

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. Nos.13453 & 13481 of 2008
and
M.P.No.1 & 2 of 2008

GeethaPetitioner in W.P.13481/2008

V.MuthulingamPetitioner in W.P.13453/2008

.Vs.

1. V. Radhakrishnan

2. The Revenue Divisional Officer,
Tirukoilur, Villupuram District.

3. The Tahsildhar, Ulundurpet,
Villupuram District.

4. The Regional Deputy Tahsildhar-I,
Ulundurpet, Villupuram District.

5. The District Collector,
Villupuram District,
villupuram.

...Respondents in both W.P's

Prayer in both the W.P's: The writ petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka.A3/4435/2007 dated 26.05.2008 on the file of the 2nd respondent herein and quash the same and further direct the 2nd respondent herein to hear the appeal filed by the 1st respondent herein on merits after giving an opportunity to the petitioner herein.

For Petitioner : Mr.T. Dhanyakumar

For Respondent -1 : Mr.S.Saravana Kumar

For Respondents 2 to 5 : Mr.R.S.Selvam
Government Advocate

COMMON ORDER

The petitioners prays for a common relief to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka.A3/4435/2007 dated 26.05.2008 on the file of the 2nd respondent herein and quash the same and further direct the 2nd respondent herein to hear the appeal filed by the 1st respondent herein on merits after giving an opportunity to the petitioner herein.

2. The learned counsel for the petitioner would submit that in W.P.No. 13453 of 2008 the petitioner was in possession of the property purchased by his mother in the year 1955 at Keeranur Village, Ulundurpet Taluk, Villupuram District, which bears the survey Nos. 368/1 (2.02 acres), S.No.369/6(1.51 acres) and 370/2(2.13 acres), and it was registered as document nos. 429 and 293 of 1955. The properties devolved to the legal heirs of the said Valiammal and one of the legal heirs, namely Mr.Muthulingam, the petitioner had settled his part of the property in favour of his wife namely one Geetha. The petitioner had given representation to the fourth respondent for effecting name change in patta and in the revenue records. The fourth respondent had directed to issue Joint patta in the names of Rajasekaran, Gunasekaran and Radhakrishnan and Muthulingam for the lands bearing S.No. 368/1,369/6, and 370/2. Accordingly, necessary changes have been effected and computerised patta was issued.

3. Aggrieved against the said order of the fourth respondent, the first respondent had filed an appeal before the second respondent on 01.08.2007. Thereafter notice were issued to the petitioners on 12.07.2007 fixing the hearing as on 23.07.2007. After several adjournments, the appeal was posted on 27.03.2008 for hearing and the second respondent issued another notice to the petitioner's on 25.05.2008 fixing the hearing on 02.06.2008. On the said date of hearing the petitioner's appeared. But the case was adjourned to 16.06.2008 with a direction that the petitioner should file the counter.

4. In the meanwhile the Revenue Divisional Officer/second respondent, who conducted the enquiry was transferred on 30.05.2008 and the succeeding Revenue Divisional Officer had taken note of the instructions in a separate file. On 26.05.2008, the petitioner's wife received the impugned order dated 25.05.2008 wherein, it is found that the appeal preferred by the first respondent was allowed directing the petitioners to approach the civil Court. When the petitioner attended the hearing on 27.03.2008, the matter was adjourned to 02.06.2008 and the 2nd respondent further adjourned the appeal to 16.06.2008 and directed the petitioners to file a Counter and the Revenue

Divisional Officer concerned was also transferred on 30.05.2008. To the shock and surprise, the petitioner's wife received a notice dated 26.05.2008 in which it is stated that the hearing date was fixed on 02.06.2008. However, the second respondent had passed the impugned order, without affording opportunity to the petitioners, which is illegal, arbitrary and against the principles of natural justice.

5. The learned counsel for the petitioners would further contend that the impugned notice signed on 25.05.2008 and despatched on 27.05.2008, fixing the hearing date at 11.00 a.m on 02.06.2008. On 02.06.2008, the matter was adjourned to 16.06.2008. However, the impugned order was passed on 26.05.2008 itself, without affording any opportunity to the petitioners, who were under the belief that the matter will be taken up on 16.06.2008. The second respondent had passed the impugned order in favour of the 1st respondent due to bias and extraneous reasons, since, the first respondent being an affluent person and the President of Ulundurpet Town, Panchayat.

