Madras High Court
Mathavadiyan vs The Revenue Divisional Officer on 12 October, 2020

W.P(MD)No.141

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P(MD)No.14135 of 2020

Mathavadiyan ... Petitioner

Vs.

1.The Revenue Divisional Officer,
Tenkasi,
Tenkasi District.

2.The Revenue Divisional Officer,
Cheranmahadevi,
Tirunelveli District.

3.The Tahsildar,
Ambasamudram,
Tirunelveli District.

4.P.Arul
5.P.Asuthasan
6.Chinnappan
7.Marya Ponnu
8.Josephraj
9.Thai Arul ... Respo

PRAYER: Writ Petition filed under Article 226 of the Constitution of
praying for issuance of a Writ of Mandamus to direct the first respon
dispose the petitioner's appeal dated 26.09.2020 under the Patta Pass

Act after giving adequate opportunity to the respondents 4 to 9 herei
the time framed fixed by this Court.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents 1 to 3 : Mr.M.Pandiya Rajan
Additional Government Pleader

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ORDER

This Writ Petition is filed seeking issuance of a Writ of Mandamus to direct the first respondent to dispose the petitioner's appeal dated 26.09.2020 under the Patta Passbook Act after giving adequate opportunity to the respondents 4 to 9 herein within the stipulated time.

2. Heard the learned Counsel appearing for the petitioner and Mr.M.Pandiya Rajan, learned Additional Government Pleader, who took notice for the respondents 1 to 3. Since this Court is not going to pass any adverse order against the respondents 4 to 9, notice to them is dispensed with.

3. The learned counsel appearing for the petitioner would submit that the petitioner has purchased a land measuring to an extent of 43 cents, 11 cents and 22 cents in Survey Nos.322, 323/2B and 324/1B respectively situated in Keelambur Village, Ambasamudram Taluk, Tirunelveli District, http://www.judis.nic.in W.P(MD)No.14135 of 2020 through a registered sale deed dated 13.08.2004, pursuant to which, the petitioner made an application before the third respondent for mutation of patta in his name. However, a patta bearing No.240 was issued to the petitioner in respect of Survey No.322/6 and a joint patta bearing No.1030 was wrongly issued in the name of the respondents 4 to 9 in respect of Survey No.323/2B and 324/1B without any documents. Therefore, on 04.11.2019, the petitioner made an appeal before the second respondent. Since there is no response from the second respondent, the petitioner has come forward with this Writ Petition.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that after bifurcation of Tirunelveli District as Tirunelveli District and Tenkasi District, the appellate authority is the first respondent.

5. Considering the facts and circumstances of the case, this Court, without expressing any opinion on the merits of the matter, directs the second respondent to forward the appeal papers filed by the petitioner on 14.11.2019 to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the appeal papers from http://www.judis.nic.in W.P(MD)No.14135 of 2020 the second respondent, the first respondent shall decide the appeal and pass appropriate orders thereon in accordance with law within a period of four months thereafter, after affording an opportunity of hearing to the respondents 4 to 9 herein and any others persons who are likely to be affected.

6. It is made clear that if any application is filed under Section 10 of the Tamil Nadu Patta Pass Book Act, 1983 for modification of entries in the Patta, it shall have to be decided within a period of 120 days from the date of receipt of the application. If there is any appeal filed under Section 12 of the Act, the concerned authority must ensure that the appeal is disposed of within 90 days from the date of filing of appeal. Similarly, the Revision Application filed against the order of the Appellate Authority shall have to be decided within 60 days. The Authorities, while deciding the issue under the provisions of Patta Passbook Act, shall afford an opportunity of hearing to the concerned parties

and decide the same in accordance with law.

7. Of late, several cases are filed before this Court with the prayer of disposal of applications filed under Sections 10 to 13 of the Act and if those applications are disposed of by the Authorities concerned in time, the parties need not unnecessarily approach this Court for such specific directions. It is http://www.judis.nic.in W.P(MD)No.14135 of 2020 not known as to why an order of the Court is required for the Authorities to do their job as adumbrated under the Act, for which salary is provided to them. It is needless to state that if any physical verification is required, the Authorities concerned must visit the spot and verify the same so that it will give a bird's eye view on the issue in question. In a case of grant compensation to a victim of electrocution, one of the Sitting Judges of this Court (Justice G.R.Swaminathan) had done a spot inspection in order to satisfy his conscience and the authorities mentioned supra do not have super power and they should conduct such inspections, if required, as otherwise, they are unfit to hold the post and they should be shown the doors.

