



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.40 of 2017
&
C.M.P. (MD) .No.467 of 2017

Ramanathapuram Municipality
Rep. through its Commissioner
Ramanathapuram District.

...Appellant

Vs.

1.M.Riswan

... 1st Respondent/
Writ Petitioner

2. The District Collector,
Ramanathapuram.

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

4. The Tahshildar,
Ramanathapuram Taluk,
Ramanathapuram.

... 2 to 4 Respondents/
1 to 3 Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order, dated 19.05.2016 in W.P.(MD).No.9331 of 2016

Prayer in WP(MD). 9331/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 2nd respondent to issue patta to the land to an extent of 5500 sq.ft comprising in Rajasuryamadaai Village Survey no.317/1A, Ramanathapuram District to the petitioner and other legal heirs of petitioners deceased father namely M.A.Kadar based on the recommendation given by the 3rd respondent in NA.KA.No.A/20158/2015 dated 27.01.2016.



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For Appellant : Mr.A.Kannan
For Respondents : Mr.G.Prabhurajadurai for R1

Mr.V.Muruganantham, for R2 to R4
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**]

Heard Mr.A.Kannan, learned counsel for the appellant, Mr.G.Prabhu Rajadurai, learned counsel for the first respondent and Mr.V.Muruganantham, learned Additional Government Pleader for the respondents 2 to 4. By consent of both parties, the writ appeal itself has taken up for final disposal.

2. This appeal is filed by the third party to the writ proceedings. The writ petition has been filed by the first respondent herein for a direction upon the third respondent herein to issue patta to the land to an extent of 5500 sq.ft., comprising in Rajasuryamadai Village Survey No.317/1A, Ramanathapuram District to him based on the recommendation of the third respondent, the Tahsildar, Ramanathapuram Taluk, Ramanathapuram District, vide proceedings dated 27.01.2016. The writ petition came to be disposed of at the admission stage without calling for a counter affidavit from the official respondents, that too by issuing a positive direction to issue patta.

3. Mr.A.Kannan, learned counsel for the appellant, Ramanathapuram Municipality has elaborately referred to the proceedings issued by the Settlement Officer Kovilpatti, dated 30.06.1976 and consequential proceedings of the District Revenue Officer, Ramanathapuram, dated 03.12.1991 and the orders passed in W.P.Nos.57 to 59 of 1992 filed by Sakunthala, Aysha Ammal and T.Murugesan, which were dismissed by the common order, dated 16.06.1999 and also confirmed by the Division Bench in W.A.Nos.1115 to 1117 of 1999 vide order dated 18.01.2005 and a suit filed by the predecessor-in-title of the writ petitioner in O.S.No.63 of 1985 on the file of Sub Court, Ramnad, was decreed vide judgement dated 28.11.1986 and submits that the said decree will not bind the Government, who are not the defendants in the suit. Further it is submitted that another suit along with interlocutory application in I.A.No.827 of 2017 was filed by Aysha Ammal in O.S.No.144 of 2014 on the file of District Munsif, Ramanathapuram and the said interlocutory application was dismissed vide judgment dated 21.01.2015. The learned counsel further referred to the reports submitted by the Tahsildar, dated 24.11.2016, wherein reference were made to various suits and other legal proceedings which are pending. Therefore it is submitted



that without impleading the Ramanathapuram Municipality, the first respondent could not have filed the writ petition and the Court committed a serious error in disposing the writ petition at the admission stage without impleading necessary parties.

4. The learned counsel for the first respondent/writ petitioner, though would agree that in the facts and circumstances of the case, the appellant should have been impleaded as a party and counter affidavit of all the official respondents are necessary to dispose of the writ petition, seeks to sustain the claim of grant of patta by referring various proceedings including the suits filed by the predecessor-in-title by exchange deed of settlement and Government Orders.

5. As observed earlier, the Court ought not have disposed of the writ petition at the admission stage by issuing a positive direction to grant patta. It may be true that writ Court can issue direction at the admission stage itself when, the relief sought for is an innocuous relief when there is failure on the part of the official respondents to exercise their statutory duty and the writ petitioner having exhausted all the remedies would have approached this Court and even in such circumstances, the Court would direct the official respondents to consider the matter on merits and in accordance with law. Further, the Court would be careful in observing that before an order is passed, notice to all concerned, who are likely to be aggrieved by any order, is required to be issued. Unfortunately in the instant case, no such procedure has been followed and the writ petition has been disposed of directing patta to be issued for a specified extent, within a period of 2 weeks.

6. Thus for the above reasons, we are fully convinced that the order under appeal requires to be set aside. Accordingly, the writ appeal is allowed and the order passed in the writ petition is set aside. The appellant herein is impleaded as fourth respondent in the writ petition and the registry is directed to make necessary corrections in the cause title and the writ petition is restored to the file of the Court to be heard and decided afresh. All the respondents are at liberty to file counter affidavits, after which the writ petition shall be listed before the appropriate bench for being heard and disposed of. No costs. Consequently, connected miscellaneous petition is closed.

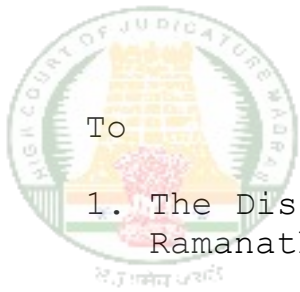
Sd/-

Assistant Registrar(AD-II)

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

1. The District Collector,
Ramanathapuram.
2. The Revenue Divisional Officer,
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Ramanathapuram District.
3. The Tahshildar,
Ramanathapuram Taluk,
Ramanathapuram.
4. The Commissioner,
Ramanathapuram Municipality
Ramanathapuram District.
5. The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Prabhurajadurai , Advocate Sr.No.54025
+1cc to Mr.A.Kannan, Advocate Sr.No.53877
+1cc to Mr.M.Seenisulthan, Advocate Sr.No.54437
+1cc to Spl.Government Pleader Sr.No.54255

jikr

vb/mms/15.05.2017/4p/10c

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