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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.13947 of 2021

and W.M.P.No.14815 of 2021

K.A.Thirumalaisamy

...Petitioner

-Vs-

The Tahsildar  
Avinashi Taluk Office,  
Avinashi - 641 654.

...Respondent

Prayer :Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the application, dated 25.12.2020 having Reference Application ID.No. 2020/0105/32/118301 of the respondent and quash the same and consequently direct the respondent to measure, sub-divide and issue a separate patta in the name of the petitioner for vacant land measuring 0.57 cents in Survey No.207/1, situated at Avinashi Taluk, Tiruppur District as mentioned in Document No.6992/2011 at the office of the Sub Registrar, Avinashi.

For Petitioner : Ms.C.Uma

For Respondent : Mr.Yogesh Kannadasan  
Government Advocate

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus, to call for the records of the application, dated 25.12.2020 having Reference Application ID.No.2020/0105/32/118301 of the respondent and quash the same and consequently direct the respondent to measure, sub-divide and issue a separate patta in the name of the petitioner for vacant land measuring 0.57 cents in Survey No.207/1, situated at Avinashi Taluk, Tiruppur District as mentioned in Document No.6992/2011 at the office of the Sub Registrar, Avinashi.



2. In respect of the land measuring to an extent of 1.27 hectares (3.14 acres) comprised in S.No.207/1, situated at Avinashi Taluk, Tiruppur District, the petitioner claimed ownership as he claimed to have purchased the same by sale deed, dated 08.07.2011 and in this regard, it is the further case of the petitioner that, a portion of the land also has been given gift to the local authorities, i.e., Kuppandampalayam village panchayat, for public purpose, therefore, insofar as the remaining land is concerned, in order to get patta, the petitioner had made online application on 28.10.2020 to subdivide the land and issue patta in favour of the petitioner. However, the said application has been returned through the impugned communication, dated 25.12.2020 by the respondent Tahsildar, stating the reason that, the petitioner has not been in possession of the land concerned.

3. Therefore Ms.C.Uma, learned counsel appearing for the petitioner would submit that, since the petitioner has established that, he is the owner of the property, for which, he seeks for sub-division and patta and in support of the same or to substantiate the same, documents had been filed, without verifying those documents, the respondent has returned the said application or rejected the same, by impugned communication, dated 25.12.2020 stating that, the petitioner had not been in possession which is against law. As the possession does not been physical possession which should follow the title, therefore, the said reasoning given by the respondent is untenable, hence, she seeks indulgence of this Court against the impugned order.

4. Heard Mr.Yogesh Kannadasan, learned Government Advocate appearing for the respondents who would submit that, if at all the petitioner is able to satisfy the respondent with documents to substantiate his claim that, he is the owner of the property in question and based on which he is entitled to get sub-division and issuance of separate patta in his name, the same would be considered again by revisiting the said issue and therefore, for the said purpose the matter can be remanded and on such remand, the needful would be done by considering the request of the petitioner after hearing the petitioner as well as the rival party, if any, in this regard by giving a reasonable opportunity and accordingly, final order would be passed within a time frame that may be stipulated by this Court.

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



6. As has been rightly pointed out by the learned counsel appearing for the petitioner, that the possession means, the ownership of the property and therefore, whether the petitioner is in physical possession or not cannot be the matter for considering the grant of patta in respect of the land in question by the petitioner.

7. Therefore in this regard, the petitioner's application can be considered by the respondent, Tahsildar in proper perspective by giving an opportunity of being heard to the petitioner and in that case, it is open to the petitioner to supply whatever the input by way of documents in support of his claim and on consideration of the same, a fresh order can be passed on merits by the Tahsildar concerned.

8. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order :

"(i) The impugned order is hereby quashed and the matter is remitted back to the respondent for reconsideration.

(ii) While reconsidering the same, the respondent is hereby directed to consider the application of the petitioner, dated 28.10.2020 submitted through online with regard to the petitioner's request for sub-division and issuance of patta transfer and accordingly, decide the same on merits and in accordance with law, after giving an opportunity of being heard to the petitioner and if any third party / rival party, and accordingly, pass final orders thereon, within a period of Eight weeks from the date of receipt of a copy of this order."

9. With this direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsvn



To

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The Tahsildar  
Avinashi Taluk Office,  
Avinashi - 641 654.

+1 CC to Mr.C. Uma, Advocate, Sr 31847.  
+1 CC to The Government Pleader, Sr 32138.

W.P.No.13947 of 2021

GPL (CO)  
LS (23/07/2021)