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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.23281 of 2021

M.Natarajan

... Petitioner

-Vs-

1.The Tahsildhar,
Sendurai Taluk,
Sendurai & Post,
Ariyalur District.

2. A.Velayutham

3.S.Jayabal

... Respondents

PRAYER:-

This Petition is filed under Article 226 of the Constitution of India, praying for the issue a Writ of Mandamus, directing the Ist respondent to consider the representations dated 10.08.2020 and 11.08.2021 for the transfer of the Patta in respect of the lands in SF. No. 145/4 measuring an extent of 0.50.0 Ares and SF No.145/6 measuring an extent of 0.25.0 Ares of Namangunam Village, Sendurai Taluk, Ariyalur District in terms of the Judgment and Decree passed in O.S No.238/2010 dated 23.08.2017 on the file of Additional District Munsif Ariyalur as confirmed in A.S. No. 44 of 2017 dated 03.04.2019 on the file of Sub-Judge, Ariyalur and pass orders accordingly.

For Petitioner :: Mr. S.Kamadevan

For Respondent-1 :: Mr.Yogesh Kannadasan
(Government Advocate)

For Respondents-2&3 :: No Appearance



O R D E R

The relief sought for in this writ petition is for a direction to the 1st respondent to consider the representations dated 10.08.2020 and 11.08.2021 for the transfer of the Patta in respect of the lands in SF. No. 145/4 measuring an extent of 0.50.0 Ares and SF No.145/6 measuring an extent of 0.25.0 Ares of Namangunam Village, Sendurai Taluk, Ariyalur District in terms of the Judgment and Decree passed in O.S No.238/2010 dated 23.08.2017 on the file of Additional District Munsif Ariyalur as confirmed in A.S. No. 44 of 2017 dated 03.04.2019 on the file of Sub-Judge, Ariyalur and pass orders accordingly.

2. The learned counsel for the petitioner would submit that the petitioner's father Thiru. Murugesu Asari (late) purchased the lands in SF Nos.145/4 and 145/6 measuring total extent of 0.75.0 Ares, Namangunam Village, Sendurai Taluk, Ariyalur District through a registered sale deed dated 08.11.1973. After the death of the petitioner's father, the petitioner and his elder brother one Karuppan and sister, Tmt.Dhanalakshmi are in possession and enjoying the same as the legal heirs by intestate succession. While so, the 2nd respondent seems to have produced bogus documents and false representations before the 1st respondent and got Patta under the UDR scheme. On the strength of the same, he filed suit in O.S. No. 238 of 2010, on the file of Additional District Munsif, Ariyalur seeking for declaration and permanent injunction against the petitioner and other two family members wherein his claim was that the lands in question were orally assigned to him by the Government thirty years ago and on the strength of the same, he is in possession and also got Patta accordingly. The above suit was resisted by the petitioner along with his family members contending that the second respondent has no right or title over the said properties. The learned District Munsif after analyzing the oral and documentary evidence categorically held that the petitioner and his brother and sister are the title holders and the second respondent has no right over the suit property and dismissed the suit by the elaborate Judgment and Decree dated 23.08.2017.

3. It has been further submitted by the learned counsel for the petitioner that as against the said judgment, the second respondent preferred A.S. No 44 of 2017 on the file of Sub-Ordinate Judge, Ariyalur and the appellate court also confirmed the Judgment and Decree of the trial court on 03.04.2019. Thereafter, the 2nd respondent has not proceeded for any revision or Appeal against the aforesaid order and thereby the Civil court decree passed with respect to the above properties has become final. While being so, the second respondent seems to have settled the properties in question in favour his grandson/3rd respondent herein on 16.02.2020 to defeat the



petitioner's right and title over the said properties.

4. The learned counsel for the petitioner would further submit that in order to mutation of revenue records in the name of the petitioner and other two family members, based on the said judgment and Decree as confirmed in the appeal, the petitioner had made representation dated 10.08.2020 to the first respondent for the transfer of Patta enclosing the Judgments of the Civil Courts and the same was duly acknowledged. However, there was no response or reply probably due to the Covid-19 pandemic. Again the petitioner has made representation dated 11.08.2021 to the 1st respondent and on receipt of the same, the petitioner has got intimation dated 12.08.2021 stating that the same has been forwarded to the Deputy Tahsildhar to submit his report after enquiry . Thereafter, there is no further progress on the representation dated 11.08.2021 made by the petitioner herein.

5. The learned counsel for the petitioner has relied on the section 10 of the Tamilnadu Patta Passbook Act, 1983 which read as follows:

"10. Modification of entries in the Patta pass book. - (1) Where any person claims that any modification is required in respect of any entry in the Patta pass book already issued under section 3 either by reason of the death of any person or by the reason of the transfer of the land or by reason of any other subsequent change in circumstances, he shall make an application to the Thasildhar for the modification of the relevant entries in the Patta pass book.

2) An application under sub-section (1) shall contain such particulars, as may be prescribed, and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

3) Before passing an order on an application under sub-section (1), the Thasildhar shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the Thasildhar decides that any modification should be made in respect of entries in the Patta passbook, he shall pass an order accordingly and shall make such consequential changes in the Patta pass book, as appear to him to be necessary, for giving effect to his order.



(b) If the Thasildhar decides that there is no case for effecting any modification of the entries in the Patta pass book, he shall reject the application.

(c) An order under clause (a) or clause (b) shall contain the reasons for such order and shall be communicated to the parties concerned in such manner as may be prescribed"

According to the aforesaid Section, the 1st respondent has a statutory duty to effect the modification of the entries due to change of such circumstances. Even though the petitioner has given representations dated 10.08.2020 and 11.08.2021 for the transfer of Patta in respect of the lands in SF. No. 145/4 measuring an extent of 0.50.0 Ares and SF No.145/6 measuring an extent of 0.25.0 Ares of Namangunam Village, Sendurai Taluk, Ariyalur District in terms of the Judgment and Decree passed in O.S No.238/2010 dated 23.08.2017 on the file of Additional District Munsif Ariyalur as confirmed in A.S. No. 44 of 2017 dated 03.04.2019 on the file of Sub-Judge, Ariyalur, the 1st respondent has neither conducted any enquiry in this regard nor passed any order on his representations, hence, he is left with no other alternative and efficacious remedy except to approach this Court by invoking its jurisdiction under Article 226 of Constitution of India for a direction to the 1st respondent as prayed for in this Writ petition.

6. The learned Government Advocate for the 1st respondent would submit that while the Civil Courts have categorically held that the right, title and interest of the property in question is belonged to the petitioner and his brother and sister, the 2nd respondent has settled the property in question in favour of the 3rd respondent. Under such circumstances, the 1st respondent may be directed to conduct the enquiry in this regard and pass orders in accordance with law within a time frame as fixed by this Court.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the 1st respondent as well as perused the material available on records.

8. Having considered the facts and circumstances of the case and submissions of the learned counsel for both sides, this Court without expressing any opinion with regard to the merit of the case, directs the 1st respondent to consider the representations dated 10.08.2020 and 11.08.2021 of the petitioner herein and pass appropriate orders in accordance with law within a period of four months from the date of receipt of copy of this order after affording sufficient opportunity to the parties concerned.



9. With the aforesaid directions, the Writ petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Lbm

To:

The Tahsildhar,
Sendurai Taluk,
Sendurai & Post,
Ariyalur District.

+1cc to the Government Pleader, S.R.No.57134

W.P. No.23281 of 2021

SPD(CO)
CT 08/12/2021