



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.3169 and 15214 of 2013 and
M.P.Nos.2 to 4 of 2013 in W.P.No.3169 of 2013
and M.P.Nos.1 & 2 of 2013 in W.P.No.15214 of 2013

W.P.No.3169 of 2013

P.Banumathi

... Petitioner

Vs.

- 1.The District Revenue Officer,
Tiruppur, Tiruppur District.
- 2.The Tahsildar,
Kangayam Taluk, Tiruppur District.
- 3.The Zonal Deputy Tahsildar,
Kangayam - 638 701,
Tiruppur District.
- 4.The Sub Registrar,
Vellakovil Sub Registrar Office,
Vellakovil - 638 111,
Tiruppur District.
- 5.V.S.Chenniyappan
- 6.K.M.Subramani
- 7.M.Palanivelu
- 8.Sundaram

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 05.06.2012 made in Regn.6 No.R1420A/12 passed by the 3rd respondent, quash the same consequently direct the respondents 1 to 3 to restore the mutation of records relating to the properties measuring 5.02 ½ acres comprised in S.F.No.397/1 corresponding to Natham R.S.F.No.397/1A1, 1A2, 1A3, 1A4 of Muthur Village, Kangayam Taluk, Tiruppur District in petitioner's name and take action against the erring persons by considering the representation dated 26.11.2012.



WEB COPY

For Petitioner : Mr.N.Manokaran

For Respondents

R1 to R4 : M/s.Narmadha Sampath
Additional Advocate General
Assisted by M/s.A.Madhumathi
Special Government Pleader
R5 to R8 : Mr.M.R.Thangavel

W.P.No.15124 of 2013

P.Banumathi

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by its
Secretary to Government,
Department of Home, Fort St. George,
Chennai - 600 009.

2.The Inspector General of Police,
West Zone, Coimbatore.

3.The Superintendent,
Tiruppur District, Tiruppur.

4.The Inspector of Police,
District Crime Branch,
Anti Land Grabbing Special Wing,
Tiruppur.

5.N.S.N.Nataraj, MLA,
Kangayam Constituency,
Kangayam, Tiruppur District.

6.Appu @ Palanisamy

7.M.C.P.Saravanan

8.P.Shanmuga Rasu

9.V.S.Chennaiyappan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to ensure protection to my family, life and properties from the hands of the respondents 4 to 9 by forbearing the respondents 5 to 9 from taking the law in their own hands to take forcible possession of petitioner's house, poultry farm and lands measuring an extent of 5.02 ½ acres comprised in Natham R.S.No.397/1A1 to 1A4, Muthur Village, Kangayam Taluk, Tiruppur District by considering petitioner's representation dated 03.06.2013.



WEB COPY

For Petitioner : Mr.N.Manokaran

For Respondents

R1 to R4 : M/s.Narmadha Sampath
Additional Advocate General
Assisted by M/s.A.Madhumathi
Special Government Pleader
R5 to R8 : Mr.M.R.Thangavel

COMMON ORDER

Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, M/s.Narmadha Sampath, learned Additional Advocate General assisted by M/s.A.Madhumathi, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.M.R.Thangavel, learned counsel appearing for the respondents 5 to 8.

2.The petitioner in both these writ petitions is one P.Banumathi, wife of Periyasamy. In W.P.No.3169 of 2013, the petitioner challenges the order passed by the third respondent, the Zonal Deputy Tahsildar, Kangayam, Tiruppur District dated 05.06.2012, by which the name of the petitioner has been deleted from the Patta and the names of the respondents 5 to 8 have been included. W.P.No.15214 of 2013 has been filed for a direction to the respondents 1 to 3, who are the Secretary to Government, Home Department, Inspector General of Police, West Zone, Coimbatore and the Superintendent of Police, Tiruppur District to ensure protection to the petitioner's family, life and properties from the hands of the respondents 4 to 9, the 4th respondent is the Inspector of Police, District Crime Branch, Anti Land Grabbing Special Wing, Tiruppur, the 5th respondent was a sitting MLA of Kangayam Constituency, the 6th respondent was the former President of Village Panchayat, the 7th respondent is stated to be a Real Estate agent, the 8th respondent one P.Shanmuga Rasu is stated to be an agreement holder and the 9th respondent V.S.Chenniyappan, who is the 5th respondent in W.P.No.3169 of 2013.