6. A counter affidavit has been filed by the first respondent on 28.06.2018, in which it is stated that after issuing proper notices to the parties only the order impugned is passed and if aggrieved the petitioner could file revision as per Sec 13 of Tamil Nadu Patta Pass Book Act 1983. The learned counsel would further contend that in 1960 a registered partnership deed was executed and no factual division took place. Since, some of the properties had not been included in the said deed a fresh deed was executed in 1988-1989. After, he got separate patta the petitioner had sold some of the properties along with one Gunasekar and further they have gifted an 0.5 acres land in Survey No. 368/1 and 0.53 $\frac{1}{4}$ acres in R.S No.370/2 and 0.37 $\frac{3}{4}$ acres and R.S.No.369/6 and the said properties are to the share of the other legal heirs.

7. The learned counsel for the respondent would also contend that the respondent, got the patta transferred in his name and the petitioner is also aware of the same and the first respondent had purchased some lands in S.No.368 during the year 1975 - 1976 from his savings and if there is any grievance regarding the allotment, the petitioner ought to have approached the Civil Court which would be the appropriate remedy. Instead of doing so, the petitioners have interfering with their possession of property. The 4th respondent had included the petitioner's name in the property belonging to the first respondent by transfer of patta.

8. The Government Advocate has filed the counter of the RDO, Tiruppur who submits that the entire property belongs to one Venkatachalla Padaaiyachi and was partitioned according to the

partition deed made as document no. 813/60. He would also submit that the said properties were partitioned according to A,B,C,D and E schedule as mentioned in the partition deed. Accordingly, the following lands have been allotted to the husband of the petitioner(Muthulingam), which is as follows:

S.No.	R.S.No.	Extent (cents)
1.	398/1	0.52
2.	397/2	0.41
3.	397/1	0.40
4.	396/2	0.40
5.	396/3	0.07
6.	396/5	0.21
7.	396/6	0.08
8.	350/15	0.80
9.	396/1	0.09
10.	396/7	0.05
11.	356/3	1.05

9. While verification of the village accounts, an extent of 1.05 of land in R.S.No. 356/3 has been classified as ITI poromboke and the properties in Kattu Nemilli Village, Arasur Village and Veeramangalam village also have been allotted to Thiru. Muthulingam as per the "E" schedule. In the mean while, the following lands have been purchased by Tmt. Valliyammal w/o. Venkatachalam Padiyachi in Doc. No. 429 of 52 dated 21.03.1952.

S.No.	R.S.No.	Extent (cents)
1.	368/1	2.02
2.	369/6	1.51
3.	370/2	2.13
4.	370/1	0.25
5.	110/1F3	76x62 sft-house site

10. It is also seen from the records that Thiru. Muthulingam the "E" schedule partioner has executed the "E" schedule property to his wife Tmt.Geetha as gift deed as per the doc. No. 1156/2004 dated 15.07.2004 and also an extent of 0.55 acre in R.S.No.368/1 and 0.53 $\frac{3}{4}$ acre in Rs No.370/2 and an extent of 0.37 $\frac{3}{4}$ acres in R.S.No.369/6 executed in the

documents. The learned Government counsel would submit that the order has been passed on merits after hearing the parties and without any bias.

11. The learned Government Advocate submitted that only after due notice to the persons concerned and considering the claim made by each of them the 2nd respondent had set aside the order of the fourth respondent dated 25.04.2007 and had directed the parties to approach the Civil Court, which is a reasonable one and the order has been passed in the interest of the parties.

12. Heard both sides and perused the materials available on record.

13. From the perusal of Para -12 of the counter affidavit, it could be seen that the second respondent, before passing the impugned order, had not given any opportunity to the petitioner. Para:12 of the counter affidavit is extracted hereunder:

" Para:12. I state that with regard to Para 2 to 4: Necessary opportunities have been given to the petitioner to give his objection and other things recording this matter. So many summons have been issued to the petitioner to appear before the Revenue Divisional Officer, Tirukoilur for enquiring out he did not appear before the Revenue Divisional Officer for his objection.

The averments made in the para is not correct Tmt. Valliyammal w.o Venkatachalam (mother in law of petitioner) has purchased the properties in an extent of 2.02 acres in RS No. 368/1, 1.51 acres in RS No. 369/6 and 2.13 ares land in Rs. No. 370/2 in U.Keeranur Village as per doc. no. 429/52 dated 21.05.1952 and in the above lands were registered as joint holdings in the name of Rajasekaran and Radhakrishnan as per patta No. 669 in the village account. Hence, the petitioner has no right over the lands."

