

(1999) 11 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 15945 of 1993 and W.M.P. No's. 24671/93 and 19432/96

M. Ashrab Ali

APPELLANT

Vs

The Commissioner of Land Administration, District Revenue Officer, The Revenue Divisional Officer and The Town Panchayat

RESPONDENT

Date of Decision : 25-11-1999

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 19A
Tamil Nadu Land Encroachment Act, 1905 — Section 7

Citation : (1999) 11 MAD CK 0058

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : T. Susindran, for the Appellant; S. Gopinathan, GA(W) for RI to R3 and V.K. Vijayaraghavan, for R4, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the order of the first Respondent dated 12.05.1993 cancelling house site patta granted in favour of the

Petitioner he has filed the above Writ Petition.

2. The case of the Petitioner is briefly stated hereunder: -According to him the land bearing R.S. No. I44/E6 situate at 22, Papanasam Village,

Papanasam Taluk, Thanjavur District is a natham Poramboke and the total extent is about two acres and 52 cents. While so, he had put up a

thatched structure over an extent of 1 cent in the said land during the year 1983 and running a petty shop in the said premises for the past 20 years.

He was issued with notice u/s 7 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as "Act"). Thereafter, he made an

application to the third Respondent to grant patta for the said land under his occupation on payment of market value. The third Respondent called for a report from the Tahsildar, Papanasam Town. The Tahsildar inspected the premises and fixed the value of the property at Rs. 3,000.00 and sent his report to the third Respondent dated 19.11.1986. Based on the said report, the third Respondent, by order dated 04.02.1987, passed an order to the effect that Tahsildar, Papanasam shall issue Patta to the Petitioner in Form II by receiving Rs. 6,600.00 from the Petitioner, since the Petitioner agreed to pay double the value of market price. As requested, he remitted the amount on 23.02.1987. Aggrieved by the said order passed by the third Respondent, 4th Respondent, Town Panchayat, Papanasam preferred an appeal before the second Respondent on the ground that the said land was not a natham poramboke and the same is vested with 4th Respondent for the purpose of providing road for public at large. The second Respondent after considering the claim of both parties and after personal inspection confirmed the direction issued by the third Respondent. However directed that the Petitioner should not encroach the adjacent pathway provided to the public for the purpose of going to the nearby burial ground. Not satisfied with the said order, the 4th Respondent preferred further revision before the first Respondent. The first Respondent issued a notice to the Petitioner and heard the argument of both side. However by an order dated 12.05.1993 relying on a site plan submitted by the Collector, Thanjavur allowed the revision and cancelled the house site patta granted in his favour, against which the Petitioner has filed the present Writ Petition.

3. The first Respondent has filed a counter affidavit wherein it is stated that from the records and topo sketch available it is found that originally the width of the road in question was 5 metres, but it was reduced to 2 metres in width. After the said assignment was made in favour of the Writ Petitioner it is not sufficient to public to go to burial ground. It is further stated, at least 6 metres in width should be provided for the road proceeding to burial ground. After considering the above aspects and after noting that public interest is paramount than the interest of the Petitioner the first Respondent has allowed the revision filed by the Town Panchayat and rightly cancelled the patta in favour of the Petitioner.

4. The 4th Respondent, Town Panchayat has also filed a separate counter affidavit, wherein it is stated that the Petitioner is a wealthy mirasdar and he is doing business in several places. He owns several buildings. It is further stated that the property has been continuously used as way for reaching cremation ground. As the assignment made was objectionable and against public interest, the order of assignment was rightly set aside.

These aspects were not considered by the assigning authority.

5. In the light of the above pleadings. I have heard the learned Counsel for Petitioner as well as Respondents.

6. Mr. T. Susindran, learned Counsel appearing for the Petitioner after taking me through the impugned order of the first Respondent vehemently

contended that the site plan said to have been submitted by the District Collector has not been brought to the notice of the Petitioner or to the

counsel and the impugned order based on such report is liable to be set aside. I am unable to accept the said contention. No doubt, the land in

R.S. No. 144/E6 of Papanasam Town is classified as natham poramboke. In this land the Petitioner encroached an extent of 0.01 acre by means of

thatched shed and running a petty shop therein. During the course of regularisation of the encroachment the Revenue Divisional Officer.

