



W.P.(MD)No.7916 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.7916 of 2023

Sri.Muthuirulappa Thevar

... Petitioner

Vs

1.The District Collector,
Tenkasi District.

2.The Revenue Divisional Officer,
Sankarankovil,
Tenkasi.

3.The Tahsildar,
Sankarankvoil Taluk,
Tenkasi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to give individual patta with specific subdivision of the land in S.No.37(2) at Vadakkupanavadali Village for an extent of 1.53 acres on the basis of the representation dated 09.03.2021.

For Petitioner : Mr.R.Rajamohan

For Respondents : Mrs.K.Christy Theboral
Additional Government Pleader



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ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, directing the respondents to give individual patta with specific sub-division of the land in S.No.37(2) at Vadakkupanavadali Village for an extent of 1.53 acres on the basis of the representation, dated 09.03.2021.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3. The case of the petitioner is that the petitioner's grand-father Thanikodi Thevar purchased certain land measuring to an extent of 1 acre 53 ½ cents out of 2.98 acres in survey number 37/2 at Vadakupanavadali village as early as in the year 1927 by registered sale deed No.1746 of 1927 which is undivided share. The land owners in survey number 37/1A, 37/1B, 37/1C, 37/2, 37/3, 38/1 and 38/3 about 33 persons granted the land vide document number 9660 of 1935 registered in Sub-Registrar Office, Melaneelithanallur for construction of a “private tank” to store water for the purpose of agricultural irrigation and agreed to pay rent for the use of water. The deed was executed in favour of the then Government represented by the Collector. On that basis, the lands were



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classified as “Private Kulam” but it was not carried out by the Public works department and not acted upon. After his father inherited the property, he was in possession and enjoyment of the agricultural lands. After the demise of his father, he inherited the properties along with other sharers and he is in possession and enjoyment of the same. The patta stands in their name and a joint patta was issued for the survey number 37/2(A) which was sub-divided into various numbers. But, the lands were erroneously classified as 'Kulam'. Individual and joint pattas were granted to various persons. As on date, a portion of the land which is adjacent to the road is used as house sites and Constructions are going on. As a result, the value of the property has multiplied and there is a demand for the land.

4. The computer patta was issued to various persons and as for the survey number 37/2(A) is concerned the Patta 2159 was issued as a Joint Patta. There are no specific person's named in that patta with sub-division and specific extent and boundaries. As a result confusion arose and there are several overlapping claims. The petitioner has already filed a Civil Suit for declaration of his exclusive rights and later he was advised that the only remedy is to get a separate patta with specific survey number. When he approached the third respondent, he was informed that because of the civil suit, he cannot help. As a



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result, he allowed it to be dismissed because this suit was filed on a wrong advice similarly, he also filed a suit for injunction on a wrong advice and did not prosecute the same. He was advised at the time that the civil suit was an appropriate remedy but later he learnt that the classification of the land as “Nilaviyalkulam” had created problem and they cannot enjoy the property according to the need of the situation. There are several individual on whose name patta were granted and people are selling the property as house sites and some of them are cultivating the land and as such the land is not used as a tank. Therefore, the classification has to be modified or cancelled on the basis of the present condition of the land. When the owners are different, then it is a duty of the respondents to sub-divide and give separate patta to avoid any confusion and unnecessary disputes. The boundaries are not clear and the boundary stones are not laid properly. This is contrary to the Survey and boundaries Act.

5. The petitioner thoroughly searched and found that the land in survey number 37 with all sub-divisions is not Government lands and are private patta lands. Therefore, it cannot be classified as 'Kulam' or 'cart tract'. The respondents also granted patta for these lands all these years and chitta and adangal are also there. Therefore, the classification is erroneous and contrary to the Revenue Board Standing Order 15. In any event, the lands are private lands



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and that nature was never changed. He is in possession and enjoyment of 1.53 acres by doing cultivation. As such, he is entitled for a separate patta and demarcation of his lands with clear boundaries and boundary stones. The respondents 2 & 3 are duty bound to measure the lands and demarcate the same on the basis of his demand. He is prepared to pay the necessary statutory charges for the same. The petitioner gave a representation to the respondents as early as on 9th March 2021 and no action was taken on the representation by issuing a separate patta for him. He further submitted that a remainder on 10.03.2023 to the respondent on the same issue and requested to grant individual patta in his name. Since the respondents did not pass any orders, the petitioner has filed the present writ petition.

6. The third respondent filed counter and in the counter it is seen that the land in S.No.37/2 a patta has been issued in the name of some individuals, but it is maintained as water body by the village people and the Government also maintaining the above land as water storage place for public prior to 1935 and the revenue records disclosing that S.No.37/2 'rayathu Punjai' in the name of some individual in patta number 2159, but it is water body as on the ground situation. The individual cannot claim title for the water body. Further, the petitioner filed two civil suits in O.S.No.124 of 2013 and 148 of 2016 before



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the District Munsif Court, Sankarankovil and failed in his attempt. Now, seeking individual patta in his name. The petitioner clearly admitted in all his proceedings that the subject matter of the land is kulam, but now he cannot claim individual patta for the kulam. The petitioner claiming title from 1927 but he failed to submit any satisfactory inheritance details that the petitioner is the sole legal heir for the property which is absolutely belongs to this petitioner. Hence, in the absence of explanation about the inheritance, and after the document in the year 1935 and when the land is maintained as a water body, the claim of the petitioner is unsustainable. Based on the document number 966 of 1935, it is clearly stated that all the executants of the document wished to construct a private tank in S.No.37/2. Hence, on such execution of document, the land is maintained as public water storage place and if there is any individual who had encroached the land that has to be evicted. Further the subject matter of the land is maintained as water storage place for public prior to 1935. Hence, the Government is the dominant owner of the property and the right of any individual is extinguished due to the lapse of time in claiming any right. Thereby the petitioner is not entitled to claim individual patta. The petitioner's request to acquire the land of the individuals is also not maintainable as the petitioner's claim for seeking individual patta on par with the trespassers and the prayer has to be dismissed.



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7. On perusing 'A' Register entries, it is seen that even though survey No.37/2(A) in Vadakupanavadali Village is shown as patta land, it has also been mentioned that it was a “ nilaviyal kulam ”. In other words, even though private persons have been shown as pattadhars, the character of the property has been shown as that of tank. When on ground a water-body is existing, it is not open to the private individuals to obliterate its character. Further the petitioner has not taken any steps to correct the entries in the Revenue Records if really the land is classified as “Nilaviyal Kulam”. However, on perusal of the record, it is seen that the said land is classified as “Nilaviyal Kulam”, and for the land classified as such, no patta can be granted in favour of any individual as it belongs to the Government to be utilised for public purpose. Further, it is seen from the records in O.S.No.124 of 2013, on the file of the Additional District Munsif Court, Sankarankovil that in Ex.B1- shows that on 19.09.1927 one Ramasamy Thevar and 31 others as per the document No.966/1935 in the year 1935 have executed an agreement in favour of the Government for developing the land into a pond and hence, now at present he cannot seek for individual patta.



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8. Accordingly, the prayer sought for in this Writ Petition cannot be granted and the Writ Petition is dismissed. No costs.

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Index : Yes/No
Internet: Yes/No
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