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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.37443 of 2015 and
M.P.No.1 of 2015

A.K.Muthusamy

...Petitioner

Vs.

1. The District Collector
Salem, Salem District .
2. The District Revenue Officer,
Salem, Salem District.
3. The Revenue Divisional Officer,
Mettur, Salem District.
4. The Tahsildar,
Omalur Taluk,
Salem District.

5.K.Rajappan

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 4 to grant a separate patta in the petitioner's name in respect of 83 cents (0.28.0 Hrs.) bearing S.F.No.28/6, Malliakuttai Village, Omalur Taluk, Salem District by considering his representation dated 19.08.2002, 14.11.2006, 15.12.2006, 09.07.2009 and 28.07.2015.

For Petitioner : Mr.N.Manokaran

For Respondents 1 to 4 : Ms.Akila Rajendran
Counsel for Government

For 5th Respondent : Mr.R.Ezhilarasan

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents 1 to 4 to grant a separate patta in



the petitioner's name in respect of 83 cents (0.28.0 Hrs.) bearing S.F.No.28/6, Malliakuttai Village, Omalur Taluk, Salem District by considering his representations dated 19.08.2002, 14.11.2006, 15.12.2006, 09.07.2009 and 28.07.2015.

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2.The property in S.F.No.28/6 to the extent of 2.90 acres at Athirampatti, Malliakuttai Post, Omalur Taluk, Salem District is the subject matter, in respect of which, the claim of the petitioner is that, the petitioner and the 5th respondent are brothers, therefore, in respect of the subject land i.e., out of 2.90 acres, the 5th respondent had been in possession and enjoyment of the property to the extent of 2.07 acres and the petitioner had been in possession and enjoyment of 0.83 cents. This position, according to the petitioner, had been continuing from 1974.

3.In this context, it is the further case of the petitioner that, while that being so, in order to grab the entire land of 2.90 acres, the 5th respondent had filed a writ petition in W.P.No.24175 of 2012, where, he obtained an order in his favour, as if that he is entitled to get conveyance from the Government to the entire extent of the property as stated above to and in favour of the 5th respondent and accordingly, he is trying to oust the petitioner from the said property even for the 0.83 cents. Therefore, in order to thwart the said attempt allegedly made by the 5th respondent and to get a separate patta, insofar as the 0.83 cents are concerned, to and in favour of the petitioner, the petitioner had given a representation on 28.07.2015 and the said representation since has not been considered by the Tahsildar concerned i.e., the 4th respondent herein, the petitioner has approached this Court by filing the present writ petition with the aforesaid prayer.

4.Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, who would submit that, the petitioner and the 5th respondent are brothers and therefore, the petitioner since have been in possession and enjoyment of the 83 cents of the land, as stated above, for several decades before, he is entitled to get the separate patta in his name for the said land of 83 cents. Insofar as the 2.07 acres are concerned, it is open to the 5th respondent to get patta as he had been in possession and enjoyment of that portion of the land alone. He would further submit that, when that being the position, without impleading the petitioner as a party respondent, the 5th respondent filed the writ petition in W.P.No.24175 of 2012.

5.The reason for filing of the said writ petition was that, the property was originally belong to one Marakkal, who had executed a Will in favour of the 5th respondent and in the meanwhile, for the repayment of the loan or due payable to the



Government by the said Marakkal, the property was brought in auction, wherein the Government had taken the property as if that it is "a bought in land", for a nominal price of 10 paise and therefore, it had become the Government property. In order to get back the same, it was the claim of the 5th respondent, as projected by him before the Writ Court in the said writ petition that, the entire due payable by the said Marakkal, who was the original owner, since had been paid by him to the Government and it has been admitted by the Government also, the property can be directed to be reconveyed to the 5th respondent who is the sole beneficiary as per the Will executed by the said Marakkal. The said position as projected by the 5th respondent before the Writ Court since has been accepted, the learned Judge of this Court, by order dated 10.02.2015, had passed an order directing the Government to reconvey the land to the 5th respondent and to issue patta consequently in favour of him.

6.As against the said order, it seems that, appeal had been filed by the Government in Writ Appeal No.987 of 2016, which was also dismissed on 12.01.2018, of course by setting aside a portion of the order passed by the Writ Court dated 10.02.2015 viz., the consequential direction given by the Writ Court to issue patta in the name of the 5th respondent.

7.Be that as it may, by relying upon these developments, the learned counsel appearing for the petitioner would further submit that, since both in the writ petition as well as in the writ appeal filed by the Government, the petitioner was not a party and the petitioner had been claiming the right over some extent of the property in question i.e., for 83 cents, he is a necessary party. However, he had not been impleaded as one of the party respondent in the writ petition. Therefore, in order to set aside or modify the order or to recall the order passed by the Division Bench in the said Writ Appeal No.987 of 2016, the petitioner has now made an attempt to file a miscellaneous petition to permit the petitioner to review the order passed by the Writ Appellate Court in C.M.P.No.19637 of 2019, wherein notice has been ordered and the same is pending.

