

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.38971 of 2015

and

M.P.No.1 of 2015

R.Mohan

... Petitioner

Vs.

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

2.The Thasildar,
Maduravoil Taluk,
Thiruvallur District,
Pin Code - 600 095.

3.The Zonal Deputy Tahsildar,
Maduravoil Taluk,
Thiruvallur District,
Pin Code - 600 095.

4.S.Selvam

5.S.Indra

...Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondents 1 to 3 to dispose of the petitioner's representation dated 10.09.2015 seeking for cancellation of patta in the name of respondents 4 and 5.

For Petitioner : Mr.G.Vasudevan

For Respondents : Mr.P.Sanjay Gandhi,
Addl. Govt. Pleader for R1 to R3
Mr.V.Vargees Amalraj for R4 & R5

ORDER

The petitioner has come up with the present writ petition for a mandamus, directing respondents 1 to 3 to dispose of his representation dated 10.09.2015 for cancellation of patta granted in the name of respondents 4 and 5.

2. The case of the petitioner, as per the averments made in the affidavit filed in support of this writ petition, is as follows:

2.1 The land measuring to an extent of 78 cents comprised in Survey No.101, Ramapuram Village was owned by one Munuswamy Naicker and his brother-Kaliya Naicker. Pursuant to the family partition, the said Munuswamy Naicker has got 39 cents and he died intestate leaving behind his son Kuppuswamy, who also died intestate, leaving behind his two sons viz., Shanmugam and Ranganathan. After the death of Shanmugam, the property was in enjoyment of the fourth respondent and his brother S.Gopal and the petitioner's father Ranganathan. Thereafter, on 12.11.1993 another family partition was effected between them and the property was also sold by them.

2.2 The petitioner's father and the fourth respondent's father have another property comprised in Survey No.100 at Door Nos.5/50 and 5/51, Valluvar Salai, Ramapuram, Chennai, in which, the petitioner's father was allotted the northern portion i.e., Door No.5/51, Valluvar Salai, Ramapuram, Chennai - 89 and the fourth respondent and his brother were allotted the southern portion bearing Door No.5/50, Valluvar Salai, Ramapuram, Chennai. Further, there was a common pathway of four feet and it was enjoyed by both. Suppressing the same, the fourth respondent's brother executed a release deed dated 29.09.2005 bearing Document No.1630 of 2005 on the file of SRO, Saidapet in respect of the property bearing Door No.5/50 in S.No.100/1B, Ramapuram Village, Maduravoil Taluk, including two feet in the common pathway in favour of the fourth respondent, who subsequently obtained patta No.5777 dated 30.04.2014 in his favour, without notice to the petitioner.

2.3 Thereafter, the fourth respondent attempted to put up fence in the common pathway. Hence a legal notice was issued on 05.11.2014 to the fourth respondent, for which, there was no response. However, the fourth respondent executed a settlement deed in respect of his property including two feet in the common pathway in favour of his wife viz., the fifth respondent, who also obtained patta No.5886 dated 17.11.2014 in her favour, without notice to the petitioner. Hence, the petitioner filed a suit in O.S.No.565 of 2014 on the file of the Principal District

Munsif, Poonamallee for declaration and injunction and the same is pending. In the mean while, respondents 4 and 5 also filed a suit in O.S.No.572 of 2014 for permanent injunction and the same is also pending before the District Munsif, Poonamallee.

2.4 Pending the civil proceedings, the petitioner sent a legal notice dated 13.07.2015 to the Zonal Deputy Tahsildar for cancellation of pattas granted to respondents 4 and 5. Since no action was taken, he has made a representation dated 10.09.2015 to the third respondent, the copy of which is addressed to respondents 1 and 2. Finding no response, the petitioner has filed the present writ petition for the above stated relief.

3. Learned counsel for the petitioner submitted that suppressing the fact that the four feet common pathway is in enjoyment of both the parties, the respondents 4 and 5 have obtained patta Nos.5777 and 5886 respectively in respect of their property including two feet, out of four feet common pathway, without notice and without providing an opportunity of personal hearing to the petitioner. The same is denied by the learned counsel for the respondents 4 and 5.

4. However, irrespective of the submissions made on either side, considering the limited nature of the relief sought for herein, this Court directs the first respondent to consider the representation of the petitioner dated 10.09.2015, by affording an opportunity of personal hearing to the petitioner as well as to the respondents 4 and 5 and pass appropriate orders, with regard to cancellation of patta Nos.5777 dated 30.04.2014 and 5886 dated 17.11.2014 granted in favour of respondents 4 and 5 respectively. It is made clear that this Court is not expressing any opinion with regard to the merits of the claim made by the petitioner and it is for the first respondent to pass appropriate orders purely on merits and in accordance with law. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

5. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.
rk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Revenue Divisional Officer,
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+ 1 cc to Mr.V.Vargees Amalraja, Advocate S.R.No.23252

+ 1 cc to Mr.G.Vasudevan, Advocate Sr 22612

KR/9/6/2016

W.P.No.38971 of 2015



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