



W.P.No.360 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2024

PRONOUNCED ON : 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. No.360 of 2023

and

W.M.P. No.335 of 2023

1. Karthikeyan

2. Marudachalam

3. Subramani

4. Kandasamy

... Petitioners

Vs

1. The Personal Assistant to
District Collector (General),
Coimbatore District,
Coimbatore.

2. The District Revenue Officer,
Coimbatore North,
Coimbatore District.

3. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.



W.P.No.360 of 2023

4. A.Saravanan
Tahsildar,
Coimbatore North Taluk,
Coimbatore.

5. Selvakumar

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned communication passed by the 3rd respondent in Na.Ka.No.7494/2018/A1 dated 21.09.2022 and addressed to the 1st respondent, quash the same.

For Petitioners : Mr.S.Sriram

For R1 to R3 : Mr.V.Manoharan
Additional Government Pleader

For R4 : No appearance

For R5 : Mr.N.Umapathi

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 21.09.2022 thereby directing the first respondent to conduct an enquiry and send the report.



W.P.No.360 of 2023

2. Brief Facts:

WEB COPY

2.1. The suit in O.S.No.756 of 2008 on the file of the 3rd Additional Sub Court, Coimbatore for partition and separate possession was filed by one Mr.V.K.Natarajan and 12 others against the petitioner and 15 others in respect of the properties comprised in S.F.No.625 measuring 6.30 acres and the land comprised in S.F.No.626 measuring 8.81 acres situated in Chinnavedampatty Village, Coimbatore.

2.2. The case of the plaintiff was that the said property belonged to one Mr.Chellappa Gounder, who had two sons namely Mr.Kali Chinnappan and Mr.Vaiyapuri Gounder. They were co-parcenors and were in joint possession. The plaintiffs are the legal heirs of Mr.Kali Chinnappan and the defendants are the legal heirs of Mr.Vaiyapuri Gounder.

2.3. The case of the defendants was that the said Vaiyapuri Gounder was in absolute possession till his demise and he had two sons. His legal heirs are the defendants and they were in possession and enjoyment of the said property. Therefore the plaintiffs has no right in the subject property.



W.P.No.360 of 2023

2.4. After full fledged trial, the suit was dismissed by judgment and decree dated 08.10.2010. Aggrieved by the same the plaintiffs filed appeal suit in A.S.No.120 of 2011 on the file of the 1st Additional District Court, Coimbatore. The appeal suit was also dismissed by judgment and decree dated 31.07.2017. Aggrieved by the same the plaintiffs filed second appeal before this Court and it is pending in S.A.SR.No.59445 of 2018 with a condone delay petition in C.M.P.No.22901 of 2018.

2.5. While pending appeal suit some of the plaintiffs filed an application to include their names as joint pattadars in the Patta in respect of the subject property. The third respondent by a proceedings dated 31.12.2018 dismissed the said application. Thereafter, the counsel who appeared for plaintiffs filed an application under Right to Information Act (hereinafter referred to as "RTI Act") before the third respondent seeking information on what basis the patta bearing No.38 was transferred from Kaliappan, Chinnappan to the name of Vaiyapuri Gounder and whether the change is based on the relationship or it is based on any documents and requested to furnish the details. On receipt of the said application the third



W.P.No.360 of 2023

respondent by a proceedings dated 21.09.2022, addressed a communication to the first respondent to conduct an enquiry in this regard and submit a report which is impugned in this writ petition.

3. The learned counsel for the petitioner would submit that the third respondent has no jurisdiction to conduct enquiry on the information sought for by the fifth respondent. The fifth respondent is a stranger to the properties and who was a counsel to the plaintiffs in the civil suit and the appeal suit and as such he has no locus to seek any information under the RTI Act. Already the Civil Court dismissed the original suit as well as the appeal suit filed by the plaintiffs and as such the third respondent has no jurisdiction to give findings about the transfer of patta. The judgment and decree passed in the original suit and in the appeal suit are binding the revenue authorities and therefore any deviation contrary to that is illegal and it would amount to contempt of Court. In fact already the third respondent rejected the claim of some of the plaintiffs to include their name in the patta. They ought to have filed an appeal as against the order of dismissal passed by the third respondent, instead their counsel filed an



W.P.No.360 of 2023

application under the RTI Act seeking information about the issuance of patta.

