



W.P.(MD).No.16283 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.16283 of 2013
and MP(MD).Nos.1 & 2 of 2013**

V.Vijaya

....Petitioner

Vs

1.The District Collector
Sivagangai

2.The District Revenue Officer
Collector Office
Sivagangai

3.The Revenue Divisional Officer
Devakottai
Sivagangai

4.The Tahsidhar
Karaikudi
Sivagangai

5. N.Ramachandiran

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records, relating to the impugned order of the second respondent dated 04.02.2013 in Pa.Mu.P. 40276-2010 in Revision Petition No.54/2010 and quash the same and consequently direct the respondents 1 to 4 to not to interfere in the Civil dispute between the petitioner and the fifth respondent herein.



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For Petitioner : Mr.VR.Shanmuganathan
For R1 to R4 : Mr.A.Sivanupandian
Government Advocate
For R5 : Mr.AR.L.Sundaresan
Senior Counsel
For M/s.AL.Gandhimathi

ORDER

The present writ petition has been filed challenging an order passed by the second respondent herein under which he has reversed the order of the third respondent and proceeded to grant patta in the name of the fifth respondent herein.

2.According to the learned counsel for the petitioner, the property in dispute was originally owned by one Karuppaiah. During his life, the said Karuppaiah and his two sons namely Nelliyan and Piramaiya have entered into a registered partition dated 26.05.1971. Under the said partition, the survey number in dispute was allotted to the share of Piramaiya. Since Piramaiya was working in Chennai, taking advantage of his absence, his brother Nelliyan has illegally transferred the patta in his name without any notice. The learned counsel for the petitioner had further contended that the said Piramaiya had died on 08.11.2001 leaving his two sons namely the P.Ramasamy and P.Subramanian as his legal heirs. He had further contended that the said legal heirs of Piramaiya have executed a power of attorney in



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favour of the petitioner husband who in turn has sold the property in favour of the petitioner by way of a registered sale deed dated 13.03.2007. Based upon the said sale deed, patta was transferred in the name of the writ petitioner in Patta No.1103.

3.The learned counsel for the petitioner had further submitted that the fifth respondent herein who is the son of Nelliyan had approached the third respondent herein contending that the property belonged to his father Nelliyan who had executed a registered settlement deed in his favour on 30.06.2006. The third respondent after considering the submissions on either side arrived at a finding that a Civil Suit in O.S.No.1 of 2010 is pending on the file of Additional District Munsif Court, Karaikudi and in view of the said pendency, he refused to entertain the appeal and directed the parties to approach the Civil Court for relief.

4.The learned counsel for the petitioner had further contended that the fifth respondent filed a revision before the second respondent. The second respondent had issued a notice of enquiry on 10.11.2011 to conduct an enquiry on 20.11.2011. On the said date, the petitioner had appeared in person and sought time to engage a counsel. Thereafter, the petitioner had received a notice dated 23.03.2012 proposed him to hold enquiry on



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27.03.2012. On 27.03.2012, the petitioner had appeared through a counsel and informed the second respondent about the pendency of the Civil suit.

Thereafter, no notice was issued for any further hearing. Ultimately, the order impugned in the writ petition dated 04.02.2013 has been passed which was received by the writ petitioner on 18.09.2013. Hence, according to the learned counsel for the petitioner, he was not granted any opportunity to put forth his contention and an order has been passed in violation of the principles of natural justice.

5.The learned counsel for the petitioner had further contended that the suit filed by the fifth respondent herein in O.S.No.1 of 2010 was dismissed for default on 11.01.2018 and the application to condone the delay in restoring the suit was dismissed on 21.09.2021. Such being the case, the fifth respondent herein cannot claim any right or title over the property in dispute. The order of the second respondent deserves to be reversed and patta should be restored in the name of the writ petitioner. Hence, he prayed for allowing the writ petition.

6.Per contra, the learned Senior Counsel appearing for the fifth respondent herein had contended that the said Piramaiya has executed an unregistered sale deed in favour of Nelliyan on 16.11.1975. Since value of the property was less than Rs.100/-, the document does not require any



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registration. Hence, even during the life time of Piramaiya, the share of Piramaiya was alienated in favour of his brother Nelliyan. Thereafter, Nelliyan has executed a registered settlement deed in favour of his son, fifth respondent herein under a settlement deed dated 30.06.2006.

