



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.10863 of 2015

WEB COPY

M.Devaraj

... Petitioner

Vs

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The District Land Survey and Settlement Officer,
Kanyakumari District,
Nagercoil.

3.The Tahsildar,
Vilavancode Taluk,
Vilavancode,
Kanyakumari District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to issue patta to the petitioner in respect of the land measuring an extent of 12 cents comprised in survey Nos.598/6 and 603/6 situated at Methukummal Village, Vilavancode Taluk, Kanyakumari District in accordance with the order passed by this Court in W.P. (MD)No.7093 of 2008 dated 18.12.2012.

For Petitioner : Mr.B.Vijay Karthikeyan

For Respondents : Mr.M.Karuppasamy
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The writ petitioner's mother Sathyappu filed O.S.No.653 of 1982 on the file of the Principal District Munsif, Kuzhithurai seeking the relief of declaration and permanent injunction, in respect of the suit schedule properties. The suit schedule properties were comprised in Re.Survey Nos.598/5, 598/6, 603/5 and 603/6 and totally measured 2 acres and 15 cents. The suit was decreed on 08.11.1990. The Government of Tamil Nadu represented

by the District Collector, Kanyakumari District at Nagercoil, was the sole defendant in the said suit.

3. Aggrieved by the judgment and decree passed by the trial Court, the Government filed A.S.No.33 of 1993 before the Sub Court, Kuzhithurai. The First Appellate Court dismissed the appeal on 24.06.1994. Eventhough, it is mentioned that a Second Appeal was filed questioning the judgment and decree passed by the first Appellate Court, it was not numbered for a very long time. Therefore, the petitioner's mother Sathyappu filed W.P.(MD)No.9760 of 2004 for directing the Revenue Department to make necessary changes in the relevant revenue record and also in the survey and settlement records.

4. All that the petitioner's mother wanted was enforcement of the decree made in her favour. The said writ petition was partly allowed and the official respondents were directed to give effect to the decree passed in O.S.No. 653 of 1982 dated 08.11.1990 and as confirmed in A.S.No.33 of 1993 dated 24.06.1994 expeditiously.

5. Aggrieved by the aforesaid order passed by the learned Single Judge, the District Collector, Kanyakumari District and others filed W.A.No.431 of 2006. The Writ Appeal was dismissed on 10.03.2008. In the meanwhile, the petitioner's mother passed away and the petitioner came on record in W.P.(MD)No.7093 of 2008. The prayer made in the said writ petition was on the same line as made earlier. By order dated 18.12.2012, once again the authorities were directed to enforce the orders earlier passed. Again there was no compliance. Therefore, the petitioner was constrained to file Contempt Petition No.254 of 2014.

6. When the matter was taken up for hearing, the authorities produced a copy of the patta issued in favour of the writ petitioner. Recording the same, the contempt petition was closed on 11.07.2014.

7. The grievance of the writ petitioner is that the patta issued in his favour covers only two acres. Therefore, the petitioner wants issuance of patta for the remaining extent of land namely 15 cents. It is not in dispute that the Civil Court granted declaratory decree in favour of the petitioner's mother for an extent of 2 acres 15 cents. Therefore, the petitioner ought to have been issued patta for the extent of land covered by the Civil Court decree.

8. The petitioner had filed this writ petition in June, 2015. It is taken up for final disposal in April, 2019. That is after a gap of four years. Till date, the counter affidavit has not been filed. This Court had to spend quite sometime by going through the materials on record. If a proper counter affidavit had been filed, the time of the Court would have



been considerably saved.

9.It is seen that the petitioner's mother had to file a suit and defend the first appeal. She filed a writ petition and defend a writ appeal. She filed one more writ petition No.7093 of 2008. She passed away during the pendency of the said writ petition. The petitioner came on record and thereafter had to file Cont.P.(MD) No.254 of 2014. Still the decree passed in favour of the writ petitioner's mother was not fully complied with. There was only a substantial compliance. Therefore, seeking full compliance of the decree passed by the Civil Court, this writ petition came to be filed.

10.Even after a lapse of four years, the respondents has not chosen to file any counter. This Court could not receive any assistance from the respondents. Since the respondents had vexed the writ petitioner's family and since the decree passed by the Civil Court has not been fully complied with, since no counter affidavit was filed and since the time of the Court was wasted, this Court while allowing this writ petition levies a cost of Rs.5,000/- on the respondents.

11.Accordingly, this writ petition is allowed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The District Land Survey and Settlement Officer,
Kanyakumari District,
Nagercoil.

3.The Tahsildar,
Vilavancode Taluk,
Vilavancode,
Kanyakumari District.



+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-58872[F] dated 04/04/2019)

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