3.1. In support of his contention he relied upon the judgment of High Court of Bombay reported in *AIR 2008 BOM 120* in the case of *Celsa Pinto vs. Goa State Information Commission and another*, wherein it was held that the "information" defined under Section 2(f) of RTI Act is that it cannot include within its fold answers to the question "why" which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.

3.2. Further, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of *Khanapuram Gandaiah Vs. Admininistrative Officer and others reported in 2010 (2)*



W.P.No.360 of 2023

SCC 1, wherein it was held that the nature of questions posed in the application was to the effect why and for what reason the respondent omitted to examine certain documents and why he came to such a conclusion. Therefore, the Public Information Officers is not supposed to have any material which is not before him or any information which he could have not obtained under law. Therefore the application filed seeking information is *per se* illegal and unwarranted.

3.3. He also relied upon the judgment of the Supreme Court in the case of ***Central Board of Secondary Education and another Vs. Aditya Bandopadhyay and others reported in 2011 (8) SCC 497***, wherein it was held as under:

"63. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject



WEB COPY



W.P.No.360 of 2023

to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide “advice” or “opinion” to an applicant, nor required to obtain and furnish any “opinion” or “advice” to an applicant. The reference to “opinion” or “advice” in the definition of “information” in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

.....

67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely



W.P.No.360 of 2023

affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising “information furnishing”, at the cost of their normal and regular duties.”

4. The fifth respondent filed a counter which revealed that he himself on his own and in personal interest sought for information before the third respondent regarding the following details :

"1. கோயமுத்துர் மாவட்டம், கோயமுத்துர் வடக்கு வட்டம், 50 சின்னவேடம்பட்டி கிராமம், க.ச.எண்கள் 625 மற்றும் 626-ல் 1879 மற்றும் 1912-ம் ஆண்டுகளில் RSR-ல் குறிப்பிட்டுள்ள



W.P.No.360 of 2023

WEB COPY

பட்டாதாரர்களான காளியப்பன், சின்னப்பன் பட்டா எண்.38-ல் அவர்கள் பெயரிலிருந்து 19.9.1916 பட்டா எண்.38 வையாபுரி கவுண்டர் என்பவர் பெயருக்கு பெயர் மாற்றம் எதன் அடிப்படையில் செய்யப்பட்டது என்ற தகவல் அளிக்கவும். அதன் ஒளி நகல் வழங்கவும்.

2. கோயமுத்துர் மாவட்டம், கோயமுத்துர் வடக்கு வட்டம், 50 சின்னவேடம்பட்டி கிராமம், க.ச.எண்கள் 625 மற்றும் 626-ல் 1879 மற்றும் 1912-ம் ஆண்டுகளில் குறிப்பிட்டுள்ள பட்டாதாரர்களான காளியப்பன், சின்னப்பன் பட்டா எண்.38-ல் அவர்கள் பெயரிலிருந்து 19.9.1916 பட்டா எண்.38 வையாபுரி கவுண்டர் என்பவருக்கு உறவின் அடிப்படையில் பெயர் மாற்றம் செய்யப்பட்டிருந்தால் அதுபற்றிய தகவல் அளிக்கவும். அதன் ஒளி நகல் வழங்கவும்.

3. கோயமுத்துர் மாவட்டம், கோயமுத்துர் வடக்கு வட்டம், 50 சின்னவேடம்பட்டி கிராமம், க.ச.எண்கள் 626-ல் 1879 மற்றும் 1912-ம் ஆண்டுகளில் RSR-ல் குறிப்பிட்டுள்ள பட்டாதாரர்களான காளியப்பன், சின்னப்பன் பட்டா எண்.38-ல் அவர்கள் பெயரிலிருந்து 19.9.1916 பட்டா எண்.38 வையாபுரி கவுண்டர் என்பவருக்கு ஆவணங்களின் அடிப்படையில் பெயர் மாற்றம் செய்யப்பட்டிருந்தால் அதுபற்றிய தகவல் அளிக்கவும். அதன் ஒளி நகல் வழங்கவும்."

