BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 17.08.2022

ORDER PRONOUNCED ON : 21.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.16030 of 2014
and
MP(MD).No.2 of 2014
and
W.M.P(MD)No.11118 of 2017

Seeni Mohamed Jahuber Sadiq ... Petitioner

Vs.

1.The District Revenue Officer,
Ramanathapuram District,
Ramanathapuram.

2.The Revenue Divisional Officer,
Ramanathapuram District,
Ramanathapuram.

3.The Tahsildar,
Ramanathapuram Raluk & District.

4.Noorul Amin ..... Respondents

PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 11.08.2014 of the first respondent in proceedings Pa.Mu. 16230/2014 (B6), confirming the order dated 01.10.2013 of the second respondent made in Mu.Mu.(A7)/7810/2012 and to quash the same and consequently restore the patta for Sy.No.45/1/1A1B1 in Kanchirankudi Group, Ramanathapuram Taluk & District in favour of the petitioner.

For Petitioners	: Mr.G.Sridharan
For R1 - R3	: Mr.N.Muthuvijayan Special Government Pleader
For R4	: Mr.S.Ramesh for Mr.V.Raghavachari

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein confirming the order of the second respondent, under which patta granted in favour of the writ petitioner was cancelled and it was granted in favour of the fourth respondent and three others.

2. Contentions of the petitioner:

(i) The property in dispute, namely Survey No.451/1A1B1 and other properties originally belonged to one K.A.Mohamed Mohideen Marakayar. He died leaving behind his 4 sons, namely Mohamed Sahid, Mohamed Abu Bucker @ Shaukath Ali, Mohamed Umarshahib and Mohamed Bathu Nachi and Kathija Beevi.

(ii) The petitioner is the grand-son of Mohamed Abu Bucker @ Shaukath Ali through his elder daughter Mohamed Meera Ummal. The petitioner's grand-father had filed O.S.No.56 of 1951 on the file of Sub Court, Ramanathapuram for partition. A preliminary decree was passed on 28.03.1953 granting 763/1152 shares in favour of the petitioner's grand-father. A final decree was also passed on 09.10.1961.

(iii) The petitioner's grand-father had filed A.S.No.33 of 1963 before the High Court challenging the final decree proceedings. During the pendency of the said appeal, the petitioner's grand-father has executed a registered settlement deed, dated 30.05.1964 in favour of his daughter Mohamed Meera Ummal, who is the mother of the petitioner herein, in respect of his share 763/1152 and handed over the possession of the same.

(iv) The petitioner's grand-father had passed away during the pendency of the appeal and the petitioner's mother and her sisters were impleaded as legal heirs. In the meanwhile, the Government had acquired an extent of 2.26 acres in Survey No.451/1A for the construction of a hospital. The appeal in A.S.No.33 of 1963 was dismissed on 04.12.1969, however, with a direction to the parties to work out their residuary share due to the death of the petitioner's grand-father.

(v) Mohamed Sahid's legal heirs had filed I.A.No.529 of 1973 for passing of a supplementary preliminary decree. The same was heard along with L.A.O.P.No.30 of 1972 arising under Section 30 of the Land Acquisition Act, 1894. The learned Subordinate Judge granted a supplementary preliminary decree in favour of the petitioner’s mother upholding the gift deed, dated 30.05.1964 and rejected the request of the petitioner therein with regard to their residuary shares on the death of the petitioner’s grand-father.

(vi) In L.A.O.P.No.30 of 1972, the learned Subordinate Judge was pleased to apportion the compensation amount granting a sum of Rs. 9,457.35/- to the petitioner’s mother. Out of the said amount, a sum of Rs. 7,500/- was deducted towards the payment of mortgage amount. The Mohamed Sahid’s branch was awarded with a sum of Rs.3,470.56/-. The said order has become final.

(vii) Based upon the gift deed, dated 30.05.1964 and the confirmation of the gift deed made in I.A.No.529 of 1973, the mother of the petitioner has executed a registered settlement deed in favour of the petitioner on 05.02.2009 for an extent of 23 cents. Based upon the said gift deed, a patta was issued by the third respondent herein by an order, dated 29.12.2011. The said order was challenged by the fourth respondent herein before the second respondent by way of an appeal. The appeal was allowed by the second respondent herein by an order, dated 01.10.2013 on the only ground that the petitioner's mother has sold away all the properties that were allotted to her share and hence, patta could not have been granted to the writ petitioner on the basis of the settlement deed, dated 05.02.2009. Based upon the said conclusion, the second respondent herein passed an order transferring the patta in the name of the fourth respondent and his brothers, who belonged to Mohammed Sahid's branch.

(viii) The petitioner filed a revision before the first respondent herein. The first respondent by his impugned order, dated 11.08.2014, has confirmed the order passed by the second respondent herein without properly analyzing any one of the registered documents and the judgments passed by the Civil Court. The first respondent has proceeded to hold that during UDR proceedings, the patta was standing in the name of the fourth respondent herein, but during natham settlement proceedings, it was shown as a vacant site. Taking advantage of the same, the petitioner has applied for patta and he has obtained the same. Based upon the above said findings, the first respondent had dismissed the revision. Challenging the same, the present writ petition has been filed.

3. Contentions of the learned counsel for the petitioner:

(i) The learned counsel for the petitioner has contended that the share that was allotted to the petitioner's grand-father in O.S.No.56 of 1951 is 763/1152 shares. The petitioner's grand-father has gifted this share to the petitioner's mother under a registered gift deed, dated 30.05.1964. This gift deed has been upheld in I.A.No.529 of 1973, in which the fourth respondent's father was also a party. Only based upon the said gift deed, dated 30.05.1964 and order in I.A.No.529 of 1973, the petitioner's mother has executed a gift deed in favour of the petitioner on 05.02.2009 for an extent of 23 cents. Hence, the patta granted by the third respondent in favour of the petitioner for 23 cents is legally valid.

