

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.06.2021	17.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.365 of 2019

and

C.M.P. (MD) No.3136 of 2019

and

W.P. (MD) No.11151 of 2019

and

W.M.P. (MD) No.8520 of 2019

W.A. (MD) No.365 of 2019:

- 1.The District Collector
Madurai
- 2.The Revenue Divisional Officer
Madurai North
Madurai 625 020
- 3.The Tahsildar
Madurai North
Madurai 625 020
- 4.The Village Administrative Officer
Koilpappakudi Village
Madurai North Taluk
Madurai

... Appellants

-vs-

- 1.L.N.R.Chandrasekaran
- 2.L.N.R.Janardhanan
- 3.L.N.R.Rajan
- 4.L.N.S.Rajaram (died)
- 5.L.N.V.Subramanian
- 6.L.N.V.Viswanathan (died)
- 7.L.N.V.Natarajan



8.L.N.V.Simmachandran

9.L.N.R.Balasubramanian

10.L.N.T.Sathiyamoorthy

11.L.N.S.Jeyaseelan

12.L.N.K.Surendranathan (died)

13.O.S.Mothimai

[R13 is substituted of the deceased R4 vide order dated 19.10.2016 in W.M.P.(MD) No.13850 of 2016]

14.C.V.Chamundeeswari

[R14 is substituted of the deceased R6 vide order dated 19.10.2016 in W.M.P.(MD) No.13852 of 2016]

15.P.R.Sathiya Priya

16.L.N.S.Praveenkumar

[R15 & R16 are substituted of the deceased R12 vide order dated 19.10.2016 in W.M.P.(MD) No.13851 of 2016]

17.The Senior Divisional Manager

State Marketing Manager (KRIBHCO)
Krishak Bharati Co-operative Ltd.,
Module Nos.1, 2 & 3 /
SIDCO Garment Complex
Thiru.Vi.Ka.Industrial Estate
Guindy, Chennai-600 032

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 10.02.2017, passed in W.P.(MD) No.1318 of 2011, on the file of this Court.

Prayer in WP(MD). 1318 of 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI FIED MANDAMUS, calling for the records leading to the proceedings of the 1st Respondent No.Na.Ka.66350/10/Y1 dated 01-11-2010 and quash the same, and direct redelivery of the land measuring 30.78 cents of land in Survey No.231/2 Kovil Pappakudi Village in Madurai North Taluk under Patta No.495 to the petitioners.



For Appellants : Mr.A.K.Manickam, Government Counsel

For Respondents : Mr.M.S.Suresh Kumar for R1, R2, R5, R7 to R10
No appearance for R3, R4, R6, R11 to R17

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W.P. (MD) No.11151 of 2019:

1.L.N.R.Chandrasekaran

2.L.N.R.Janardhanan

3.L.N.V.Subramanian

4.L.N.V.Natarajan

5.L.N.V.Simmachandran

6.L.N.R.Balasubramanian

7.L.N.T.Sathiyamoorthy

8.L.N.S.Jeyaseelan

9.O.S.Mothimai

10.C.V.Samundeeswari

11.P.R.Sathiya Priya

12.L.N.S.Praveenkumar

... Petitioners

-vs-

1.The District Collector
Madurai

2.The Revenue Divisional Officer
Madurai North, Madurai 625 020

3.The Tahsildar
Madurai North
Madurai-625 020

4.The Village Administrative Officer
Koilpappakudi Village
Madurai North Taluk
Madurai



5.The Senior Divisional Manager
State Marketing Manager (KRIBHCO)
Krishak Bharati Co-operative Ltd.,
Module Nos.1, 2 & 3
SIDCO Garment Complex
Thiru.Vi.Ka.Industrial Estate
Guindy
Chennai-600 032

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records in Na.Ka.No.1992/2004/C, dated 06.05.2010 passed by the second respondent and quash the same as illegal, arbitrary and against the principles of natural justice, which was made without any notice.

For Petitioners : Mr.M.S.Suresh Kumar

For Respondents : Mr.A.K.Manickam, Government Counsel

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.

The writ appeal has been filed by the District Collector, Madurai and three others challenging the order, dated 10.02.2017 in W.P.(MD) No.1318 of 2011, filed by the respondents 1 to 16. The 17th respondent is a Cooperative Society.

2. The private respondents filed the said writ petition praying for issuance of a writ of certiorarified mandamus to quash the proceedings of the first appellant, dated 01.11.2010 and to direct redelivery of the land measuring 30.78 Cents in Survey No.231/2 Kovil Pappakudi Village in Madurai North Taluk, under Patta No.495.

