

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.4617 of 2008

and

M.P.No.2 of 2008

P.Paramasivam Udaiyar

... Petitioner

Vs.

1. The District Collector,
Villupuram,
Villupuram District.

2. The Assistant Director,
Land Survey Department,
District & Survey Office,
Villupuram.

3. The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

4. Chinnasamy Udayar

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to impugned communication of the 2nd respondent Na.Ka.A7/2170/07 dated 28.01.2008 and quash the same.

For Petitioner : Mr.M.K.Bhoopathy Rajan

For R1 to R3 : Mr.R.S.Selvam
Government Advocate

For R4 : Mr.R.Krishna Prasad

O R D E R

This Writ Petition has been filed to call for the records relating to impugned communication of the 2nd respondent in Na.Ka.A7/2170/07 dated 28.01.2008 and to quash the same.

2. The case of the petitioner is that he is the owner of Plot No.46/2B consisting of 2.5 Ares (0.04008 Sq. Metre) in Nagalur Village Kallakurichi Taluk, Villupuram District, as per the Patta bearing No.560 issued to him. The said property is the petitioner's family ancestral property and they had been in possession and enjoyment of the same since the date of purchase by the petitioner's forefathers. While so, on 11.03.2004, the petitioner found that the District Office by its employee namely, Mr.M.Jesudoss had done measurement alteration in the petitioner's plot and had corrected the field map arbitrarily without affording an opportunity or notice to the petitioner before any such alteration made in his plot. The said field map was signed by the Zonal Tahsildar on 25.06.2004 and on 30.06.2004. Thereafter, the petitioner has applied for obtaining copy of field map of his plot bearing No.46/2B and the same was issued to him on 26.05.2004, wherein, the petitioner has not found any alteration in the field map and hence, he sent representation to the 3rd respondent herein on 14.06.2004 and to the Tahsildar, Kallakurichi on 21.04.2004, 14.06.2004, 03.07.2001 and 21.07.2004. Since there was no response from them, he sent his further representation to the 1st respondent on 02.02.2007 enclosing the copy of the original filed map relating to his property and the altered filed map, by the registered post with acknowledgment card. In the said representation, the petitioner has high lighted the discrepancies revealed in the altered filed map from the original filed map, relating to his plot and requested the 1st respondent to take immediate steps for correcting the errors committed by their officials. Since there was no positive response, the petitioner was constrained to file Writ Petition in W.P.No.12224 of 2007 before this Court.

3. This Court, by an order dated 03.04.2007, had allowed the Writ Petition and had directed the 1st respondent to dispose of the petitioner's representation dated 02.02.2007 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of the said order. Thereafter, the 1st respondent had issued a direction vide letter dated 26.06.2007 to the 2nd respondent to comply with the order of this Court and accordingly, the 2nd respondent had complied the direction of this Court by duly issuing notice to the petitioner and to the 4th respondent herein.

4. Aggrieved by the action taken by the 2nd respondent, vide Proceedings in Na.Ka.No.A7/2170/07(2) dated 28.06.2007, the 4th respondent has preferred a Writ Petition in W.P.No.26477 of 2007 before this Court, on the ground that he was not given any notice about the above proceedings, before passing the impugned order which was obtained by suppressing the material facts and by misleading this Court.

5. The petitioner would also submit that he has filed vacate stay petition in M.P.No.2 of 2007 before this Court, against M.P.No.1 of 2007 in W.P.No.26477 of 2007. This Court, by an order dated 12.10.2007, had directed the 2nd respondent to issue notice to both the parties and to take proper decision in the matter, after giving necessary opportunity to both the parties, within a period of 12 weeks from the date of receipt of a copy of the said order and consequently, disposed of the Writ Petition in W.P.No.26477 of 2007. Thereafter, the 1st respondent has issued notice to the petitioner and to the 4th respondent vide proceedings in Na.Ka.No.A7/2170/07 dated 12.11.2007, directing them to appear for the enquiry before the 2nd respondent and to take appropriate action in respect of the above Writ Petition. Accordingly, the petitioner and the 4th respondent had appeared for the enquiry which was held on 08.01.2008 and raised their objections to take action for re-alteration of the measurements done by the District Officer. Since the 2nd respondent had acted arbitrarily in altering the measurement in 50/50 manner and confirmed the same in favour of the 4th respondent, the petitioner has approached this Court by way of this Writ Petition, invoking the Jurisdiction of this Court under Article 226 of the Constitution of India.

