IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 06.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.17930 of 2016
and
W.M.P.Nos. 15624 & 15625 of 2016

V.Ramakrishnan ...Petitioner

-Vs-

1. The District Revenue Officer – cum -
Land Acquisition Registration Development
Planning Appellate Officer,
Divisional Office,
Nagapattinam District.

2. The Divisional Revenue Officer,
Divisional Office,
Nagapattinam.

3. The Tahsildar,
Sirkali Taluk,
Nagapattinam District.

4. The Zonal Deputy Tahsildar,
Sirkali Taluk,
Nagapattinam District.

5. The Village Administrative Officer,
Sirkali Taluk,
Nagapattinam District.

6. D.Ramaian
7. D.Rajendran ..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first Respondent herein in Ni.Mu.Aa4/4010/2015, dated 16.10.2015 and quash the same in and to consequently direct the 1st respondent herein to remove the name of Dhanusu Padayatchi in the Patta No.896 and to replace the Petitioner name in respect of S.No.27/3B, Ilayamadukoodam, 80, Radhanallur Village Sirkali Taluk, to an extent of 11.5 Acres.

For Petitioner : Mr.R.S.Krishnaswaamy

For Respondents : Ms. Akila Rajendran
Government Counsel - for RR1 to 5

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records on the file of the first Respondent herein in Ni.Mu.Aa4/4010/2015, dated 16.10.2015 and quash the same in and to consequently direct the 1st respondent herein to remove the name of Dhanusu Padayatchi in the Patta No.896 and to replace the Petitioner name in respect of S.No.27/3B, Ilayamadukoodam, 80, Radhanallur Village Sirkali Taluk, to an extent of 11.5 Acres.

2. In respect of the property at S.No.27/3B, Radhanallur Village Sirkali Taluk, to an extent of 11.5 Acres, it is the case of the private respondents that during the UDR Survey, there had been a change of patta in the name of the petitioner's father and without verifying the other legal heirs including the private respondents, since patta had been issued to the petitioner's father in Patta No.896 dated 25.01.2005 for the said Survey No.27/3B to the extent of 11.5 Acres, in order to cancel the same and to issue patta in the name of the father of the private respondents as well as the grandfather of the petitioner, one Dhanusu Padayatchi, the private respondents has given a representation dated 21.07.2014 to the respondent District Revenue Officer.

3. The District Revenue Officer, having heard the private respondents and after getting a spot survey done by the lower authorities of the Revenue Department, had come to the conclusion that, Patta No.896 dated 25.01.2005 was a wrong entry, thereby cancelling the same, directed to issue fresh patta for the said survey number to and in favour of Dhanusu Padayatchi S/o Sokka Padayatchi, who is none other than the father of the private respondents and the grandfather of the petitioner.

4. Challenging the said order dated 16.10.2015 issued by the respondent District Revenue Officer, the petitioner has filed the present writ petition with the aforesaid prayer.

5. Heard Mr.R.S.Krishnaswamy, learned counsel appearing for the petitioner, who would submit that the petitioner's father is none other than the brother of the private respondents. Therefore, the petitioner's father is one of the legal heir of Dhanusu Padayatchi, who was the original owner of the property in question as well as some other properties. Therefore,

according to the petitioner, there had been an oral partition among the legal heirs of the said Dhanusu Padayatchi and based on such oral partition, the petitioner's father inherited the property in question and accordingly he had applied for separate patta, which was considered and granted in Patta No. 896 dated 25.01.2005.

6. However, if at all the private respondents who are none other than the uncles of the petitioner, had given any request to the revenue authorities to cancel the patta issued in favour of the petitioner's father and in this regard if any enquiry was proposed by the District Revenue Officer, in that enquiry, the petitioner's father or the petitioner should have been called for and in this regard, the contention of the petitioner is that, subsequently on 21.12.2012, the petitioner's father settled the property in favour of the petitioner and the same having been registered as Document No.328/2012 in the concerned Registrar Office, through which the petitioner inherited the property from his father and accordingly, he applied for separate patta in his name, which was also considered and granted by the Revenue Authorities on 29.01.2014.

7. Therefore, the property in question since had been inherited by the petitioner's father ie., Vishwanathan, has been subsequently inherited by the petitioner by way of settlement made in favour of the petitioner on 21.12.2012 and that is how the petitioner has become the absolute owner of the property in question and accordingly the patta was also issued on 29.01.2014.

8. Therefore, as on date when the representation was given by the private respondents on 21.07.2014, the petitioner has been the absolute owner of the property, in whose name the document stands as well as the patta issued by the Revenue Authorities also stands. When that being so, the petitioner being the necessary party, should have been given notice and should have been heard. However, no opportunity was given and no notice had been given to the petitioner by the District Revenue Officer before deciding the issue on representation given by the private respondents dated 21.07.2014.

