BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.5572 of 2009

and

M.P(MD)No.2 of 2009

M.Madurai Veeran ... Petitioner

Vs.

1.The District Revenue Officer
Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.The Special Tahsildar,
Natham Land Survey & Settlement,
Madurai North,
Madurai.

4.S.Arumugam (died) *
5.Indira
6.Marudambal
7.Danasekaran
8.Varadarajan

9.Ganesan
10.Umapathy
11.Ilayaraja
12.Rajathi
(Respondents 5 to 12 are substituted for the deceased fourth respondent vide Court order dated 21.12.2018 in WMP 21378 of 2018) ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order of the first respondent in Ref. Na.Ka.No.116959/2003 G2 dated 30.04.2009 confirming the impugned order of the second respondent in ref. Ni.Mu. No. 2764/2003/7.10.2003 and quash the same.

For Petitioner : Mr.S.Srinivasa Raghavan
For Respondents 1 to 3 : Mr.D.Gandhiraj
Special Government Pleader

For Respondents 5 to 8 : Mr.R.Karunanidhi

For 4th Respondent : died

O R D E R

Heard Mr.S.Srinivasa Raghavan, learned counsel for the petitioner, Mr..D.Gandhiraj, learned Special Government Pleader for the respondents 1 to 3 and Mr.R.Karunanidhi, learned counsel for the respondents 5 to 8.

2.The writ petition has been filed by M.Madurai Veeran, questioning the order of the District Revenue Officer, dated 30.04.2009 in Na.Ka.No.116959/2003 G2.

3.Originally, it appears that the Tahsildar, Madurai had passed an order on 03.07.2000 whereby, he had stated that the application of one M.Muniyandi, who is the father of the petitioner herein, had been examined and that the name of the person, whose name is found in Patta No.448 should be removed and the name of M.Muniyandi should be included in the said patta. Thereafter, mutation of name is of M.Muniyandi in the natham survey and chitta had been also done. In effect on his petition the Tahsildar had recognized the claim of M.Muniyandi and had included his name in the aforesaid patta No.448 in Kovil Pappakudi Village, Madurai North. Consequential changes had also been made in the revenue records and with respect to house tax receipts.

4.At this stage, the matter went further on an appeal by one Mrs. Arumugam, before the Revenue Divisional Officer, who by an order dated 07.10.2003 in Ni.Mu.No.2764/2003/7.10.2003, had observed that it had not been denied that joint patta had actually been originally issued and had thereafter, further stated that documents had not been produced to show that the respondent M.Muniyandi, had participated in the Independence Struggle and that the property had been assigned to him.

5.In view of these particular facts, accepting the contention of the appellant Mrs.Arumugam before him, the Revenue Divisional Officer had directed joint patta to be granted to Mrs.Arumugam, W/o.Subramani and to the father of the petitioner herein / M.Muniyandi.

6.Questioning that particular order, the parties went further to the District Revenue Officer, who passed an order, dated 30.04.2009 in Na.Ka.No.116959/2003 G2. That particular order is now put to test in this Writ Petition.

7.The petitioner herein was the revision petitioner before the District Revenue Officer and the respondent was Tmt.Arumugam. The District Revenue Officer, after examining the contentions raised and after examining the documents, had stated that there records had not been produced to show that the father of the petitioner had actually participated in the freedom struggle and that the property in question had been assigned to him. He therefore confirmed the order of the Revenue Divisional Officer. In the order of the District Revenue Officer, it had also been very clearly stated that the party aggrieved by the said order can approach the civil Court within a period of 30 days.

8.For reasons best known to the petitioner herein, the petitioner had approached the Writ Court.

9.The learned counsel for the petitioner stated that there is an issue as to who should approach the civil Court.

10.The party, who approached the District Revenue Officer, was the petitioner herein. He is the party aggrieved. He is aggrieved by the grant of joint patta. He is aggrieved by not recognising the fact that his father should have been given patta exclusively in his name. The petitioner should have approached the civil Court. If he had a doubt, as to who has to approach the civil Court then he need not have filed the present Writ Petition also.

11.The writ petition has been filed when there is a specific provision provided indicating the manner in which the order of the District Revenue Officer should be reexamined. It is not that the District Revenue Officer had passed an order overlooking the orders of all the earlier authorities. He had only confirmed the order of the Revenue Divisional Officer. In both the orders it has been very clearly stated that the father of the petitioner had not proved or not produced any documents to show that he had participated in the Indian freedom struggle and that the lands were therefore allotted to him. In the absence of such documents, both the authorities have concurrently held that the patta with respect to the property should be granted only as a joint patta and not as exclusive patta.

12.These are all findings on facts and it is only a civil Court which can re-appreciate those facts. Before the civil Court, documents can be produced if they are available to show that the father of the petitioner had actually participated in the freedom struggle. Documents can also be produced that the land in question was assigned to the father of the petitioner herein. Those documents can be tested during the course of trial. They should be admissible. They should be proved in the manner know to law. They should also be relevant. Primarily they must be also genuine. In the absence of such proof, or in the absence of production of documents, it will be highly impossible for the Writ Court to examine the case of the petitioner herein.

13.In the typed set of papers filed along with the present petition, the petitioner has only filed house tax receipts in the name of the father, the proceedings of the Tahsildar, the proceedings of the Revenue Divisional Officer, the representations given and then the death certificate of the father, the legal heirship certificate of the father and the certificate of the Electricity Board and the order impugned.

14.Even before this Court, the petitioner has not produced any document to show that his father M.Muniyandi had actually participated in the freedom struggle. Documents have not been produced to show that the property in question had been actually assigned to the father of the petitioner herein. Even if documents have been produced, they will have to be tested during the course of trial in a civil suit. The Writ Court hope is not the correct forum, The Writ Petition is therefore dismissed.

15. In view of the fact that probably the writ petitioner had bonafide filed the Writ Petition, liberty is also granted under Section 14 of the Limitation Act provided the petitioner establishes the requirements in the said provision. If that be so, then the time period from the date of filing of the Writ Petition, till today may be excluded, if at all the issue of limitation is put against the petitioner and if at all the petitioner decides to institute a civil suit.

16.With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The District Revenue Officer
Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.The Special Tahsildar,
Natham Land Survey & Settlement,
Madurai North,
Madurai.

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-34631[F] dated 16/11/2021)

W.P(MD)No.5572 of 2009
15.11.2021

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