

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 18608 of 2013
and M.P.Nos. 2 to 4 of 2013

V. Sudhakaran ... Petitioner

-vs-

1. The Revenue Divisional Officer,
Coimbatore - 18.

2. The Tahsildar,
Mettupalayam Taluk,
Coimbatore District.

3. P.K. Thangavelamy (Deceased)

4. The Inspector of Police,
Anti Land Grabbing Special Wing,
O/o. Superintendent of Police,
Coimbatore - 18.

5. Tharan Sri Sakthi

6. Jai Gudan ... Respondents

[R5 & R6 are substituted as Legal heirs of the deceased
3rd respondent vide order dated 05.02.2020]

PRAYER : Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order Mu.Mu.194/2013/ A2 dated 18.06.2013 passed by the 1st respondent and the consequential order dated 26.06.2013 made in Na.Ka.No. 5896/2013/S1 passed by the 2nd respondent, quash the same and consequently direct the respondents 1 and 2 to restore the mutation entries, and forbear the 3rd respondent from interfering with the petitioner's Right to Property over an extent of 23 cents comprised in S.F.No.742/C, Bellaepalayam Village, Mettupalayam Taluk, Coimbatore District.

For Petitioner : Mr.Ma.Pa. Thangavel
For Respondents : Mr.N. Srinivasan
Additional Govt. Pleader
[RR1, 2 & 4]
R3 - died
Mr.R. Kannan [R5 & R6]

ORDER

Heard Mr.Ma.Pa. Thangavel, learned counsel for petitioner, Mr.N.Srinivasan, learned Additional Government Pleader for respondents 1, 2 and 4 and Mr. R.Kannan, learned counsel for respondents 5 and 6 legal heirs of the deceased 3rd respondent.

2. With the consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. The petitioner has filed this writ petition challenging the proceedings of the 1st respondent dated 18.06.2013 and the consequential order passed by the 2nd respondent dated 26.06.2013 transferring the patta in favour of the deceased 3rd respondent and for consequential direction to restore the revenue entries in favour of the petitioner and to forbear the deceased 3rd respondent from interfering with the petitioner's Right to Property measuring to an extent of 23 cents comprised in S.F.No.742/C, Bellaepalayam Village, Mettupalayam Taluk, Coimbatore District.

4. The learned counsel appearing for the respondents 3/5 & 6 raised a preliminary objection to the maintainability of the writ petition contending that if the petitioner is aggrieved by the order passed by the 1st respondent, he should have filed a review petition before the District Revenue Officer and the writ petition should not have been entertained. This petition can be entertained for more than one reason. Firstly, this writ petition is pending from the year 2013 and the parties have not contesting the matter before this Court effectively and it would be inequitable to now relegate the petitioner to avail an alternate remedy. Secondly, the impugned order has been passed without notice to the petitioner, in utter violation of principles of natural justice and this would be a good ground to entertain a writ petition under Article 226 of the Constitution of India, though a revisional remedy is available under the statute. Thus, the preliminary objection raised by the learned counsel for respondents 3/ 5 & 6 is rejected.

5. So far as the merits of the case is concerned, this Court need not venture into the same in view of the subsequent developments i.e., judgment of the Civil Court in the suits filed by the petitioner and the 3rd respondent/ 5 & 6 in respect of the very same property. The petitioner and others filed O.S.No.288 of 1995 on the file of the District Munsif Court, Mettupalayam, seeking for a declaration of their title to the property and for permanent injunction. Similarly, the 3rd respondent and others filed O.S.No.282 of 1995 for the same prayer. On 27.08.1998, the suit filed by the petitioner and others was decreed and the suit filed by the 3rd respondent & others was dismissed.

6. Aggrieved by the same, 3rd respondent and others filed appeals in A.S.No. 5 of 1999 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Coimbatore. By common judgment dated 29.06.2001, the judgment and decree of the trial Court was reversed. Consequently, the suit filed by the petitioner and others was dismissed and the suit filed by the 3rd respondent and others was decreed. The petitioner and others preferred second appeals before this Court in S.A.Nos.2122 & 2123 of 2001, those appeals have been allowed by common judgment dated 01.11.2018 and restored the judgment and decree of the Trial Court dated 27.08.1998. Thus, as on the date, the right of the petitioner and others over the property in question has been declared. The respondents 5 and 6, the legal heirs of the deceased 3rd respondent filed review application in Review Application Nos. 9 and 10 of 2019 to review the common judgment in S.A.Nos.2122 and 2123 of 2001. These review applications have been dismissed by common order dated 24.09.2019.

7. It is settled legal position that the revenue authorities cannot adjudicate into the title of a property in a patta proceedings. In the instant case, when the Civil Court has declared the title to the petitioner and others in O.S.No.288 of 1995, which has attained finality. It goes without saying that the decree passed in the suit is binding on the revenue officials and the patta register should be accordingly mutated.

8. It is submitted by the learned counsel for respondents 5 and 6 that Special Leave petition has been filed as against the judgment of this Court in S.A.Nos. 2122 & 2123 of 2001. However, there is no proof to substantiate the said submission.

In the light of the above, the writ petition is allowed and the impugned order is set aside and the respondents 1 and 2 are directed to restore all the revenue entries as stood prior to passing of the impugned

order by entering the name of the petitioner within a period of three(3) weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (MD)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer,
Coimbatore - 18.
2. The Tahsildar,
Mettupalayam Taluk,
Coimbatore District.
3. The Inspector of Police,
Anti Land Grabbing Special Wing,
O/o. Superintendent of Police,
Coimbatore - 18.

+1cc to Mr.Ma.P. Thangavel, counsel for petitioner,
S.R.No.012718
+1cc to Government Pleader, counsel for RR1, 2 and 4
S.R.No.13625
+1cc to Mr.R.Kannan, counsel for R5 and R6,
S.R.No.12748.

W.P.No. 18608 of 2013
and M.P.Nos. 2 to 4 of 2013

NR (CO)
VSI-2(28.05.2020)