IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30012 of 2022

Thayathal ... Petitioner

Vs.

1. The District Collector,
District Collectorate,
Tiruppur.

2. The District Revenue Officer,
District Collectorate,
Tiruppur.

3. The Tahsildar,
Dharapuram Taluk,
Tiruppur District.

4. The Revenue Divisional Officer,
Revenue Divisional Office,
Tharapuram.

5. The Village Administrative Officer,
Nandavanampalayam,
Tharapuram Taluk,
Tiruppur District.

6. The District cum Special Officer,
Tamil Nadu Boodhan Board,

Chennai – 600 005.

7.The Special Secretary,
Commissioner of Land Reforms,
Tamil Nadu Boodhan Board,
Chennai – 600 005.

8.Rangasamy
9.Dev Anand … Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Na.Ka.No.4852/2014/13 issued by the 2nd respondent dated 01.09.2022 and quash the same as contrary to law and consequently direct the 2nd respondent to consider the petitioner claim for issuance of patta in the petitioner name in R.S.No.915/2 (Old Survey No.608) in pursuance to the judgment and decree dated 19.08.2020 in O.S.No.175 of 2012 on the file of the learned District Munsif Court, Dharapuram.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.T.K.Saravanan for RR1 to 7
Government Advocate

ORDER

The petitioner has filed this writ petition to call for the records pertaining to Na.Ka.No.4852/2014/13 issued by the 2nd respondent dated 01.09.2022 and quash the same as contrary to law and consequently direct the 2nd respondent to consider the petitioner's claim for issuance of patta in the name of the petitioner pertaining to R.S.No.915/2 (Old Survey No.608) in pursuance to the judgment and decree dated 19.08.2020 in O.S.No.175 of 2012 passed by9 the District Munsif Court, Dharapuram.

2.Since, no adverse order is being passed as against the respondents 8 and 9, notice to respondents 8 and 9 is dispensed with.

3.The case of the petitioner is that the property in S.F.No.608 to an extent of 17.31 acres belongs to one Kumarasamy Gounder. After his demise, the said property devolved upon his two sons, namely, Subbiah Gounder and Ramasamy Gounder, who are his legal heirs. While so, the brothers entered into a Partition dated 17.12.1959, in which 8.65 ½ acres of land was allotted to Subbiah Gounder, father of 8th respondent herein, mentioned as "B" Schedule property and the Southern portion of the remaining 8.65 ½ acres of land was allotted to Ramasamy Gounder, mentioned as "A" Schedule property. On 18.12.1959, there was a partition between the said Ramasamy Gounder and his son K.R.Raju, in which the said Raju was allotted the Southern portion of the property in S.F.No.608

measuirng about 8.65 ½ Acres. After the said partition dated 18.12.1959, the petitioner purchased the land allotted to said Raju on 05.03.1981.

4.It is further averred by the petiitoner that the above said Subbiah Gounder donated 3 acres of land out of his share in the Northern portion in S.F.No.608 to Tamil Nadu Boomidhan Scheme on 19.12.1963 and the Deed was registered on 25.03.1965 and thus, out of 8.65 ½ acres of land allotted, he was in possession of 5.65 ½ acres of the land. While so, during the year 1988 – 1989 the property in S.F.No.608 was subdivided and the Northern side portion of the property was renumbered as R.S.F.No.914 and the Southern side portion of the property was renumbered as R.S.F.No.915. In order to divide the property donated to Boomidhan Board, the Revenue Authorities issued patta to Boomidhan Board in respect to the land in S.No.915/2 which is owned by the petitioner. Thereafter, the petitioner filed a suit for declaration of title for 8.65 ½ acres of the land on the Southern side of R.S.No.608 and for recovery of possession from the 8th respondent herein in O.S.No.375 of 1989 before the District Munsif Court, Dharapuram and the said Court vide Judgment and Decree dated 10.02.1995 upheld that the petitioner is in possession of the Southern portion of the above said land and the land donated to Boomidhan Board is in the Northern part of S.No.608 (R.S.No.914) which is in possession of the 8th respondent. Aggrieved over the said order, the 8th respondent preferred an appeal in A.S.No.26 of 1995 on the file of the Sub Court, Dharapuram and the Sub-Court vide its Judgment and Decree dated 08.08.1995 confirmed the decree in O.S.No.375 of 1989. Challenging the same, the 8th respondent preferred Second Appeal in S.A.No.1434 of 1995 before this Court and this Court vide its order dated 22.02.2008 confirmed the decree passed by the lower appellate Court. It is further averred by the petitioner that the petitioner filed another suit in O.S.No.175 of 2012 on the file of the District Munsi Court, Dharapuram, seeking declaration that the property donated to the Boomidhan Board is situated in S.No.914 and not in S.No.915/2 and the trial Court vide its judgment and decree dated 19.08.2022 allowed the same in favour of the petitioner. Thereafter, no appeal was filed by the Boomidhan Board and others who have party to the suit. Inspite of the said order, patta has not been mutated in favour of the petitioner. Hence, the present Writ Petition has been filed.

