



W.P.(MD) No.10269 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.10269 of 2021
and
W.M.P.(MD) Nos.7954 and 8785 of 2021**

S.Rajeswari

... Petitioner

/vs./

1.The Revenue Divisional Officer of Madurai,
Collectorate Buildings,
Madurai 625 020.

2.The Tahsildar of Madurai West,
Theni Main Road,
Madurai 625 016.

3.S.Kudbudeen

4.P.K.Vanitha

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the impugned order passed by the first respondent in Ni.Mu.No.2020/2021/B dated 11.06.2021 quash the same as illegal.



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For Petitioner : Mr.K.Murugesan
For R1 & R2 : Mr.D.Ghandhiraj
Special Government Pleader
For R3 : Mr.H.Lakshmi Shankar

ORDER

The above writ petition is filed for the issue of a Writ of Certiorari calling for the records of the impugned order passed by the first respondent in Ni.Mu.No. 2020/2021/B dated 11.06.2021 and quashing the same as illegal.

2.The facts in brief which precedes for filing of the writ petition are herein below set out.

3.It is the case of the petitioner that the land comprised in S.No.24/5, measuring an extent of 0.05-5 hectares (13.05 cents), situate in Keelamathur Village, Madurai West Taluk, Madurai is the ancestral property of one A.Periyasamy Aasari. On the demise of A.Periyasamy Aasari, the property devolved on his son, P.Selvaraj and his grandsons, S.Selvaprabhu and S.Rajiv by virtue of partition dated 02.06.1974. Revenue records were also mutated in their



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names. Thereafter, by a registered sale deed dated 30.12.2005, Selvaraj and his sons, S.Selvaprabhu and S.Rajiv had sold the land to the third respondent. The third respondent, in turn, had sold the land to one S.Rajasekaran and his wife R.Shanthi under a registered sale deed dated 26.09.2007. They had also got the revenue records mutated in their names by the second respondent. The petitioner has purchased the said land from Rajasekaran and his wife Shanthi under a registered sale deed dated 28.10.2020 and the second respondent had granted patta in her name. Therefore, it is the case of the petitioner that from 1974 till 2021, the patta in respect of the above lands stood in the name of the petitioner and her predecessor in interest.

4.After her purchase, the petitioner had got the lands surveyed by the Surveyor belonging to the second respondent on 23.03.2021. The Surveyor had measured the petitioner's land and laid a survey stone leaving an extent of 930 sq.ft., for pathway. The petitioner had therefore fenced an extent of 4510 sq.ft., and was enjoyment of the same.



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5.It is the further case of the petitioner that the fourth respondent, who owned 20 cents of land in S.No.24/4 in the same village and situate opposite to the petitioner's land had not left out any space for pathway. This was confirmed by the Surveyor. Therefore, the petitioner had called upon the fourth respondent to leave out some space for the pathway from out of her lands. However, the fourth respondent was not willing to do so and on the contrary was trying to encroach into the petitioner's land with the active connivance of the third respondent. The petitioner was therefore constrained to file a suit O.S.No.11 of 2021 for declaration and injunction on the file of the learned Vacation Civil Judge, Madurai and the same is pending.

6.While so, the first respondent without conducting any enquiry and issuing notice to the petitioner has cancelled the patta granted to the petitioner and her vendor and directed the second respondent to restore the patta in the name of A.Periyasamy Aasari as it stood in the year 1974. Therefore, the petitioner was constrained to move this Court for the relief of Certiorari.

7.The respondents have been served and are represented by the counsels.



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8.The third respondent has filed a petition for vacating the stay in which he has contended as follows:

“12. In this case, the writ petitioner had suppressed the fact that she has attempted to encroach and block a portion of the road which is an access to more than 150 families. She has also suppressed the criminal complaint and enquiry before the Police station. Further, on the strength of interim order granted by this Hon'ble Court, she has infact put up a fencing by planting fencing stones upto the middle of the road in S.No.24/5 by showing the erroneous patta.”

9.Heard the learned counsels appearing on either side.

10.Admittedly, the impugned order does not reflect the service of notice on the petitioner and affording her an opportunity to put across her case which forms the touchstone of justice delivery system. Therefore, the impugned order passed by the first respondent in Ni.Mu.No.2020/2021/B dated 11.06.2021 is set aside and the matter is remitted back to the first respondent for fresh consideration. The petitioner has himself filed a suit in O.S.No.11 of 2021 before the Sub Court,



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Thirumangalam, seeking declaration and injunction and the suit schedule property has been described as follows:

□மாண்பு நீதிமன்ற அதிகார வரம்பிற்குட்பட்ட மதுரை மாவட்டம், மதுரை மேற்கு வட்டம், கீழமாத்தூர் கிராமத்தில், அயன் ரீசர்வே எண்: 24/5-ல் கட்டுப்பட்டதும், மதுரை தெற்கு, 1 நிர் இணை சார்பதிவக ஆவண எண்:7782/2020-ன்படி, பாதைக்காக விடப்பட்ட 930 சதுரடி போக வாதிக்கு உரிமையும், பாத்தியமுமானதான 4510 சதுரடி உள்கூடு அளவுள்ள காலி மனையிடத்திற்கு நான்குமால், அடியளவு விபரம்.

வடக்கே : துவரிமான் கிராம பாசன வாய்க்கால்

கிழக்கே : இராஜராஜேஸ்வரி புஞ்சை

தெற்கே : நரிமடை வாய்க்கால்

மேற்கே : வாதி ரோட்டிற்காக விட்ட இடம்

இதற்குட்பட்ட மேற்புறம் 1-வது தாக்கு மனை ஜாதியடியால் கிழமேலடி வடபுறம் 42, தென்புறம் 34, தென்வடலடி கீழ்புறம் 70, மேல்புறம் 62-க்கு 2508 சதுரடி உள்ள மனையும், இதன் கீழ்புறம் 2-வது தாக்கு கிழமேலடி வடபுறம் 28, தென்புறம் 28, தென்வடலடி கீழ்புறம் 73, மேல்புறம் 70-க்கு 2002 சதுரடி உள்ள மனையும், ஆகிய இரண்டு தாக்குகளும் கூடிய மொத்தம் 4510 சதுரடி உள்ள மனையும், மேற்படி மனையுடன் இணைந்த அனைத்து பாத்திய சுதந்திர சமஸ்தங்களும்.□

11.Further, the sale deed under which the petitioner has purchased her property also demarcates the western boundary as the 30' pathway. It is this 930



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sq. ft. pathway which is now claimed to have been encroached by the fourth respondent. It is needless to state that the first respondent shall first consider as to whether there is such encroachment on the 930 sq. ft. pathway. If there is such encroachment, the same shall be removed and thereafter, the first respondent shall proceed to pass orders on the representation. The first respondent is directed to pass appropriate orders on merits and in accordance with law after issuing notice to the petitioner, the third respondent and all other parties concerned within a period of 8 weeks from the date of receipt of a copy of this order.

12. In the result, the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
mm/abr

0.06.2023

To

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2.The Tahsildar of Madurai West,
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P.T.ASHA, J.

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