



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.(MD)No.6919 of 2018

and

W.M.P.(MD)Nos.6660 and 6661 of 2018

S.S.Janarthan

... Petitioner

-Vs-

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The District Revenue Officer,
Office of the DRO,
Tuticorin District.

3.The Revenue Divisional Officer,
Beach Road, Tuticorin.

4.The Revenue Tahsildar,
Tuticorin Taluk,
Tuticorin.

... Respondents

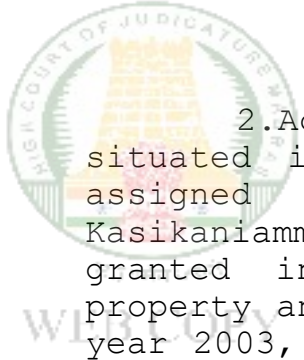
Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order passed by the 4th respondent vide his proceedings Ref.No.Na.Ka.Aa2/15992/2017 dated 12.02.2018 and quash the same and consequently direct the respondents to restore the patta in favour of the petitioner and other legal heirs of Mrs.Kasikaniammal for an extent measuring 1.62 acres in Survey No.509/6 situated in Kumaragiri Village, Tuticorin Taluk, Tuticorin.

For Petitioner : Mr.V.Meenakshi Sundaram,
For Mr.K.Vijai Rajesh

For Respondents : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

ORDER

This writ petition has been filed, challenging the order passed by the 4th respondent rejecting the petitioner's request to issue patta.



2. According to the petitioner, a land in Survey No.509/6 situated in Kumaragiri Village, Tuticorin Taluk, was originally assigned in favour of the petitioner's mother, namely, Kasikaniammal, by an order dated 27.12.1969 and a patta was also granted in her favour. She was in possession and enjoyment of the property and cultivating the same till her demise. She died in the year 2003, after her demise the petitioner along with his father, brothers and sisters have been in possession and enjoyment of the property. While so, the father of the petitioner also died. Thereafter, the petitioner along with his brothers and sisters, being the legal heirs of the deceased, approached the authorities for transfer of patta in their name. At that time, they have found that the land has been shown as "Assessed Waste" in the revenue records. Since the entry in the Revenue Register has been wrongly made as "Assessed Waste", the petitioner and other legal heirs made a representation to the authorities to correct the entry, but the same was not considered. Hence, they were constrained to file a writ petition in W.P.(MD)No.14882 of 2012, seeking restore / transfer the patta in the name of the petitioners therein, and this Court, after hearing the parties, has held that despite the fact that patta was originally granted in the name of the mother of the petitioner on account of the assignment, the land was subsequently classified as poramboke land without any notice to the petitioners, and therefore, this court directed the Revenue Divisional Officer, Tuticorin, and Revenue Tahsildar, Tuticorin, to conduct an enquiry, and pass suitable orders on the representation of the petitioner and others, after affording opportunity to them. Thereafter, the impugned order has been passed by the fourth respondent stating that there is no record available to show that the land has been assigned in favour of the petitioner's mother and rejected their claim. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner would contend that the petitioner has sufficient records to show that the land in question was assigned to his mother. According to him, a patta pass book was issued by the revenue authorities, wherein it has been clearly stated that the land has been assigned in favour of the petitioner's mother. Apart from that, in an earlier round of litigation, this Court has also held that the land in question was assigned in favour of the petitioner's mother and without considering all those materials, the Revenue Tahsildar, Tuticorin, has mechanically passed the impugned order as if there is no record available to show that the land was assigned to the mother of the petitioner.

4. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the Tahsildar, Tuticorin, has passed the impugned order based on the revenue records, and as per the revenue records, there is no entry available to show that the land has been assigned in favour of the petitioner's mother, and there is no infirmity in the order passed by the Revenue Tahsildar, Tuticorin.



