



WEB COPY



WA No.2174 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WA No.2174 of 2022

M/s.Praveen Engineering Industry,
Represented by its Sole Proprietor, V.Praveen,
930/1C, 32nd Ward Rayakotta Road,
Hosur, Krishnagiri District.

... Appellant

versus

- 1.The District Collector,
Krishnagiri District.
- 2.The District Revenue Officer,
Krishnagiri District, Krishnagiri.
- 3.The Sub-Collector,
Krishnagiri District, Hosur.
- 4.The Tahsildar,
Hosur, Krishnagiri District.
- 5.The Special Commissioner and
Commissioner of Land Administration
Chennai.

... Respondents



WA No.2174 of 2022

(Fifth respondent is suo motu
impleaded on 15.07.2024
by D.K.K., J and K.B., J)

PRAYER: Writ Appeal filed against the order of the learned Single Judge
in W.P.No.17503 of 2009 dated 08.09.2022.

For the Appellant :Mr.V.Raghavachari
Senior Counsel
for Mr.Eshwar Sabapathy

For the Respondents :Mr.V.Manoharan
Additional Government Pleader
for respondents 1 to 4

JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

The Writ Appeal is filed against the order of the learned Single
Judge in W.P.No.17503 of 2009 dated 08.09.2022.

Brief facts of the case as follows:

2.1. The petitioner/appellant industry was established in the year 1990
and it is represented by its sole proprietor. The appellant industry is situate



WA No.2174 of 2022

in S.Nos.930/1-A, 942/2 and 942/1-C, Rayakotta Road, Hosur, Krishanagiri Village. The appellant's mother is the absolute owner of the land situate in S.No.942/1-C.

2.2. According the appellant, S.Nos.930/1-A and 942/2 are unassessed waste lands, belonging to Government, classified as 'Kallankuthu Poramboke' (stony ground). The appellant's grandfather and appellant were doing business in the land in S.Nos.930/1-A and 942/2 since 1990 and paying 2A assessment kist and the appellant's grandfather had applied for assignment of the said land vide applications dated 31.08.1990 and 25.09.1991 to the District Collector, Dharmapuri but no orders were passed. The patta for the land in S.Nos.930/1-A and 942/2 stood in the name of appellant's grandfather. The appellant made an application dated 10.02.2006 to the first respondent and an application dated 21.08.2006 to the Special Commissioner and Commissioner of Land Administration seeking assignment of the said land. Pending consideration of the aforesaid representations, on 05.09.2006, the third respondent inspected the land and threatened to evict the said land. Hence, the appellant filed a writ petition in



WA No.2174 of 2022

W.P.No.36425 of 2006 forbearing the respondents from evicting the appellant and consider the representation dated 10.02.2006. The writ court, by order dated 15.11.2006 directed the first respondent to consider the said representation and pass orders. While so, the first respondent vide proceedings dated 12.01.2007 issued a notice directing the appellant to appear before the first respondent for enquiry on 22.01.2007. However, the said notice was served upon the appellant on 29.01.2007. Therefore, the enquiry was rescheduled and conducted on 19.02.2007. The appellant had produced all the relevant records and the request of issuance of patta was rejected by the second respondent on 16.03.2007 on the simple ground that the land may be required for future use.

2.3. While so, the first respondent, has passed an order dated 17.07.2009 directing the third and fourth respondent to evict the industrial unit. Aggrieved by the same, appellant industry has preferred the instant writ petition. The writ court, by order dated 08.06.2022, had dismissed the writ petition with the following observation:

"Admittedly, the petitioner's grandfather



WA No.2174 of 2022

established a company in S.No.942/1-C which is a patta land and stand in the name of the petitioner's mother and it is an admitted fact that the petitioner's grandfather encroached the adjacent land in in S.No.930/1A, which is classified as Kulam Poromboke. In such circumstances, the petitioner made a request to the Government for assignment of the said land. After conducting detailed enquiry, the second respondent rejected the claim made by the petitioner.

Encroachments are affecting the developmental activities of our great nation. Encroachment in water bodies are creating water scarcity, more specifically affecting the drinking water facilities to the provided to the citizen in the said locality. That being the factual position, this Court is of an opinion that encroachments in water bodies and water resources are to be considered as serious offence. In the present case on hand, once the land is classified as water body poromboke, assignment cannot be granted in favour of the petitioner or any other third parties and further, the respondents have rightly passed the impugned orders and hence, this Court does not warrant any interference."

2.4. Challenging the same, the appellant has filed the present intra court appeal.



WA No.2174 of 2022

3. Learned Senior counsel appearing for the appellant submits that the appellant has made an application on 10.02.2006 for assignment of land in Survey No.930/1-A and 942/2 to the District Collector/first respondent and also another application on 21.08.2006 for assignment of land in the same survey numbers to the Special Commissioner and Commissioner of Land Administration and those applications are still pending. Pending the said applications, the appellant had filed a writ petition in WP No.36425 of 2006 before this Court. This Court, by order dated 15.11.2006, had directed the first respondent to consider the representation dated 10.02.2006 and to pass appropriate orders and the said order has not been complied with. It is further submitted that pending the aforesaid application dated 10.02.2006 addressed to the first respondent and application dated 21.08.2006 addressed to the Special Commissioner and Commissioner of Land Administration, the second respondent/DRO has issued proceedings in Na.Ka.No.45864 of 2006/H1 dated 16.03.2007 rejecting to issue patta.

