



W.P(MD)No.13306 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13306 of 2015

and

M.P.(MD)No.1 of 2015

M.Indhumathi

... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Revenue Divisional Officer,
Padmanabapuram Division,
Thuckalay,
Thuckalay Post,
Kanyakumari District.
- 3.The Tahsildar,
Kakulam Taluk,
Thuckalay,
Thuckalay Post,
Kanyakumari District.
- 4.The Executive Engineer,
Kodayar Basin Division,
Public Works Department,
Water Resources Organization,
Nagercoil,
Kanyakumari District.



W.P(MD)No.13306 of 2015

5.The Assistant Executive Engineer,
Kodayar Basing Sub Division,
Public Works Department,
Water Resources Organization,
Thuckalay & Post,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 to 3 to grant patta/assignment to the petitioner with regard to an extent of 0.16 Ares equal to 40 cents to lands with coconut trees in survey no.697/7 previously in Eraniel Village now in Nullivillai-A Village in Kalkulam Taluk, Kanyakumari District by reclassifying the land from tank promboke into Ryotwari or dry land.

For Petitioner : Mr.K.Sridhar

For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1 to R5

ORDER

Heard both sides.

2.The writ petitioner is a resident of Nullivillai A Village. The petitioner's father was in possession and enjoyment of 16 ares of land (40 cents) in Survey No.697/7 in Earniel Village since 1993. He passed away in the year 2008. The petitioner has been in possession and enjoyment of the subject land ever since. Since the petitioner apprehended interference at the hands of the



W.P(MD)No.13306 of 2015

respondents, she filed W.P.(MD)No.15947 of 2014. The said Writ Petition was disposed of on 24.09.2014 by directing the authorities to consider the petitioner's request for issuance of patta. Since no order was passed on her representation, the present writ petition came to be filed seeking positive direction.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents.

5. The case of the respondents is that the land in question has been classified as tank and that therefore, patta cannot be issued in respect of the water body. The respondents argue that tank known as 'செந்துாரிகுண்டு குளம்' என்ற சேந்துள்ளி குளம்' measures an extent of 56 ares. According to the respondents, there are as many as 11 encroachers and that steps are being taken to remove the encroachments. The learned Special Government Pleader pressed for dismissal of the writ petition.



W.P(MD)No.13306 of 2015

WEB COPY

6. I carefully considered the rival contentions and went through the materials on record.

7. As already noted, the petitioner claims possessory right through her father. Her father late.A.Murugesa Pillai in turn claimed right through one Bagavathi Pillai and his son Gopala Pillai. The conveyance deeds executed by them in favour of Murugesa Pillai are registered. Bagavathi Pillai states that he has been in possession for more than 50 years. The learned counsel for the petitioner asserts that tall coconut trees numbering about 45 are presently standing in the land and that they would be 80 years old. One Mr.Paul Jone after inspecting the trees has certified that their age would be not less than 62 years. Paul Jone is a holder of Diploma agriculture and retired as Assistant Agricultural Officer. Even according to the respondents, the age of the trees will be not less than 40 years. The photographs have been shown and it is obvious that there are truly tall. The age of a coconut tree can be estimated by counting the rings. That is why, it is asserted by the writ petitioner that their age is close to 80 years. The land was a part of the Trivancore Samasthanam. In the year 1957, there was a state re-organization and substantial portion of erstwhile Trivancore Samasthanam merged with the State of Kerala. While



W.P(MD)No.13306 of 2015

two districts alone (Kanyakumari & Shenkottai) were merged with State of Tamil Nadu. Eraniel Village was a part of Kanyakumari District in Trivancore State. The petitioner would claim that the land was assigned in favour of Bagavathi Pillai & Gopala Pillai but the assignment proceedings are not available. The classification of the land when it was under the State of Trivancore has also not been produced. But one thing is clear: that even before the merge of Eraniel village with the State of Tamil Nadu, the trees had been planted. Admittedly, neither the Government of Tamil Nadu nor the District Administration planted the trees in question. Therefore, on the strength of the classification now found in the revenue record, interference with the petitioner's possession cannot be permitted. At the same time, there are two adverse factors staring at the petitioner. One is the payment of 'B' memo. Other is classification of the petition mentioned survey number as 'tank'. Therefore, the petitioner cannot seek issuance of patta. At the same time, for the reasons already stated, the respondents are also restrained from interfering with the petitioner's possession and enjoyment of the land.

8. The learned counsel for the petitioner would assert that on ground, there is absolutely no water body in existence. That may be so, but this Court cannot ignore the classification found in the revenue record.



W.P(MD)No.13306 of 2015

WEB COPY

9. The writ petition is disposed of with the following directions:-

A. The petitioner's possession over 16 ares of land (40 cents) in Survey No.697/7 in Earniel Village is protected and the respondents will not interfere with the same.

B. The petitioner however will not be allowed to plant any further trees. Once all the trees that are presently standing fall, the land will be resumed by the Government.

C. The right of the petitioner to move the jurisdictional civil court for obtaining appropriate relief for declaration is left open.

D. The civil court will decide the issue independently based on the pre-existing rights of the parties and will not be swayed by the outcome of this writ petition.

No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

Index : Yes / No
Internet : Yes/ No
rmi



W.P(MD)No.13306 of 2015

To

1. The District Collector,
Kanyakumari District,
Nagercoil.
2. The Revenue Divisional Officer,
Padmanabapuram Division,
Thuckalay,
Thuckalay Post,
Kanyakumari District.
3. The Tahsildar,
Kakulam Taluk,
Thuckalay,
Thuckalay Post,
Kanyakumari District.
4. The Executive Engineer,
Kodayar Basin Division,
Public Works Department,
Water Resources Organization,
Nagercoil,
Kanyakumari District.
5. The Assistant Executive Engineer,
Kodayar Basing Sub Division,
Public Works Department,
Water Resources Organization,
Thuckalay & Post,
Kanyakumari District.



WEB COPY



W.P(MD)No.13306 of 2015

G.R.SWAMINATHAN, J.

rmi

W.P(MD)No.13306 of 2015

14.08.2023