



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.12.2021

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD) .No.18478 of 2021

WEB COPY

Kamala

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Collectorate,
Madurai 625 002.

2.The Tahsildhar,
Vadipatti Taluk,
Taluk Office, Vadipatti,
Madurai District.

3.Mangaleshwari

4.Kalaiselvi

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to mutate the patta in favour of the petitioner based on the petitioner's online application, dated 21.06.2021, with respect to property of an extent of 42 cents situated in Survey No.79/3C, and 25 cents in Survey No.80/2B, in T.Andipatti Village, Vadipatti Taluk, Madurai District.

For Petitioner	:	Mr.S.Vellaichamy
For R1 and R2	:	Mr.N.Satheesh Kumar
		Additional Government Pleader
For R3 and R4	:	Mr.R.Karuppiah

ORDER

The entire issue surrounds the holdings of one S.Ramachandran, who retired as a Teacher. The writ petitioner is his sister. The third respondent, is his daughter-in-law/widow of his predeceased son, Saravanan. The fourth respondent is his daughter. He had another daughter called Usha. It is claimed that she has also predeceased him. Ramachandran is said to have executed a Will on 21.12.2020. A copy of the said Will had been enclosed as a document along with the Writ Petition. In the said Will, he had discussed about A, B, C and D schedule properties.



2.It is the contention of the learned Counsel for the petitioner that he had bequeathed 'A' Schedule property to the petitioner herein and, 'D' schedule property to the third respondent herein. It is stated that the fourth respondent is also the beneficiary of 'D' schedule property. Placing reliance on the said Will of S.Ramachandran, the petitioner herein, had sought transfer of patta in her name and in this connection had forwarded an online application, a copy of which has been filed along with the Writ Petition. She had also enclosed along with the application, the legal heirship certificate, death certificate, encumbrance certificate and also several other documents. The application of the petitioner has been pending on the file of the second respondent/Tahsildar, Vadipatti Taluk in Madurai District. While that particular application was pending, the third and fourth respondents who also stood to gain from the Will also made an online application and based on such application, the patta had been transferred to their names.

3.It is claimed that even for the 'A' schedule property over which, the petitioner has laid a claim on the basis of the Will, patta had been granted to the third and fourth respondents. Aggrieved by that particular order of the Tahsildar, which in effect is not an order, but, issuance of a patta in the name of the third and fourth respondents, the present Writ Petition has been filed.

4.Heard Mr.S.Velaichamy, learned Counsel for the petitioner, Mr.Satheesh Kumar, learned Additional Government Pleader for the respondents 1 and 2 and Mr.R.Karuppiyah, learned Counsel for the respondents 3 and 4.

5.It is the contention of Mr.Velaichamy, learned Counsel for the petitioner that the Tahsildar is the competent authority to examine any petition with respect to grant or denial of patta. But, such an order should be passed based on the principles of natural justice, after putting all parties on notice. It is his grievance that when the application of the petitioner was pending and which application has been made in proper form through online, without reference to the petitioner, the second respondent had granted patta even with respect to the particular schedule of the holding of Ramachandran to which the petitioner had given an application, seeking patta, in the names of the third and fourth respondents. It is therefore claimed by the learned Counsel that this grant of patta should be interfered with. It had been stated that the petitioner should have been heard and thereafter, a considered order should have been passed. The petitioner could have taken recourse in manner known to law by filing an appeal before the Revenue Divisional Officer, but, that opportunity was also lost by the petitioner, in view of the fact that the patta had been straight away granted to the third and fourth respondents. Under these circumstances, at the learned Counsel stated that this Court should



interfere with the grant of such patta in favour of the third and fourth respondents.

