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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.3344 OF 2009

AND

W.M.P.NOS.1 & 2 OF 2009

R.Elanchezhiyan

...Petitioner

Vs.

- 1.The District Revenue Officer,  
Villuppuram District,  
Villuppuram.
- 2.The Revenue Divisional Officer,  
Kallakurichi Taluk,  
Kallakurichi,  
Villuppuram District.
- 3.The Zonal Deputy Tahsildar,  
Kallakurichi Taluk,  
Kallakurichi,  
Villuppuram District.
- 4.Kalikkatti Mooper
- 5.Sadaya Mooper
- 6.Arumugam
- 7.Chinnammal
- 8.Ramasamy
- 9.Mariammal

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the first respondent dated 30.12.2008 made in Na.Ka.Aa.8/T.R.R.P.04/07(Aa.8/19910/03) in confirming the order of the second respondent dated 23.03.2003 in his proceedings 6906/2003/A4, and quash the same.



For Petitioner : Mr.P.Valliappan

For R1 to R3 : Mr.R.P.Murugan Raja  
Government Advocate

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O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorari to call for the records relating to the proceedings of the first respondent dated 30.12.2008 made in Na.Ka.Aa.8/T.R.R.P.04/ 07(Aa.8/19910/03) in confirming the order of the second respondent dated 23.03.2003 in his proceedings 6906/2003/A4, and quash the same.

2. The case of the petitioner is that the disputed property in survey No.5/2, measuring to an extent of 1.47.0 Hectare (3.64 acres), Vinai Theerthapuram Village, Kallakurichi Taluk, Villuppuram District, is Government land which was assessed as waste land. For the disposal of the waste land, the assessment order was issued in favour of the petitioner on 31.10.1965 and from the date of assessment, the petitioner is in possession and enjoyment of the same and the Tahsildar has also issued Patta in favour of the petitioner in Patta No.292, along with Patta Pass Book on 11.07.1984 and other revenue records were also mutated in favour of the petitioner. While so, during the course of Up-dating the Registry Scheme (U.D.R) the Tahsildar, Kallakurichi, transferred the Patta for the aforesaid land in favour of respondents 4 to 6 and one Mr.Kannan, who inherited the estates to the respondents 7 to 9, by subdividing the aforesaid Survey number, without conducting any enquiry and subsequently, the petitioner made a representation before the 3<sup>rd</sup> respondent, raising objections for transferring the Patta in favour of the private respondents. After conducting a proper enquiry, the third respondent herein, retransferred the Patta to the petitioner's name in respect of the above said land, by its order dated 26.02.1993. As against the order of the third respondent, respondents 4 to 6 and the said Kannan, preferred an appeal before the Revenue Divisional Officer, Virudhachalam and the Revenue Divisional Officer without affording sufficient opportunity to the petitioner, set aside the order of the third respondent on the ground that the 3<sup>rd</sup> respondent has no power to cancel the order issued by the Tahsildar. By virtue of the above said order, the respondents 4 to 6 and the said Kannan, attempted to interfere with the petitioner's peaceful possession and enjoyment over the said land. Hence, the petitioner filed a Suit against them in O.S.No.808 of 1993, on the file of the I Additional District Munsif Court at Kallakurichi, seeking for the relief of declaration of title and for permanent injunction. Later on, the petitioner preferred a Revision before the



District Revenue Officer, 1<sup>st</sup> respondent herein, against the order of the Revenue Divisional Officer, Vridhachalam. The first respondent granted an interim stay on 11.01.1994 and subsequently, the first respondent dismissed the petitioner's Revision in his proceedings No.Na.Ka.A3.18657/93, holding that the Patta will be transferred subject to the result of the Suit pending against the parties, wherein, the first respondent clearly observed that G.O.Ms.No.92, Revenue, dated 15.06.1992, the Zonal Deputy Tahsildar has power to rectify the mistake committed during the course of UDR Scheme, and also while transferring the Patta under UDR Scheme, the authorities concerned ought to have conducted a proper enquiry by affording sufficient opportunity to the parties. However, without the knowledge of the petitioner, the Patta was transferred by the Tahsildar, which is unsustainable in law.

2.1. In the meantime, the Suit filed by the petitioner was decreed on 31.01.2003, thereby declared the title and for permanent injunction against respondents 4 to 9. Thereafter, the respondents 4 to 9 have made a representation to the District Collector, Villuppuram, for cancellation of Patta granted in favour of the petitioner in respect of the abovesaid property. The said representation was forwarded to the second respondent herein and the second respondent conducted an enquiry, in which the petitioner and the respondents 4 to 9 have appeared, and the petitioner has categorically pleaded before the second respondent that the Suit, which was filed by the petitioner is in his favour. But, without considering the same, the second respondent has suo moto cancelled the petitioner assignment, which was granted by the Government. Further, the grievance of the petitioner is that the Government granted the assignment based on which, the petitioner is in continuous possession and enjoyment of the same, by paying the kist and all the revenue records were also mutated, and Patta also stands in his name. Aggrieved by the same, the petitioner preferred another revision before the first respondent on 21.04.2003, wherein the first respondent considered the petitioner's bonafide and long period of possession and enjoyment of the property, and granted interim stay as against the order of the second respondent on 30.04.2003. Further the respondents 4 to 9 had filed an appeal against the judgment of the Civil Court in A.S.No.115 of 2003 before the Sub-ordinate Judge's Court at Kallakurichi. The said appeal was dismissed for default on 16.10.2006. Thereafter, the appeal was restored on an application filed by the respondents 4 to 9, and the same is pending for disposal. While so, the first respondent without any intimation and proper enquiry dismissed the revision petition filed by the petitioner, and the impugned order passed by the first respondent, which is unsustainable in law. Challenging the same, the present Writ Petition is filed.



3. The learned counsel for the petitioner submitted that, though initially the appeal was dismissed on 16.10.2006 and subsequently the restoration application filed by the respondents is pending in lower Court for disposal, however, till date the restoration application has not been allowed by the trial court. Hence, the present impugned order passed by the first respondent is not sustainable in law and the same is liable to be set aside.

4. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

5. It is borne out by record that the appeal is pending restoration before the court below. Such being the case, without deciding the title to the property, it would not be just and reasonable to issue any direction in favour of one party or the other. Therefore, this Court, without issuing any direction, grants liberty to the petitioner to file fresh application pursuant to the order of Lower Court and depending upon the outcome of the appeal, the petitioner as well as the private respondents 4 to 6 are at liberty to make appropriate application before the District Revenue Officer, which shall be considered and disposed of in accordance with law.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

jd/nhs

To

1. The I Additional District Munsif,  
Kallakurichi.

2. The District Revenue Officer,  
Villuppuram District,  
Villuppuram.

3. The Revenue Divisional Officer,  
Kallakurichi Taluk,  
Kallakurichi,  
Villuppuram District.



4.The Zonal Deputy Tahsildar,  
Kallakurichi Taluk,  
Kallakurichi,  
Villuppuram District.

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+1cc to M/s.C.Prabakaran, Advocate Sr.No.18445

+1cc to the Special Government Pleader Sr.No.18836

W.P.No.3344 of 2009

SKM(CO)

RVM(15/06/2022)