

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7842 of 2020

S.Gopalasundari

.... Petitioner

Vs.

The Tahsildar
Mylapore Taluk,
No.46, Greenways Road Extension,
Bishop Garden,
R.A.Puram,
Chennai - 28.

....Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned reply dated 15.11.2016 vide நக,எண்.அ2பம/328/2016 from the file of the respondent and quash the same as illegal and consequently direct the respondent to issue patta for land measuring 1005 Sq.ft. Together with the house thereon comprised in R.S.No.2170/9, Part No.38 of Triplicane Village, Mylapore Taluk, Chennai District to the petitioner.

For Petitioner :Mr.S.B.Viswanathan

For Respondent :Mr.E.Balamurugan

Special Government Pleader

O R D E R

On the consent given by both sides the main Writ Petition itself has been taken up for final hearing.

2. This Writ Petition has been filed challenging the order passed by the respondent dated 15.11.2016 rejecting the application made by the petitioner for grant of Patta in her favour.

3. The case of the petitioner is that the subject property

originally belonged to the grandmother of the petitioner and she having purchased the same by virtue of the registered sale deed dated 22.09.1938. After the death of her grandmother, the property vested on the mother of the petitioner and his two brothers. The petitioner became the owner of the property insofar as the share of her mother, after her death. The uncle of the petitioner sold a portion of the property to one K.Natarajan. The petitioner filed the suit in O.S.No.4339 of 1986 before the XII Assistant City Civil Court, Chennai seeking for the relief of declaration of title and recovery of possession. Initially, this suit was dismissed by judgment dated 31.01.1995.

4. The petitioner aggrieved by the same, filed an appeal in A.S.No.113 of 1995 before the V Additional City Civil Court, Chennai. The appeal was allowed and the suit was decreed as prayed for by judgment and decree dated 29.02.1996. This was subsequently confirmed before this Court in Second Appeal No.1172 of 1996 by judgment dated 06.09.2011. It is seen from records that the S.L.P filed before the Hon'ble Supreme Court by the defendants in the suit also came to be dismissed by an order dated 03.02.2012.

5. The petitioner thereafter had put the decree on execution in E.P.No.1181 of 2012 and the possession was delivered to the petitioner on 15.07.2013. The petitioner thereafter submitted an application requesting the respondent to grant the Patta in her favour. This application came to be rejected by the respondent by proceedings dated 15.11.2016. Instead of challenging the proceedings, the petitioner was working out her rights to cancel the sale deed executed by her uncle and by filing a subsequent suit in O.S.No.4603 of 2017. The petitioner did not realise the fact that all this exercise was not warranted in view of the judgment and decree passed in her favour declaring her right and title over the property. Ultimately realising her mistake, the present Writ Petition has been filed before this Court challenging the proceedings of the respondent refusing to grant Patta in favour of the petitioner.

6. Heard, Mr.S.B.Viswanathan, learned counsel appearing for the petitioner and Mr.E.Balamurugan, learned Special Government Pleader appearing for the respondent.

7. The impugned order passed by the respondent smacks with illegality. The respondent ought to have given effect to the decree passed in favour of the petitioner in A.S.No.113 of 1995 and should have transferred the Patta in favour of the petitioner. R.S.O.31 (4) makes it very clear that such a transfer has to be made based on a decree passed by a competent Civil Court. In this case, a competent Civil Court has declared

the title of the petitioner and it has been confirmed up to the Hon'ble Supreme Court. The petitioner has also executed the decree and has taken possession of the property. Under such circumstances, the respondent ought to have transferred the Patta and he should not have directed the petitioner to get the earlier sale deed cancelled and to remove the entry from the encumbrance certificate. The decree passed in favour of the petitioner automatically makes the earlier sale deed non-est and the entry in the encumbrance certificate consequently also becomes non est. The respondent should not have driven the petitioner to go through one more round of litigation to cancel the sale deed and to cancel the entry in the encumbrance certificate. The impugned order is liable to be interfered by this Court. In the result, the impugned proceedings of the respondent dated 15.11.2016 is hereby quashed and the respondent is directed to transfer the Patta in favour of the petitioner with regard to the subject property by passing appropriate orders. This process shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

In the result, Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Tahsildar
Mylapore Taluk,
No.46, Greenways Road Extension,
Bishop Garden,
R.A.Puram,
Chennai - 28.

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RGN(CO)
GS(27/07/2020)