7.The learned Senior Counsel had further contended that patta was standing in the name of the fifth respondent's father namely Nelliyan, right from 16.10.1986 onwards in patta No.376. Hence, on the date when the writ petitioner is alleged to have purchased the property from the legal heirs of Piramaiya on 13.03.2007, patta was standing in the name of his father namely Nelliyan. That apart, the encumbrance certificate would have reflected, even on 30.06.2006, a settlement deed has been executed by Nelliyan in favour of the fifth respondent, when the petitioner had purchased the property in the year 2007.

8.The learned Senior Counsel had further contended that patta was standing in the name of the father of fifth respondent, the fourth respondent ought not to have transferred patta in the name of the writ petitioner without issuing any notice either to Nelliyan and his son the fifth respondent herein. This has forced the fifth respondent to approach the third respondent for cancellation of the said patta. Without properly appreciating the fact that patta was transferred in the name of the writ petitioner without issuing notice to the



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fifth respondent, the third respondent had directed the authorities to approach the competent Civil Court. However, the second respondent after properly appreciating the erroneous procedure adopted by the Tahsildhar had passed the order restoring the patta in the name of the fifth respondent. Hence, he prayed for dismissal of the writ petition.

9.I have considered the submissions made on either side and perused the materials available on record.

10.There is no dispute that the survey numbers in dispute namely 9/6B and 9/6C situated in Kandanoor Village & Group, Karaikudi was originally allotted to the share of Piramaiya. According to the writ petitioner, the properties had devolved upon the legal heirs of Piramaiya namely Ramasamy and Subramanian from whom the writ petitioner had purchased the property on 13.03.2007.

11.The learned Senior Counsel appearing for the fifth respondent had contended that during his life time, the said Piramaiya had already alienated his share in favour of his brother Nelliyan by way of an unregistered sale deed dated 16.11.1975. Being a property of less than Rs.100/-, the sale deed does not require any registration and it would result in conveyance of the property. The narration of the above said facts would clearly indicate that there is a serious title dispute between the petitioner and the fifth respondent who is the son of said Nelliyan. The Revenue Authorities or this court by



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invoking under Article 226 Constitution of India cannot resolve the said issue.

12. A perusal of the records produced on the side of the 5th respondent hearing indicate that the Patta was standing in the name of Nelliyan in Patta No.376 at least from 16.10.1986 onwards. The petitioner herein has purchased the property on 13.3.2007. Thereafter, the petitioner had approached the Tahsildhar for mutation of revenue records. The Tahsildhar ought to have issued notice to Nelliyan or his legal heirs before mutating the revenue records in favour of the writ petitioner. However without issuing any notice to Nelliyan or his legal heirs, he has proceeded to issue patta in favour of the writ petitioner herein. Hence, it is clear that the procedure adopted by the 4th respondent for granting patta in favour of the writ petitioner is not legally sustainable.

13. The 3rd respondent herein had relied upon the pendency of the civil court and directed the authorities to approach the competent civil court. Once the 3rd respondent finds that erroneously patta has been granted in favour of the writ petitioner without issuing notice to the 5th respondent, he ought to have reversed the order. The 2nd respondent herein has rightly interfered and reversed the order and restored the patta in the name of the 5th respondent herein. The 2nd respondent has also given a finding that there are no records to indicate under what order, patta was transferred in the name of the writ



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petitioner. Patta is reflected only in 10 (1) computerized patta and it is not substantiated by any order passed by the Tahsildhar. He has raised a doubt with regard to the procedure adopted for mutation of the revenue records in favour of the writ petitioner. Hence, I do not find any error in the order passed by the 2nd respondent herein directing the Tahsildhar to restore patta in favour of the 5th respondent.

14.The learned counsel for the petitioner had contended that the 2nd respondent has not granted sufficient opportunity to the writ petitioner to put forth her case. The Learned Senior Counsel appearing for the 5th respondent had contended that the Tahsildhar has passed an order granting patta in favour of the writ petitioner without issuing notice to the 5th respondent.

15.In view of the above said facts, this court sets aside the order impugned in the writ petition. The matter is remitted back to the file of the 4th respondent herein for fresh consideration on merits and in accordance with law. In case, if the 4th respondent arrives at a finding that the patta was granted in favour of the father of the 5th respondent only during UDR proceedings, he shall refer the matter to the 2nd respondent for adjudication. On the other hand, if the 4th respondent finds that even before UDR proceedings, patta was standing in the name of Nelliyan, he can proceed to pass orders on merits after giving due opportunity to the 5th respondent and the writ petitioner herein.



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16.In view of the above said discussion, the order impugned in the writ petition is set aside and the matter is remitted back to the file of the 4th respondent herein. The 4th respondent shall adhere to the direction issued by this court in the preceding paragraph. The writ petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

03.11.2022

Internet : Yes/No
Index : Yes/No
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