3. By order, dated 10.02.2017, the said writ petition was allowed. Aggrieved by the same, the District Collector, Madurai and other officials have preferred the writ appeal.

4. W.P.(MD) No.11151 of 2019 has been filed by the respondents 1, 2, 5, 7 to 11 & 13 to 16 in the writ appeal praying for issuance of a writ of certiorari to quash the proceedings of the Revenue Divisional Officer, Madurai North / second appellant in the wit appeal, dated 06.05.2010, on the ground that it is in violation of the principles of natural justice.

5. We have heard Mr.A.K.Manickam, learned Government Counsel appearing for the appellants and Mr.M.S.Suresh Kumar, learned counsel appearing for the private respondents in the writ appeal.



6. For the sake of convenience, the District Collector and others shall be referred to as "the appellants" and the private respondents shall be referred to as "the writ petitioners".

WEB COPY 7. The writ petitioners stated that they are owners of the land in question, measuring a total extent of 40 Cents, which was assigned in favour of their forefathers, who are all brothers and sons of L.N.S.Subbier, namely, L.N.S.Ramalingam, L.N.S.Venkatram, L.N.S.Sankarachari and L.N.S.Thulasiram, on 10.04.1947. After the demise of L.N.S.Subbier, the writ petitioners and the legal representatives continued to be in possession of the land, which was assigned to them. They have constructed houses and door numbers were also assigned to the said houses. The Special Tahsildar granted Patta in Form-IV and in order to invite objections, a meeting was convened in the Village Chavadi and since no objection was received, Patta No.495 was granted in favour of the petitioners on 20.05.1998. The land, which was so assigned measuring a total extent of 40 Cents, was partitioned by a deed of partition dated 16.03.1983, registered as document No.6335 of 1983. While so, during June 1999, the third appellant issued a notice dated 15.06.1999 alleging that the Patta No.495 was obtained by furnishing false information and an enquiry is to be conducted. The writ petitioners submitted their objections / reply dated 24.06.1999 and sought for time to produce the assignment order. Since copy of the assignment order was not available with the petitioners, they have filed a copy application for furnishing a copy of the assignment order. While so, the second appellant issued a notice dated 12.10.1999 stating that if the petitioners do not produce the assignment order, he will draw adverse inference against them. This compelled the petitioners to file W.P.No.20020 of 1999, which was disposed of by order dated 15.06.2009 giving liberty to the petitioners to file a copy application in the office of the second appellant, for securing a copy of the assignment order, with further direction to the second appellant to postpone the enquiry for a period of two months. In accordance with the direction of this Court, the petitioners filed copy application on 04.07.2009. However, the copy of the assignment order was not furnished nor any enquiry was conducted by the second appellant. While so, there was an attempt to forcibly disposses the writ petitioners on 10.11.2010, on the ground that the land in question has been allotted to the 17th respondent / Cooperative Society for constructing a Soil Testing Lab in the said premises. This compelled the writ petitioners to file W.P.(MD) No.1318 of 2011 to quash the said proceedings.

8. Before the learned Writ Court, the appellants contended that there is no record to prove that the forefathers of the writ petitioners were granted assignment to an extent of 40 Cents of land in the year 1947. It was further contended that the lands are classified as "Village Natham" and the writ petitioners somehow



managed to obtain a temporary Patta. The Village Panchayat Council also resolved to cancel the assignment granted in favour of the writ petitioners and earmark the land for public use. Further, with regard to the direction issued by this Court in the earlier writ petitioner to furnish copy of the assignment order, it was stated by the appellants that since copy of the assignment order was not available in the office, it was not furnished. In these circumstances, the Patta granted to the petitioners was cancelled on 06.05.2010 and thereafter, by order dated 01.11.2010, the land was assigned to the Society for constructing Soil Testing Laboratory.

9. The learned Writ Court accepted the case of the writ petitioners on all grounds and rejected the case of the appellants / respondents in toto. At the outset, the learned Writ Court came to the conclusion that there is total violation of principles of natural justice and the writ petitioners were denied adequate opportunity to put forth their submissions and the entire proceedings are vitiated. Further, the learned Writ Court held that the order and direction issued in the earlier writ petition i.e. W.P.No.20020 of 1999, dated 15.06.2009, were not complied with and in such circumstances, unilateral cancellation of Patta, which was granted pursuant to various proceedings, is illegal and consequently, allowed the writ petition as prayed for by directing redelivery of the property.