3.W.P.No.3169 of 2013 was admitted on 07.02.2013 and the impugned order has been stayed. As a result of which, Patta continues to stand in the name of the writ petitioner Tmt.P.Banumathi.

4.W.P.No.15214 of 2013 was heard on various dates and on 06.06.2013, the Court has passed the following order:

"Heard the learned counsel for the petitioner.
Mr.M.S.Ramesh, learned Additional Government Pleader



WEB COPY

takes notice on behalf of respondents 1 to 4.

Notice to the respondents 5 to 9 returnable by 19.06.2013. Private notice is also permitted.

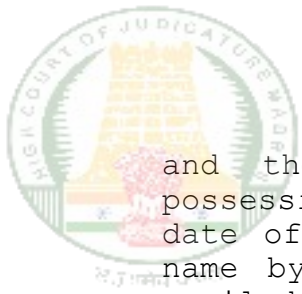
There shall be an interim injunction restraining the respondents 5 to 9 from trespassing into the property in R.S.No.397/1A1 to 1A4, Muthur village, Kangayam Taluk, Tiruppur District until further orders.

There shall be a direction to the Superintendent of Police, Tiruppur to ensure that the respondents 5 to 9 should not trespass into the property of the petitioner and take possession of the same until further orders passed by this Court."

5.The allegation in W.P.No.15214 of 2013 is that at the behest of the 5th respondent, there was an attempt to coerce the petitioner to hand over the property to the 9th respondent and such other matters. The 5th respondent, the then sitting MLA of Kangayam Constituency has filed a counter affidavit denying the allegations. However, for the purpose of disposal of these writ petitions it may not be necessary for this Court to go into those aspects and the matters are left open because the dispute still seems to be simmering in various forums.

6.The petitioner's case could be briefly stated as hereunder:

The property in question was owned by the petitioner's grandfather late Ramasamy Gounder, who is stated to have purchased the property from the joint family nucleus under a sale deed dated 10.07.1972 registered as Document No.1434/1972. The petitioner's grandfather had mortgaged the property to one K.A.Nataraj Gounder under a registered mortgage deed dated 18.05.1984. Later the same was made over to one K.Chinnappa Gounder under a registered mortgage deed dated 07.06.1985. Again the property was mortgaged in favour of N.Rathinasamy and R.Periyasamy under a registered mortgaged deed dated 26.07.1999. There has been subsequent mortgage in the name of one Kuppusamy Gounder executed and registered on 10.06.1985, who in turn made over the mortgage to the above mentioned N.Rathinasamy and R.Periyasamy by a registered deed dated 26.07.1999. The petitioner would state that her mother Tmt.Amaravathi and her grandmother Tmt.Lakshmiammal were the persons who had discharged the mortgage deed and the mortgage deed stood cancelled by registered documents in Doc.Nos.45 and 46 of 2008. The petitioner's mother and her grandmother filed a suit for partition in O.S.No.134 of 2004 on the file of the District Munsif Court, Kangayam. Ultimately, the suit was decreed based upon a compromise arrived at between the parties. Thereafter, the petitioner's mother and her grandmother jointly executed a settlement deed dated 08.01.2008 registered as Doc.No.47 of 2008



and the petitioner would state that she is in absolute possession and enjoyment of the said property ever since the date of settlement and the revenue records were mutated in her name by the second respondent on 15.10.2008 and she has also availed loan on the said property. There are other civil cases filed by others in respect of the right of way to the property over which we are not concerned in the present dispute. The petitioner would state that in one such suit filed by the petitioner against one Dhanakodi and 10 others in O.S.No.183 of 2009 on the file of the District Munsif Court, Kangayam, the defendants filed certain documents relating to earlier suit in O.S.No.492 of 1983 filed by the petitioner's grandmother Tmt.Lakshmiammal, which was decreed and the judgment was reversed in A.S.No.131 of 1990 and the judgment of this Court in S.A.No.241 of 1991 dated 06.09.2002 and a sale deed dated 06.03.1996 executed in favour of the respondents 5 to 8 [W.P.No.3169 of 2013]. The petitioner would further state that it is at that juncture, she came to know about these proceedings and the petitioner has expressed suspicion with regard to the transaction between the petitioner's grandfather and the respondents 5 to 8.

