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W.P.No.41336 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

**CORAM:
THE HON'BLE MR.JUSTICE M.DHANDAPANI**

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C.Rathinam (Deceased)

2.Subbiah

3.Kavitha

4.Jayamani

(P2 to P4 substituted as Lrs of deceased
sole petitioner vide order dated 21.03.2022
made in W.M.P.No.6255/2022 in
W.P.No.41336/2006)

...Petitioners

VS.

1.The State of Tamil Nadu
Represented by the Secretary
Revenue Department,
Fort St.George,
Chennai – 600 009.

2.The Special Commissioner &
Land Commissioner for Land Administration
Chepauk, Chennai – 600 005.

3.The District Revenue Officer,
Salem.

4.The Revenue Divisional Officer,



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Salem.

5.The Tahsildar,
Yercaud, Salem District.

6.Gem Granites
a registered Firm
by its General Manager
58, Cathedral Road,
Chennai – 600 086.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order in the nature of Certiorarified Mandamus or any other appropriate writ calling for the records of the second respondent relating to his order Na Ka F.2/18672/04 dated 21.01.2006, quash the same and direct the fifth respondent to re-grant patta to the petitioner for the lands of an extent of three acres each in S.Nos.17/5 and 17/6 in Athiyur Village, Yercaud Taluk, Salem District.

For Petitioners : Mrs.HemaSampath(senior counsel)
for M/s.R.Meenal

For Respondents : Mr.Yogeshkannadasan (R1 to R5)
Special Government Pleader

ORDER

This writ petition has been filed to direct the fifth respondent to re-grant patta to the petitioner in respect of the lands to an extent of three acres



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each in S.Nos.17/5 and 17/6 in Athiyur Village, Yercaud Taluk, Salem District.

2.The case of the petitioner is that the properties comprised in S.Nos.17/5 and 17/6 situated at Athiyur village, Yercaud Taluk, Salem District, were issued in favour of the petitioner's brother namely Jeyeraj and the petitioner respectively by way of conditional assignment. After the demise of the petitioner's brother, the petitioner purchased the property in S.No.17/5 through a registered sale deed dated 08.02.1990 from Sheela, the wife of the petitioner's brother. Thereafter, one K.Gunatharan approached the petitioner and offered a proposal for mining in the above said properties. While so, the petitioner, the said K.Gunatharan and one Asaithambi entered into an agreement to undertake mining activities in the said properties for five years from 1984 to 1989. The power of attorney was executed in favour of said Asaithambi but misusing the same, the said K.Gunatharan and the said Asaithambi executed a sale deed dated 13.02.1992 in favour of the sixth respondent. The sixth respondent claimed that they had purchased the said property in S.No.17/6 and they had also taken one acre in S.No.17/5 on



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lease. Therefore, the petitioner filed a suit in O.S.No.2139 of 2004 before the II Additional District Munsif's Court, Salem, for a declaration that the sale deed executed in favour of the six respondent is fraudulent and invalid. The suits were decreed in favour of the petitioner and the appeals in Appeal Suit and Second Appeal filed by the 6th respondent were dismissed. The petitioner, thereafter, filed a representation for grant of patta and the fourth respondent vide his proceedings dated 31.12.1993, directed the petitioner to approach the Civil Court. Against the said order of the fourth respondent, the petitioner preferred a revision petition before the third respondent and the same was dismissed by cancelling the assignment dated 07.05.1977. Aggrieved against the same, this Writ Petition is filed.

3.The learned Senior counsel for the petitioner submits that the petitioner filed suit in O.S.No.2139 of 2004 on the file of the II Additional District Munsif Court, Salem, for declaration to declare the sale deed dated 13.02.1992 as fraudulent and invalid and another suit in O.S.No.2141 of 2004 before the same Court for declaration that the lease deed dated 13.02.1992 as false, fraudulent and invalid in law. Both the suits were



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decreed in favour of the petitioner by order dated 21.12.2006, thereby directing the sixth respondent to deliver possession of the above said property to the petitioner. Aggrieved by the same, the sixth respondent filed appeal suit in A.S.Nos.58 & 56 of 2007 and A.S.No.18 of 2008 and all the appeals were dismissed vide order dated 01.09.2009, confirming the decree passed in O.S.Nos.2139 & 2141 of 2004. Against the said order, sixth respondent and one Asaithambi filed Second Appeals in S.A.No.1518, 1519 & 1520 of 2010 before this Court and the same were dismissed as withdrawn. While such being the case, when there is no restraint order, rejecting the petitioner's representation for issuance of patta is not sustainable. Accordingly, he prayed for appropriate orders.

4. On the above said contention, heard the learned counsel Special Government Pleader appearing for the respondents and perused the materials available on record.

5. On perusal of the materials available on record it is evident that, the suits in O.S.Nos.2139 & 2141 of 2004 filed by the petitioner were decreed



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in his favour on 21.12.2006 and that, the same was confirmed by the lower appellate court vide order dated 01.09.2009 in the appeal and the further appeal before this Court also ended in favour of the petitioner.

6. That being the undisputed case, it is incumbent on the part of the revenue authorities to consider the representation in the light of the order and decree passed by the Court below which has been confirmed in appeal. In such view of the matter, this Court without interfering with the impugned order remands the matter to the 5th respondent by directing the petitioner to file fresh application for issuance of patta before the 5th respondent along with a copy of the decree in O.S.Nos.2139 & 2141 of 2004 and A.S.Nos.58 & 56 of 2007 and A.S.No.18 of 2008 within a period of two weeks from the date of receipt of copy of this order and on receipt of such representation, 5th respondent is directed to consider the same in the light of the decree dated 21.12.2006 passed in O.S.Nos.2139 & 2141 of 2004 and decree dated 01.09.2009 passed in A.S.Nos.58 & 56 of 2007 and A.S.No.18 of 2008 and pass appropriate orders in accordance with law within a period of twelve weeks thereafter.



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WEB COPY 7. With the above observations and direction, the Writ Petition is disposed of. No costs.

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Index : Yes/No

Speaking order : Yes/No

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