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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.15885 of 2019
and
WMP.No.15699 of 2019

Neelavathy ... Petitioner
Vs

- 1.The District Collector,
Collector Office,
Villupuram District
- 2.The District Revenue Officer,
Collector Office,
Villupuram District
- 3.The Revenue Divisional Officer,
Kallakurichi Taluk,
Villupuram District 606 213
- 4.The Thasildar,
Tashildhar Office,
Kallakurichi Taluk,
Villupuram District 606 213

5.Muthu ... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the second respondent herein in Pa.Mu.A3/407/2017 dated 09.04.2019 and quash the same and consequently direct the respondents 1 to 4 herein to cancel the patta, as ordered by the third respondent in respect of the pathway in S.No.219/1.



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For Petitioner : Mr.K.Gangadaran

For Respondents

For R1 to 4 : Mr.S.Rajesh,
Government Advocate

For R5 : Mr.V.Ayyaparaja

ORDER

The writ petition is filed to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the second respondent herein in Pa.Mu.A3/407/2017 dated 09.04.2019 and quash the same and consequently direct the respondents 1 to 4 herein to cancel the patta, as ordered by the third respondent in respect of the pathway in S.No.219/1.

2. The petitioner owned land comprised in survey No.215/9 in Natham Villambar Village and he is in possession and enjoyment of the same. They are using the Government poramboke land comprised in survey nos.219/1 and 219/4 situated in Natham Villambar Village as common pathway to reach their respective house. While being so, the fourth respondent by proceedings dated 19.11.2014, issued patta in favour of the fifth respondent in respect of the entire land admeasuring 38 sq.mtrs comprised in survey No.219/1 including the pathway which is used by the petitioner and the other general public. Therefore, the petitioner challenged the issuance of patta in favour of the fifth respondent before the third respondent. The third respondent set aside the patta insofar as the pathway alone and directed the Tahsildar to demarcate the pathway of the petitioner and issue patta for the remaining portion in favour of the fifth respondent.

3. Heard, Mr.K.Gangadaran, the learned counsel for the petitioner, Mr.S.Rajesh, Government Advocate appearing for the respondents 1 to 4, and Mr.V.Ayyaparaja, the learned counsel for the fifth respondent.

4. While pending the writ petition, this Court directed the Tahsildar to make a field inspection and file a report. The Tahsildar conducted field inspection and filed report along with FMB sketch. The FMB sketch revealed the portion of the land which is used as pathway to reach the petitioner's house in the land assigned in favour of the fifth respondent i.e. comprised



in survey No.219/1. Though another pathway is available to reach the petitioner's house comprised in survey no.218/6, there is an encroachment by the third parties by putting up house. Therefore, the only way to reach the petitioner's house is the pathway comprised in survey No.219/1.

5. The fourth respondent filed counter and revealed that the land comprised in survey No.219/1 to an extent of 38 sq.mtrs situated at Vilambar Village, Kallakurichi Taluk is classified as 'Natham'. The adjacent lands comprised in survey Nos.219/2 and 219/3 were purchased by the fifth respondent and he is in possession and enjoyment of the same. Since the said property is in possession and enjoyment of the fifth respondent, he was assigned the said land and issued patta.

6. The fifth respondent filed counter and Mr.V.Ayyaparaja, the learned counsel for the fifth respondent submitted that the subject land is classified as 'grama natham' and it has been assigned in his favour by order dated 19.11.2014. The property comprised in survey No.215/9 is possessed by the petitioner. The petitioner never used the subject land as pathway at any point of time and as such the second respondent rightly allowed the appeal filed by the fifth respondent.

7. On perusal of the order passed by the third respondent and also the photographs submitted by the petitioner and FMB sketch produced by the fourth respondent revealed that the general public along with the petitioner used the subject property as pathway for several decades. However, the said usage has not been recorded in the revenue records and the FMB. Therefore, the fifth respondent was granted patta for the entire extent admeasuring 38 sq.mtrs comprised in survey No.219/1. Therefore, the third respondent rightly directed the fourth respondent to demarcate the pathway which is used by the petitioner and the general public to reach their respective house and for the remaining property comprised in survey no.219/1 may be issued patta in favour of the fifth respondent herein. Without considering the same, the second respondent mechanically allowed the appeal filed by the fifth respondent, that too, without verifying the records.

8. In view of the above, the impugned order is liable to be aside. Accordingly, the impugned order dated 09.04.2019 is set aside and the order passed by the third respondent is restored. The fourth respondent is directed to comply with the direction issued by the third respondent within a period of four



weeks from the date of receipt of copy of this order. It is also made clear that while complying with the above direction, if any law and order issue arises, the fourth respondent can very well seek for police protection from the jurisdictional police station.

9. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Collector Office,
Villupuram District
- 2.The District Revenue Officer,
Collector Office,
Villupuram District
- 3.The Revenue Divisional Officer,
Kallakurichi Taluk,
Villupuram District 606 213
- 4.The Thasildar,
Tashildhar Office,
Kallakurichi Taluk,
Villupuram District 606 213

+1cc to Mr.R.Bharahkumar, Advocate SR.No.65079

+1cc to Mr.K.gangadaran, Advocate SR.No.65046

+1cc to the Government Pleader SR.No.64790

WP.No.15885 of 2019

SSI (CO)
GN(27/12/2021)