Kumbakonam has issued orders for the assignment of the above house site in favour of the encroacher - Writ Petitioner hereinafter collecting the

double market value of Rs. 6,600.00. Learned Counsel has also very much relied on the order of the Appellate Authority District Revenue Officer,

Thanjavur who after inspection confirmed the orders of the original authority. It is clear from the impugned order of the first Respondent that from

the records and tope sketch available it is found that originally the width of the road is 5 metres but it was reduced to 2 metres, after the said

assignment was made, in favour of the Petitioner, which undoubtedly is not sufficient for public to go to burial ground. I am in agreement with the

conclusion of the first Respondent viz., that at least 6 metres in width should be provided for the road proceeding to burial ground. This aspect was

not considered by the Revenue Divisional Officer as well as District Revenue Officer. Even though it is stated that the revisional authority based on

the site plan submitted by the Collector, Thanjavur cancelled the patta, I do not find any error in the said conclusion. There is no need to supply all

the records to the counsel for Petitioner during the disposal of the revision petition. As a revisional authority he is entitled to call for a report from

the subordinate authorities. In such circumstances, when the revenue records show that minimum 6 metres width should be provided for the road

proceeded to burial ground for the benefit of the general public, the same cannot be interfered by this Court lightly.

It is also clear that, even though at the time of assignment, the width of the road was 5 metres, because of the encroachment of the Petitioner after

assignment it has been reduced to 2 metres in width, hence in the interest of the general public, the first Respondent is justified in interfering with the

grant of house site patta.

7. Mr. V.K. Vijayaraghavan, learned Counsel for 4th Respondent by relying on a decision of K.S. Palaniswamy, J., in A. Chinnaswami Gounder

Vs. The Director of Settlements and Others, would contend that since natham poramboke lands are intended for the benefit of the villagers, the

same cannot be assigned, particularly when the said land is being used as a pathway leading to the burial ground. In that decision K.S.

Palaniswamy, J., after considering the communal land with reference to Madras Estates Abolition Act has concluded.

...It would follow from the above observation that if a communal land continues to be communal land and is being used as such, it would not be

within the jurisdiction of the Government to give a direction u/s 19-A to any person in possession of such land to continue in possession, even

though such permission is subject to conditions contemplated therein. The reason is obvious. Once the existence of the need for the use of the land

as a communal land is recognised, it would be against the very character of the communal land to allow a person to be in occupation though such

permission may be subject to conditions. Communal land should be available for use of the community in the customary way. No one can be put in

exclusive possession because such exclusive possession would one way or the other affect the rights of the community at large in the use of the

land. Therefore, so long as the land continues to be communal land and is being used as such, the Government have no power u/s 19-A to permit

any person to be in occupation, even if such permission is granted subject to conditions. In this view. I hold that the Board, after having found that

the land continues to be a communal land and is being used as such by the villagers had no jurisdiction to give the direction u/s 19-A permitting its

occupation by A. Chinnaswami Gounder, the owner of the lands on either side of the pathway. It may be that the said A. Chinnaswami Gounder is

taking water to his land on one side of the pathway through a veent fixed in the bund. But that can be hardly be a ground to permit him to be in

occupation of the communal land.

Though the said observation is made with reference to Section 19A of the Madras Estates Abolition Act and the power of the Government for

assignment, as observed by the learned Judge when it is intended for common use, the same cannot be altered or modified for the benefit of an

individual. Apart from this, it is also clear from the information furnished by the Executive Officer, Town Panchayat, Papanasam that the assignment

made in favour of the Petitioner was objectionable and it is against the public interest. It is also clear from the impugned order that while

considering house site patta in favour of the individual from the natham lands, the assigning authority has to consider the interest of the Villagers,

general public as well as the views of the local Panchayat town Panchayat. In our case, it is clear that the way is being used by the general public to

reach burial ground. If that is so, as rightly concluded by the revisional authority sufficient space is required for the benefit of the general pubic to

use the same to reach the burial ground.

8. Under these circumstances, I do not find any error or infirmity in the order of the first Respondent dated 12.05.1993 and I am in agreement with

the said order. Consequently, the Writ Petition fails and the same is dismissed. No costs.

9. In view of the dismissal of the main Writ Petition, connected W.M. Ps., are also dismissed.