IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.3440 of 2016

1.M.Palanisamy
2.M.Chandrasekar ... Petitioners

Vs.

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

2. The Tahsildar,
   Omalur Taluk,
   Salem District.

3. P. Subramani (Deceased)

4. S.Chinnaponnu

5. S.Perumal

6. S.Chinnadurai

7. Sambu

(R4 to R7 are residing at Kavandappatti Kattuvalavu,
Chellapillai Kuttai, Omalur Taluk.
Salem District)

(RR 4 to 7 are substituted as LRs of R3
deceased as per order dated 21.8.2018 in
WMP.No.4634 of 2017) in WP 3440/16 ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the 1st and 2nd respondents to grant an exclusive patta in our favour in respect of the entire land relating to Survey No.62/6 covered by patta No.294 in Mitta Chellapillai Kuttai Village covering Kavandappatti Village and exclude the extraneous entry of the name of the 3rd respondent in respect of a new sub division of survey No.62/6A.

For Petitioner	:	Mr.R.Nalliyappan
For Respondents 1 & 2	:	Mr.Richardson Wilson Counsel for Government
For Respondents 4 to 7	:	No appearance

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents 1 and 2 to grant an exclusive patta in favour of the petitioners in respect of the entire land relating to Survey No.62/6 covered by Patta No.294 in Mitta Chellapillai Kuttai Village covering Kavandappatti Village and exclude the extraneous entry of the name of the third respondent in respect of a new sub division of Survey No.62/6A.

2.The case of the petitioners is, the petitioners father one Muthu Gounder purchased 0.30 cents of land at S.No.62/6 at Chellapillai Kuttai in Omalur Taluk, Salem District sometime in the year 1964 by a registered sale deed in Document No.602/1964 dated 10.03.1964 registered at the Sub Registrar Office, Omalur.

3.Accordingly, the petitioners father had been in possession and enjoyment of the property.

4.Subsequently, it seems that, during the UDR Survey when such exercise was undertaken by the Revenue Authorities after verifying the revenue records, notices were issued to the persons whose names stand in the 'A' Register as owners of the particular land and in this context, though notices had been given to the petitioners father as well as the third respondent, it seems that the petitioners father did not respond to the notices issued by the Revenue Department and the UDR Scheme and ultimately based on the available record where the land in question stood in the name of the third respondent, the UDR patta had been issued in favour of the third respondent.

5.Subsequently, the petitioners, after the lifetime of the father of the petitioners, came to know all those development and they approached the Revenue Authorities in order to rectify the same to cancel the patta stood in the name of the third respondent and to issue patta in favour of the petitioners. However, the said attempt made by the petitioners, according to them, have not yielded any desired result, therefore they approached this Court by filing the present writ petition with the aforesaid prayer.

6.During the pendency of the writ petition, the third respondent since deceased, his legal heirs respondents 4 to 7 impleaded as party respondents.

7.Heard Mr.R.Nalliyappan, learned counsel appearing for the petitioners, who having reiterated the aforesaid facts, seeks indulgence of this Court to issue a direction to the official respondents to conduct an enquiry on the plea raised on behalf of the petitioners with regard to the ownership and consequent issuance of patta in favour of the petitioners father, by cancelling the same issued in favour of the third respondent who presently represented by respondents 4 to 7 who are the legal heirs of the third respondent.

8.On the other hand, Mr.Richardson Wilson, learned counsel for Government appearing for respondents 1 and 2, on instructions and by relying upon the averment made in the counter affidavit filed by the second respondent, would submit that, though it was the case of the petitioners father that he purchased the property in Survey No.62/6 sometime in 1964, subsequently, he mortgaged the same to one Arumuga Naicker in 1968 that was also registered and thereafter, when UDR Scheme was undertaken though notices were issued to the land holders and wide publicity was given in the villages and enquiries were conducted before finalising the scheme, the petitioners or their father failed to appear in time to prove their right over the land in question and therefore, as per the entries made in the 'A' Register i.e. Settlement Register, it has been incorporated during UDR Scheme and necessary changes were carried out.

