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**(2013) 08 MAD CK 0047**

**In the Madras High Court**

**Case No :** Writ Petition No. 24968 of 2004 and W.P.M.P. No. 30362 of 2004

Palaniammal

APPELLANT

Vs

The District Collector and Others

RESPONDENT

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**Date of Decision :** 23-08-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) 8 MLJ 197

**Hon'ble Judges :** C.S. Karnan, J

**Bench :** Single Bench

**Advocate :** R. Margabandhu, for the Appellant; R. Lakshmi Narayanan, Addl. Govt. Pleader for R-1 to R-3, Mr. G. Vasudevan for R-5 and (dismissed) R-4, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

C.S. Karnan, J.—The short facts of the case are as follows:--

The petitioner submits that she is the owner of the land in Survey No. 88/3 to an extent of 0.90.0 situated in Gangalamahadevi Village. Her father

Chinnawamy Gounder had executed the sale deed dated 02.08.1988 and also settlement deed dated 30.07.1996 and had conveyed the title of

the said property to her. Subsequently, the patta was transferred in her name on 14.10.1999. She dug open a well in the said land and obtained

electricity service connection for irrigation with 5 H.P. motor. Further, the house has been constructed on the said property for residential purpose.

The pump set connection was obtained on payment of Rs. 25,000/- scheme. Besides this, she availed a loan of Rs. 60,000/- from the Land

Development Bank, Polur. The present outstanding is Rs. 84,000/- only from the said loan. She further stated that she has been the owner of the

said land from the year 1988 onwards. The said land was notified u/s 4(1) of the Harijan Welfare Schemes Act. On 18.03.1996, an award was

passed in the name of her father Chinnaswami Gounder. As such, the land acquisition proceeding is not fit to be proceeded with. Further, no

compensation has been assessed for the well and pump set and the residential building.

The petitioner further submits that there was an attempt on the part of the second respondent to cancel the patta standing in her name and to

reclassify the said land as Natham. The petitioner issued a telegraphic of notice on 08.08.2004 to the respondents 1 to 4. Before reclassifying the

lands as Natham Poromboke, notice should have been given to her, but no opportunity or notice was given to her. After the receipt of the

telegraphic notice dated 08.08.2004, the second respondent, viz., the Tahsildar had deliberately made an entry in the Chitta as per T.K.T. No.

51/14121, dated 25.02.2003, 8a 267/1412, dated 04.03.2003 but signed the said transfer on 09.08.2004. Before converting a patta into Natham

Poromboke land, the opportunity should have been given to her to reveal the petitioner's possession. Now, the third and fourth respondents orally

expressed that they are going to take delivery of the petitioner's property within a short time. Under the circumstances, the petitioner approached

this Court for a remedy after invoking Article 226 of the Constitution of India.

2. The above writ petition has been filed in the year 2004, but till now, the respondents have not filed a counter statement even though, an interim

order is operating against them from 02.09.2004. Therefore, this Court is constrained to pass a final order since the matter is pending for more

than eight years on this Court file.

3. The highly competent counsel for the petitioner vehemently argued that the petitioner is the owner of the cultivable landed property. Her father

had executed a sale deed as well as settlement deed in the year 1988 and 1996 respectively. From the date of these deeds, the petitioner is the

absolute owner of the land. When this is the factual position, the second respondent had passed an award to the erstwhile owner, viz.,

Chinnaswami Gounder, who is the father of the petitioner. The very competent counsel further submits that the petitioner had obtained a loan from

the Land Development Bank, Polur, for developing the said land in order to bring

the land into a cultivable position, for which, man power, money power and a long duration of time have been spent. Now, the outstanding loan dues to the Land Development Bank, Polur, payable by the petitioner is Rs. 85,000/-, as such, the Land Development Bank is having a binding over the land. Further, the petitioner had constructed a house over the land at a cost of Rs. 10,000/- and she had obtained electricity service connection in S.C. No. 252 and 5 H.P motor pump set has been installed and operating till now, solely for the purpose of irrigation. Besides, the petitioner dug open a well at a cost of Rs. 2,00,000/-, for which man power, money power and a long duration of time had been spent. The very competent counsel further pointed out a legal position that the Taluk Tahsildar without prior notice to the petitioner, converted the land into Natham Poromboke, which is not sustainable under law. The action of the Revenue Authorities has caused inconvenience to the petitioner and changed the character of the land as Natham Poromboke which is improper since the patta is in the name of the petitioner and it has been issued by the regular Tahsildar, who is attached to the Taluk Office, Polur. Hence, the learned counsel entreats the Court to allow the writ petition.

