



WEB COPY

W.P(MD)No.21729 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.10.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.SUNDAR**

W.P(MD)No.21729 of 2019

and

W.M.P. (MD)No.18464 of 2019

Kanthasamy

... Petitioner

/Vs./

1.The Sub Collector,
Devakkottai, Sivagangai District.

2.Sabasthiammal

3.Alphons

4.Pushpam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining the impugned order in Mu.Mu.A1/514/2017 dated 06.12.2018 passed by the 1st respondent and quash the same.

For Petitioner : Mr.M.Ramu

For R-1 : Mr.K.Mu.Muthu

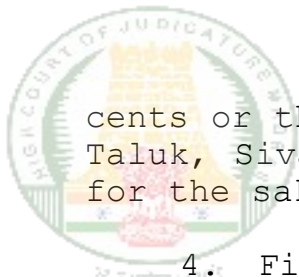
Additional Government Pleader

ORDER

Mr.M.Ramu, learned counsel on record for writ petitioner and Mr.K.Mu.Muthu, learned Additional Government Pleader who accepts notice on behalf of first respondent (official respondent) are before this Court.

2. To be noted, respondents 2 to 4 are private respondents. Also to be noted, from the case file placed before this Court and from the submissions made at the bar, it comes to light that instant writ petition can be disposed of by passing an order which is not adverse to the rights of the respondents 2 to 4 (private respondents). With consent of learned counsel for writ petitioner and learned State counsel, main writ petition is taken up, heard out and is being disposed of.

3. As the entire matter now turns on a very narrow compass, it is not necessary to advert to the facts in great detail. In other words, short facts shorn of unnecessary details ie., facts which are imperative for appreciating this order will suffice. Suffice to say that the writ petitioner is concerned with 'land admeasuring 53



cents or thereabouts in S.No.36/1E3 in Nagamathi Village, Devakottai Taluk, Sivagangai District' (hereinafter referred to as 'said land' for the sake of brevity, clarity and convenience)

4. First respondent ie., jurisdictional 'Revenue Divisional Officer' ('RDO' for brevity) passed an order dated 06.12.2018 bearing reference No.Moo.Mu.A1/5141/2017 which shall hereinafter be referred to as 'impugned order' for the sake of brevity, which has been called in question.

5. Suffice to say that impugned order touches upon rights of writ petitioner qua said land.

6. Notwithstanding this position, impugned order has been passed without notice to the writ petitioner. Writ petitioner has not only not been put on notice, as is obvious, writ petitioner was not given reasonable opportunity to put forth his case.

7. Learned State counsel submits that impugned order has been passed by the first respondent under Section 12 of 'The Tamil Nadu Patta Pass Book Act, 1983 (4 of 1986)' (hereinafter referred to as 'said Act' for the sake of brevity, convenience and clarity). It is also pointed out that alternative remedy is available by way of revision to the jurisdictional 'District Revenue Officer' ('DRO' for brevity) under Section 13 of said Act.

8. In response to this, learned counsel for writ petitioner submits that this is a case of violation of 'principles of natural justice' ('NJP' for brevity) and it is submitted that NJP is a well established exception to the alternative remedy rule. In other words, it is the specific submission of learned counsel for writ petitioner that alternative remedy is a rule of discretion. Violation of NJP is one of the exceptions to the alternative remedy rule which no doubt is a self imposed restraint qua writ jurisdiction. To put it differently alternate remedy rule is not a rule of compulsion or an absolute rule but is only a rule of discretion.

9. In the instant case, a perusal of the impugned order reveals that writ petitioner has not been put on notice. There can be no two opinions that writ petitioner ought to have been put on notice and reasonable opportunity ought to have been given to the writ petitioner pre-impugned order, as the impugned order has altered the rights of the writ petitioner.

10. On this sole ground, this Court is inclined to set aside the impugned order. Though obvious, it is made clear that impugned order is set aside solely on the ground of violation of NJP and not on merits. To put it differently, this Court is not expressing any opinion or view on the merits of the matter.



11. Impugned order is set aside and the matter is sent back to the first respondent for hearing the appeal under Section 12 of said Act on its own merits and in accordance with law after putting all concerned on notice and after giving reasonable opportunity to all concerned including the writ petitioner.

WEB COPY

12. Aforesaid exercise shall be completed by the first respondent as expeditiously as possible and in any event, within twelve (12) weeks from the date of receipt of a copy of this order.

13. Copy of the outcome of the proceedings shall be communicated to the writ petitioner and all concerned under due acknowledgment within seven (7) working days from the date of the order.

14. Writ Petition is allowed with the aforesaid directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

sm

To

The Sub Collector,
Devakkottai,
Sivagangai District.

+1 CC to M/s.M.RAMU, Advocate SR-93042.
+1 CC to SPL GP SR-93236.

Order made in
W.P(MD)No.21729 of 2019
(2/2)
Dated:
18.10.2019

CS (01.11.2019) 3P 4C