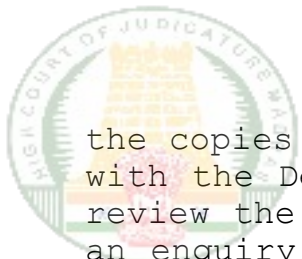
10. The writ petitioners have approached this Court by filing W.P.(MD) No.11151 of 2019 challenging the order passed by the second appellant, dated 06.05.2010 cancelling the Patta granted in their favour. The writ petition was filed during the pendency of the writ appeal. As during the course of hearing of the writ appeal on 04.04.2019, the learned Government Counsel produced a copy of the order passed by the second appellant, dated 06.05.2010, and since the said order was never communicated to the petitioners, in order to avoid any technical pleas being raised by the Authorities, they had filed W.P.(MD) No.11151 of 2019, which was admitted by this Court on 30.04.2019 and an order of interim stay was granted, which is in force. Thus, what is required to be seen is whether the claim made by the writ petitioners that the land in question was assigned to their forefathers and initially a temporary Patta was granted in Form-IV and subsequently, after inviting the objections and since no objection was conveyed by the public, regular Patta was granted and whether such a Patta could have been cancelled in the manner done by the second appellant vide order dated 06.05.2010 and whether the allotment of the land in favour of the Society was valid.

11. The writ petitioners had approached this Court by filing W.P.No.20020 of 1999. The said writ petition was filed praying for issuance of a writ of certiorarified mandamus to quash the order passed by the second appellant, dated 12.10.1999, which is an Equivocal Notice pertaining to the proposal to cancel the Patta



No.495 and to forbear the Authorities from proceeding with the proposed Patta enquiry. The writ petition was pending and it appears that there was an interim order in the writ petition and it was taken up for disposal on 15.06.2009. The learned Writ Court opined that even after a period of ten years, the writ petitioners have not produced copy of the assignment order and therefore, held that it cannot grant the relief sought for to quash the enquiry proceedings. However, the learned Writ Court did not deny the relief to the writ petitioners as it had granted liberty to the petitioners to approach the Government by filing a copy application for furnishing copy of the assignment order stated to have been granted in the year 1947. Taking note of the submission of the learned counsel for the petitioners that copy application was filed on 18.11.1999 and the same has not been furnished to them, the Tahsildar, Madurai North Taluk / third appellant was directed to furnish copies of documents as sought for by the petitioners, if the same are available, within a period of two months from the date of the copy application. Consequently, the second appellant was directed to postpone the enquiry, which was the subject matter of challenge in the writ petition.

12. It is not disputed by the appellants that the writ petitioners complied with the direction and filed copy application, but the copy of the assignment order was not furnished. For the first time, in the writ petition, which is the subject matter of the writ appeal, counter affidavit was filed by the appellants / writ petitioners stating that copy of the assignment order is not available in their office. Therefore, adverse inference cannot be drawn against the writ petitioners, rather, benefit will accrue in favour of the writ petitioners and therefore, the other orders and documents connected and relating to the grant of Patta are to be necessarily looked into in order to examine as to whether the claim made by the writ petitioners is genuine. Thus, the second appellant erroneously cancelled the Patta by order, dated 06.05.2010, solely on the ground that in spite of the directions issued in W.P.No.20020 of 1999, the writ petitioners have not produced copy of the required documents. Forgetting that the document was not available with the Revenue officials and the appellants have admitted before the Court that the document was not available, the copy application filed by the writ petitioners was never disposed of. Therefore, the order dated 06.05.2010, passed by the second appellant is illegal. That apart, the order is in violation of the principles of natural justice as it has not afforded opportunity to the writ petitioners and did not obey the order passed in W.P.No.20020 of 1999, wherein there has been a specific direction to postpone the enquiry for a period of two months. This does not mean that without furnishing copy of the documents as sought for by the writ petitioners, soon after the expiry of the period of two months, Patta can be cancelled. The fault lies with the Department in not complying with the first limb of the direction issued by the Court for furnishing



the copies of the document. Therefore, if the copy is not available with the Department, they should approach the learned Writ Court to review the order in the writ petition or they should have conducted an enquiry, called for the other related and contemporary documents and taken a decision in the matter. Without following such a procedure, the second appellant arbitrarily passed the order, dated 06.05.2010 cancelling the Patta. Therefore, the order dated 06.05.2010 is required to be quashed and it is accordingly, quashed.

