



W.P.No. 23618 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.23618 of 2022

Ramasamy

.Petitioner

Versus

1. The District Collector
Tiruvannamalai
Tiruvannamalai District
2. The District Revenue Officer
Tiruvannamalai
Tiruvannamalai District.
3. The Revenue Divisional Officer
Tiruvannamalai
Tiruvannamalai District.
4. The Tahsildar
Tiruvannamalai
Tiruvannamalai District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Mandamus, directing the respondents to
reclassify the land ad-measuring 2 acres comprised in S.No.93, Mallappa



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Naicken Palayam, Tiruvannamalai Taluk and District after deleting the entry in the Revenue Records classifying the said land as "Eri Poromboke" and to consider the representation dated 30.07.2022 and grant Patta to the petitioner for the property.

For Petitioner : Mr.R. Rajarajan

For Respondents : Mr.G.Krishna Raja, AGP

ORDER

This writ petition is filed seeking for a direction to the respondents to re-classify the land ad-measuring 2 acres comprised in S.No.93, Mallappa Naicken Palayam, Tiruvannamalai Taluk and District after deleting the entry in the Revenue Records classifying the said land as "Eri Poromboke" and to consider the representation dated 30.07.2022 and grant Patta to the petitioner for the property.

2. The case of the petitioner is that the aforesaid property was under the cultivation of the petitioner's ancestors and thereafter, the petitioners father was in possession and enjoyment of the same. After his



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demise, the petitioner is in possession and enjoyment of the property.

During the life time of the petitioner's father, several representations have been sent to the respondents for grant of assignment patta, but the respondents have not considered the same. The petitioner is a landless poor and belongs to depressed class and as such the claim of the petitioner requires to be considered for the grant of assignment of land under the category of landless persons. However, on the other hand, the respondents have also wrongly classified the aforesaid land as "Eri Poramboke". Therefore, the petitioner had sent a representation to the respondents on 30.07.2022 requesting them to reclassify the aforesaid land by deleting the entry in the Revenue Records classifying the said land as "Eri Poramboke" and to consider grant of assignment patta to the petitioner. Despite receiving the representation, the respondents have not considered the representation of the petitioner dated 30.07.2022. Hence, the petitioner has come forward with the present writ petition.

3. The main contention of the learned counsel appearing for the petitioner is that even people who were granted patta on reclassification of the land as "Natham" but the said persons, people who were allotted



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lands by the Tamil Nadu Slum Clearance Board have also been issued with eviction notices. In this backdrop, considering the long usage of the lands by the petitioner and the like persons, representation has been given by the petitioner for reclassification of lands from Eri Poramboke and for grant of assignment patta, which has not been considered till date. It is the further submission of the learned counsel for the petitioner that it is well within the domain of the respondents to consider reclassification and assign the lands to the persons like the petitioner, which is provided for in the Revenue Standing Orders. Accordingly, he prays for appropriate directions to the respondents to consider the representation of the petitioner in the light of the Revenue Standing Orders and pass appropriate orders in favour of the petitioner.

4. On the above contentions, this Court heard the learned Addl. Government Pleader appearing for the respondents that the reclassification of lands sought for by the petitioner cannot be considered by the Tahsildar and the competent authority to consider reclassification is the Government and the Commissioner of Land Administration and, therefore, no direction can be issued to the respondents for any



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consideration of the representation filed by the petitioner.

5. 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.

6. It is the admitted case of the petitioner that the subject lands have been classified in the revenue records as 'Eri Poramboke' in which the petitioner seeks grant of assignment patta. However, it is the case of the petitioner that the classification of the lands have been wrongly made in the revenue records and the subject lands are only poramboke lands and, therefore, representation has been submitted for reclassification of lands and also for grant of assignment patta.

7. Grant of assignment patta is covered under the Revenue Standing Orders. Insofar as poramboke and reserved lands are concerned, Revenue Standing Orders 15(38) covers the same. RSO 15(38)(ii) refers to Water course poramboke, and for better clarity, the same is extracted hereunder:



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*"(38) Assignment of poramboke and Reserved lands -
(ii) Water course poramboke: Great care should be taken
to preserve the margins of canals, channels and streams.
The transfer and assignments of such water course source
porambokes can be ordered only by the Government in
consultation with the Commissioner of Land
Administration and the Chief Engineer (P.W.D.)."*

8. In ***Sivakasi Region Tax Payers Association vs. The State of Tamil Nadu and Ors. (29.04.2008 - MADHC) : MANU/TN/0722/2008***, a Division Bench of this Court had occasion to deal with issue an issue relating to eviction and also with regard to water bodies and in the said context, it has been held thus :-

"14. The question is whether the State Government by issuing the impugned G.O., has exceeded its jurisdiction or has in any way violated any specific direction issued by the Supreme Court. It is trite proposition that any land which is not owned by a private person belongs to the State, obviously the State holds such property as Trustee not as the private property of the authorities or the officials or the party in power in a democratic set up. Since the land belongs to the State, the State cannot be denied the power of settling the lands with any person, of course by following a recognized procedure and not in an arbitrary manner. Even before issuance of G.O., the circulars issued



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by the Board of Revenue, which subsequently came to be known as Revenue Standing Orders (RSO in short), not only recognized the right of the State to settle any land but also to regulate the procedure to be followed. Such provisions are analysed hereunder with a view to test the arbitrariness of the subsequent G.O.