4. Learned Senior Counsel appearing for the appellant fairly accepted that since the application dated 21.08.2006 for assignment of land is still



WA No.2174 of 2022

pending before the Special Commissioner and Commissioner of Land Administration, he is not pressing the prayer as sought for quashing of the order dated 16.03.2007 passed by the second respondent/DRO. He further submits that the other prayer for quashing the order dated 17.07.2009 passed by the first respondent/District Collector for eviction alone remains for consideration. Hence, he seeks for liberty to agitate before the authority concerned/Special Commissioner and Commissioner of Land Administration seeking for assignment of land. .

5. Learned Senior Counsel for the appellant further submitted that the Writ Court has incorrectly taken note of the fact that the classification of the aforesaid property, as a water body, whereas in fact it is Kallukuttu Poromboke, (rocky stony land). Therefore, with regard to the prayer for quashing the order dated 17.07.2009 of the first respondent/District Collector is liable to be set aside.

6. Learned Government Pleader appearing for the respondents supported the order of the writ court and seeks for dismissal of the writ



WA No.2174 of 2022

appeal.

WEB COPY

7. Heard the parties and perused the materials available on record.

8. It is seen that the writ court has already passed an order dated 15.11.2006 in WP No.36425 of 2006 directing the first respondent/District Collector to consider the application dated 10.02.2006 for assignment of land, which is still pending and no order has been passed. Further, it is brought to notice of this Court that the appellant has made another representation dated 26.08.2022 to the District Collector seeking for exchange of land pursuant to the order issued by the Department of Revenue and Disaster, Land Disposal Wing in G.O.Ms.No.201, dated 10.05.2022 is also pending consideration.

9. We also accept the said contention of the learned Senior Counsel for the appellant that the classification of the land is not a water body and it is only a Kallakuttu Poromboke (rocky stony land). Therefore, we have no hesitation to set aside the order passed by the writ court with regard to the



WA No.2174 of 2022

quashing of the prayer sought for against the order dated 17.07.2009 of the first respondent/District Collector, as the prayer against the order dated 16.03.2007 passed by the second respondent/DRO has already been 'not pressed. It is also seen that on an earlier occasion the appellant has made a representation for assignment of land before the Special Commissioner and Commissioner of Land Administration on 21.08.2006 seeking for assignment of land by fixing the market value of the land prevailing at the time of occupation and assign the land to the industry and same is still pending consideration.

10. It is not in dispute that the appellant/petitioner has been in possession of the property for a long period and there is also a direction of this Court in WP No.36425 of 2006 dated 15.11.2006 to consider the representation dated 10.02.2006 of the appellant/petitioner and pass order within a period of eight weeks. Since the representation dated 10.02.2006 is still pending and further the aforesaid order passed in W.P.No.36425 of 2006 is yet to be complied with, we are of the view that the appellant/petitioner shall approach the Special Commissioner and



WA No.2174 of 2022

Commissioner of Land Administration to consider and pass orders on his earlier representation dated 21.08.2006, enclosing therewith copies of representations dated 10.02.2006 and 26.08.2022.

11. According to the appellant, he has filed another writ petition in WP.14392 of 2023 and has got an interim order against a notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. Therefore, it is for the appellant to work out his remedy before the writ court.

12. The issue involved in the present appeal is only regarding the considering the application, which is pending for assignment of land in the subject matter of property is concerned.

13. In view of the above, this court is inclined to pass order as follows:

i) The order dated 17.07.2009 passed by the first respondent relates to eviction is set aside. Consequently, the order of the writ court in WP No.

10/14



WA No.2174 of 2022

17503 of 2009 dated 08.09.2022 is set aside to that extent, as the prayer against the order dated 16.03.2007 passed by the second respondent/DRO is already not pressed;

ii) Learned Additional Government states that the Special Commissioner and Commissioner of Land Administration is not a party in the present appeal. Therefore, both the parties have agreed that the Special Commissioner and Commissioner of Land Administration may be suo motu impleaded as fifth respondent in the present appeal.

iii) As agreed by both the parties, the Special Commissioner and Commissioner of Land Administration is suo motu impleaded as fifth respondent in the present appeal.

iv) The appellant is directed to send a copy of the representation dated 21.08.2006 along with a fresh representation to the fifth respondent, for assignment of land by fixing the market value at the time of possession, within a period of two weeks from the date of receipt of a copy of this order. The appellant shall also sent a copy of the applications dated 10.02.2006 and 26.08.2022 to the fifth respondent, which was addressed to the District Collector, seeking assignment of land and exchange of land;



WA No.2174 of 2022

WEB COPY

v) Based on the application dated 21.08.2006 along with the fresh application to be submitted by the appellant, which is to be made within the stipulated time, the fifth respondent is directed to consider the same and pass appropriate orders on merits, as early as possible, within a period of 12 weeks thereafter. It is needless to say that the fifth respondent is also to receive a report from the District Collector, if it is required.

14. With the above directions, the writ appeal stands allowed. There shall be no order as to costs.

[D.K.K., J.] [K.B., J.]
15.07.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn



WEB COPY



WA No.2174 of 2022

To

- 1.The District Collector,
Krishnagiri District.
- 2.The District Revenue Officer,
Krishnagiri District, Krishnagiri.
- 3.The Sub-Collector,
Krishnagiri District, Hosur.
- 4.The Tahsildar,
Hosur, Krishnagiri District.
- 5.The Special Commissioner and
Commissioner of Land Administration
Chennai.



WEB COPY



WA No.2174 of 2022

D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

WA No.2174 of 2022

15.07.2024