6. The 2nd respondent has filed the counter affidavit, which contains the written statement filed by the petitioner in O.S.No.260 of 2006. As per the scheme under the uploading of records, the sub division of a piece of land cannot be equally divided in order to round up the extent which ends in fraction, one of the land owners will get either a small increase after sub division. The first respondent has also passed an order on 26.06.2007 to restore the land records to its original position and 17(b) charges are pending against the Surveyor Jesudoss for the alleged correction.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

8. It could be seen from the records that the above disputed land, was originally belonged to one Chinnu Udayar and Chitta Udayar, grand father of the 4th respondent herein, who was holding the property measuring to an extent of 19 cents comprised in S.F.No.46/2, Nagalur Village, Kallakurichi Taluk. In the year 1924, there was a partition between the Chinnu Udayar and the 4th respondent's grand father Chitta Udayar, thereby, the southern extent of 9.1/2 cents were allotted to Chinnu Udayar and the northern extent of 9.1/2 cents were allotted to Chitta Udayar. Subsequently, the Chinnu Udayar sold his 9.1/2 cents to Pachamuthu Udayar, who is the father of the 4th respondent herein, under a sale deed dated 30.08.1940. After the demise of Pachamuthu Udayar, his 9.1/2 cents were allotted

to his two sons, namely, Krishnaswamy and the 4th respondent herein. Thereafter, the share of Krishnaswamy in the above property, was purchased by the 4th respondent's wife from the legal heirs of Krishnaswamy. Therefore, the 4th respondent herein claims that he is entitled to an extent of 9 ½ cents in the southern portion of S.F.No.46/2 and the remaining extent of 9 ½ cents in the northern portion, were purchased by his grand father and hence, he claims that he is entitled to get share from that part also.

9. It could be further seen from the records that during the UDR scheme, when the properties were resurveyed and sub divided, the 4th respondent has found that the total extent of his property, had been erroneously shown as 9 cents in S.F.No.46/2A and 10 cents in S.F.No.46/2B respectively. Immediately, on coming to know about the error, the 4th respondent has filed a petition to the Revenue Authorities and subsequently, the Revenue Authorities has corrected the error, by sub dividing 9.1/2 cents from each of the S.F.Nos.46/2A and 46/2B. Similarly, the petitioner has also found some corrections in the measurement alteration in his field map and hence, he made a representation to the 1st respondent on 02.02.2007 to rectify the same. Since there was no response to him, he filed a Writ Petition in W.P.No.12224 of 2007 before this Court, to direct the 1st respondent, to dispose of his representation dated 02.02.2007.

10. On perusing the materials available on record, it could be seen that the District Revenue Officer, without affording opportunity or without even sending any notice to the parties concerned, had arbitrarily come to the decision and made some alterations in S.F.Nos.46/2A and 46/2B and hence, both the parties had disputed the measurement alterations made in the said properties.

11. Under these circumstances, in order to give an opportunity to the petitioner and the 4th respondent, this Court is inclined to quash the proceedings of the 2nd respondent made in Na.Ka.A7/2170/07(2) dated 28.01.2008 and to direct the District Revenue Officer, to hold an enquiry by giving opportunity to the parties.

12. Accordingly, the proceedings of the 2nd respondent made in Na.Ka.A7/2170/07(2) dated 28.01.2008, is hereby quashed and the District Revenue Officer is directed to hold an enquiry, within a period of one month from the date of receipt of a copy of this order, by giving equal opportunity to the petitioner and the respondent, and thereafter, within three months to pass an order in accordance with law. The parties are also directed to cooperate with the enquiry, which is to be conducted by the District Revenue Officer.

13. With these directions, the Writ Petition is disposed of, No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Villupuram,
Villupuram District.
2. The Assistant Director,
Land Survey Department,
District & Survey Office,
Villupuram.
3. The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

+1cc to Mr.M.K.Bhoopathy Rajan , Advocate SR.No. 41949

+1cc to Mr.SARVABHUMAN ASSOCIATES SR.No. 41981

+1 CC TO GOVERNMENT PLEADER SR.NO. 42271

W.P.No.4617 of 2008
and
M.P.No.2 of 2008

ASK (24/09/2018)

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