9.It is the further case of the official respondents that, the Survey No.62/6 subsequently seems to have been sub-divided into Survey No.62/6A and it has been registered in the name of some third parties i.e., Chinnaponnu W/o. Subramani, Perumal S/o.Subramani, Chinnadurai S/o.Subramani, Sambu W/o.Raja.

10.Based on these entries made in the 'A' Register under the UDR Scheme changes have been effected, accordingly patta had been issued in the name of the third respondent.

11.The learned counsel for Government would further submit that, in this regard, it is the failure on the part of the petitioners or their father to respond to the UDR notices. Had they responded and filed any appeal to establish their case that they are the owners of the property in question by producing necessary documents to that effect, rectification if any, could have been made, but after long years now the writ petition has been filed. Therefore, the said plea cannot be accepted by the Revenue Authorities and therefore, such kind of change cannot be made in the UDR Survey Registers at this length of time, therefore the prayer sought for is liable to be rejected, he contended.

12.There is no representation for the private respondents.

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

14.It is an admitted case on the part of the official respondents as has been culled out from the counter affidavit filed by the second respondent that, the land to the extent of 30 cents in Survey No.62/6 as referred to above was purchased by the father of the petitioners by a registered sale deed on 10.03.1964.

15.When that being so, unless and until subsequently the ownership is changed to any third party including the third respondent, it cannot be construed that the third respondent or any other third parties had become owner of the property and even though the names of the third respondent or any other persons in the family of the third respondent whose name were found place in the 'A' Register, the said issue could have been verified by the Revenue Authorities at the time of UDR Survey and to that effect, the necessary changes in this regard could have been made.

16.No doubt the issue could have been changed in time by the petitioners father, but he failed to agitate the same, probably he might not have expected that, there could have been any change effected in the UDR Register despite the fact that he having purchased the property in the year 1964 itself.

17.Be that as it may, subsequently on coming to know about the changes effected in the year UDR Register and the consequential patta issued in favour of the third respondent, they wanted to agitate the matter and raised the issue before the authorities concerned and in this regard, this Court finds that, at earliest point of time i.e. on 24.06.2014 the petitioners father Muthu Gounder had given a representation to the District Revenue Officer where he has stated all these developments and seeks indulgence of the respondents to rectify the mistake committed during the UDR Survey.

18.Despite this attempt having been made by the petitioners side through their father subsequently since the petitioners could not get any decided result, they have come before this Court seeking the aforesaid relief.

19.Since it is a factual matrix as has been admitted in the counter of the second respondent that, the land in question was purchased on 10.03.1964 by the petitioners father and there is no other contra document to suggest that the petitioners father subsequently has sold the property or encumbered the same to and in favour of any third party except the mortgage made sometime in March 1962 and thereafter pursuant to the mortgage whether the third respondent have got any right over the property through a valid documents, have not been made available by the respondent side. Therefore this Court prima facie finds that, there is some force in the contention made by the petitioners with regard to issuance of patta in their favour and therefore, in this context, the request made by the petitioners father dated 24.06.2014 and subsequent efforts taken by the petitioners are to be considered by the respondents especially the first respondent in proper perspective and after conducting an enquiry, a final decision can be taken thereon.

20.In that view of the matter, there shall be a direction to the first respondent to conduct an enquiry on the request of the petitioners father dated 24.06.2014 and in this regard, a further representation also can very well be made by the petitioners within two weeks from the date of receipt of a copy of this order addressing to the first respondent with connected documents establishing their ownership towards the property in question and on receipt of such representation from the petitioners with the other input to be supplied by them in this regard, the first respondent shall conduct an enquiry by hearing the petitioners as well as the legal heirs of the third respondent who are respondents 4 to 7 herein and accordingly decide the issue on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order and the final order to that effect shall be passed and be communicated to the parties concerned.

21.With this direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

Sgl

To

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

2. The Tahsildar,
   Omalur Taluk,
   Salem District.

+1cc to the Government Pleader SR.No.28504

W.P.No.3440 of 2016

PCH(CO)
RLP(15/07/2021)