* * * * *

26. In MANU/TN/0660/2005 : AIR2005Mad311 (L. Krishnan v. State of Tamil Nadu rep. by its Secretary, Department of Revenue (Land Development) Chennai and Ors.), a Division Bench of this Court, while relying upon the decision of the Supreme Court in MANU/SC/0410/2001 : AIR2001SC3215 (cited supra), had issued a direction for removal of the encroachment on the land which has been recorded as Odai poramboke. Certain general observations were made emphasising upon the duty of the State Government to protect the natural resources as well as the water bodies with a view to prevent scarcity of water.

27. While there cannot be any dispute regarding the sentiments expressed in such decision, the question remains that if any particular pond or water channel, artificial or may be even natural has fallen into dis-use for a very long period, whether a direction can be issued for eviction irrespective of the question as to whether the persons who have encroached upon such land have



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acquired any right under the Law relating to limitation or under any policy of the State where the State Government in its wisdom decides to confer certain right on such persons.

28. We do not think it may be laid down as a matter of general principle of law that irrespective of the question as to whether the land in question is required for any public purpose or not, there should be eviction. It should not be understood for a moment that we are suggesting that all encroachments should be regularized or encouraged. But, if the State Government takes a conscious decision to regularize certain encroachments, which have continued for a pretty long period after the appropriate authority comes to a conclusion that such land is not required for any public purpose or for the State, can it be said that such policy is beyond the jurisdiction of the State Government. As a matter of fact, a person by remaining in adverse possession for more than 30 years acquires a right over such property. This is because of the statutory provisions contained in Section 27 of the Limitation Act read with Article 112 of the Limitation Act, where the land belongs to the State."

9. From the aforesaid decision, it is clear that water bodies are to be maintained as water bodies, even if the same is not used for storage of water at the relevant point of time. In the aforesaid decision, the Court



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has held that not in all cases direction can be issued and the conscious decision of the Government is required if a water body has been put to disuse over a long period of time. Therefore, the foremost important aspect to be taken into account is the conscious decision of the Government in respect of a water body and the usage to which it should be put to.

10. Even according to the petitioner, the subject lands are classified as 'Eri Poramboke', meaning thereby, the said land is a water body. Such being the case, even if the land is not used to store water at the present point of time, no claim can be made by the parties to reclassify the lands to suit their convenience, as the lands vests with the Government and it is only for the Government to take a decision with regard to its usage, by consciously considering the necessity for reclassifying the lands. It cannot be done merely at the behest of the petitioner as water body is more to be safeguarded, as it sustains human life. Insofar as the subject property is concerned, the lands belong to the Government and the Government being the custodian of the property belonging to the public at large, is duty bound to safeguard the



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same in the interest of the larger public. Therefore, merely on the allegation that the petitioner and his ancestors had been occupying the said property for a considerable length of time cannot be the ground for this Court to direct that the Government has to resort to the procedure of granting assignment of the said lands in favour of the petitioner by invoking the provisions under the Revenue Standing Orders.

11. Be that as it may. Even stretching the relief sought for by the petitioner for consideration of his representation is concerned, it is to be pointed out that the petitioner has given the representation to the Tahsildar to consider reclassification of the lands. However, it is to be pointed out that the Tahsildar is not clothed with any power or jurisdiction to reclassify the lands. The power for reclassification of lands vests with the Commissioner of Land Administration, in consultation with the Government. Such being the case, the relief sought for by the petitioner seeking reclassification of lands at the hands of the Tahsildar is wholly impermissible, unsustainable and misconceived. If at all the petitioner seeks any relief on the above lines, the proper course open to the petitioner is only to approach the Commissioner of Land



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Administration and the Government in accordance with law by filing appropriate representation and cannot seek the indulgence of this Court for a direction to the Tahsildar to do something to which he has no power or authority.

12. For the reasons aforesaid, the prayer as sought for by the petitioner cannot be granted and, accordingly, the writ petition is dismissed. However, liberty is granted to the petitioner to file appropriate application/representation before the appropriate authority, viz., Commissioner of Land Administration and the Government seeking reclassification of land and consequential allotment of land in terms with the Revenue Standing Orders. There shall be no order as to costs.

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Index:Yes / No
Speaking Order : Yes/No
Neutral Citation : Yes/No
msm

To



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M. DHANDAPANI, J.

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