



W.P.No.42336 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

CORAM:

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

W.P.No.42336 of 2016

and

W.M.P.No.36241 of 2016

R.Subburayan

...Petitioner

Vs.

1. The Tahsildar
Vandavasi Taluk,
Vandavasi.

2. Ponnusamy

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 08.11.2016 signed on 21.11.2016 bearing Ref.No.Pa.Mu.A5/7177/2016 and quash the same and consequently direct the 1st respondent to restore the Patta No.52, issued in favour of the petitioner in respect of the lands comprised in S.Nos.85/1A, 85/1B1, 85/3 and 85/4B admeasuring 0.38.00 Ares, 0.38.50 Ares, 0.41.00 Ares and 0.31.00 Ares respectively, situated in Adhiyankuppam Village, Adhiyanoor Post, Vandavasi Taluk, Tiruvannamalai District.

For Petitioner : Mr.T.Saikrishnan

For Respondents : Mr.U.Bharanidharan, AGP, for R1



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: Mr.A.Seshadri, for R2

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ORDER

The petitioner has filed this Writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in respect of the order dated 08.11.2016 bearing Ref.No.Pa.Mu.A5/7177/ 2016, quash the same and to consequently, direct the 1st respondent to restore the Patta No.52, issued in favour of the petitioner in respect of the subject lands.

2. The case of the petitioner is that the land comprised in S.No.85/3, to an extent of 1.1 Acre was owned by his father namely, Late Raman and he was in absolute possession and enjoyment of the same. While so, one Munusamy, Subramani and Mani, who are the sons of one Ellan, brother of the petitioner's father, were trying to sell a portion of the subject land to an extent of 50.5 cents to the 2nd respondent, as if the entire property belonged to their grandfather and on oral partition, the same was divided into 2 shares in which the upper half of the property was allotted to them and the lower half is allotted to the petitioner's father. Aggrieved by the same, the petitioner's father filed a Suit in O.S.No.390 of 1984 on the file of the Additional District



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Munsif Court, Arni, seeking permanent injunction as against the 2nd respondent and others and the same was partially decreed in favour of the petitioner's father on 20.12.1990. Aggrieved by the same, the petitioner's father filed an Appeal in A.S.No.29 of 1991 on the file of the Sub Court, Arni, which was allowed on 26.02.1993, reversing the decree dated 20.12.1990 made in the above said suit. Thereafter, the 1st respondent issued patta in Patta No.52 in favour of the petitioner and his brother namely, Ekambaram in respect of the lands comprised in S.Nos.85/1A, 85/1B1, 85/3 and 85/4B, measuring an extent of 0.38.00 Ares, 0.38.50 Ares, 0.41.00 Ares and 0.31.00 Ares respectively, situated at Adhiyankuppam Village, Tiruvannamalai District. While so, challenging the above said judgment passed by the lower Appellate Court, the 2nd respondent and others filed a Second Appeal in S.A.No.1710 of 1995 before this Court. Pending Second Appeal, upon receipt of an application dated 03.07.2016 from the 2nd respondent, the 1st respondent passed the present impugned order dated 08.11.2016 bearing Ref.No.Pa.Mu. A5/7177/2016, canceling Patta No.52 issued in favour of the petitioner and his brother and directed to restore the same back to Patta No.96 as reflected in the A register. Challenging the same,



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the present Writ petition is filed.

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3. Learned counsel for the petitioner submitted that, during the pendency of the Second Appeal before this Court, the petitioner's father passed away and the petitioner and other legal heirs of the said Raman were impleaded and subsequently, the patta in respect of subject property was also issued in favour of the petitioner and his brother. The major grievance of the petitioner is that, though the Second Appeal in S.A.No.1710 of 1995 filed by the 2nd respondent and others, challenging the judgment dated 26.02.1993 made in A.S.No.29 of 1991 was pending before this Court, merely upon receipt of the application from the 2nd respondent, that too seeking cancellation of patta only in respect of the land comprised in S.No.85/3 to an extent of 50 1/2, the action of the 1st respondent canceling the entire patta in Patta No.52 which stood in the name of the petitioner and his brother in respect of the lands comprised in S.Nos.85/1A, 85/1B1, 85/3 and 85/4B, is not sustainable. Further, the present impugned order was passed by the 1st respondent, without hearing the petitioner is not sustainable and it is wholly against the principles of natural justice. Further, it is pertinent to note that,



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subsequently, the said Second Appeal in S.A.No.1710 of 1995 was dismissed on 07.12.2016, confirming the judgment made in the A.S.No.29 of 1991 in favour of the petitioner's father. Hence, the order impugned in this petition, necessarily has to be interfered with and accordingly, he prayed for allowing this Writ petition.

4. Learned counsel for the 2nd respondent submitted that, mere dismissal of the second appeal will not deprive the rights of the 2nd respondent to possess the property, as the said suit in O.S.No.390 of 1984 was filed by the petitioner's father is only for permanent injunction and not for declaration of title in respect of the subject property in favour of the petitioner's father. Hence, he prayed for dismissal of this Writ petition.

5. On the above said contentions, heard learned Additional Government Pleader and perused the materials available on record.

6. In catena of decisions, this Court held that the patta is not a title and it confirms only the possessory rights. It is not disputed that, the suit filed by the petitioner's father in O.S.No.390 of 1984 as against the 2nd respondent, seeking permanent injunction was partially decreed in favour of the



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petitioner's father and the subsequent appeal preferred by the petitioner's father in A.S.No.29 of 1991 was allowed on 26.02.1993, reversing the decree dated 20.12.1990 made in the above said suit and against which, the 2nd respondent and others, filed Second Appeal in S.A.No.1710 of 1995 before this Court and the same was dismissed on 07.12.2016, confirming the judgment made in the A.S.No.29 of 1991 in favour of the petitioner's father. It is equally not disputed that the petitioner's possession over the subject property was established before the trial Court and the same was also confirmed by this Court. While such being the case, the petitioner is entitled for patta and the cancellation of the patta which stood in the name of the petitioner and his brother, that too without conducting proper enquiry and without affording sufficient opportunity of personal hearing either to the petitioner or to his brother, is not sustainable. Hence, on the sole ground, the present impugned order is liable to be interfered with.

7. Accordingly, the order impugned is set aside and the Writ petition is allowed with a direction to the 1st respondent to restore the patta in the name of the petitioner and his brother within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected



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Miscellaneous petition is closed.

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Index : Yes/No

Speaking order : Yes/No

M.DHANDAPANI, J.

skt

To

The Tahsildar
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Vandavasi.

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