

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 28.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**W.P(MD)No.23557 of 2018**

WEB COPY

E.Nirmala Devi

... Petitioner

Vs.

1. The District Collector,
Trichy District,
Trichy.
2. The Revenue Divisional Officer,
Musiri,
Trichy District.
3. The Tahsildar,
Thottiyam Taluk,
Trichy District.
4. The Firka Surveyor,
Periyapallipalayam,
Thottiyam Taluk,
Trichy District.
5. Sivakumar,
S/o.Arumugam

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in File No.2018/0105/15/027038, dated 26.10.2018, quash the same and direct the respondents 3 and 4 to issue separate patta to the petitioner for the land measuring 7 acres 36-1/2 cents situated on the southern half of S.No.63 of Periyapallipalayam Village, Thottiyam Taluk, Trichy District.

For Petitioner : Mr.R.Subramanian

For R1 to R4 : Mrs.J.Padmavathy Devi
Special Government Pleader**ORDER**

Mrs.J.Padmavathy Devi, learned Special Government Pleader takes notice for the respondents 1 to 4.

2. This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent in File No.2018/0105/15/027038, dated

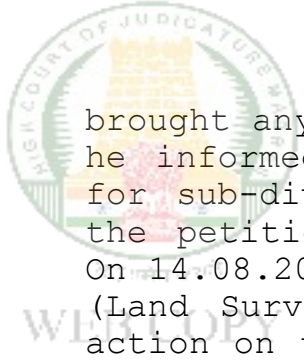


26.10.2018 and direct the respondents 3 and 4 to issue separate patta to the petitioner for the land measuring 7 acres 36-1/2 cents situated on the southern half of S.No.63 of Periyapallipalayam Village, Thottiyam Taluk, Trichy District.

3.The case of the petitioner is that the cultivable lands bearing S.No.63, measuring 7 acres 36-1/2 cents out of 14 acres 78 cents of Periyapallipalayam Village was allotted to the petitioner's husband - Ezhilarasu by way of family partition, dated 07.07.1972. The said partition was entered between the petitioner's husband, his brother Sivakumar/fifth respondent herein and his father Arumuga Gounder. As per the said partition, 'B' Schedule was allotted to the husband of the petitioner and 7 acres 36-1/2 cents situated on the northern side of the above land was allotted to the fifth respondent in the partition deed and the same was referred to as 1st item in 'C' Schedule. In effect, the northern half of S.No.63 was allotted to the fifth respondent and southern half was allotted to the petitioner's husband. They took possession of their respective shares and they have been in possession and enjoyment of the same by cultivating various crops. Joint Patta No.699 was issued to the petitioner's husband and the fifth respondent herein, the brother of the petitioner's husband.

3.1.The petitioner's husband was working as Doctor in Government Hospital, Namakkal District. Taking advantage of the petitioner's husband's absence at Periyapallipalayam, the fifth respondent has started to give various troubles to the petitioner and in the year 2006, the fifth respondent has laid a water pipe line in the property of the petitioner's husband and he filed O.S.No.151 of 2006 for mandatory injunction to remove the water pipe line. Subsequently, the petitioner's husband died in the year 2013 and thereafter, the petitioner's name was included in Joint Patta No.699 and at present, the petitioner is residing at Namakkal District and she has no one to assist her. Taking advantage of the same, the fifth respondent is trying to grab the entire land. Hence, on 11.08.2017, the petitioner had applied for sub-division of her property in S.No.63 and the same was kept pending. Subsequently, the third respondent informed that he closed the application and instructed her to give a fresh application.

3.2.On 12.04.2018, the petitioner gave another application for sub-division through online and paid necessary fees for the same. The fourth respondent/Firka Surveyor informed that the suit filed by the petitioner's husband is pending and hence, he was not in a position to effect sub-division. The petitioner informed him that her husband filed O.S.No.151 of 2006 to remove the pipe line put up by the fifth respondent and he did not pursue the same and therefore, the same was dismissed for default on 18.09.2012. Hence, the petitioner has obtained a certified copy of the suit register on 12.06.2018 and submitted the same to the respondents 3 and 4. After perusing the same, on 28.07.2018, the fourth respondent has come to the petitioner's land for effecting sub-division and he did not



brought any equipment to measure the land. After visiting the land, he informed the petitioner that the fifth respondent is objecting for sub-division and left the place. Immediately, on 07.08.2018, the petitioner gave a detailed representation to the authorities. On 14.08.2018, the Assistant Director-cum-P.A. to District Collector (Land Survey), Trichy, has directed the third respondent to take action on the petitioner's representation dated 07.08.2018. In the second week of November, 2018, when the petitioner verified the status of her application, she was shocked to know that the third respondent has closed the petitioner's application on 26.10.2018 as Court case is pending.

4.The learned counsel for the petitioner submitted that no other cases are pending against the petitioner and the fifth respondent and it is with regard to removal of water pipe line, which is running through the petitioner's land and there is no dispute regarding title and therefore, the respondents 3 and 4 ought to have considered the petitioner's representation for sub-division and issue separate patta to her.

5.I have heard the learned counsel appearing for the parties and perused the materials available on record.

6.It is seen from the records that even without holding any enquiry, the respondents 3 and 4 have unilaterally closed the application on their own, which is a clear violation of principles of natural justice. Therefore, this Court directs the third respondent to consider the representation of the petitioner dated 07.08.2018 afresh and after holding enquiry, pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

7.With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The District Collector,
Trichy District,
Trichy.

2. The Revenue Divisional Officer,
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Trichy District.



3. The Tahsildar,
Thottiyam Taluk,
Trichy District.

4. The Firka Surveyor,
Periyapallipalayam,
Thottiyam Taluk,
Trichy District.

+1cc to Mr.R.Subramanian, Advocate Sr.No.97428

+1cc to SPL.Govt.Pleader, Sr.No.97605

SMN2

KM/BK/SAR3/18.12.2018/4P/7C

W.P (MD) No.23557 of 2018
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