14. This Court had directed the Government Advocate on 28.06.2018, to produce relevant documents to verify the said issue and he has produced the records. On perusal of the said records, it could be seen that several adjournments were given for the said enquiry from 23.07.2007 to 07.01.2015. It has been observed that the petitioner was not present hence the matter was adjourned to 12.11.2007 and on that date, both the parties were not present and the first respondent had stated that the

respondents have filed a petition under Section 317 of Crpc., and the matter was posted on 10.12.2007. On 10.12.2007 there was no representation for both sides and the matter was finally adjourned to 28.01.2008 at 11.a.m . On 28.01.2008, no representation by either side hence, the matter was adjourned to 25.06.2008. In spite of despatch of notice by Register Post was sent on 28.04.2008, there was no representation by the petitioner on 26.05.2008 and hence, the order was passed by the second respondent directing the petitioner to approach the Civil Court to get the necessary remedy.

15. From the perusal of the records, it could be seen that no opportunities were given to the petitioners to give their objections regarding this matter and the second respondent had not given any reason regarding the circumstances in which the impugned order has been passed. So many summons have been issued to the petitioner to appear before the Revenue Divisional Officer, Thirukoviliur for enquiry and he has not appeared for giving objections. The second respondent based on the available records, had passed the impugned order and directed the petitioner to approach the Civil Court. without even giving personal opportunity to the petitioners.

16. In the above circumstances, this Court is of the view that the impugned order has been passed without giving a reasonable opportunity to the parties concerned. Hence, the impugned order is quashed and the matter is remitted back to the Revenue Divisional Officer/second respondent to conduct a fresh enquiry after giving reasonable opportunity to the parties concerned and pass appropriate orders. The Revenue Divisional Officer/second respondent is directed to issue notice to the parties concerned within a period of one month from the date of receipt of a copy of this order and eight weeks time is granted to complete the enquiry and to pass further orders in this regard.

17. With the above direction, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To.

1.The Revenue Divisional Officer,
Tirukoilur, Villupuram District.

2.The Tahsildar,
Ulundurpet, villupuram District.

3.The Regional Deputy Tahsildar I,
Ulundurpet, villupuram District.

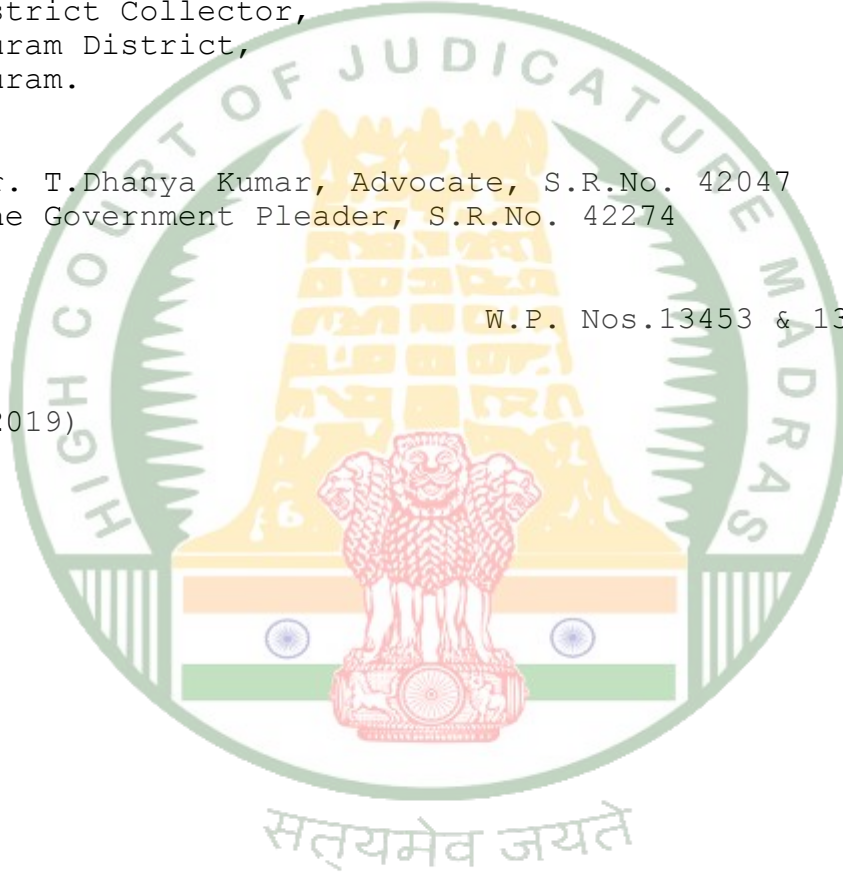
4. The District Collector,
Villupuram District,
Villupuram.

+1cc to Mr. T.Dhanya Kumar, Advocate, S.R.No. 42047

+2cc to the Government Pleader, S.R.No. 42274

W.P. Nos.13453 & 13481 of 2008

SKV(CO)
GN(21/01/2019)



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