8. It is made clear that the time limit stated supra must be adhered to in disposal of the applications, failing which, the Authorities under the Act will have to face departmental proceedings for their misdemeanor / deviant / misconduct, dereliction of duty, lack of devotion to work and lack of integrity, so as to deprive their entire terminal benefits, which will be an eye opener for others not to follow the errand Officials and the outcome of the departmental proceedings must be entered into the Service Register of the Authorities.

http://www.judis.nic.in W.P(MD)No.14135 of 2020

9. The Government is directed to issue a Government Order / Circular by fixing the time limit afore-stated for disposal of the applications, within a period of one month from the date of receipt of a copy of this order.

10. At this juncture, the learned counsel for the petitioner referred to a judgment of the Division Bench of this Court in the case of Mehraj Begum vs. The Government of Tamil Nadu and others [W.P.No.27499 of 2018] decided on 16.10.2018 and submitted that though several guidelines were issued in that order in respect of matters pending before various Revenue Authorities, he is not aware whether any guidelines were framed by the Government or not. For better appreciation, the relevant Paragraphs of the said judgment are extracted hereunder:

> “12. Since it is represented by the learned counsel for the Petitioner that many Appeals are pending, this Court suo motu impleads the Commissioner, Corporation of Chennai, Ripon Building, Chennai as necessary party to this Writ Petition and passes the following directions:
>
> (a) Respondents are directed to de-seal the building constructed by the Petitioner for the purpose of rectifying the defects and the building shall not be occupied for any other purpose, much less residential purpose.

(b) If the respondents are unable to demolish the building, then it is left open to them to demolish / remove http://www.judis.nic.in W.P(MD)No.14135 of 2020 all the doors, windows, glasses, toilet seats and bidets, kitchen cooking platform, waterline pipes running into domicile from water tank or sump or any other mode to wash basins, kitchen and rest rooms, including the tap / shower.

(c) In the event of the building being found locked or closed by the occupants, the respondents shall drill the roof of the building and make a big hole so that the building cannot be occupied any more.

(d) Respondents shall ensure that proper set back is maintained in the building in question and also ensure as to whether the building in question has encroached the Road.

(e) If the violated portions are not rectified, Respondents are directed to demolish the same.

(f) Till the building is brought in accordance with the Sanctioned Plan, there shall not be electricity supply to the building in question. Though this Court is entitled to disconnect water supply to the building in question, taking note of the fact that the neighbours of the Petitioner will suffer, water supply is not disconnected.

(g) The Appellate Authority shall conduct the proceedings once in 15 days and ensure that the building in http://www.judis.nic.in W.P(MD)No.14135 of 2020 question is brought in accordance with the sanctioned Plan within six months.

(h) If the Officials concerned do not adhere to the procedures mentioned supra, the Government shall post the erring Official in a non-sensitive post.

(i) Wherever Appeals are pending before the authorities concerned as regards buildings constructed in violation of the Sanctioned Plan, there shall be an interim order by the Appellate Authority and there shall be disconnection of electricity supply to the said violated portion, if the building is not brought as per the Sanctioned Plan within the time limit.

(j) whenever an appeal or any petition is filed under the Tamil Nadu Town and Country Planning Act, 1971, the said application should reflect the very same number and in case of appeal, the original number should also find place. That apart, the owner of the house / flat shall exhibit in a notice board outside the premises that appeal is pending before the authority, by giving necessary details/numbers, like original application, appeal, writ petition, if any and the authorities concerned shall also forward a copy of the same to the Metro Water and Tamil Nadu Electricity Board for appropriate action.

http://www.judis.nic.in W.P(MD)No.14135 of 2020

(k) The 1 st Respondent/Secretary to the Government of Tamil Nadu, Housing and Urban Development Department and the 5th Respondent/Commissioner, Corporation of Chennai, Chennai are directed to furnish the following particulars to this Court on or before 18.12.2018:

(i) Number of appeals pending before the authorities;

(ii) Number of cases, wherein directions have been issued by this Court.

