) LW 603;*
- ii) *Krishnamurthy Gounder – Vs – Government of Tamil Nadu (2002 (3) CTC 221);*
- iii) *S.Rengaraja Iyengar – Vs – Achikannu Ammal (1959 (72) LW 767 :: CDJ 159 MHC 217);*
- iv) *K.Ilangovan – Vs – The District Collector, Coimbatore (CDJ 2013 MHC 5387);*
- v) *A.Sankaralingam – Vs – Arunachala Reddiar (CDJ 1992 MHC 420);*
- vi) *The Executive Officer – Vs – V.Swaminathan & Ors. (2004 (3) CTC 270 (DB));*
- vii) *Muthammal (Dead) by LRs – Vs – The State of TN (2006 (3) LW 361);*
- viii) *A.R.Meenakshi – Vs – The State of TN & Ors. (2013 (4) LW 76); and*
- ix) *T.S.Ravi & Ors. – Vs – The District Collector & Ors. (CDJ 2018 MHC 8248 (DB)).*



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9. Per contra, learned Addl. Government Pleader appearing for the respondents submitted that the land in S. No.482/3 is classified as vacant land during Natham Survey & Settlement operations. It is the further submission of the learned Addl. Government Pleader that the petitioner is a rank encroacher and has encroached upon the lands and with a dishonest intention had put up a shed and had sought for patta.

10. It is the further submission of the learned Addl. Government Pleader that Natham Survey and Settlement operations were held during the years 1983-1984 and if really the petitioner is in possession of the impugned land for the past 35 years, the petitioner ought to have claimed patta at that point of time and even otherwise, the petitioner's name would have been entered in the survey record. The land in question was classified as a vacant land during the Natham Survey and Settlement operations and shown as vacant land in the revenue records. Such being the case, the petitioner could only be branded as an encroacher and would not be entitled to any patta and the prayer sought for by the petitioner deserves to be rejected.



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11. It is the further submission of the learned Addl. Government Pleader that the husband of the petitioner owns 5.62 acres of land and 0.024.0 sq.mtrs., of house site along with a tiled house and 0.0237.0 wq.mtrs., of vacant land in the very same village and further the petitioner is gainfully employed and earning a salary of more than Rs.37,000/- per month and the son of the petitioner is also employed and earning a salary of more than Rs.40,000/- per month, as evidenced through the deposition of the revenue officials at the time of enquiry by the 2nd respondent, which fact has not been disputed by the petitioner. Therefore, as per the Revenue Standing Orders, the petitioner is not entitled for grant of house site patta, as she does not fall within the ambit of poor person to claim house site patta. Therefore, learned Addl. Government Pleader prays for dismissal of the present writ petition.

12. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the relevant provisions under the Revenue Standing Orders.



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13. A perusal of the materials available on record reveal that the land has been shown as "Village Natham" (vacant land) during the Natham Survey and Settlement process. The said fact is not disputed by the petitioner. However, the claim of the petitioner is only to the extent that she has been in occupation of the said land for more than 35 years and that she has put up a construction on the abovesaid land and is residing there and, therefore, seeks allotment of the said land. Though such a claim is made by the petitioner, however, as rightly pointed out by the learned Addl. Government Pleader, during the Natham Survey and Settlement proceedings, no steps were taken by the petitioners to claim patta and that no steps have also been taken by the petitioner to have his name entered in the revenue records. The stand of the petitioner is silent on this aspect. Further, no materials are also placed before this Court to show the long possession and enjoyment of the petitioner.

14. Be that as it may. The land is classified as "Natham" which is not in dispute and which land is under the occupation of the petitioner for which the petitioner seeks patta. Patta could be granted to lands, which is classified as Natham by following the provisions under the Revenue Standing Orders. The



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Revenue Standing Orders provides the type and extent of lands which can be allotted and the persons to whom it can be allotted and the basis of the said allotment. The allotment/assignment of the lands aforesaid is covered by RSO 21.

15. RSO 21 deals with the disposal of lands which are classified as “Village Natham” which could be allotted subject to payment of assessment. A perusal of RSO 21 reveals that lands can be allotted to landless persons. The definition of “landless persons” is provided under RSO 15 (3) (2)(ii). The main ground on which the case of the petitioner has been rejected is that the land is classified as “Government Poramboke” (vacant land) and that the petitioner is affluent and, therefore, not entitled to any assignment/allotment under RSO 21.

16. For more clarity, the specific provision in the RSO 21 which pertains to assignment of lands for house sites is quoted hereunder :-

“In assigning lands for house sites care should be taken to see that land is not granted to persons already possessing enough land for their reasonable requirements and that preference is



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given to those who own no house site and whose family income does not exceed Rs.12,000/- per annum.”

17. As stated above, there is no dispute about the fact that the subject land is a “Village Natham” and that the revenue records reveal that it is a vacant land belonging to the Government. Even the UDR and Adangal Register reveal that the subject survey number is a “Village Natham”, which is classified as a vacant land. In fact, the case of the petitioner is that on the said land to which she has no title, she has put up a shed and is residing in the said premises along with her family.