9. Learned counsel for the petitioner further submits that, the impugned order was passed without hearing the petitioner, who is the present owner of the property, according to him, in whose favour there has been a title ie., settlement made by his father and also patta issued in the name of the petitioner by the Revenue Authorities on 29.01.2014. If at all the said issues have to be revisited, the District Revenue Officer should have heard the petitioner. Without hearing the petitioner, the original patta issued in the name of the petitioner's father

ie., Patta No.896 dated 25.01.2005 cannot be unilaterally cancelled and therefore, the said order which is impugned herein dated 16.10.2015 passed by the respondent District Revenue Officer concerned is infirm and flawed on the ground that the petitioner has not been heard and no notice has been served on him, he contended.

10. Though the learned counsel for the petitioner wants to make submissions on the merits of the case also, since he has raised this preliminary ground that, no notice had been served by the respondents before passing the impugned order, the learned counsel seeks the indulgence of this Court on the said ground alone.

11. Heard Ms.Akila Rajendran, learned counsel for the respondents appearing for the official respondents, who would submit that, not only the property in question, but the entire estate including the property in question originally belonged to one Dhanusu Padayatchi, who is none other than the father of the private respondents as well as Vishwanathan, who is the father of the petitioner. Therefore, if at all any partition had been effected between the parties, it should have been effected in writing, based on which separate estate should have been allotted to each of the legal heir. Without showing any such documents, if at all one of the brothers viz., Vishwanathan was able to get separate patta for the property in question in Patta No.896 as early as on 25.01.2005 during the updated survey, certainly that would be a wrong entry or wrong patta issued in favour of the petitioner's father.

12. Therefore, based on the patta dated 25.01.2005, the petitioner's father cannot claim any right over the property in question. Accordingly, the patta issued in favour of the said Vishwanathan was questioned by the private respondents. The same having been considered, was cancelled by the orders of the District Revenue Officer on 16.10.2015 and accordingly patta was directed to be issued in favour of Dhanusu Padayatchi, who is the original owner of the entire property including the property in question and from whom, if the private respondents as well as the father of the petitioner wanted to inherit the property by way of partition, if it had already taken place or effected or not, they can do so and as far as the Revenue Authorities are concerned, the wrong committed by the Revenue Authorities should have been rectified by giving a separate patta issued in favour of the petitioner's father, since the same has been rectified after hearing the said Vishwanathan, the question of hearing the petitioner does not arise and therefore, on that ground the impugned order need not be interfered with. Therefore, the learned Government Counsel wants to sustain the order.

13. I have heard the learned counsel appearing for both the parties and have perused the materials placed on record.

14. Whether the partition had taken place in favour of the legal heirs of Dhanusu Padayatchi cannot be concluded now, as there are no documents filed before this Court or before the Revenue Authorities.

15. Be that as it may. If at all any patta had been issued in Patta No.896 dated 25.01.2005 for the subject property to and in favour of one Vishwanathan ie., the father of the petitioner and who, after receiving the said patta, claimed to have enjoyed the property in question and in that capacity, he registered a settlement deed in favour of the petitioner dated 21.12.2012 and the same having been registered in the concerned Sub Registrar Office and pursuant to which, the petitioner was able to get separate patta for the land in question on 29.01.2014 issued by the Revenue Authorities, without taking into account all these developments, the District Revenue Officer ought not to have decided the issue in question against the petitioner's father Vishwanathan and accordingly the decision taken by the District Revenue Officer, without hearing the petitioner who is claimed to be the present owner of the property, of course pursuant to the settlement deed registered in his name in the year 2012, in the considered opinion of this Court, may not be justifiable.

16. Therefore, on that ground, without going into the merits of the issue as claimed by the petitioner, this Court feels that the impugned order, after setting aside the same, can be remitted back to the first respondent District Revenue Officer for reconsidering the issue by giving notice to the petitioner and the private respondents and after hearing them, a fresh order can be passed by taking into account the case of the petitioner including the documents in his possession with ie., the settlement deed as well as the subsequent patta issued in his name.

17. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders.

- That the impugned order dated 16.10.2015 is hereby quashed on the ground of violating the principles of natural justice, as admittedly no notice has been issued to the petitioner, who claims to be the owner of the property in question, for which he is able to produce some documents.
- As a sequel, the matter is remitted back to the first respondent District Revenue Officer and on such remittance, the first respondent shall reconsider the matter by issuing notice to the petitioner as well as the private respondents and

after hearing both the parties, the first respondent shall decide the issue on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

18. With the above directions, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

KST
To

1. The District Revenue Officer – cum -
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+1 CC to Mr.K. Arunagiri, Advocate sr 31341.

W.P.No.17930 of 2016

RSV(CO)
SP(09/08/2021)