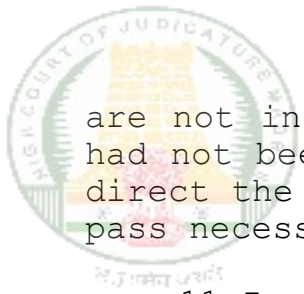
6.Mr.N.Satheesh Kumar, learned Additional Government Pleader pointed out that the affidavit filed in support of the Writ Petition and stated that even in the affidavit it had been stated that patta had been granted in favour of the third and fourth respondents and thereafter, the learned Additional Government Pleader urged that the proper course for the petitioner would be to file an appeal before the Revenue Divisional Officer as contemplated in the provisions. The learned Additional Government Pleader also stated that the transfer in the names of the third and fourth respondents was a natural transfer from the name, which originally existed, namely, their father/father-in-law to the sole surviving legal heirs, who are the third and fourth respondents/daughter-in-law and daughter.

7.It is stated by the learned Additional Government Pleader, the Writ Petition in this regard should not be considered and therefore is liable to be dismissed.

8.The learned Counsel for the third and the fourth respondents had also filed a counter affidavit and it is contended by the learned Counsel that the properties are joint family properties and therefore, Ramachandran, father/father-in-law had no right to execute a Will with respect to the joint family properties and if at all he had any right to execute a Will that right was limited to his share in the joint family properties.

9.I had given my conscious consideration to the arguments advanced. Even if it is to be accepted that the properties over which the Will had been written were joint family properties, and if the arguments of the learned Counsel for the respondents 3 and 4 are to be accepted on that ground, that the patta should also be restricted only to such properties to which the father, Ramachandran, can actually claim rights. It is seen that the patta originally stood in his name. When it is claimed by the learned Counsel for the third and fourth respondents that Ramachandran had only a limited share or right to a limited extent in the said properties, they cannot claim patta to be granted for the entire property. They could claim or lay a claim only for his share in the joint family properties. However, the second respondent before whom an application seeking grant of patta was made should have, in accordance with the principles of natural justice issued notice to the petitioner herein and taken a decision in manner known to law. Judicial review certainly lies on an administrative act which had been taken violating the fundamental principles of natural justice.

10.The principles are very simple. It only requires issuance of notice to all concerned. It further requires hearing all concerned. It does not put any embargo in the nature of order



are not interfered with by the Court. But, if necessary procedure had not been followed, then, certainly the Court has to step in and direct the officials to follow the correct procedure and thereafter, pass necessary orders.

11.In this case, when the online application of the petitioner was very much available on the desk of the second respondent, it is only expected that he should give due respect to the same and issue notice to the petitioner that he intends to transfer patta, seek their opinion and could have passed the very same order as he had passed. But, it should have been passed after hearing necessary parties.

12.In view of these facts, I would interfere with the grant of patta in the name of the third and fourth respondents, but, at the same time I would direct the second respondent to once again conduct an enquiry and issue notice to the petitioner/Kamala and to the third and fourth respondents/Mangaleshwari and Kalaiselvi, hear both sides and thereafter, take a considered decision as to the steps to be taken with respect to the lands over which patta stands in the name of Ramachandran. That decision has to be taken on the subjective satisfaction of the second respondent and this Court can never direct the second respondent to take a decision in a particular manner, but can certainly point out the procedures adopted by him was wrong and further direct him to take a decision in manner known to law, after following due procedures.

13.The patta granted in favour of the third and fourth respondents is hereby interfered with and cancelled. The second respondent is directed to conduct enquiry in manner known to law and pass fresh orders and this exercise is to be completed within a period of sixteen weeks from the date of receipt of a copy of this order.

14.With the above direction this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

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 Collector,
Madurai District,
Collectorate, Madurai 625 002.

2.The Tahsildhar,
Vadipatti Taluk,
Taluk Office, Vadipatti,
Madurai District.

+1 CC to M/s.R.KARUPPIAH, Advocate (SR-39197[F] dated 17/12/2021)

+1 CC to M/s.SPL GP (SR-39273[F] dated 17/12/2021)

W.P(MD) .No.18478 of 2021
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