18. RSO 21, as extracted supra shows that persons, who are already in possession of enough lands for their reasonable requirement and whose family income is more than Rs.12,000/- per annum are not entitled for assignment of lands. In the case on hand, it is evident from the impugned order passed by the 2nd respondent that the 3rd and 4th respondents, who were enquired at the time of considering the representation of the petitioner have categorically stated that the petitioner’s husband is employed in Government and is earning a salary of



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Rs.37,000/- per month and that the son of the petitioner is a computer engineer and is earning a monthly salary of about Rs.40,000/- per month. By no stretch could the petitioner be stated to be a poor person, who would be entitled to assignment of land under the Revenue Standing Orders.

19. In fact, it is the stand of the petitioner in the affidavit that the petitioner had requested the respondents to sell the land by fixing the guideline value for the said land and sell the same to her on collecting the necessary charges. It is to be pointed out that the lands held by the Government are not a saleable commodity, merely at the asking of the petitioner. It is for the Government to consider sale of such lands as per the provisions under the Revenue Standing Order and the mere fact that an occupier had put up a tenement on the said land would not be a ground for the Government to allot the land to the occupier, when it is an undisputed fact that the petitioner, who is an encroacher, is not a landless poor and would not be entitled to any lenient treatment for assignment/allotment of lands under the Revenue Standing Orders.



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20. Further, RSO 15 also provides that lands and house site pattas should be allotted only to applicants of the poorer class not exceeding 01.5 acres or 3 cents subject to conditions set out in the special form of order of assignment. In the case on hand, the petitioner, by no yardstick could be termed to be a person belonging to poorer class. Not only the family of the petitioner is gainfully employed, but the petitioner's family is also possessed of vast extent of lands, both cultivable as also habitable and, therefore, the claim of the petitioner for grant of house site patta by invoking the provisions of Revenue Standing Orders cannot be acceded to. Further, the occupation of the petitioner in the lands, which have been classified as "Natham" (vacant land) and shown in the revenue records as belonging to the Village, could only be termed to be an encroachment and merely because the petitioner has occupied the said land and the same is situated adjacent to his house for the past five years or so would not give any leverage to the petitioner to claim grant of patta for the land under the Revenue Standing Orders. The aforesaid aspects have been gone into in proper perspective by the 2nd respondent and a detailed and well reasoned order has been passed, which cannot be said to be arbitrary, perverse or unreasonable.



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21. Though appeal has been filed by the petitioner before the 1st respondent, which has also been rejected citing that appeal against the order passed by the 2nd respondent would not lie before the 1st respondent and it was held that no right had been created under the Dharkast Rules under RSO 15 and that the 2nd respondent has also not included an appeal provision in the said order. Therefore, properly appreciating the said order of the 2nd respondent, the 1st respondent had rejected the alleged appeal of the petitioner, which also does not suffer the vice of any illegality or perversity.

22. In the above background, the eviction notice has been issued by the 3rd respondent upon the petitioner which has also been put in issue in the present petition.

23. Very many decisions have been relied on by the learned counsel for the petitioner with respect to the notice issued u/s7 of the Land Encroachment for eviction of the petitioner to highlight the ratio that in respect of lands classified as “Natham”, notice u/s 7 cannot be maintained.



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24. This Court has carefully considered the aforesaid decisions and it is trite to point out that in respect of lands, which have been classified as “Natham” in the UDR and Adangal maintained by the respondents with respect to lands classified as Natham, it has been the consistent view of the Courts that notice u/s 7 of the Land Encroachment Act is not maintainable and any notice issued u/s 7 deserves to be set aside. In the case on hand, the lands having been classified as “Natham” in the UDR and Adangal, the notice issued u/s 7 is wholly impermissible and, accordingly, in view of the decisions cited supra, necessarily the eviction notice impugned in this writ petition deserves to be set aside.

25. In view of the discussion made above, this Court is of the considered view that neither the order passed by the 2nd respondent nor the consequential order of the 1st respondent deserves any interference, but necessarily the consequential eviction notice suffers the vice of illegality, irregularity and perversity and, accordingly, the said eviction notice deserves to be set aside.

26. For the reasons aforesaid, the writ petition is allowed in part by quashing the impugned eviction notice issued by the 3rd respondent, but



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confirming the order passed by the 2nd respondent, which has been confirmed by the 1st respondent. Consequently, connected miscellaneous petitions are closed.

There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

GLN

To

1. The Commissioner of Land Administration
Ezhilagam, Chepauk
Chennai 600 008.

2. The District Collector
Namakkal District, Namakkal.

3. The Revenue Divisional Officer
Thiruchengode, Namakkal District.

4. The Tahsildar
Tiruchengode Taluk
Namakkal District.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NO.36209 OF 2015**

**Pronounced on
24.11.2022**