

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 10.07.2024****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.11224 of 2024 AND****W.M.P.(MD)No.9986 of 2024**

V.Vijayan

... Petitioner

Vs.

1. The Secretary,
Department of Land and Revenue Administration,
Fort St. George, Chennai.
2. The Commissioner,
O/o.The Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai.
3. The District Collector,
Theni District, Theni.
4. The District Revenue Officer,
Theni District, Theni.
5. The Revenue Divisional Officer,
Uthamapalayam Revenue Division,
Uthamapalayam, Theni District.
6. The Tahsildar,
Uthamapalayam Taluk,
Uthamapalayam,Theni District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Sey.Mu.No.F4/6416266/2023 dated 15.04.2024 passed by the second respondent and quash the same as illegal.



For Petitioner : Mr.K.Safar Badhusha
For Respondents : Mr.P.Thambi Durai,
Government Advocate.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner's grandfather was a freedom fighter. The certificate issued by the legendry leader and freedom fighter Shri.P.Kakkan has been enclosed in the typed set of papers. A.M.G.Vijayarathinasami Nadar was the petitioner's grandfather. Along with the petitioner's grandfather 12 others were given temporary assignment during Fasli year 1366 on 11.04.1950. Three of them were given allotments in a portion of Sengulam. The remaining ten persons including the petitioner's grandfather were allotted an acre of land each in Udayakulam. It is stated that out of the said ten persons, seven persons alone applied for permanent patta and they were also granted. The petitioner's grandfather failed to apply for permanent patta. Udayakulam is comprised in survey No.675. Permanent patta was ordered to be issued



in favour of the seven allottees. Survey No.675 was sub divided and pattas were issued in respect of survey Nos.675/2, 675/3, 675/4, 675/5, 675/6, 675/7 and 675/8.

3. The petitioner's grandfather passed away some time in the year 1962. The petitioner's father Shri.Viswanathan tried to pursue the matter. After his demise, the petitioner took up the matter seriously and after getting all the relevant records made a claim before the Commissioner of Land Administration. The petitioner also filed writ petitions for consideration of his request. Pursuant to the direction given by this Court, the petitioner's request was considered. By the impugned order dated 15.04.2024, the petitioner's request was rejected on the ground that the land on which the petitioner is staking claim falls within the water body. Challenging the said order, the present writ petition came to be filed.

4. 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 set aside the impugned order and grant relief as prayed for.



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5. The Tahsildar, Uthamapalayam filed status report and also made available the relevant revenue records. The respondents submitted that granting relief would run counter to the order passed by this Court vide order dated 07.03.2024 in W.P.(MD)Nos.31214 and 31221 of 2023. The respondents pressed for dismissal of the writ petition.

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

7. Two facts are beyond dispute; a) the grandfather of the petitioner was a freedom fighter / political sufferer and b) he along with twelve others were given assignment and out of them, seven applied for permanent patta and they were also issued with permanent patta. It is also seen that the petitioner's grandfather as well as the petitioner's father and the petitioner have been in possession of the land that was originally assigned temporarily in their favour. The petitioner has enclosed photographs indicating sugarcane cultivation in 1 acre of land.



8. The importance of preserving water bodies is being realised only of late. Earlier even the Board standing order provided for reclassifying and converting the water bodies which had fallen into its use and applying them out. The Hon'ble Supreme Court had categorically mandated that the water bodies should be maintained as such and that they cannot be converted into house sites. The Division Bench of this Court vide order dated 07.03.2024 made in W.P.(MD)Nos.31214 and 31221 of 2023 had issued the following directions:-

“12.

...

B) The existing encroachments in all the water bodies shall be identified and removed after issuing notice to the encroachers. If constructions have been made, they shall be demolished. Further encroachments shall not be permitted. Nor they shall be regularised.

C) Pattas issued in respect of water bodies after 01.01.2000 shall be cancelled and the water bodies shall be restored to their original position.”

9. I am more than satisfied that the land in occupation of the petitioner is reflected in the revenue record only as a water body(Udayakulam). If I direct the respondents to issue patta in favour of the petitioner, it will be in breach of the direction issued by the Hon'ble



Division Bench. I therefore have to sustain the stand of the respondents.

Patta cannot be issued in favour of the petitioner. But the matter cannot rest there. Equities obtaining in this case will have to be taken note of. Identically and similarly placed individuals occupying the same kind of lands which are adjacent are having patta. They were originally a part of the water body. Merely because the petitioner's grandfather failed to apply, the question that calls for consideration is whether that should operate to the prejudice of the petitioner. The only way I can balance is by directing the respondents not to initiate any eviction proceedings against the petitioner during his lifetime. After the lifetime of the petitioner, physical possession of the land will be resumed by the District Administration. This writ petition stands disposed of accordingly. Consequently, connected miscellaneous petition is closed.

10.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU



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G.R.SWAMINATHAN,J.

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