



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.NO.6992 OF 2020

AND

W.M.P.NO.8339 OF 2020

M.Sivasakthi

... Petitioner

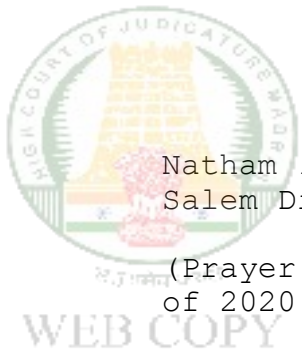
.Vs.

1. The District Collector,
Salem District,
Salem.
2. The Tahsildar,
Attur Taluk,
Salem District.
3. The Block Development Officer,
Thalaivasal Panchayat Union,
Attur Taluk,
Salem District.
4. The President,
Deviakurichi Village Panchayat,
Deviakurichi and Post,
Attur Taluk,
Salem District.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the orders of the third respondent in Na.Ka.1060/2019/The2, dated 04.11.2019 and the consequential orders of the fourth respondent in proceedings Nil, dated 09.03.2020 and quash the same and further direct the respondents 1 and 2 to consider the representation dated 13.06.2019 and 28.06.2019 for the grant of house site Patta in respect of



Natham land in SF No.263/6 of Deviakurichi Village, Attur Taluk, Salem District.

(Prayer amended vide order dated 28.10.2020 made in WMP No.18588 of 2020 in W.P.No.6992 of 2020 by NAVJ)

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.A.Selvendran
1 to 3 Special Government Pleader

For Respondent 4 : No appearance

ORDER

(Order of the Court was made by T.RAJA, J.)

Mrs.M.Sivasakthi, W/o.C.Mani, residing at Boyar Street, Deviakurichi & Post, Attur Taluk, Salem District, claiming to be a person belong to Boyer Community and doing pottery work making mud pot and other clay vessels/works for her livelihood, has come to this Court seeking issuance of Writ of Certiorarified Mandamus for quashing the order of the third respondent dated 04.11.2019 and the consequential orders of the fourth respondent dated 09.03.2020 and consequential direction to consider her representation for grant of house site patta in respect of Natham land in SF No.263/6 measuring an extent of 0.01.33 Ares situated at Deviakurichi Village, Attur Taluk, Salem District.

2. Learned Counsel for the petitioner would submit that the petitioner belongs to Boyer community doing mud pot and clay works for her livelihood. Her family is classified as MBC by the State of Tamil Nadu. The petitioner's family also does not possess any land including any house site of her own and settled down at Natham SF No.263/6 situated at Deviakurichi Village, Attur Taluk, Salem District, and adjacent to the said land, a public well is also classified in the revenue records. The total extent of the land covered in SF No.263/6 is 0.01.33 Ares which is less than 3½ cents and in a portion of the said land, one Maruthai, has constructed a house under Group Housing scheme. Since the petitioner has been in possession of a portion of the land measuring less than 2 cents in SF No.263/6, an application has been made for grant of patta. But this was refused by the second respondent overlooking the fact that the petitioner belongs to Boyer community and eking out her livelihood by making mud pot and other clay works for more than several decades. In addition thereto, one Maruthai is also living in a



portion of the same survey number. Therefore, it is not open either to the fourth respondent or to the respondents 2 and 3 to say that the petitioner is disqualified to get the benefit of patta.

WEB COPY

3. Continuing his argument, learned Counsel for the petitioner would submit that once the land in question is admitted as Natham poramboke, the Government or the Panchayat cannot have any legal claim over the said land. In support of his argument, he would rely upon a judgment of this Court in the case of T.S.Ravi -vs- The District Collector, Thiruvarur District [W.P.Nos.26234 and 26237 of 2018, dated 11.10.2018] wherein it has been held that if a land classified as a Grama Natham, the same does not vest in the Government and the Government is not a paramount owner. The relevant portions are extracted hereunder:

"21. The question whether the land is classified as Grama Natham is communal land belonging to the entire villages or not was considered by this Court in Palani Ammal v. L.Sethurama Aiyangar, reported in AIR (36) Madras 814. While considering the said question the learned Single Judge of this Court after referring to the Judgment of Wadsworth J. in Chinnathambi Goundan v. Venkatasubramania Iyer, reported in AIR (26) 1939 Mad, 409, had observed as follows:

"Gramanatham is not communal property in the sense in which thrashing floor or burning grounds or other property is communal, that is property reserved for the use of the community. Gramanatham if it is unoccupied is assigned from time to time by the proprietor whether it is in zamindari area or in an inam village; and this practice was referred to by the learned Judge (Wadsworth J.) in Chinnathambi Goundan v. Venkatasubramania Iyer, AIR (26) 1939 Mad 409. This, if I may say so with respect, is the practice obtaining in the zamindari area and also in inam villages."

