

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-02-2016

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 33825 of 2015

S. Logeswari

... Petitioner

Versus

1. The District Collector
Chennai District
Chennai - 600 001

2. The Tahsildar
Guindy Taluk
Saidapet,
Chennai - 600 015

3. N. Leelavathi

4. S. Ramadevi

5. V. Maheswari

6. R. Vijayalakshmi

7. S. Vasanthi

8. N. Govindarajan

... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 1 and 2 to consider the representation dated 26.02.2015 made by the petitioner for the grant of Patta in favour of the petitioner in respect of the property bearing Door No.27, Old No.7-B, Krishnarao Naidu Street, Theagaraya Nagar, Chennai (Plot No.15) in Survey Nos. 117/8, 118/5, T.S. No.6530, Block No.140 having a total measurement of 2 grounds and 1680 square feet and consequently to issue patta in favour of the petitioner.

For Petitioner : Mr. N. Rajavadivelu
For Respondents : Mr. P. Sanjay Gandhi
Additional Government Pleader
for RR1 and 2
: **M/s. A. Easkkiappan for R3,5 & 8**
vide order dt. 4.4.2016 made in
WMP.8068/16 in WP.33825/15.*

ORDER

The petitioner has come forward with this writ petition praying for issuance of a Mandamus to direct the respondents 1 and 2 to consider the representation dated 26.02.2015 which was submitted by her for grant of Patta in her favour in respect of the property bearing Door No.27, Old No.7-B, Krishnarao Naidu Street, Theagaraya Nagar, Chennai (Plot No.15) in Survey Nos. 117/8, 118/5, T.S. No.6530, Block No.140 having a total measurement of 2 grounds and 1680 square feet.

2. According to the petitioner, the property in question was purchased by her grand father Subramania Mudaliar by a sale deed dated 27.10.1949 registered as document No.648 of 1949. His grand father thereafter settled the said property to his second wife Kaveri Ammal by a settlement deed dated 15.03.1951 registered as document No.212 of 1951 with the condition that the settlee shall enjoy the property till her life time and after the demise of Kaveri Ammal, it shall be enjoyed by his son Srinivasan and then to his children. According to the petitioner, Kaveri Ammal died on 08.10.1970 and her son Srinivasan (father of the petitioner) also died on 27.02.2011. The petitioner, being the only daughter born to Srinivasan succeeded to his estate and became owner of the property in question. Even during the life time of her father, one N.S. Naidu was inducted as a tenant in a portion of the premises in the second floor to set up an office. Later, his son Krishnamurthy was running the office and thereafter, the 8th respondent, being his son continued as a tenant over the second floor portion alone. The respondents 3 to 8 are the legal heirs of the above said Krishnamurthy. According to the petitioner, the tenants are squatting in the property without paying any rent. The respondents 3 to 8 also made a rival claim contending that the petitioner's grand father sold the property to Mr. N.S. Naidu, which is false. While so, on 27.10.2014, the 8th respondent filed C.S. No. 719 of 2014 claiming ownership of the property. During the pendency of the suit, the petitioner filed RCOP No. 595 of 2015 against the 8th respondent and his wife and it is pending on the file of learned XVI Judge, Small Causes Court, Chennai in which the 8th respondent filed MP No. 342 of 2015 claiming ownership over the property based on a Will dated 01.02.1981 alleged to have been executed by N.S. Naidu and on the basis of a Probate Order passed in OP No. 200 of 1986. On

the basis of the objection filed by the petitioner, the said Original Petition was converted into T.O.S. No. 43 of 2011 and it was dismissed on 07.10.2009. As against the same, O.S.A. Nos. 110 and 111 of 2010 were filed and they were also dismissed by the Division Bench of this Court. A further appeal preferred before the Honourable Supreme Court was also dismissed on 07.12.2011. During the pendency of the above litigation, the petitioner came to know that the second respondent has granted patta in favour of the 8th respondent. According to the petitioner, the respondents 3 to 8 have created fraudulent documents and obtained the patta. Therefore, on 26.02.2015, the petitioner sent a representation to the first respondent seeking to cancel the patta issued in favour of the respondents 3 to 8 and to grant patta in her favour. As there is no order passed on such representation, the petitioner has come forward with this writ petition for the relief stated above.

3. Mr. P. Sanjay Gandhi, learned Additional Government Pleader takes notice for the respondents 1 and 2.

4. On 27.10.2015, this Court directed the petitioner to take private notice to the respondents 3 to 8. Accordingly, private notice was sent and the respondents 3 to 8 were also served and an affidavit of service filed indicating the service of notice on them. However, there is no representation for the respondents 3 to 8.

5. Having regard to the above facts and circumstances of the case, this Court is of the view that no positive direction could be issued to the second respondent to cancel the patta issued in favour of the respondents 3 to 8 and to grant patta in favour of the petitioner. It is seen from the records that the representation dated 26.02.2015 of the petitioner has been received by the office of the first respondent, however, till date, no order is passed thereon. Therefore, without expressing any opinion on merits, it would be suffice to issue a direction to the petitioner to send a fresh representation to the second respondent by enclosing a copy of this order and on receipt of the same, the second respondent shall consider it and pass orders thereon on merits and in accordance with law after hearing the respondents 3 to 8.