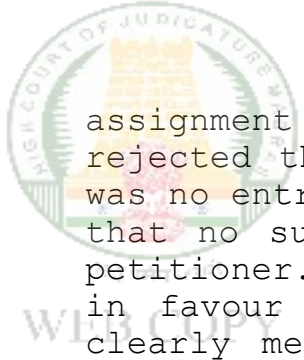
5. I have considered the submissions made by the learned counsel on either side, and perused the materials available on record carefully.

6. The impugned order has been passed on the ground that there is no entry in the Village Assignment Register, regarding the assignment granted in favour of the petitioner's mother and in the 'A' Register. From the perusal of the records, it could be seen that a patta passbook has been issued to the petitioner's mother, wherein, it has been clearly mentioned that the land was assigned to the mother of the petitioner and that the petitioner has also produced receipts for payment of taxes. Apart from that in the earlier writ petition filed by the petitioner and other legal heirs, this Court, after having considered the entire materials, specifically held that an assignment was made in favour of the mother of the petitioner. The relevant portion of the order reads as follows:-

"5. It is seen that originally, the patta was issued in the name of the mother of the petitioners on account of assignment of land and thereafter, the said land was classified as a poramboke land without any intimation or notice to the petitioners, which act of the authorities cannot be countenanced at any cost. It is also seen that the petitioners were also made to run from pillar to post to know the exact position as of now and they have also not been furnished with the order copy of cancellation of patta, despite they made a representation to the District Collector.

6. In such view of the matter, the respondents 2 and 3 are directed to conduct an enquiry with regard to the claim of the petitioners on the basis of their representation dated 14.05.2010 in line with the communication of the District Collector / first respondent, dated 16.07.2010 and thereafter, pass appropriate orders on the issue, after affording an opportunity of hearing to the petitioners and other interested parties, if any. Such exercise be completed within a period of six weeks from the date of receipt of a copy of this order."

7. This court after considering the materials available on record has held that pursuant to the order of assignment in favour of the mother of the petitioner, a patta was also granted in her favour, therefore, this court directed the concerned Tahsildar to consider the request for transfer of patta and pass appropriate orders on the representation made by the petitioner along with the other heirs of the deceased Kasikaniammal. But, the Tahsildar, without considering none of the materials submitted by the petitioner, has mechanically come to a conclusion that in the village assignment register, there was no entry in respect of the



assignment granted in favour of the mother of the petitioner and rejected the request for transfer of patta. Merely because there was no entry found in the village revenue records, it cannot be said that no such assignment was made in faovur of the mother of the petitioner. The Tahsildar ought to have considered the patta issued in favour of the mother of the petitioner wherein, it has been clearly mentioned that the land in question was assigned in her favour. Apart from that to show their possession and enjoyment, the petitioner has also produced Kist and other Tax receipts. The Tahsildar without considering all those materials has mechanically rejected the claim of the petitioner based on the village revenue records. Thus, this court is of the view that the impugned order has been passed by the Tashildar on a total non application of mind and so, it is liable to be set aside.

8. In the above circumstances, the impugned order passed by the fourth respondent is set aside. The matter is remanded back to the fourth respondent, and the fourth respondent is directed to consider all relevant records including the patta passbook issued in favour of the petitioner's mother and the Kist and other Tax Receipts and also the order passed by this Court in W.P.(MD)No.14882 of 2012, and pass suitable orders after affording sufficient opportunity to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. Until such final order is passed by the fourth respondent, the respondents are directed to maintain status quo as-on-today and further directed not to assign the land to any third party.

9. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector, Tuticorin District, Tuticorin.

2.The District Revenue Officer, Office of the DRO,
Tuticorin District.

3.The Revenue Divisional Officer, Beach Road, Tuticorin.

4.The Revenue Tahsildar, Tuticorin Taluk, Tuticorin.

+1CC to M/s.Niranjan S.Kumar, Advocate, SR.No. 58846

+1CC to the Special Government Pleader SR.No.59518

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