
(2014) 10 MAD CK 0237

In the Madras High Court

Case No : Writ Petition (MD) No. 5167 of 2013

P. Athi Narayana Perumal

APPELLANT

Vs

The District Collector Kanyakumari

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0237

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—The Petitioner has filed the instant Writ of Mandamus praying for passing of an order in directing the Third Respondent/Tahsildar, Agasteeswaram Taluk, Nagercoil to conduct appropriate enquiry on their representations dated 15/11/2010 and 28/12/2010 in regard to issuance of patta for the land in R.S. No. 269/15 of Azhagapapuram Village, Agasteeswaram Taluk, Kanyakumari District admeasuring an extent of 0.15.0 ares in their names.

2. The case of the Petitioners (as culled out from the Writ Petition) is that the Government poramboke land in Old S. No. 2342, R.S. No. 269/15 in Azhagapapuram Village, Agasteeswaram Taluk, Kanyakumari District admeasuring an extent of 0.15.0 ares was in the possession and enjoyment of his forefathers from time immemorial. They had remitted tax to the revenue authorities in regard to the possession and enjoyment of the said land.

3. The stand of the Second Respondent is that the land belonging to their family in R.S. No. 269/14 in Azhagapapuram Village, Agasteeswaram Taluk, Kanyakumari District belonging to their forefathers as patta land. In the said land, an irrigation channel drawing water from Petchiparai and Perunchani dams was formed during the year 1897. For that, a portion of their patta land in old S. No. 2342 was acquired. The remaining acquired land after the formation of the irrigation channel was classified as "poramboke" and assigned R.S. No. 269/15 which is originally their patta land. The remaining patta land in old S. No. 2342 in the name of their family was assigned as R.S. No. 269/14.

4. Around the year 1977, the said land was in possession and enjoyment of the Second Respondent's father S. Palavasekaran Nadar. Further, on the application made by his father, a letter dated 14/10/1977 was sent by the Office of the Third Respondent/Tahsildar, Agasteeswaram Taluk, Nagercoil, requiring his father to pay a sum of Rs. 1,826.25 as assessed amount to issue patta for the land in R.S. No. 269/15 in favour of his father. Once again, a notice was sent by the Third Respondent/Tahsildar, Agasteeswaram Taluk, Nagercoil dated 6/7/1978, requiring to pay the aforesaid amount in order to issue patta to the said land, the Third Respondent sent a letter on 11/7/1979.

5. The primordial stand taken on behalf of the Petitioners is that the Second Respondent's Father was an illiterate, poor farmer and three notices issued by the Third Respondent was in English language and consequently, the Second Petitioner's father, failed to remit the aforesaid amount to the office of the Third Respondent. Resultantly, no patta was issued in the aforesaid land in the name of the Second Petitioner's father Palavasekaran Nadar. The Second Petitioner's father expired on 11/2/1990. The said land was in possession and enjoyment of the Second Petitioner along with his two elder brothers, viz., P. Duraiswamy and another elder brother, viz., the First Petitioner as sons of late S. Palavasekaran Nadar.

6. It is to be noted that the Second Petitioner's elder brother P. Duraiswamy expired on 3/5/2003. Thereafter, his share devolved on his sons viz., the Third, Fourth and Fifth Petitioners herein. Consequently, the Petitioners pleaded themselves with the Respondents to issue patta to the said land on the basis of the said two notices sent to his father S. Palavasekaran Nadar by the Third Respondent. Since no fruitful result came from the Respondents for oral pleas of the Petitioners, the Petitioners sent a written requisition by means of "Registered Post With Acknowledgement Due" on 15/11/2010 to the Respondents praying for issuance of patta for the Government poramboke land situated in R.S. No. 269/15 in Ahzgapapuram Village, Agasteeswaram Taluk.

7. The said land was in possession of the Petitioners from time immemorial for the period of their forefathers till now. Before the forming of the irrigation channel as stated supra, the land was in possession and enjoyment of the Petitioner's family as patta land, comprised in old S. No. 2342. They had improved the land and converted the same into a fertile agricultural land etc. The Respondents had not responded to the representation of the Petitioners dated 15/11/2012 seeking issuance of patta for the aforesaid land in their favour, although the receipt of the said representation was acknowledged. The Respondents had not passed appropriate orders on the said Writ Petition. Consequently, the Petitioners projected W.P.(MD) No. 14109 of 2010 before this Court seeking issuance of a Writ of Mandamus in directing the Respondents to issue patta to the land in R.S. No. 269/15 of Azhagapuram Village, Agasteeswaram Taluk, Kanyakumari District admeasuring an extent of 0.15.0 ares in their favour, based on the letters sent by the Third Respondent dated

14/10/1977 and 6/7/1978. The aforesaid W.P.(MD) No. 14109 of 2010 was disposed of by this Court wherein a direction was issued to the Third Respondent to dispose of the representation dated 15/11/2010, after providing an opportunity of hearing to the Petitioners therein within a period of twelve weeks from the date of receipt of a copy of this order. Moreover, the Petitioner is directed to furnish a copy of the representation dated 15/11/2010 to the Third Respondent along with a copy of the order.