7.The grievance of the petitioner is that though the respondents 5 to 8 were said to have purchased the property by a registered sale deed dated 06.03.1996, for over 16 years they did nothing, they did not take any steps to mutate the revenue records and for the first time, application was given in the year 2010 for mutation of the revenue records and such application was given by the 5th respondent V.S.Chenniyappan. The third respondent by order dated 13.09.2010 rejected the application stating that civil proceedings are pending. Thereafter, it appears that no steps were taken by the respondents 5 to 8 for mutation of the revenue records nor any appeal was filed against the order dated 13.09.2010. Subsequently in the year 2012, the respondents 5 to 8 sought for mutation of their names in the revenue records by filing an application before the third respondent who according to the petitioner has no jurisdiction. The petitioner alleges that because there was a change of officer, the respondents 5 to 8 took advantage of the matter. The third respondent without issuing any notice to the petitioner whose name finds place in the Patta from the year 2008 onwards, removed the name of the petitioner from the Patta and entered the names of the respondents 5 to 8 and this proceedings is impugned in the writ petition. The procedure adopted in the matter is in clear contravention of the provisions of the Tamil Nadu Patta Passbook Act [hereinafter referred to as 'the Act'], more particularly, the procedure contemplated under Section 3 of the Act. Apart from that, the rules framed under the Act, namely, Rules 3 and 4 of the Tamil Nadu Patta Passbook Rules, 1987 mandates that a



notice be issued. The larger question would be as to why the respondents 5 to 8 have not taken any steps for mutation of revenue records though they claimed to have purchased the property by a registered document dated 06.03.1996.

WEB COPY

8. The case of the respondents 5 to 8 is that the petitioner's grandmother Tmt. Lakshmiammal had filed a suit in O.S.No.492 of 1983 before the Sub Court, Dharapuram for partition concerning the very same property and the suit was decreed by judgment dated 22.12.1988. The defendants in the suit were Tmt. Lakshmiammal's husband Ramasamy Gounder, Natraya Gounder and Shanmugam. The respondents 5 to 8 herein were not parties to the suit because they claimed to have purchased the property only on 06.03.1996. The defendants filed an appeal before the Additional District Court, Erode in A.S.No.131 of 1990 and by judgment dated 22.10.1990, the decree passed by the Trial Court was reversed and the suit was dismissed. S.A.No.247 of 1997 was filed by Tmt. Lakshmiammal, the grandmother of the petitioner. The case of the respondents 5 to 8 is they purchased the property in the year 1996, i.e. much after the filing of the second appeal and during its pendency and they sought impleadment in the second appeal which was ordered on 31.08.1998 and they were impleaded as respondents 4 to 7 in S.A.No.247 of 1991. Since Ramasamy Gounder passed away, his legal heirs had to be brought on record. Already his wife, the appellant/plaintiff was on record and the petitioner's mother Tmt. Amaravathiammal, daughter of Ramasamy Gounder was impleaded as the 8th respondent in the second appeal by order dated 21.08.2002 being legal representative of the deceased Ramasamy Gounder. Soon thereafter, by judgment dated 06.09.2002 the second appeal was dismissed. It is the case of the respondents 5 to 8 that when the settlement deed was executed by the petitioner's mother and grandmother in favour of the petitioner on 08.01.2008, the fact that the petitioner's grandmother lost in the second appeal before this Court was not brought on record and there is no recital.

9. Thus, the above facts are the contentions of the respective parties. In a writ proceedings, this Court cannot go into the disputed questions of fact nor adjudicate upon the title. Unfortunately, the third respondent has made an attempt and passed the impugned order including the names of the respondents 5 to 8 in the Patta deleting the name of the petitioner without notice. There is violation of mandatory procedure contemplated under the Tamil Nadu Patta Passbook Act and Rules thereunder. Therefore, the order cannot be sustained. On account of the interim order granted in the writ petition in the year 2013, Patta now stands in the name of the petitioner and that position should continue.