4.1. However, it was not considered and as such the fifth respondent preferred an appeal before the State Information Commission, Chennai. On



W.P.No.360 of 2023

On this occasion the third respondent vide communication dated 29.10.2018 informed the fifth respondent that the required information could not be furnished as the changes have been effected 100 years ago. Therefore the State Information Officer directed the first respondent to conduct an enquiry with the third respondent and applicant and to submit a report. Accordingly, the first respondent conducted enquiry in which no document was filed by both the parties to prove their ownership. Therefore the third respondent was once again requested to conduct further enquiry. Thereafter, the 3rd respondent conducted enquiry and submitted a report before the first respondent dated 21.09.2022. The third respondent held that the change of the name in Patta No.38 was not carried out based on any records and the mutations in the revenue records have to be cancelled. Since, the said mutation had been effected before the implementation of the UDR Scheme and the second respondent is the authority to enquire the issue. Therefore, the third respondent recommended the second respondent to conduct enquiry for further action in this regard. Accordingly, the second respondent issued notice for enquiry and it is pending for adjudication.



W.P.No.360 of 2023

5. The fifth respondent is not a party to any of the proceedings.

Admittedly, he appeared on behalf of the plaintiffs in the suit and the appeal suit. In fact both were dismissed and now it is pending before this Court in SR stage and in C.M.P.No.22901 of 2018 to condone the delay of 192 days in filing the second appeal in S.A.SR.No.59445 of 2018. However, the second appeal has nothing to do with this writ petition.

6. The fifth respondent had sought for information with regard to on what basis the name in the patta was changed. Whether the change is based on the relationship or on the basis of documents. These are the questions raised by the fifth respondent about "why". In this regard it is relevant to extract the provision under Section 2(f) of the RTI Act here under:

"2(f)- Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"



W.P.No.360 of 2023

6.1. Thus, it is clear that it cannot include within its fold the answers to the question "why" which could be the same when as asking the reason for a justification for a particular thing. Therefore the Public Information Officer cannot be expected to communicate to the applicant the reason how a certain thing was done. In the sense of a justification because of the applicant makes a question about information. The justifications are matter within the domain of adjudication authorities and cannot be properly clarified as information.

7. Therefore the information sought for by the fifth respondent cannot be provided under the RTI Act. It shows that an application under Section 6 of the RTI Act can give any information which is already in existence and accessible to public authority under law. Therefore, when the patta was changed in favour of the defendants ancestor by the authority concerned, the said authority cannot be expected to give reasons other than those that have been enumerated in the order. Therefore, the application submitted by the fifth respondent is *per se* illegal and unwarranted. That apart, the Public Information Officer is not supposed to have any material which is not



W.P.No.360 of 2023

before him or any information he could have not obtained under law.

Therefore under Section 6 of RTI Act the applicant is entitled to get only such information which can be assessed by Public Authority under any law for the time being in force.

8. Further, without application of mind the State Information Commission Officer directed the first respondent to conduct enquiry about the transfer of patta. In fact, during the enquiry, no one produced any documents with regards to title. Once again the first respondent directed the third respondent to conduct enquiry which is unwarranted and illegal. The third respondent conducted enquiry and concluded that there is no documents available for transfer of patta in favour of defendants ancestor in respect of the subject property. The third respondent then requested the second respondent to proceed with the enquiry in this regard. This shows that the entire proceedings of the respondents 1 to 3 are unwarranted for the information sought for by the fifth respondent.



W.P.No.360 of 2023

9. Admittedly, the fifth respondent is the counsel who appeared on behalf of the plaintiffs in the suit and the appeal suit. In fact the fifth respondent has no locus to ask for information that too about the patta which was issued in favour of the defendants in the suit. That apart, he made application under the RTI Act not on behalf of the plaintiffs or other relations of the plaintiffs, he made the application on his own and on his personal interest. Further, the patta and other property details are about the petitioners private property and it is not amenable under RTI Act. That apart already the claim of the plaintiffs for partition was negated by the trial court as well as by the appellate court on the ground that the plaintiffs had no title over the property and they failed to produce any documents to prove their title. The relevant portion of the judgment passed in the suit in O.S.No.756 of 2008 dated 08.10.2010 is extracted here under:

"10. ... Therefore it is very clear from the documents filed by the defendants side that the suit property was in continuous possession and enjoyment of the defendants almost for the last four generations. On the contrary the plaintiffs have not even filed a single document to show their alleged possession either by themselves or by any of their forefathers. Moreover, the first plaintiff who was examined as PW.1 has