6. * Accordingly, without going into the merits of the case or expressing any opinion with regard to the claim of the Petitioner, this writ petition is disposed of, directing the petitioner to send a fresh representation to the second respondent along with a copy of this order. On receipt of such representation, the second respondent is directed to consider the representation of the petitioner after affording an opportunity of hearing to the petitioner as well as the

respondents 3 to 8 and to pass orders thereon on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

rsh

10.02.2016

This matter having been posted on under the Caption "For Being Mentioned" on Tuesday, the Seventh day of June, 2016 and upon hearing the arguments of Mr.A. Esakkiappan, Advocate for the petitioners and of Mr.N. Rajavadivelu, Advocate for 1st Respondent and of Mr.P. Sanjay Gandhi, Additional Government Pleader for R2 & R3, the Court made the following order.

By order, dated 10.02.2016, the above said Writ Petition has been disposed of by this Court. In para 6 of the order, it has been observed as under:

"6. Accordingly, this Writ Petition is disposed of, directing the petitioner to send a fresh representation to the second respondent along with a copy of this order. On receipt of such representation, the second respondent is directed to consider the representation of the petitioner after affording an opportunity of hearing to the petitioner as well as the respondents 3 to 8 and to pass orders thereon on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs."

2. While so, the petitioners herein who are the respondents 3, 5 and 8 in the writ petition, have come forward with the present miscellaneous petition, seeking to recall the order, dated 10.2.2016 made in W.P.No.33825 of 2015.

3. According to the learned counsel appearing for the petitioners, the above said writ petition has been disposed of, without hearing the petitioners and in fact, they filed vakalath on 15.12.2015 vide U.Sr.No.149944 of 2015, but it was returned. In the meanwhile, the matter was listed before this Court on 10.02.2016 and was disposed of. The grievance of the petitioners is that the writ petitioner has suppressed material facts before this Court and obtained the order. Hence, the learned counsel sought for disposal of the writ petition on merits after hearing the petitioners, by recalling the order, dated 10.2.2016.

4. Heard the learned counsel on both sides and perused the materials available on record.

5. A perusal of the order, dated 10.2.2016 would explicit that this Court has not decided the rights of any of the parties, but has given only a direction to the second respondent to consider the representation of the writ petitioner and dispose of the same after affording an opportunity to the petitioners herein, that too on merits and in accordance with law. Therefore, this Court has not expressed any opinion with regard to the merits of the case. Hence, the apprehension of the petitioners that the matter was decided on merits in the writ petition, in my opinion, cannot be sustained. However, to precise the position, this Court is inclined to modify the order to the following extent.

"6. Accordingly, without going into the merits of the case or expressing any opinion with regard to the claim of the petitioner, this Writ Petition is disposed of, directing the petitioner to send a fresh representation to the second respondent along with a copy of this order. On receipt of such representation, the second respondent is directed to consider the representation of the petitioner after affording an opportunity of hearing to the petitioner as well as the respondents 3 to 8 and to pass orders thereon on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs."

Accordingly, this WMP. is ordered. No. Costs.

The Registry is directed to substitute the above said modified order and issue a fresh copy of the order to the parties.

suk

04.04.2016

s/d-

Assistant Registrar (CS-V)

Dated : 26.02.2016

***Para 6 amended as per Order
of this Court dated 04.04.2016
and made in W.P.33825 of 2015
Sd/-Assistant Registrar (CS V)
Dated : 18.04.2016**

**Sd/-Assistant Registrar (CS VI)
Dated : 10.06.2016**

True Copy

Sub-Assistant Registrar

rsh

To

1. The District Collector
Chennai District
Chennai - 600 001

To be Substituted to the Order

2. The Tahsildar
Guindy Taluk
Saidapet,
Chennai - 600 015

already despatched on 26.04.2016

3. **Mrs. S. Logeswari, D/o. S. Srinivasan,
No.5/676, Anna Street, Otteri, Vandalur, Chennai-48.**

4. **Mrs. N. Leelavathy, W/o. N. Krishnamoorthy,
II Floor, NO.22/27, Krishna Street,
T.Nagar, Chennai-17.**

5. **Mrs. S. Ramadevi, D/o. N. Krishnamoorthy,
Jey yes, Ruby Apartments, No.97 Second Street,
Raja Raja Nagar, Ram Nagar South,
Chennai-91.**

6. **Mrs. V. Maheswari, D/o. Late Krishnamoorthy,
No.1, Eighth Street and Gopalapuram, Chennai-86**

7. **M/s. R. Vijayalakshmi, D/o. N. Krishnamoorthy,
No.2, Second Street, Pearbur,
High Road, Chennai-12.**

8. **Mrs.S. Vasanth, D/o. N. Krishnamoorthy,
Jey, Yes, Ruby Apartments,
No.97 Second Street, Raja Raja Nagar,
Ram Nagar South, Chennai-91.**

9. **N. Govindaraja S/o. N. Krishnamoorthy,
II Floor, NO.22/27, Krihna Street, T. Nagar, Chennai 600 017.**
**

+ 1 cc to Mr.N.Rajavadivelu, Advocate SR 30611
+ 1 cc to M/s. A. Esakkiappan, Advocate SR.30614*
+ 1 cc to Government Pleader, SR 8790

W.P No.33825 of 2015

kgk(co)
prk29/2
CA(20.04.2016)
EU 14.06.2016