



W.P.No.34551 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34551 of 2022

Muthammal

... Petitioner

Vs.

1. The District Collector,
office of the District Collectorate,
Ariyalur District

2. The Tahsildar,
Ariyalur.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the 2nd respondent herein to issue the patta to the petitioner's name by considering the petitioner's representation dated 14.10.2022 on merits within the time limit fixed by this Hon'ble Court.

For Petitioner : Mr.P.Paramasivadass for
Mr.R.Gokulakrishnan

For Respondents : Mr.E.Sundaram,
Government Advocate



W.P.No.34551 of 2022

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ORDER

The relief sought for in the present writ petition is to direct the second respondent to issue patta to the petitioner's name by considering the representation submitted by the writ petitioner on 14.10.2020.

2. The petitioner states that her husband Mr. Muthusamy served in the Indian Army and 5 acres of agricultural land was assigned in his favour in the order dated 02.05.1946 in Survey No.57/1, O.Koothur Village, Ariyalur Taluk and District. The family of the petitioner was cultivating the land. The husband of the petitioner passed away on 07.04.1976 due to age and ailments.

3. The petitioner states that she filed a civil suit in O.S.No.249 of 2013 and a decree was passed by the District Munsif Court at Ariyalur. Pertinently, the said decree was an ex-parte decree and more so, the subject property has been classified as "water course" i.e. Odai.



W.P.No.34551 of 2022

4. The learned Government Advocate submitted a copy of the revenue records and established that the subject property is classified as “water course” and therefore, such ex-parte decree or any other order cannot be of any avail to the petitioner for securing patta under Section 3 of the Patta Passbook Act which stipulates that Tahsildar shall issue the Patta Passbook to every owner in respect of the land owned by him on an application made by him in his behalf.

5. The petitioner is in occupation of the water course and the Hon’ble Supreme Court of India, time and again held that encroachment in water bodies are to be removed and the water bodies are to be protected for maintaining the water resources. The ex-parte decree obtained is non-executable in view of the fact that it relates to a water course and as per the Supreme Court Judgment, water course is to be protected for all purposes by the competent authorities to maintain water resources and to protect ecological and environmental aspects. All the encroachments in water bodies are to be removed and the encroachers have to be evicted.



W.P.No.34551 of 2022

6. The petitioner is in possession of the water body to an extent of 5 acres which cannot be permitted in any circumstances. Thus, the respondents are directed to conduct a field inspection, verifying the revenue records and evict all the encroachers from the water bodies, and maintain the water course for the benefit of the public at large. In the event of failure to do so, the respondents are committing a lapse, dereliction of duty and violating the judgements of the Hon'ble Supreme Court of India in the matter of maintenance of the water bodies for the state of Tamil Nadu. Thus, the respondents are directed to initiate all appropriate actions and protect the water bodies in that locality.

7. The claim of the writ petitioner for grant of patta cannot be considered in view of the fact that she is an encroacher of the water body. If at all, the petitioner is a landless poor person, she is entitled to submit an application before the competent authorities for the purpose of availing the welfare schemes introduced by the Government of Tamil Nadu.

8. The learned Government Advocate brought to the notice of this Court that the husband of the petitioner was owning other lands. It is made clear that the eligibility of the petitioner is to be considered if at all any



W.P.No.34551 of 2022

application is filed for the purpose of availing the welfare schemes in force.

At the outset, the case of the petitioner for the grant of patta under the free house site patta is to be considered only if she is otherwise eligible and her family is not owning any property. As far as the subject property is concerned, the petitioner is liable to be evicted immediately.

9. With these observations, the writ petition stands **dismissed**.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

08.08.2023

To

1. The District Collector,
office of the District Collectorate,
Ariyalur District

3. The Tahsildar,
Ariyalur.



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W.P.No.34551 of 2022

S.M.SUBRAMANIAM. J.,

(sha)

W.P.No.34551 of 2022

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