



W.P.(MD).No.13266 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.13266 of 2012

1.Swarne Sethuraman
2.Babu

... Petitioners

Vs.

1.The District Collector,
Kanyakumari District.

2.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating with the impugned order passed by the second respondent in proceedings, B3/21236/2012 dated 07.09.2012 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents to issue patta in favour of the petitioners to the property, measuring 54.39 Acres comprised in R.S No. 581/1 and R.S No. 581/2 in Surulacode village in Kalkulam Taluk in Kanyakumari District.



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For Petitioners : Mr.R.Suriyanarayanan

For Respondents : Mr.D.Sasi Kumar
Additional Government Pleader

ORDER

The present writ petition has been filed challenging an order passed by the second respondent herein, under which a request of the petitioner for grant of patta has been rejected on the ground that the land has been classified as AWD land and it is very close to the reserved forest area.

2. According to the learned counsel for the petitioners, the predecessors in title of the petitioners had filed O.S.No.33 of 1985 on the file of the Sub Court, Padmanabhapuram for the relief of declaration of title and recovery of possession. The said suit was decreed by the trial Court. As against the same, the District Collector had filed A.S.No.86 of 1999 before the District Court, Nagercoil. The first appeal was also dismissed. As against the same, the Government had filed second appeal with an enormous delay of more than three thousand days. This Court had dismissed the condone delay application on 15.02.2011 and rejected



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the second appeal. According to the learned counsel for the petitioners, an S.L.P was filed by the District Collector. In the said S.L.P, the delay was condoned and the High Court was directed to number the second appeal. As on today, after the orders of the Hon'ble Apex Court, the second appeal has been numbered as S.A.No.501 of 2015 and the same is pending.

3. The learned counsel for the respondents had submitted that the land has been classified as AWD and it is very close to the forest area. The second respondent has rightly rejected the request for grant of patta.

4. I have carefully considered the submissions made on either side.

5. A perusal of the judgment and decree in the Civil Court discloses that there is a decree for declaration of title and recovery of possession in favour of the petitioners' ancestors in title. However, there are no records to show that the possession has been recovered pursuant to the said decree. Now, S.A.No.501 of 2015 is also pending, challenging the said decree. In such circumstances, the order of the second



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respondent herein cannot be interfered with. In case, if the petitioners succeed in the pending second appeal, they can file a fresh application before the second respondent herein for a grant of patta after recovering possession through the Court.

6. With the above said observations, this Writ Petition is disposed of. No costs.

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Index : Yes / No
Internet : Yes / No
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To

1.The District Collector,
Kanyakumari District.

2.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

R.VIJAYAKUMAR ,J.

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Order made in
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