W.P.No.360 of 2023

very clearly admitted in the cross examination that he has been cultivating the lands which were acquired by him through his father. Therefore even as per the admission of the first plaintiff he has acquired certain lands from his father. But what prevented them from claiming their right in the suit property even at the time of acquiring the property from his father itself is not explained by the plaintiffs side. The PW.1 also admitted that in 1976 itself Patta has been issued in respect of the suit property to Ramasamy and Sellappan and it came to his knowledge only in the year 2007. The plaintiffs have issued legal notice dated 13.03.2007 to the defendants and the copy of the same is marked is Ex.A.2 for which the defendants have issued a reply which is marked as Ex.A.3 and A.4. The acknowledgment cards for receipt of legal notices by some defendant are marked as Ex.A.5 series and the returned cover of the other defendant are marked as Ex.A.6 series. These documents not substantiating leither the title or the share of the plaintiffs or their forefathers. The another important point to be noted is, it seems from the exhibits on the defendants side and even from Ex.A.1 that the property comprised in S.F.No.626 was sub divided into 626/1 and 626/2. But the plaintiffs, in the description of the property of the plaint, given the S.F.No.626 as if it remains undivided which is not proper and as such the description of property is also not correct.



W.P.No.360 of 2023

Therefore viewing from any angle the plaintiffs have not proved the very existence of a parson by name Kalichinnappan and he was the elder son of the Sellappa Gounder (Sr). Even assuming that there was a son for Sellappa Gounder (Sr), by name Kalichinnappan is true, still the plaintiffs have not established, by linking the genealogy, that they are the descendants of the said alleged Kalichinnappan. Since the plaintiffs are basing their claim only on the ground that they are the legal heirs of Kalichinnappan and the very fact of existence of the alleged Kalichinuappan itself is not proved, the plaintiffs are absolutely not entitled to any share in the suit property as claimed by them and this issue is answered accordingly."

9.1. The above judgment in O.S.No.756 of 2008 was confirmed by the Appellate Court in A.S.No.120 of 2011 by the judgment and decree dated 31.07.2017. The relevant portion of the judgment is extracted hereunder:

"15. ... The plaintiffs could not show any samplence of title or right over the property by producing any record or they could not even adduce oral evidence on the aspect. The only witness adduced by the plaintiff to speak about the inheritance



WEB COPY



W.P.No.360 of 2023

is P.W.2. But he also could not speak about the same. He has stated that he has no direct knowledge but he speaks from the hearsay information gathered by him. So his evidence cannot be taken as conclusive proof that the plaintiffs are legal heirs of Kalichinnappan. The plaintiff have failed to prove that the Sellappa Gounder has got a son in the name of Kalichinnappan, the Kalichinnappan's legal heirs details and how the plaintiffs are the descendants of the said Kalichinnappan. Further, they could not produce any document regarding their right over the suit property and also they have not produced any document about their descendants. Hence, there would not be any purpose in sending the suit for fresh trial by set asiding the judgment and decree."

9.2. Therefore, the civil courts have held against the plaintiffs. What was not achieved directly, the plaintiffs attempted to achieve indirectly by filing application under RTI Act that too by their counsel on special capacity. Without considering these facts and without application of mind the respondents 1 to 3 proceeded with the enquiry with regards to change of patta in respect of the subject property in favour of the defendants ancestor.



W.P.No.360 of 2023

WEB COPY

10. In view of the above this Court finds infirmity in the proceedings initiated by the respondents 1 to 3 on the application submitted by the fifth respondent and is liable to be quashed. Accordingly, the impugned order passed by the third respondent is quashed and the proceedings pending before the second respondent is also quashed.

11. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

spp



W.P.No.360 of 2023

To:

WEB COPY

1. The Personal Assistant to
District Collector (General),
Coimbatore District,
Coimbatore.
2. The District Revenue Officer,
Coimbatore North,
Coimbatore District.
3. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.
4. A.Saravanan
Tahsildar,
Coimbatore North Taluk,
Coimbatore.



WEB COPY



W.P.No.360 of 2023

G.K.ILANTHIRAIYAN, J.

spp

W.P. No.360 of 2023
and
W.M.P. No.335 of 2023

25.09.2024
(1/2)