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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.21027 of 2022

B.Abdul Malick .. Petitioner

v.

1. The District Collector
   Chengalpattu District

2. The Commissioner/Block Development Officer
   Kattankulathur Panchayat Union
   Chengalpattu

3. The Tahsildar
   Vandalur Taluk
   Chengalpattu District .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in impugned notice of the 2nd respondent dated 25.07.2022 under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and quash the same and consequently direct the respondents to issue patta to the property in S.No.160/1 2A, Urappakkam Village, Vandalur

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Taluk, Chengalpattu District on the basis of the assignment patta in Patta No.89 dated 18.11.1973, on the basis of the petitioner's objections/representation dated 30.07.2022, within stipulated time as may be fixed by this Hon'ble Court.

For Petitioner :: Mr.V.Subramanian for
Dass and Viswa Associates

For Respondents :: Mr.J.Ravindran
Additional Advocate General
assisted by Mr.A.Selvendran
Special Government Pleader
for R1 & R3
Mr.P.Muthukumar
State Government Pleader for R2

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

This writ petition has been filed challenging the impugned notice dated 25.07.2022 issued by the Commissioner/Block Development Officer, Kattankulathur Panchayat Union, the second respondent herein under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007.

2. Learned counsel appearing for the petitioner, assailing the

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impugned order, argued that being a resident of Urappakkam Village, the land covered in Survey No.160/1-2A was originally assigned to one Mr.Rathina Mudaliar, S/o Murugesa Mudaliar by the Special Tahsildar (Assignment), Saidapet vide proceedings dated 18.11.1973 in Patta No.89 having an extent of 3,000 sq.ft. Subsequent to the assignment, the assignee Mr.Rathina Mudaliar executed a registered sale deed for a valuable consideration vide Document No.6147 / 1980 dated 23.11.1980 on the file of the Sub Registrar, Tambaram in favour of the petitioner's father Mr.B.Basha Sahul Hameed. After the above said purchase, the petitioner's father obtained building permission vide Reference No.826/96/97 dated 20.02.1996 from the second respondent and he had also put up a superstructure. Since then, he has been in possession and enjoyment of the property. It is also stated that the petitioner has been paying the property tax to the local panchayat. But all of a sudden, the Commissioner/Block Development Officer, Kattankulathur Panchayat Union, the second respondent herein issued the notice dated 26.07.2022 under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007

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in Form-III branding the petitioner as an encroacher and called upon him to remove the encroachment within a period of 7 days. A detailed explanation dated 30.07.2022 also has been given to the respondents through registered post narrating the facts along with the documents to prove the petitioner's lawful right and title over the property. But without replying to the same, the second respondent issued the impugned notice as if the petitioner is an encroacher of the land covered in Survey No.160/2, which is classified as a tank. When the petitioner is in lawful possession and enjoyment of the small extent of land in Survey No.160/1-2A, on the basis of the assignment issued by the Government of Tamil Nadu vide the assignment proceedings dated 18.11.1973, the respondents cannot ask the petitioner to vacate and handover the possession of the land in question.

3. But the written instructions dated 11.08.2022 placed before us would show that there is no such Survey No.160/1-2A in Urappakkam Village, Vandalur Taluk, Chengalpet District, because, as per the revenue records, namely, U.D.R (Updating Register), 'A' register and the Adangal,

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the land in Survey No.160/1 to an extent of 0.06.0 Hectares is a Government poramboke and the land in Survey No.160/2 to an extent of 1.64.5 Hectares is also a Government poramboke and entered as Pond of Urappakkam Village, Vandalur Taluk, Chengalpet District. It also shows that the petitioner, encroaching into the water course, had constructed a building and enjoying the same.

4. When the revenue record helps us to reach a fair conclusion that both the land covered in Survey No.160/1 & Survey No.160/2 have been classified as Kulam (water body), we are unable to find any infirmity in the impugned order calling upon the petitioner to vacate and handover possession to the respondents. Therefore, the writ petition fails and it is dismissed. It is open to the respondents to proceed further in the manner known to law. Consequently, W.M.P.No.20039 of 2022 is also dismissed. However, there is no order as to costs.

Speaking/Non speaking order (T.R.,A.C.J.) (D.K.K., J.)
Index : yes/no 26.09.2022
ss

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