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W.P.No.10546 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.10546 of 2013

Ole.K.Toubro
Represented by his Power of Attorney
Mr.S.Ganapathy, Senior Manager, (Legal)
M/s.Larsen & Turbo Limited,
ECC Division, having office at
Mount Poonamallee Road, P.B.No.979,
Manapakkam, Chennai – 600 089.

...Petitioner

vs.

1. The Special Commissioner and
Director of Survey and Settlement,
Chepauk, Chennai – 600 005.
2. The Director of Survey and Settlement,
Chepauk, Chennai – 600 005.
3. The Collector,
Dindigal Collectorate,
Dindigal District.
4. The Assistant Director of
Survey and Settlement,
Chepauk, Chennai – 600 005.
5. The Revenue Divisional Officer,
Kodaikanal Taluk, Kodaikanal.



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6. The Tahsildhar,
Kodaikanal Taluk,
Kodaikanal, Dindigul District.

7. The Commissioner,
Kodaikanal Municipality,
Kodaikanal, Dindigul District.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 31.05.2010 in Na.Ka.C.Ma.1/09/E2 and quash the same and further direct the respondents to treat the land in Survey No.29 and 31 as private pathway belonging to the petitioner as per the orders of the fourth respondent dated 16.12.1998 in his Ref.No.Na.Ka.10293/96/A5 so as to enable the sixth respondent to issue patta in this regard to the petitioner.

For Petitioner : Mr.V.Ramesh

For R1 to R6 : Mr.U.Bharanidharan
Additional Government Pleader

For R7 : Mr.T.S.Mohammed Mohideen

ORDER

This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the second respondent dated 31.05.2010 in Na.Ka.C.Ma.1/09/E2 and further direct the respondents to treat the land in Survey Nos.29 and 31 as private pathway belonging to



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the petitioner as per the orders of the fourth respondent dated 16.12.1998 in his Ref.No.Na.Ka.10293/96/A5 so as to enable the sixth respondent to issue patta in this regard to the petitioner.

2. The case of the petitioner is that originally petitioner's mother was the absolute owner of the land comprised in Ward 'B' Block No.4, T.S.No.28 to 32 corresponding to re-survey Nos.92/B, 93/1 and 92/A to an extent of 18 acres situated in Kodaikanal Village and Taluk. After her demise, the petitioner inherited the subject properties and he is in absolute possession and enjoyment of the said properties. Earlier, the petitioner and his mother preferred appeal before the Assistant Settlement Officer seeking patta in respect of the above said properties and the same was held in favour of the petitioner's mother vide order dated 16.12.1998, which was implemented by the sixth respondent vide order dated 23.08.2001 granting patta in respect of T.S.Nos.29-32 and included the petitioner's name in all the Revenue Records, and the same was appealed before the third respondent by one S.Nagendran who is no way connected with the subject properties, pursuant to which the third respondent vide order dated 06.01.2004 cancelled the



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patta issued in favour of the petitioner based on the recommendation of the Revenue Divisional Officer. Further, based on the recommendation of the third respondent, the second respondent vide order dated 31.05.2010 rejected the claim of the petitioner and directed the petitioner to remove the gate in T.S.No.29 and 31, as the same is classified as pathway. Challenging the same, the present writ petition has been filed seeking the aforesaid relief.

3. Learned counsel appearing for the petitioner submitted that admittedly, the order dated 16.12.1998 passed by the Assistant Settlement Officer was implemented by the sixth respondent vide order dated 23.08.2001 wherein Patta was granted in respect of T.S.Nos.28 - 32 in favour of the petitioner and based on the recommendation of the Revenue Divisional Officer dated 04.11.2003, the third respondent passed the order dated 06.01.2004, cancelling the order passed by the sixth respondent dated 23.08.2001, which is against the principles of natural justice. Aggrieved over the same the petitioner filed a writ petition in W.P.No.12351 of 2004. This Court vide order dated 26.09.2008 directed the petitioner to approach the Special Commissioner and Director of Survey and Settlement to seek remedy



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against which the petitioner preferred appeal before this Court in W.A.Sr.No.79959 of 2009 and when the said appeal is pending before this Court, the second respondent vide order dated 31.05.2010, rejected the claim of the petitioner and directed him to remove the gate in T.S.No.29 and 31 and classified the same as pathway is unsustainable. Accordingly, he prayed to allow the present writ petition.

4. Learned counsel appearing for the respondents submitted that originally, T.S.No.29 and 31 is classified as “Poosthi Pathai” in the Revenue Records, which is not a private pathway and the same vests with the Government. Therefore, the petitioner and his family members have no legal right in respect of the land comprised in T.S.Nos.29 and 31. Hence the impugned order passed by the second respondent dated 31.05.2010 needs no interference of this Court and this writ petition deserves to be dismissed.

5. Heard the learned counsel appearing on both sides and perused the materials placed on record.



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6. Admittedly the impugned order dated 31.05.2010 was passed based on the recommendation of the third respondent / District Collector however, a perusal of the order passed by the third respondent dated 06.01.2004 reveals that no opportunity has been given either to the petitioner or the general public and mechanically order was passed cancelling the order passed by the sixth respondent dated 23.08.2001 based on the recommendation of the Revenue Divisional Officer which is in violation of principles of natural justice. The order passed by the third respondent dated 06.01.2004 itself being vitiated, the subsequent order passed by the second respondent dated 31.05.2010 cannot be allowed to subsist. Hence, the impugned order dated 31.05.2010 passed by the second respondent as also the order dated 06.01.2004 passed by the third respondent are set aside and the matter is remanded to the third respondent for fresh consideration and pass appropriate orders after affording an opportunity of hearing to the petitioner and aggrieved persons, if any, within a period of twelve weeks from the date of receipt of a copy of this order. Status Quo Ante shall be maintained till the disposal of the appeal filed by the petitioner.



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RAP

Index : Yes/No
Speaking order : Yes/No

To

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M.DHANDAPANI, J.

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