BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.2300 of 2020
and W.M.P.(MD).Nos.1946 & 1947 of 2020

N.Packialakshmi .. Petitioner

Vs.

1.The District Sub Collector,
Sub Collector Office,
Sivakasi, Virudhunagar District.

2.The Executive Magistrate cum Revenue Divisional Officer,
Sivakasi, Virudhunagar District.

3.The Tahsildar,
Srivilliputhur Taluk,
Virudhunagar District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.A1/5008/2019, dated 19.12.2019 and consequential proceedings of the 3rd respondent in Na.Ka.A1/340/2020, dated 28.01.2020 and quash the same and forbearing the respondents 1 to 3 by any registering or to make any changes in the FMB sketch, revenue records or any other impediment to be made in the petitioner's property in S.Nos.642/9 and 642/11.

For Petitioner : Mr.S.Mahalakshmi
For Respondents : Mr.M.Murugan for R1 to R3
Government Advocate

ORDER

Mr.M.Murugan, learned Government Advocate, takes notice for respondents. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2.This writ petition is filed to quash the proceedings of the first respondent, dated 19.12.2019. By the impugned communication, the first respondent informed one SMA.Muthuvel that a report has been obtained from the Tahsildar to the effect that the petitioner and few others have fraudulently obtained F.M.B. by mis-leading the revenue officials and that the proceedings are taken to cancel the erroneous subdivision in respect of an extent of 0.04.0 hectares in S.No.642/11 in Malli Village, Srivilliputhur Taluk.

3.The grievance of the petitioner is that the petitioner's father had obtained an assignment in respect of lands including an extent of 0.04.0 hectares in S.No.642/11 and that patta was issued to the petitioner's father. It is further stated that the petitioner's sister submitted a petition for subdivision as per 'A' Register and that an order was passed by the Revenue Divisional Officer in favour of petitioner and her sister on 21.01.2019. It appears that based on the complaint of one SMA.Muthuvel, the impugned order, dated 19.12.2019, came to be issued by the Revenue Divisional Officer namely the first respondent. Having regard to the fact that no notice was issued to the petitioner before a conclusion is reached by the Revenue Divisional Officer, the petitioner states that such an order would cause serious prejudice and therefore, it is liable to be quashed. The learned counsel further submitted that the Tahsildar has issued notice regarding the same subject and that the petitioner has no grievance to participate in the enquiry and to produce all the records so as to enable the Tahsildar to draw proper report. It is also stated that the Revenue Divisional Officer may also take action after issuing notice to the petitioner for any irregularity and pass the order. Since the proceedings has been issued by the Revenue Divisional Officer without notice to the petitioner, and the Revenue Divisional Officer has indicated that he is determined to cancel the earlier proceedings of the Revenue Divisional Officer, the petitioner has filed the writ petition, with an apprehension that the first respondent may pass orders without further notice to the petitioner as it was proposed in the impugned communication, dated 19.12.2019.

4.The learned Government Advocate has no grievance to set aside the impugned order and to direct the first respondent to hold an enquiry after issuing notice to the petitioner. Inasmuch as the petitioner has no grievance against the subsequent communication of the Tahsildar to the petitioner to appear for the enquiry, this Court find merits. Hence, having regard to the facts and circumstances of this case, this Court is inclined to set aside the communication, dated 19.12.2019, issued by the first respondent.

5.The proposed action of the first respondent by the impugned communication without notice to the petitioner is violating of principles of natural justice and the power of

Revenue Divisional Officer cannot be arbitrarily exercised. It appears that the Revenue Divisional Officer wants to cancel his own order passed earlier. Hence, the maintainability of petition before him for cancelling the earlier order cannot be approved unless the order was fraudulently obtained as fraud vitiate any solemn transaction.

6.With the above observations, this writ petition is disposed of and the impugned communication of the first respondent, dated 19.12.2019 is quashed and the first respondent is permitted to proceed further. Only after issuing notice to the petitioner and after giving sufficient opportunity to the petitioner and hearing the petitioner's objections, it may be proper for the first respondent to pass appropriate order in either way. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

To

1.The District Sub Collector,
Sub Collector Office,
Sivakasi, Virudhunagar District.

2.The Executive Magistrate cum Revenue Divisional Officer,
Sivakasi, Virudhunagar District.

3.The Tahsildar,
Srivilliputhur Taluk,
Virudhunagar District.

+1 CC to MR.S.MAHALAKSHMI, Advocate (SR-5099[F] dated 06/02/2020)

+1 CC to SPL GP (SR-5207[F] dated 07/02/2020)

W.P.(MD).No.2300 of 2020
06.02.2020

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