10. Mr. M. R. Thangavel, learned counsel for the respondents 5 to 8 in W.P.No.3169 of 2013 and respondents 5 to 9 in W.P.No.15124 of 2013 would submit that a fresh enquiry may be conducted by the appropriate authority. In the considered view of this Court, there is a serious dispute between the parties with regard to the claim over the property, the petitioner blames the respondents 5 to 8 for their stoic silence since 1996, their failed attempt to get Patta in the year 2010, etc. The respondents 5 to 8 would find fault with the petitioner's mother and grandmother for not having disclosed about the judgment of the second appeal while executing the settlement deed dated 08.01.2008. These issues cannot be resolved by the Tahsildar. One more ground which has been raised by the petitioner is that the third respondent has no jurisdiction to pass the order. However, it is seen that the patta issued in favour of the petitioner on 15.10.2008 has been issued by the third respondent. Be that as it may, in terms of the Rules and the notification issued by the Government, whoever is the appropriate authority assigned with the task will have to exercise powers. However, with regard to the submission made by the learned counsel for the respondents 5 to 8, in the considered view of this Court no useful purpose would be served in remanding the matter to the second or third respondents as they cannot resolve this dispute. Therefore while directing the Patta to continue in the name of the petitioner, this Court would leave it open to the parties, namely, the petitioner or the respondents 5 to 8 to approach the Civil Court for appropriate relief. Having set aside the order passed by the third respondent dated 05.06.2012, it needs to be seen as to what orders are required to be passed in W.P.No.15214 of 2013. As noted above, the 5th respondent in the said writ petition, the then sitting M.L.A. of Kangayam Constituency has filed a brief counter affidavit denying the allegations and attributing certain political motives which appears to be prima facie sketchy. In any event, there has been an order of injunction granted by the Court on 06.06.2013 [noted above] with a direction to the Superintendent of Police, Tiruppur to ensure the respondents 5 to 9 should not trespass into the property of the petitioner and take possession of the same. In the considered view of this Court in order to avoid any further problem amongst the parties, this order should continue till one of them choose to go to the Civil Court for necessary relief.

11. In the result, W.P.No.3169 of 2013 is allowed and the Patta shall continue to remain in the name of the petitioner, Tmt. P. Banumathi, wife of Periyasamy and it is left open either to the petitioner or the respondents 5 to 8 to approach the Civil Court for appropriate relief. In the light of the order



passed in W.P.No.3169 of 2013, W.P.No.15214 of 2013 is disposed of by making the interim order dated 06.06.2013 as a final order in the writ petition and accordingly, there shall be an order of injunction restraining the respondents 5 to 9 from trespassing into the property in R.S.No.397/1A1 to 1A4, Muthur village, Kangayam Taluk, Tiruppur District until further orders and there shall be a direction to the Superintendent of Police, Tiruppur to ensure that the respondents 5 to 9 should not trespass into the property of the petitioner and take possession of the same until further orders. It is made clear that in the event of the parties approaching the Civil Court, the observations made in this order will in no manner prejudice the rights of the parties and the parties shall establish their right over the property based on oral and documentary evidence and they shall not rely upon the entries in the revenue records. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Revenue Officer,
Tiruppur, Tiruppur District.
- 2.The Tahsildar,
Kangayam Taluk, Tiruppur District.
- 3.The Zonal Deputy Tahsildar,
Kangayam - 638 701,
Tiruppur District.
- 4.The Sub Registrar,
Vellakovil Sub Registrar Office,
Vellakovil - 638 111.
- 5.The Secretary to Government,
State of Tamil Nadu
Department of Home, Fort St. George,
Chennai - 600 009.
- 6.The Inspector General of Police,
West Zone, Coimbatore.



7.The Superintendent of Police,
Tiruppur District, Tiruppur.

8.The Inspector of Police,
District Crime Branch,
Anti Land Grabbing Special Wing,
Tiruppur. Tiruppur District.

+2cc to Mr.N.Manokaran, Advocate Sr.22326 and 22327
+2cc to Mr.M.R.Thangavel, Advocate Sr.22888, 22889
+1cc to the Government Pleader Sr.22684

W.P.Nos.3169 and 15214 of 2013

rk[col
srg 10/07/2020