

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.4736 of 2016

M.Sekar

... Petitioner

vs.

The Tahsildar,
Villupuram.

... Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records of the respondent in Na.Ka.No.A3/22131/2015 dated 31.12.2015 and quash the same insofar as the order rejecting to grant patta in respect of Survey No.489/2 - 46 cents situate at Maragathapuram Village, Villupuram Taluk.

For Petitioner : Mr.N.Suresh

For Respondents : Mrs.P.Rajalakshmi, GA

ORDER

The petitioner has come up with the present writ petition challenging the order dated 31.12.2015 passed by the respondent, insofar as the rejection of the petitioner's request to grant patta in respect of the property measuring an extent of 46 cents in survey No.489/2 in Maragathapuram Village, Villupuram Taluk is concerned.

2. It is the case of the petitioner that originally the properties in S.No.489/2 measuring an extent of 46 cents and in S.No.529/14 to an extent of 14 cents in Maragathapuram Village, Villupuram Taluk were allotted to his mother in the partition suit in O.S.No.640 of 1970 on the file of the District Munsif Court, Villupuram. Pursuant to the partition decree dated 27.02.1974, an execution petition in EP.No.945/1974 was filed and delivery was effected in respect of the said properties on 01.10.1974 and thereafter, she has been in possession and enjoyment of the same. After her death in 2004, the petitioner being her son, has been in possession and enjoyment of the properties as absolute owner and he submitted petitions on 16.09.2013 and 09.12.2013 for grant of

patta in his favour. On receipt of the same, the respondent sent a communication, dated 9.1.2014, directing the Deputy Tahsildar, Villupuram to enquire into the matter and file a report. Thereafter, there was no response on the part of the respondent. Hence, the petitioner filed a writ petition in WP.No.32894/2014, which was disposed of on 11.8.2015 by directing the respondent to consider the petitioner's petitions dated 16.9.2013 and 9.12.2013. Pursuant to the same, the respondent has granted joint patta by including the petitioner's name in respect of S.No.529/14, but rejected the petitioner's request in respect of S.No.489/2. Aggrieved against the same, the petitioner has filed the present writ petition for the above stated relief.

3. Learned counsel for the petitioner submitted that the respondent ought to have seen the decree passed in O.S.No.640 of 1970, in and under which, the petitioner's mother was granted with specific share in S.No.489/2. However, the respondent without even looking into the same, simply rejected the petitioner's request for transfer of patta in respect of S.No.489/2. Hence, the impugned order in respect of S.No.489/2 is perverse and non-application of mind on the part of the respondent and against the principles of natural justice.

4. Per contra, the learned Government Advocate appearing for the respondent submitted that the respondent, after perusing the records and after providing due opportunity of personal hearing to all the parties, passed the impugned order, which needs no interference by this court.

5. I have considered the rival submissions made on both sides and perused the documents placed before this court.

6. Admittedly, a suit in O.S.No.640 of 1970 came to be filed by the mother of the petitioner along with two others for partition and separate possession of the suit schedule properties. After due contest, the suit was decreed in favour of the mother of the petitioner and two others. According to the petitioner, he is the absolute owner of the properties allotted to his mother, after her death, by way of inheritance. Accordingly, he claimed for transfer of patta in respect of those properties. However, the respondent, without properly verifying the documents produced by the petitioner, passed the impugned order granting joint patta in respect of the property in S.No.529/14 and rejecting the petitioner's request for patta in respect of the property in S.No.489/2. In my considered view, the respondent ought to have considered the decree passed in O.S.No.640 of 1970, in which, the petitioner's mother was given a specific share in S.No.489/2 and the failure to do so is perverse, non-application of mind on the part of the respondent and in violation of the principles of natural justice. Therefore, the impugned order is liable to be set aside to that extent.

7. In the result, the order dated 31.12.2015 passed by the respondent is set aside insofar as the property in S.No.489/2 is concerned and the matter is remanded back to the respondent for passing fresh orders. The petitioner is permitted to furnish a copy of the decree passed in O.S.No.640 of 1970 dated 29.07.1970 on the file of the District Munsif Court, Villupuram to the respondent, within a period of two weeks from the date of receipt of a copy of this order. On filing of such document, the respondent is directed to consider the same and pass appropriate orders with regard to transfer of patta in respect of the property in S.No.489/2 on merits and in accordance with law, after providing due opportunity of personal hearing to the petitioner as well as to other necessary parties, if any, within a period of four weeks thereafter.

8. The writ petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rk

To

The Tahsildar,
Villupuram.

1 cc to Mr.N. Suresh, Advocate, Sr. 8671
1 cc to Government Pleader, Sr. 8489

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W.P.No.4736 of 2016

GJ (CO)
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