13. Reverting back to the writ appeal, if the order cancelling the Patta has been quashed, consequently, the order allotting the land to the Cooperative Society, by order dated 01.11.2010, has to be necessarily set aside. However, since W.P. (MD) No.1318 of 2011 was a case, which was filed earlier, we are required to take a decision in the matter as to whether the stand taken by the respondents alleging that the writ petitioners obtained Patta by furnishing false documents is sustainable or not. As mentioned above, neither the writ petitioners nor the Department have any records relating to the assignment, which was granted in favour of the forefathers of the writ petitioners as claimed by them. However, the facts of the case show that there are other contemporaneous records, which are required to be looked into and the stand taken by the writ petitioners cannot be brushed aside as a case where false information has been furnished. We make such an observation taking note of certain documents, which are placed before this Court.

14. Admittedly, the property was in possession of the writ petitioners, they had constructed houses and the property has been assessed property tax after assigning door numbers. The proceedings of the Divisional Development Officer, Madurai, dated 24.03.1977 shows that the four brothers were assigned 10 Cents of land each. Therefore, an enquiry was conducted by the Divisional Development Officer, wherein the retired Deputy Collector Thiru.N.Ramakrishnan was called upon to give a statement. The first question posed to Mr.N.Ramakrishnan was why 40 Cents of land was not assigned to L.N.S.Subbier. The answer given was under the Rules, the Tahsildar can assign not more than 10 Cents of land to an individual. The next question was whether the Tahsildar had assigned any plot to L.N.S.Subbier. The answer given was at the time of assignment for 40 Cents of land to the four brothers, L.N.S.Subbier was alive and did not apply for any plot and no plot was assigned to him. The next question was that entries in the revenue records show that 40 Cents of land was assigned to L.N.S.Subbier. The answer given was 40 Cents of land cannot be assigned by a Tahsildar and it must be due to fabrication of records. The next question was whether eight brothers applied for assignment. The answer given was only four applied for assignment and one of them was Thiru.L.N.S.Sankarachari.



15. The next document, which would be relevant is the proceedings of the Divisional Development Officer, dated 05.04.1977, which was passed after the statement was recorded from the retired Deputy Collector Thriu.N.Ramakrishnan. After examining the case and also the fact that one of the brothers L.N.S.Sankarachari was given 10 Cents of land and accepting the genuineness of the statement given by the retired Deputy Collector, the subject was referred to the Divisional Development Officer for change of name of the assessment of house tax receipt in favour of L.N.S.Sankarachari instead of L.N.S.Subbier was accepted and confirmed. Subsequently, there has been a deed of partition, dated 16.09.1983, which is a registered document. The photograph, which have been produced by the appellants, show that there is a compound wall and there is a dilapidated house in the property.

16. In the light of the above facts, this Court is of the view that the writ petitioners had records to prove their case and the allegation against the writ petitioners that they obtained Patta by producing false documents is a plea, which is based on surmises and conjectures and not established in the manner required to be done. Thus, the onus is on the appellants to establish that the subject property is not the property of the writ petitioners and the writ petitioners cannot be asked to prove the negative and further the appellants were not able to establish by any records that the case as pleaded by the writ petitioners is false.

17. For the above reasons,

- (i) W.A.(MD) No.365 of 2019 is dismissed and the orders and directions issued by the learned Writ Court are directed to be complied with by the appellants, within a period of three months from the date of receipt of a copy of this Judgment / Order.
- (ii) W.P.(MD) No.11151 of 2019 is allowed and the proceedings of the Revenue Divisional Officer, Madurai North, dated 06.05.2010, is quashed and the Department is directed to restore the Patta as it stood prior to the order of cancellation, dated 06.05.2010.
- (iii) No costs. Consequently, connected miscellaneous petitions are closed.

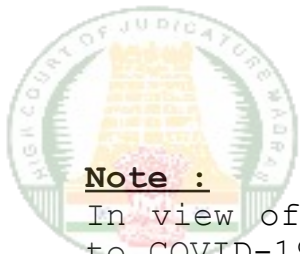
Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)



Note :

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

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To:

1.The District Collector,
Madurai.

2.The Revenue Divisional Officer,
Madurai North,
Madurai 625 020.

3.The Tahsildar,
Madurai North,
Madurai-625 020.

4.The Village Administrative Officer,
Koilpappakudi Village,
Madurai North Taluk, Madurai.

+2 CC to M/s.M.S.SURESHKUMAR, Advocate (SR-19621 & 19622[F] dated 18/06/2021)

+1 CC to M/s.SPL GP (SR-19784[F] dated 21/06/2021)

COMMON JUDGMENT

IN W.A. (MD) No.365 of 2019
and C.M.P. (MD) No.3136 of 2019
and W.P. (MD) No.11151 of 2019
and W.M.P. (MD) No.8520 of 2019

17.06.2021

ac(CO)

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