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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.23938 of 2018

and

W.M.P.Nos.27879 and 27880 of 2018

Vijaya

... Petitioner

Vs.

1. The District Collector,
Villupuram.

2. The Tahsildhar,
Tirukoilur.

3. Kathirvel

...Respondents

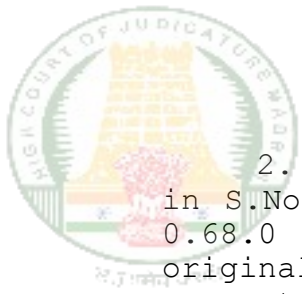
Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent in TR2018/0103/07/092826TR dated 06.04.2018 and quash the same and thereby direct the respondents 1 and 2 to restore the patta in respect of the petitioner's property in S.No.19/8B-0.68.0 ares at Eravalam Village, Tirukoilur Taluk, in her patta No.702 by considering the representation of the petitioner dated 13.03.2018 and 09.04.2018.

For Petitioner : Mr.N.Suresh

For Respondents: Mr.M.R.Gokul Krishnan
Government Advocate
(for R-1 & R-2)

ORDER

This writ petition is filed to issue a Certiorarified Mandamus, calling for the records of the second respondent in TR2018/0103/07/092826TR dated 06.04.2018 and quash the same and thereby direct the respondents 1 and 2 to restore the patta in respect of the petitioner's property in S.No.19/8B-0.68.0 ares at Eravalam Village, Tirukoilur Taluk, in her patta No.702 by considering the representation of the petitioner dated 13.03.2018 and 09.04.2018.



2. The case of the petitioner is that the property comprised in S.No.19/8 out of 2.64 acres - 1.67 ½ acres New S.No.19/8B - 0.68.0 ares situated at Eravalam Village, Tirukoilur Taluk was originally owned by the third respondent. He purchased the said property from one Ramakrishnan by his power agent one Krishnamoorthy on 03.07.2006. Thereafter, the third respondent executed power of attorney in favour of one Kesavan who is the none other than the petitioner's father on 27.07.2009. The said Kesavan executed a sale deed for valid sale consideration in favour of the petitioner by the registered sale deed dated 21.12.2009. On the strength of the sale deed, the petitioner was issued patta in Patta No.702 on 31.10.2010. While being so, the third respondent disturbed the possession and enjoyment of the property. Thereafter, the petitioner filed a suit in O.S.No.53 of 2011 on the file of the II Additional District Munsif, Tirukoilur. It was decreed in favour of the petitioner by the judgment and decree dated 31.08.2015. However, the third respondent filed an Appeal Suit in A.S.No.11 of 2016 and the same was allowed by the judgment and decree dated 12.12.2017 on the file of the II Additional Subordinate Judge, Villupuram. Aggrieved by the same, the petitioner filed an Second Appeal before this Court in S.A.No.269 of 2018 and it is pending for adjudication. On the strength of the decree passed in A.S.No.11 of 2016, the third respondent filed a petition for cancelling the patta issued in favour of the petitioner before the second respondent. On receipt of the same, the second respondent passed the order impugned in this Writ Petition and thereby changed the patta in favour of the third respondent herein.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first and second respondents. The third respondent was duly served with private notice as early as on 10.10.2018. Even then, no one appeared on behalf of him by person or counsel.

4. On a perusal of the order impugned in this Writ Petition, it reveals that on receipt of the application from the third respondent and on receipt of the report from the Village Administrative Officer dated 30.03.2018, the second respondent without adding the petitioner as a party, cancelled the patta issued in favour of the petitioner and changed the patta in the name of the third respondent in respect of the subject property comprised in 19/8B ad-measuring 0.68.00 hectares. The second respondent who issued patta in favour of the petitioner, can modify the entries in the patta pass book on three circumstances. (i) By the reason of the death of any person; (ii) by reason of the transfer of interest in the land; and (iii) by reason of any other subsequent change in circumstances,



the person claims any modification shall make an application to the Tahsildar for modification of the relevant entries in the Patta Pass Book Act.

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5. In the case on hand, the petitioner is the owner of the land by the registered sale deed dated 21.12.2009, vide Document No.3948 of 2010 on the file of the Sub Registrar, Thirukoilur. Whereas, on the strength of the judgment and decree passed in A.S.No.11 of 2016 dated 12.12.2017, the third respondent claims title over the property and applied for change of patta in his favour. As indicated above, only on the above three circumstances, the patta can be modified.

6. The third respondent claimed patta for the very same property owned by the petitioner herein. Therefore, the second respondent has no power to cancel the patta issued in favour of the petitioner, that too by the application filed by the third respondent who claimed the subject land by the judgment and decree passed in A.S.No.11 of 2016. It is also pertinent to mention here that the said suit was filed by the petitioner for bare injunction. That apart, though the appeal suit was allowed in favour of the third respondent. Aggrieved by the same, the petitioner preferred a Second Appeal in S.A.No.269 of 2016 and it is pending for adjudication. If at all there is any grievance over the patta issued in favour of the petitioner, the third respondent ought to have filed an appeal as provided under Section 12 of the Tamil Nadu Patta Pass Book Act, 1983.

7. Section 10(3)(a) of the said Act provides that if any application is made under Section 10(1) of the Act, the Tahsildar shall follow such procedure as prescribed and also shall give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. Even assuming that the Tahsildar has the authority to change patta in favour of the third respondent, before passing the order, he shall issue notice and give reasonable opportunity to the parties. Admittedly, the patta issued in favour of the petitioner, now has been modified in favour of the third respondent by the impugned order. There is no evidence to show that the petitioner was issued notice and he was given opportunity of hearing before passing the impugned order. Therefore, on these two grounds, the impugned order cannot be sustained as against the petitioner.



8. In view of the above discussion, the impugned order dated 06.04.2018 is set aside. Accordingly, this Writ Petition is allowed. However, the third respondent is at liberty to file an appeal as against the issuance of patta in favour of the petitioner in the manner known to law, if so advised. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kv
To

1. The District Collector,
Villupuram.

2. The Tahsildhar,
Tirukoilur.

+1cc to Mr.N.Suresh, Advocate Sr.47758
+1cc to the Government pleader Sr.48221

W.P.No.23938 of 2018

pmk[col]
srg 26/10/2021