4. The very competent counsel for the respondents 1 to 3 argued that the land acquisition proceedings had been initiated in order to provide house site scheme for the welfare of the poor community of Adi Dravidar people. Therefore, the Taluk Tahsildar and other respondents have jointly initiated Land Acquisition Proceedings, as the said land has been found suitable for residential purpose to the Adi Dravidar people. As per the Revenue Records i.e., chitta and adangal, the landed property stands in the name of Chinnaswami Gounder, hence, the award has been passed in his favour after adhering to all legal formalities as per the Land Acquisition Act. At this stage, the writ petition is not maintainable. The highly competent Additional Government Pleader further pointed out that the reclassification of the land has not caused any injustice to the petitioner as the classification indicates that the land is suitable for a neighborhood scheme. The petitioner had not produced any relevant records regarding loan which had been obtained by the petitioner from the Land Development Bank, Polur. The highly competent counsel further submits that there is no suitable place in the Gangalamahadevi Village for providing house-site to the

poor Harijan people, except this property. As per the contention raised by the learned counsel for the petitioner that she has a dug open well, H.P. Motor pump set and a residential building, the petitioner is open to claim compensation for the same from the respondents. Hence, the learned Additional Government Pleader entreats this Court to dismiss the writ petition.

5. The very competent counsel, Mr. G. Vasudevan appearing for the fifth respondent submits that the petitioner had applied for getting a 5 HP motor pump set under the payment of Rs. 25,000/- scheme against her patta land. The Tamil Nadu Electricity Board officials verified the physical possession of the land and granted 5 HP pump set for irrigation purpose. Before sanctioning the service connection, the writ petitioner had complied with necessary legal formalities, viz., title deeds, enjoyment of the physical possession of the land and that the land is suitable for cultivable purpose and as such, the electricity service connection had been provided to the petitioner.

6. Per contra, the learned counsel for the petitioner submits that the petitioner's lands is now classified as wet land since irrigation facilities has been provided, wherein paddy, sugarcane are standing crops over the land which indicates that the land is classified as wet land and being used for agricultural purpose. In order to prove the service connection, the petitioner has produced the electricity payment receipt issued by the fifth respondent. Besides the second respondent herein had issued a patta in the name of the petitioner. The learned counsel further submits that alternate suitable lands belonging to private individuals as well as Government are available in the same village and as such, the petitioner's land is not required for the said purpose. Besides, the petitioner is possessing a cattle farm comprising of buffaloes and bullocks, and agricultural equipments to facilitate cultivation.

7. After the above mentioned discussion, this Court is of the view:--

(i) The petitioner dug open a well and installed a 5 HP motor pump set for irrigation purpose and she and her family members are permanently staying on the said land after constructing a pucca building to look after the cultivation around the clock.

(ii) the petitioner has spent a considerable amount for excavating a well and for

obtaining electricity connection for H.P. motor and the land has been brought to a suitable level for cultivation and also a building has been raised for residential purpose. Besides, there is an outstanding loan payable by the petitioner to the Land Development Bank, Polur as per the affidavit of the petitioner. Under these conditions, if the petitioner's land is acquired for the house-site, the petitioner will be put into irreparable loss. At the same time, if the land is freed from acquisition proceedings, then the beneficiaries will not be prejudiced and the respondents can provide alternative sites to the beneficiaries after acquiring land sites elsewhere.

(iii) As per the statements in the affidavit of the petitioner that she and her family members have been involved in the agricultural operations on a full time basis, it is seen that all of them depend upon the agricultural land for their livelihood.

(iv) The reclassification of the land from wet land to natham poramboke made by the respondents 1 to 4 is improper as it has been done without issuing a prior notice to the petitioner.

(v) The petitioner is still in possession, along with her family members and enjoying the said property for cultivable purpose and the residential purpose. The acquisition proceeding will disturb the above mentioned conditions and also disturb her life irreparably.

8. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the affidavit

of the petitioner and the annexed documents and this Court's view mentioned above, this Court is inclined to entertain the above writ petition as it

is found that the Land Acquisition Proceedings initiated by the respondents is not fit to be proceeded with any further. In the result, the above writ

petition is allowed. Consequently, the respondents 1 to 5, are restrained from taking delivery of the possession of property of the petitioner in S.

No. 88/3 as reclassified Natham Poromboke, Gangalamahadevi, S. No. 88/3a and 3b, Polur Taluk. Accordingly ordered. Connected

miscellaneous petition is closed.