13. It is needless to mention that the 1 st respondent will have to follow the guidelines, while passing orders in all the applications filed under the Tamil Nadu Town and Country Planning Act, 1971. Even though the Act empowers to grant an interim order, the interim order cannot be absolute. If there are any violations, as the Act is silent, the authority concerned is bound to order disconnection of electricity till the building is altered in accordance with the plan. That apart, the 1st respondent has to ask the occupier to rectify the defects and for that purpose alone, the building could be unlocked or unsealed and not for continuation of occupation in the violative portion. When the Court is empowered to inspect the site under Order XVIII Rule 18 of CPC, nothing prevents the authority to inspect the place, as the same will ensure removal of encroachment / violations http://www.judis.nic.in W.P(MD)No.14135 of 2020 of constructions and that Government lands are restored. The purpose of the Act is to ensure that the buildings are constructed in accordance with the plan and not in violation of the plan. The deviations could be permissible in accordance with Rules to some extent and not in its entirety. There cannot be any encroachments on roads, OSR, parks, lakes, Odai and other public places.

14. When there is a demand by the Applicant or Complainant that he/she has got to be heard with regard to violations / encroachments, it is the duty bound on the part of the authorities concerned to inspect the site so that different considerations by authorities may not arise. If any proceedings are started based on the application, the same should be conducted on day to-day basis without adjourning the matter beyond seven working days at any point of time.

15. The above directions shall be followed in all the pending appeals or in other matters pending before the 1 st respondent or before the notified authority under the Tamil Nadu Town and Country Planning Act, 1971.

16. With the above directions and observations, this Writ Petition stands disposed of. No costs. Consequently, connected W.M.P.No.32010 of 2018 is closed. http://www.judis.nic.in W.P(MD)No.14135 of 2020

17. List this matter before us on 20.12.2018 for 'Reporting Compliance' by the respondents in respect of Paragraph Nos.12 to 15.”

11. However, the question whether the above order has been complied with or not cannot be gone into this Writ Petition and it is for the Division Bench to ascertain the compliance of the orders of this Court and see to that the order is implemented. If the orders are not complied with and any contempt petition is filed, and, in the event of the Court coming to the conclusion that there is a wilful and deliberate disobedience of the orders of this Court, appropriate orders will be passed. If the Authority is an IAS Officer under the relevant provisions of the Act and he/she has disobeyed the orders of this Court, they should be punished with imprisonment, and imposition of fine under the Contempt of Courts Act will be secondary, and the imprisonment should be primary and the

issue will be decided based on the facts of each case.

12. It is pertinent to mention that though this Court time and again issues directions to the Government to frame guidelines and issue Government Orders / Circulars, unless or otherwise those orders / Circulars are circulated to the Registry for tagging along with the concerned bundle, it http://www.judis.nic.in W.P(MD)No.14135 of 2020 S. VAIDYANATHAN, J., SRM is very difficult for the learned Judge to confirm the compliance of the orders of this Court, whenever those decisions are relied upon by the Advocates.

12. With the above observations and directions, this Writ Petition is disposed of. No costs.

Call on 11.12.2020 for reporting compliance of Paragraph No.6 of this order, in respect of issuance of Government Order / Circular, by the Government.

12.10.2020 Index : Yes / No Internet : Yes / No SRM

1.Note: Issue order copy on 11.11.2020

2.Note: Registry is directed to send a copy of this order to the Chief Secretary to Government, Government of Tamil Nadu, Secretariat, Chennai – 600 009.

To:

1.The Revenue Divisional Officer, Tenkasi, Tenkasi District.

2.The Revenue Divisional Officer, Cheranmahadevi, Tirunelveli District.

3.The Tahsildar, Ambasamudram, Tirunelveli District. W.P(MD)No.14135 of 2020 http://www.judis.nic.in