

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.2822 of 2013

and

M.P.Nos.1 & 2 of 2013

R.V.Muthian

.. Petitioner

Versus

1.The District Collector,
Erode District.

2.The District Collector,
Thirupur District.

3.The Divisional District,
Revenue Officer,
Thirupur District.

4.The Revenue Divisional Officer,
Dharapuram Taluk,
Thirupur District.

5.The Tahsildar,
Dharapuram Taluk,
Thirupur District.

6.The Commissioner,
Tharapuram Municipality,
Dharapuram,
Thirupur District.

7.Mr.Dhandapani

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent herein culminating in proceedings dated 29.5.2008 vide Na.Ka.No.25847 of 2008 U3 on the file of the 1st Respondent herein and the consequent order of assignment dated 30.6.2008 vide Na.Ka.No.1497/2008 B3 on the file of the 5th Respondent herein granting assignment Patta in favour of the 7th Respondent herein and quash the same and consequently direct the 6th

Respondent herein to evict the 7th Respondent as per the resolution No.505 dated 31.10.2012 within the time frame.

For Petitioner : Mr.M.Santhanaraman

For RR1 to 5 : Mr.S.Navaneethan
Additional Government Pleader

For R6 : Mr.V.S.Ramesh

Government Advocate

For R7 : No appearance

O R D E R

Heard Mr.M.Santhanaraman, learned counsel appearing on behalf of the petitioner, Mr.S.Navaneethan, learned Additional Government Pleader appearing on behalf of the respondents 1 to 5 and Mr.V.S.Ramesh, Government Advocate appearing on behalf of the sixth respondent.

2. The learned counsel for the petitioner submits that the petitioner is a resident of Door No.99/122/5, NGGO Colony, Dharapuram comprised in Old Survey No.697/2 of Sitharauthanpalayam of Dharapuram, Tirupur District. According to the learned counsel for the petitioner, in between the residence of the petitioner and the road in S.No.697/2, there is a vacant space measuring to an extent of 0.0036.0 Hectares. The said extent of land is a road poramboke. The seventh respondent has encroached the said land, which is classified as road poramboke. Therefore, the petitioner has sent notice to evict the seventh respondent as he has been encroaching upon the poramboke land situated between the petitioner's residence and the main road. When that being the position, the District Collector, Erode, by a proceeding dated 29.05.2008 in Na.Ka.No.25847 of 2008 U3, has granted an order of assignment and pursuant to the said order, the fifth respondent i.e., the Tahsildar, Erode has granted assignment of patta in proceedings dated 30.06.2008 in Na.Ka.No.1497/2008 B3 in favour of the seventh respondent. Aggrieved by the said order, the petitioner has filed this present writ petition.

3. Learned counsel for the petitioner would further submit that the proceedings of the District Collector dated 29.05.2008 itself discloses that in Survey No.69/1, the extent of 0.3294.5 hectares is classified as Thar Salai. In so far as Survey No.69/2, the extent of 0.0036.0 is classified as Natham. According to the petitioner, pursuant to the said order, the Tahsildar, Erode has granted an

assignment of patta in favour of the seventh respondent in S.No.69/2. The Collector himself admits that S.No.69/1 is classified as Thar Road as per the revenue records. Therefore, the said land cannot be assigned in favour of the seventh respondent. The contention of the petitioner is that the order passed by the first respondent granting patta in respect of Survey No.69/1 and the subsequent order passed by the Tahsildar alone is liable to set aside.

4. Learned Government pleader admitted the fact that the S.No.69/1 is classified as Thar Road in the revenue records. It is seen that the District Collector in his proceedings dated 29.05.2008 in Na.Ka.No.25847/2008 U3 has granted patta in favour of 7th respondent in T.S.No.69/2 to an extent of 0.3330.6.0, which is classified as Natham. However, the Tahsildar, Erode has passed an order in favour of the 7th respondent in his proceedings dated 30.06.2008 in Na.Ka.No.1497/2008 B2, wherein he had granted assignment of land in 69/1, which is classified as Thar Poromboke Road.

5. Therefore, it is clear that the Tahsildar, without taking into consideration the order passed by the second respondent in his proceedings that T.S.No.69/1, classified as Thar Road as per the revenue records, has granted patta in favour of the seventh respondent. The Tahsildar has no authority to grant assignment in favour of the third parties.

6. Learned counsel appearing on behalf of the Municipality submitted that if the order of the first respondent is cancelled, the Municipality will initiate necessary steps to restore the subject matter of the property in T.S.No.69/1, Sitharauthanpalayam of Dharapuram, Tiruppur District.

7. Under these circumstances, the following orders are passed:

1. The impugned order passed by the Tahsildar-4th respondent in Na.Ka.No.1497/2008 B2 dated 30.06.2008 granting an assignment order in respect of T.S.69/1 is quashed.
2. Liberty is granted to the Tahsildar-4th respondent to issue fresh orders in the light of the proceedings issued by the Deputy Collector in Na.Ka.No.25847/2008 U3 dated 29.05.2008, except S.No.69/1, Sitharauthanpalayam, Dharapuram, Thirupur District.
3. As per the undertaking of the learned counsel appearing for the Municipality before this Court, it is open to the Municipality-5th respondent to initiate proceedings against 7th respondent for recovering of the said land.

8. With the above observations, the Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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Copy to:

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- 6.The Commissioner,
Tharapuram Municipality,
Dharapuram,
Thirupur District.

+1cc to Mr.M.Santhanaraman, Advocate sr.73933

+1cc to Government Pleader sr.73693

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nm(co)
ss(31/01/2017)