8. The Petitioner's received a letter from the Third Respondent dated 17/1/2011 requiring them to appear before him on 27/1/2011 with all relevant documents for the purpose of conducting enquiry on the representation dated 15/11/2010 seeking to issue patta for the poramboke and in R.S. No. 269/15 admeasuring an extent of 0.15.0 ares. All the Petitioners appeared before the Third Respondent on 27/1/2011 and submitted all the relevant documents to substantiate their claim to issue patta for the land in question in R.S. No. 269/15 as stated supra.

9. The Petitioners were waiting for a positive order from the Third Respondent in good faith and hope. Even after the lapse of two years, the Third Respondent/ Tahsildar, Agasteeswaram Taluk, Nagercoil had not proceeded in the matter in issue as ordered by this Court in W.P.(MD) No. 14109 of 2010 dated 2/12/2010.

10. In fact, the plea of the Petitioners is that the request for issuance of patta in regard to R.S. No. 269/15 of Azhagapapuram village, Agasteeswaram Taluk, Kanyakumari District, admeasuring an extent of 0.15.0 ares in their names, fell into deaf ears and it proved otiose since no order was passed by the Respondents till date.

11. The pith and substance of the stand taken on behalf of the Petitioners is that in Law, there is no impediment for the Third Respondent to issue patta for the land in question. In this connection, the Petitioners refer to Section 48(B) of the Land Acquisition (Tamil Nadu Amendment) Act, 1996 which deals about the transfer of land to original owner in certain cases. Yet another stand taken on behalf of the Petitioners is that they are entitled to re-convey of the land in R.S. No. 269/15 of Azhagapapuram Village, Agasteeswaram Taluk, Kanyakumari District admeasuring an extent of 0.15.0 Ares, by virtue of the aforesaid provisions of Law. The specific plea taken on behalf of the Petitioners is that the possession of the land by them itself is unerringly pointed out that the land is now not required for any other purpose.

12. This Court has perused the contents of notice dated 17/1/2011 issued by the office of the Third Respondent addressed to the Village Administrative Officer, Agasteeswaram and on going through the said notice, this Court is of the considered view that the Third Respondent had directed persons mentioned therein to appear in person in connection with the enquiry of the Petition of the First Petitioner dated 15/11/2010 together with proper documents for the purpose of enquiry on 27/1/2011 at about 5 p.m.

13. It is to be noted that all the Petitioners appeared before the Third

Respondent on 27/1/2011 and submitted all the documents in regard to the issuance of patta for the land in R.S. No. 269/15 of Azhagapapuram Village, Agasteeswaram Taluk, Kanyakumari District admeasuring an extent of 0.15.0 ares in their name. First they had not seen any fruitful result. It is not known till date as to what further action, the Third Respondent/Tahsildar, Agasteeswaram Taluk, Nagercoil had taken after he issued the notice to the Petitioners 1 and 2 and also to another requiring them to appear for enquiry on 27/1/2011 at about 5.00 p.m. The Petitioners because of the inaction/long silence on the part of the Third Respondent has been performed to file the present Writ Petition before this Court. Making a request for passing an order by this Court in directing the Third Respondent to conduct an enquiry on the representations dated 15/11/2010 and 28/12/2010 in regard to the issuance of the land of patta in R.S. No. 269/15 of Azhagapapuram Village, Agasteeswaram Taluk, Kanyakumari District admeasuring an extent of 0.15.0 Ares in their names, the request of the Petitioner as sought for by them in the Writ Petition is a legitimate and a reasonable one, in the considered opinion of this Court. Since nearly 3 years and 9 months have lapsed from the date of issuance of letter dated 17/1/2011 by the Third Respondent, wherein a direction was issued to the Village Administrative Officer, Agasteeswaram Taluk and the Petitioners 1 and 2 appeared before him on 27/1/2011 at about 5.00 p.m., along with necessary documents in connection with the enquiry to be conducted and submitted by the Petitioner dated 15/11/2010, this Court in the interest of Justice, Fair Play, directs the Third Respondent to conduct an appropriate enquiry on the representation of the Petitioners dated 15/11/2010 and 28/10/2012 in regard to the issuance of patta in R.S. No. 269/15 of Azhagapapuram Village, Agasteeswaram Taluk, Kanyakumari District admeasuring an extent of 0.15.0 Ares in their names, within a period of four weeks from the date of receipt of the copy of this order and to pass just, fair and appropriate orders on merits in the manner known to law and in accordance with law (of course, after providing necessary opportunities to the Petitioners and others concerned by adhering to the principles of natural justice.

14. With the above directions, this Writ Petition is disposed of. No costs.