8.By reiterating all these developments, the learned counsel appearing for the petitioner would submit that, therefore the issue has not been concluded and in view of the C.M.P. filed, which is pending before the Writ Appellate Court, the 5th respondent cannot seek for patta exclusively for the entire extent of the land in question, therefore, rightly the petitioner had approached the Revenue Tahsildar by his representation dated 28.07.2015 to issue patta insofar as his possession of land i.e., 83 cents and therefore, a direction can be given by way of mandamus to the Revenue Tahsildar to decide the same on merits, he contended.



9. Heard Mr.R.Ezhilarasan, learned counsel appearing for the 5th respondent, who, having reiterated the aforesaid developments, would further submit that, insofar as the entirety of the land in question is concerned, that was the land belongs to one Marakkal, since she did not have any issue, due to love and affection, bequeathed a Will to and in favour of the 5th respondent for the entirety of the property and on the strength of the Will, according to the 5th respondent counsel, that the 5th respondent has inherited the entire property. However, in the meanwhile, in view of the due payable to the Government, the property was brought for sale and Government has taken it by way of auction and it had been in the possession and enjoyment of the Government, in order to get back the land in entirety i.e., by way of reconveying the land, the 5th respondent was triggered to file a writ petition as stated above. In that writ petition, having accepted the case of the 5th respondent, the Writ Court allowed the writ petition as stated surpa. As against which, though intra-Court appeal was filed by the Government, that appeal also as stated above has been dismissed.

10. Merely because, a part of the order to give a patta as has been ordered by the Writ Court, is modified by the Division Bench of this Court, as claimed by the petitioner counsel, it does not take away the right conferred on the 5th respondent by way of direction given by the Writ Court to reconvey the land to and in favour of the 5th respondent. Therefore, the learned counsel appearing for the 5th respondent would submit that, since the entirety of the land has been directed to be reconveyed to and in favour of the 5th respondent, the present attempt made by the petitioner to seek for a patta for the 83 cents, as claimed by him, through his representation dated 28.07.2015 is not countenanced and cannot be accepted. Therefore, the present prayer is devoid of merits, hence, it is liable to be rejected, he contended.

11. On the other hand, Ms.Akila Rajendran, learned Government Counsel appearing for the official respondents would submit that, since there has been at least two round of litigations, where, some directions were issued by the Writ Court as well as the Division Bench, as stated above and pursuant to the orders passed by the Writ Appellate Court, confirming the order of the Writ Court, order has to be passed to and in favour of the 5th respondent, as directed by this Court. In the meanwhile, now the petitioner has filed this writ petition seeking a mandamus to consider his representation, which he has given sometime in 2015.

12. However, it is to be noted that, though the Writ Court passed an order on 10.02.2015 and the representation was given on 28.07.2015 subsequently, the Writ Court order has been confirmed by the Division Bench as stated supra, by order dated 12.01.2018. She would also submit that, subsequently, now it is



claimed by the petitioner that, a C.M.P. has been filed seeking for permission to recall the order of the Division Bench reviewing the order of the Writ Appellate Court and the said C.M.P. is stated to be pending, where, notice had been ordered. At this stage, the claim made by the petitioner through his representation dated 28.07.2015 cannot be considered by the respondents i.e., the Revenue Tahsildar. Therefore, the present prayer sought for in this writ petition is deserved to be rejected, accordingly, the writ petition fails, hence it has to be rejected, she contended.

13.I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14.As has been rightly pointed out by the learned counsel appearing for the 5th respondent as well as the learned Government Counsel appearing for the official respondents, the issue has been concluded, by the orders of the Writ Court dated 10.02.2015, which has been confirmed on 12.01.2018, by a Division Bench order in Writ Appeal No.987 of 2016.

15.In order to make a dent in the said order passed by the Division Bench, though attempt has been made by the petitioner by filing C.M.P. as stated supra in the year 2019 and the same is stated to be pending, unless and until, that permission is granted to the petitioner and pursuant to which, if the plea of the petitioner is accepted with regard to the right over the portion of the property i.e., for the 83 cents, the further course of action insofar as the claim of the petitioner for getting separate patta for 83 cents cannot be decided by the Revenue Authorities. Till such time, the legal position would be that, insofar as the entirety of property, conveyance was directed to be made to and in favour of the 5th respondent. Therefore, at this stage, the petitioner's representation dated 28.07.2015 cannot be directed to be considered and order cannot be directed to be passed. In that view of the matter, this Court feels that, the present prayer sought for by the petitioner is untenable and unacceptable. Therefore, this writ petition fails, hence, it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sgl



To

1.The District Collector
Salem, Salem District.

2.The District Revenue Officer,
Salem, Salem District.

3.The Revenue Divisional Officer,
Mettur, Salem District.

4.The Tahsildar,
Omalur Taluk, Salem District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.30727

+1cc to the Government Pleader, S.R.No.31178

W.P.No.37443 of 2015

SV-I (CO)

RGA(03/08/2021)