



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM:

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

W.P.No. 20104 of 2021

K.Dharaniperumal

...Petitioner

Vs.

1. The Tashildar,
Atur Taluk,
Salem District.

2. The Special Tahsildar,
Urban Land Tax Scheme,
Athur Town,
Salem District - 636 102.

3. The Revenue Divisional Officer,
Atur Salem District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent to consider the representation dated 27.08.2019 and pass orders within a time frame to be stipulated by this Court to issue Patta to the petitioner in respect of the properties in Athur Survey Nos.517/10, 517/10 and 502/1 in 1976 which was changed town VAO to Attur T.S.No.86, Ward-D, Block No.26, S.No.510/7, Door Nos.95, 96, 97, 98, 99 & 99-A as well as T.S.No.80E, Ward No.D, Block No.45, Door No.406, situated in Old Survey No.505/4 Part & 5 Part.

For Petitioner : Mr.W.M.Abdul Majeed

For Respondents : Mr.V.Veluchamy
Government Advocate.

ORDER

This writ petition has been filed for issuance of Writ of Mandamus, directing the 2nd respondent to consider the petitioner's representation dated 27.08.2019 and pass orders within a time frame to be stipulated by this Court to issue Patta to the petitioner in respect of the properties in Athur Survey Nos.517/10, 517/10 and 502/1 in 1976 which was changed town VAO to Attur T.S.No.86, Ward-D, Block No.26, S.No.510/7,



Door Nos.95, 96, 97, 98, 99 & 99-A as well as T.S.No.80E, Ward No.D, Block No.45, Door No.406, situated in Old Survey No.505/4 Part & 5 Part.

2. According to the petitioner, the petitioner's great grandfather namely Perumal Chettiar, was the owner of the aforesaid properties and was in possession and enjoyment of the same till his life time. He was executed a registered Will dated 03.12.1976 as Document No.39 of 1976, on the file of Sub Registrar Office, Attur. Thereafter, he died on 16.07.1979 and subsequently, the said Will came into existence. Following the same, the aforesaid properties shown as Schedule-A thereunder, in the Will dated 03.12.1976 left behind by Perumal Chettiar have been bequeathed in favour of the male descendants of his first son, Shanmugam Chettiar begotten through the said Shanmugam Chettiar's first wife, Ambujam Ammal. As per the Will, the sons of Shanmugam Chettiar and Ambujam Ammal would have only limited life interest of enjoyment alone and the grand sons of Shanmugam Chettiar aforesaid male descendant begotten through Ambujam Ammal alone will have full interest to deal with the property. The petitioner's grandfather and his first wife Ambujam Ammal have five children out of their wedlock among which Murugesan and Kumaravel, the petitioner's father are the male descendants. The above said Murugaesan, the first son of Shanmugam and Ambujam Ammal has not left behind any male descendants, whereas, the petitioner is the only male descendant and the grand son of P.Shanmugam and as such is entitled to succeed to the Schedule A properties of the Will of Perumal Chettiar dated 03.12.1976. While that being so, some portion of the other properties under Schedule A of the Will dated 03.12.1976, were sought to be acquired by the Government under the Land acquisition proceedings, a reference were made under Section 30 of the Land Acquisition Act in L.A.O.P. No.2 of 1986 before the learned Additional Subordinate Judge, Salem, by judgment and decree dated 31.10.1995 in favour of the petitioner ie. to hold that the absolute right under the above Will was available only to the grand sons of Shanmugam Chettiar, his first wife, Ambujam Ammal and as such, the petitioner is alone, as the grand son of Shanmugam Chettiar is entitled to get all the benefits.

3. The petitioner submits that on verification of the Revenue Records, he came to know that including patta, chitta etc., pertaining to the above said properties left behind by Perumal Chettiar under the Will have been mutated in favour his son Shanmugam Chettiar, who has not given any interest in the properties. Therefore, it became just and necessary to seek for the mutation of the patta and Revenue Records in favour of the petitioner. Therefore, he sent various representations on various dates to the respondents, one such representation dated



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5.06.2016 to the first respondent and the second respondent vide notice dated 14.06.2016 called the petitioner for enquiry on 28.07.2016 and the petitioner appeared on 28.07.2016 for enquiry and he submitted an application dated 27.07.2016 to the second respondent requesting him to permit him to avail the assistance of an advocate during the course of enquiry, and the same was adjourned to 10.08.2016. Since 10.08.2016 was declared as a local holiday, an enquiry was re-scheduled to be held on 21.09.2016.

4. The petitioner further submits that on 21.09.2016, he along with his father namely S.Kumaravel, had appeared for enquiry before the second respondent on 21.09.2016 and gave their statement. Thereafter, nothing was heard from the respondents about and the petitioner sent a representation dated 27.08.2019 as a reminder in this regard and the same has not been considered by the second respondent and no order has been passed till date. Hence, the petitioners have no other alternative remedy except to approach this Court under Article 226 of the Constitution of India. Hence, this petition.

5. The learned counsel appearing for the petitioner submitted that the petitioner will be satisfied if a direction is issued to the 1st respondent to consider the petitioner's representation dated 27.08.2019 and dispose of the same within a stipulated time that may be framed by this Court.

6. Having regard to the limited scope of the prayer that is now sought for in this writ petition before this Court and taking into account the submissions made on either side, without expressing any opinion on the merits of the petitioner's representation or the case pleaded by the petitioner in the present writ petition, the Writ Petition is disposed of, with a direction to the 2nd respondent to consider the petitioner's representation dated 27.08.2019 and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

msm



To

1. The Tashildar,
Atur Taluk,
Salem District.
2. The Special Tahsildar,
Urban Land Tax Scheme,
Athur Town,
Salem District - 636 102.
3. The Revenue Divisional Officer,
Atur Salem District.

+1cc to Mr.W.M.Abdul Majeed, Advocate, S.R.No.48153
+1cc to the Government Pleader, S.R.No.49060

W.P.No.20104 of 2021

SJ[co]
NSK 17/11/2021