5.Learned counsel appearing for the petitioner submit that though patta has been issued in terms of Section 3 of the Patta and Passbook Act, 1983, the appropriate authority for mutation of the patta is the Tahsildar. However, erroneously, the petitioner has made an application before the District Collector and all other respondents and the present impugned order is passed by the District Revenue Officer on the ground that a Suit in O.S.No.335 of 2021 is pending on the file of the District Munsif Court, Dharapuram at the instance of Rangasamy and Dev Anand and unless the same is disposed, no order can be passed, which is challenged in this Writ Petition. He further prayed that this Court may grant liberty to the petitioner to file a fresh application in terms of Section 10 of the Tamil Nadu Patta and Passbook Act, 1983 and a further direction be issued to the Tahsildar to decide the issue without being influenced by any of the observations made in the impugned order.

7.Learned Government Advocate appearing for the respondents 1 to 7 submit that any patta issued in terms of Section 3 of the Tamil Nadu Patta and Passbook Act, 1983, necessary modification or cancellation is permissible only by the Tahsildar and that shall be made only under the terms of Section 10 of the Tamil Nadu Patta and Passbook Act, 1983.

However, the District Revenue Officer has usruped the power of the original authority and hence, this Court may set aside the impugned order and issue a direction to the petitioner to make appropriate application before the Tahsildar and this Court may issue a further direction to the Tahsildar to pass appropriate orders on the same after affording an opportunity of personal hearing to the petitioner as well as the private respondents.

8.Heard the learned counsel appearing for the petitioner and learned Government Advocate appearing for the respondents 1 to 7.

9.It is fairly submitted by the learned counsel for the petitioner that the representation has been erroneously submitted before the District Collector, in which the District Revenue Officer has passed order. However, as rightly pointed out, any correction, modification or alteration in the patta could be made only by the Tahsildar under Section 10 of the Patta Passbook Act. Therefore, the order passed by the 2nd respondent is impermissible and unsustainable and the same deserves to be dismissed.

10.However, it should also be pointed out that O.S.No.335 of 2021 is pending on the file of the District Munsif Court, Dharapuram. In case of any dispute, Rule 4(4) of the Tamil Nadu Patta Passbook Rules, 1987, vests power on the Tahsildar to deal with the same and for better clarity, the same is extracted hereunder:-

> *" Rule 4(4):- In the event of the Tahsildar being satisfied that a dispute concerning ownership of patta is already pending in a Court or issues are raised before him which impringe on personal laws or laws of sucession and all the parties interest do not agree on the ownership in writing, he shall direct the concerned parties to obtain order on the ownership from a competent Civil Court having jurisdiction before changing the entries as already recorded and existing in the various revenue records."*

11.In view of the aforesaid provision, it is clear that any decision that is to be taken by the Tahsildar is to be in adherence to Rule 4(4) of the Patta Passbook Rules.

12.Accordingly, the order impugned herein is set aside and the petitioner is directed to submit fresh representation/ application along with a copy of this order before the jurisdictional Tahsildar in terms of Section 10 of the Tamil Nadu Patta Passbook Act within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of the said representation/ application, the jurisdictional Tahsildar is directed to consider the same in terms of Rule 4(4) of the Tamil Nadu Patta Passbook Rules, keeping in mind the pending O.S.No.335 of 2021 before the District Munsif Court, Dharapuram, and after affording an opportunity of hearing to the petitioner as well as the other aggrieved parties, including the Boomidhan Board, the Tahsildar shall pass appropriate orders on merits and in accordance with law within a period of twelve weeks thereafter.

13.This Writ Petition is allowed with the aforesaid observations and directions. There shall be no order as to costs.

14.11.2022

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No
To

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