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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.30011 of 2018

and

W.M.P.Nos.35026 of 2018, 24037 of 2019
and 5272 of 2020

J.Rajendran

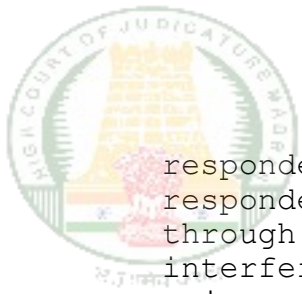
... Petitioner

-Vs-

1. The District Collector,
Dharmapuri District,
Dharmapuri.
2. District Revenue Officer,
Dharmapuri,
O/o, Collectorate,
Dharmapuri.
3. Revenue Divisional Officer,
Harur,
Dharmapuri District.
4. The Tahsildar,
Pappireddypatti Taluk,
Pappireddypatti,
Dharmapuri District.
5. The Village Administrative Officer,
Sindalpadi,
Pappireddypatti Taluk,
Dharmapuri District.
6. P.Murugan

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in proceedings N.K.No.11911/2018/Tha.2, dated 04.10.2018 signed on 05.10.2018 on the file of the second



respondent and quash the same; consequentially forbear the respondents and their subordinates or any other persons claiming through them from any way and in any manner interrupting or interfering with the petitioner's peaceful possession and enjoyment of the property having an extent of 2.60.0 Hectare comprised in Survey No.355 in Sindhalpadi Village, Kadathur Revenue Firka, Pappireddypatti Taluk, Dharmapuri District.

For Petitioner : Mr.M.Srinivasalu

For R1 to R5 : Mr.M.R.Gokul Krishnan
Government Advocate.

For R6 : Mr.C.Prabakaran

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in proceedings N.K.No.11911/2018/Tha.2, dated 04.10.2018 signed on 05.10.2018 on the file of the second respondent and quash the same; consequentially forbear the respondents and their subordinates or any other persons claiming through them from any way and in any manner interrupting or interfering with the petitioner's peaceful possession and enjoyment of the property having an extent of 2.60.0 Hectare comprised in Survey No.355 in Sindhalpadi Village, Kadathur Revenue Firka, Pappireddypatti Taluk, Dharmapuri District.

2. Heard Mr.M.Srinivasalu, learned counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents 1 to 5 and Mr.C.Prabakaran, learned counsel appearing for the sixth respondent.

3. The case of the petitioner is that the land ad-measuring 2.60.0 hectares comprised in Survey No.355, situated at Sindhalpadi Village, Kadathur Revenue Firka, Pappireddypatti Taluk, Dharmapuri District, purchased in the year 1954 by the petitioner's father. Thereafter, he was also issued patta in Patta No.675. After the demise of his father, the petitioner is in possession and enjoyment of the subject property. While being so, the sixth respondent who is having the lesser extent



of land ad-measuring 0.66.0 hectares in adjacent to Survey No.354/1C, approached the first respondent and demanded the road to be formed to reach the land, through the land belonged to the petitioner. It was forwarded to the second respondent and on receipt of the reports and after recording the statement from the petitioner as well as the sixth respondent, the second respondent passed the impugned order in his proceedings N.K.No.11911/2018/Tha.2, dated 04.10.2018, ordering him to carry out the sub-division and thereby to form a public pathway to an extent of 0.01.30 hectares in the land belonged to the petitioner.

4. A perusal of the impugned order revealed that, as per the Revenue Board's Standing Order No. 15(18), within a period of three years from the date of issuance of patta, the Revenue Divisional Officer can cancel the assignment of patta and in case of patta issued by the Tahsildar and Revenue Divisional Officer, can be cancelled without any limitation. Further revealed that the sixth respondent has no other way to reach his patta land except the land which was assigned in favour of the petitioner. The subject land is not cultivated by the petitioner for the past several years and it consist of rocks and it is not feasible for cultivation.

5. Whereas, the statement recorded from the petitioner revealed that the sixth respondent repeatedly requested the Revenue Officials to form a road to reach his patta land and also attempted to trespass into the petitioner's patta land. Therefore, the petitioner was constrained to file a suit for declaration and injunction in O.S.No.162 of 2018 as against the sixth respondent on the file of the Sub Court, Harur and the same has been decreed by the Judgment and Decree dated 24.09.2018.

6. That apart, the sixth respondent is already using the cart track situated adjacent to the petitioner's patta land and also adjacent to the lands belonged to Madhan, Selvam and Samikannu. Therefore, only to use shortcut way, the sixth respondent now insisted the Revenue Officials to allot the land for road to reach his patta land. A perusal of the statement of the sixth respondent revealed that the sixth respondent never used the subject land as pathway and he is already using the cart track which is situated adjacent to the private other persons' lands.

7. A perusal of the counter filed by the first respondent revealed that to an extent of 2.60.0 hectares comprised in



Survey No.355, situated at Sindhalpadi Village, Kadhathur Revenue Firka, Pappireddypatti Taluk, Dharmapuri District was a Government land and it was assigned to the petitioner's father on 22.03.1965. However, the entire land was not brought under cultivation by the writ petitioner or by his father and also utilized for any other purposes and it was kept unused for more than 53 years. Hence, most of the public in and around the subject land were using this unused land as a pathway for their own domestic purposes. However, on perusal of the impugned order revealed that, except the sixth respondent no one made any request to lay a pathway to reach their respective land. Admittedly there is a pathway adjacent to the patta land of Madhan, Selvam on the southern side and on northern one Samikannu and Adhimoolam. The said cart track is already being used by the general public including the sixth respondent herein. Therefore, on the request of the single person i.e., the sixth respondent, the patta assigned in favour of the petitioner's father cannot be cancelled insofar as the subject land ad-measuring 0.01.30 hectares comprised in Survey No.355 out of 2.60.0 hectares.

8. It is also relevant to extract the Revenue Board's Standing Order No.15(18) reads as follows:

"The Board of Revenue or the Government may set aside, cancel or in any way modify the decision of any authority subordinate to them, within three years, if they are satisfied that the decision was grossly inequitable; they may exercise similar powers without any limit of time, where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer, who passed it or it was passed under a mistake of fact or owing to fraud or misrepresentation."

9. At any cost, the said provision is not related to the case on hand, since, there is absolutely no irregularity in the procedure or any of the conditions are not violated by the petitioner after assignment of the subject land dated 22.03.1965 in favour of the petitioner's father. After a period of 53 years, it cannot be said that the subject land is kept unused and not utilized for any other purposes. It seems that the second respondent considered on the request made by the sixth respondent for the reason best known to the second respondent. Therefore, as such it cannot be sustained and it is liable to be set aside. Accordingly, the impugned order in proceedings N.K.No.11911/2018/Tha.2, dated 04.10.2018 is hereby set aside.

10. In view of the above, this writ petition stands



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allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Dharmapuri District,
Dharmapuri.
2. District Revenue Officer,
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O/o, Collectorate,
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3. Revenue Divisional Officer,
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Pappireddypatti Taluk,
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Dharmapuri District.
5. The Village Administrative Officer,
Sindalpadi,
Pappireddypatti Taluk,
Dharmapuri District.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.54960

+1cc to the Government Pleader, S.R.No.55080

W.P.No.30011 of 2018
and
W.M.P.Nos.35026 of 2018,
24037 of 2019 and 5272 of 2020

SSD(CO)
SU(26/11/2021)