22. The question as to whether the provisions of the Tamil Nadu Land Encroachment Act, 1905, would apply to the lands that are classified as Grama Natham was considered by a learned Single Judge of this Court in S.Rengaraja Iyengar and another v. Achikannu Ammal and another, reported in 1959 (II) MLJ 513. The learned Judge after referring to



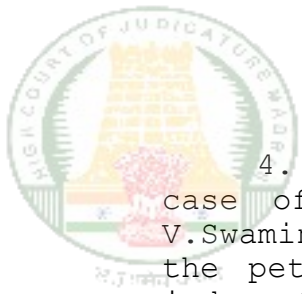
WEB COPY

Section 2 of the Tamil Nadu Land Encroachment Act, 1905, as well as the provisions of Section 3(b) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, held that the Grama Natham land does not vest in the Government and the Government is not the paramount owner. While doing so, the learned Single Judge observed as follows:

"A house-site owned by a person in what is generally known as gramanatham is not, under Madras Act III of 1905, property of the Government. Section 2 of Madras Act III 1905 says, in regard to lands which are not covered by Clauses (a) to (e) of Sub-section (1) of Section 2, that those lands are and are hereby declared to be the property of the Government, save in so far as they are temple-site or owned as house-site or backyard. In order that a land may properly be described as house-site within the meaning of that expression in Section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act III of 1905."

The learned Judge also further observed as follows:

"A building in a gramanatham (or village habitation) is protected from transfer of title to the Government both under Section 18 (1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house site in a gramanatham is protected from transfer to Government by the operation of Madras Act III of 1905."



4. Referring to yet another judgment of this Court in the case of The Executive Officer, Kadathur Town Panchayat -vs- V.Swaminathan and other [2004 (3) CTC 270] learned Counsel for the petitioner argued that this Court also in the afore said judgment has clearly held that even the Panchayat has no jurisdiction to pass resolution canceling patta with a view to evict persons who are under occupation of Grama Natham land. The relevant portions of the said judgment i.e., paragraphs 9 and 13 are extracted as under:

"9. A perusal of a combined reading of Section 3(b) and Section 18 of Madras Estates (Abolition and Conversion into Ryotwari) Act viz., Madras Act XXVI of 1948 and Section 2 of the Madras Land Encroachment Act, 1905 disclose that the title to a house site in a Grama Natham is protected from transfer to Government.

13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in canceling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further such a summarily eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions."

5. Again referring to the counter affidavit filed by the Block Development Officer, Thalaivasal Panchayat Union/third respondent herein, learned Counsel for the petitioner brought to our notice that even the land in question covered in SF No.263/6 measuring 0.0133.0 Sq. Mts. is classified as Natham Poramboke in Deviakurichi Village, Attur Taluk, Salem District. Therefore, when the land in question occupied by the petitioner for years together is proved to be a Natham poramboke, as the petitioner being the first user, the respondents cannot dislodge the petitioner. Therefore, the impugned order is liable to be set aside.

6. Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1 to 4 submitted that if the principle relied by the petitioner is accepted, the Deviakurichi Panchayat is the first user, as admittedly there is a well



belonging to the Village Panchayat which is now deserted because no water therein which was dug by the Village Panchayat. Therefore, the land in question should be allowed to be occupied by the Village Panchayat and a proposal has been made for building up a overhead water tank in the said land. In support of his contention, an undated resolution has been shown to us.

7. In view of the above settled legal position and the petitioner has made an application long time ago and as she belongs to Boyer community eking out her livelihood only by making mud pot and other clay works in the said place and the counter affidavit filed by the second respondent also supports the case of the petitioner that the land in S.F.No.263/6 is a Government Natham Poramboke, we satisfied with the contentions raised by the petitioner. Accordingly, the Writ Petition is allowed and the impugned orders are set aside. The Tahsildar/second respondent herein is directed to issue patta to the petitioner in respect of 700 sq. ft. in S.F.No.263/6 as she is not having any house site or house in the village. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

srn

To

1. The District Collector,
Salem District,
Salem.
2. The Tahsildar,
Attur Taluk,
Salem District.
3. The Block Development Officer,
Thalaivasal Panchayat Union,
Attur Taluk,
Salem District.



4. The President,
Deviakurichi Village Panchayat,
Deviakurichi and Post,
Attur Taluk,
Salem District.

WEB COPY

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.15193
+1cc to the Special Government Pleader, S.R.No.15490

W.P.NO.6992 OF 2020

SKM(CO)
PBS/02/05/2022