(ii) The second respondent had enumerated a list of documents, under which the petitioner's mother has sold away various extents of property during her lifetime. After adding all the documents, the second respondent came to a conclusion that the petitioner's mother has alienated 64 cents, which is in excess of her entitlement of 54 cents. Since the petitioner's mother has already alienated in excess of her share, the petitioner cannot claim any right based upon the gift deed executed by her on 05.02.2009. The learned counsel for the petitioner had pointed out that the second respondent had erred in considering a mortgage deed executed by the petitioner's mother in favour of Rajammal also as a sale deed. If that document is deleted, the alienations would be to an extent of only 26 cents. Out of the balance 28 cents, a gift deed has been executed by his mother only for an extent of 23 cents and hence, the order of the second respondent is not legally sustainable.

(iii) The first respondent herein has confirmed the order of the second respondent without considering any one of the documents, namely the sale deeds or the Civil Court judgments and he has simply relied upon the UDR records and Natham settlement records and has arrived at an erroneous finding. Hence, he prayed for allowing the writ petition.

4. Contentions of the learned counsel for the respondents:

(i) The respondent had contended that this survey number in dispute, namely 451/1A was having a total extent of 2.95 acres. Out of the said extent, 2.26 acres were acquired by the Government and balance of 69 cents alone was available in the said survey number. The land acquired by the Government having an extent of 2.26 cents was subdivided as Survey No. 451/1A1A and the balance extent of 69 cents was subdivided as Survey No. 451/1A1B.

(ii) Out of this 69 cents, the petitioner's mother is entitled to 763/1152 shares, which would work out to 45.7 cents. The fourth respondent's share of 389/1152 will work out to 23.3 cents.

(iii) The learned counsel for the respondent has further contended that the petitioner's mother has executed 7 sale deeds totally an extent of 23.5 cents and hence, no further land is available to the share of the writ petitioner's mother. According to the learned counsel for the respondent, on ground only an extent of 24 cents is available whereas the fourth respondent is entitled to 27.36 cents.

(iv) The learned counsel for the respondent has further contended that the petitioner's mother has exhausted the entire extent of land that was allotted to her in the partition and after suffering land acquisition proceedings, she is not left with any extent. However, the respondents are entitled to an extent of 27.36 cents. Therefore, respondents 2 and 3 herein were right in granting patta in favour of the fourth respondent herein. Hence, he prayed for dismissal of the writ petition.

5. I have carefully considered the submissions made on either side.

6. There is no dispute that Survey No.451/1A originally belonged to the family of the petitioner and the fourth respondent herein. In a suit for partition in O.S.No.56 of 1951, the petitioner's grand-father was allotted 763/1152 shares and the fourth respondent's grand-father was allotted 389/1152 shares. The fourth respondent herein has contended before the Revenue Divisional Officer that the total extent of Survey No.451/1A is 3.07 acres. Out of the said extent, 2.26 acres were acquired and hence, balance 81 cents were available between the parties. When this 81 cents are divided as per the shares in the preliminary decree, it would come to 53.64 cents to the writ petitioner and 27.36 cents to the fourth respondent herein. The fourth respondent has further contended before the Revenue Divisional Officer that the petitioner's mother has already alienated 64 cents, which is beyond 53.64 cents and hence, the petitioner is not entitled to any patta for a further extent of 23 cents.

7. On the other hand, the petitioner herein had contended before the Revenue Divisional Officer that the total extent of Survey No.451/1A is only 2.95 acres and not 3.07 acres. Out of 2.95 acres, 2.26 acres were acquired by

the Government and hence, the balance available between the parties is only 69 cents. Out of the said 69 cents, the petitioner's mother was entitled to 46 cents and the respondents' grand-father was entitled to 23 cents.

8. In view of the contradictory stand taken by the petitioner and the fourth respondent herein, the Revenue Divisional Officer has ultimately arrived at a finding that the writ petitioner herein is entitled to 54 cents and the fourth respondent herein is entitled to 27 cents. After arriving at such a finding, the second respondent calculated the alienations made by the petitioner's mother and came to a conclusion that she has alienated 64 cents, which is for beyond 54 cents, for which the writ petitioner's mother was eligible.

9. Based upon the said finding, the second respondent came to a conclusion that the petitioner's mother has already alienated over and above her share and hence, the settlement deed executed by her in favour of her son on 05.02.2009 will not confer any title upon the writ petitioner and reversed the order of the Tahsildar granting patta in favour of the writ petitioner.

10. A perusal of the order passed by the Revenue Divisional Officer will clearly indicate that the Revenue Divisional Officer has taken into consideration a mortgage deed said to have been executed by the petitioner's mother in favour of one Rajammal in Document No.787/1973. Under the said document, the petitioner's mother has mortgaged 38 cents. This 38 cents cannot be included in the list of alienations made by the petitioner's mother. If this 38 cents is excluded from 64 cents, the alienations effected by the petitioner's mother will fall down to 26 cents.

11. The fourth respondent in Paragraph No.10 of the counter has admitted that the writ petitioner is entitled to 54 cents. Hence, out of this 54 cents, if 26 cents alienated by the petitioner's mother are deducted, the balance would be 28 cents, for which the petitioner's mother would be entitled to.

12. When the petitioner's mother is entitled to 28 cents, she has executed a registered settlement deed in favour of the writ petitioner on 05.02.2009 only for an extent of 23 cents. Hence, the second respondent had arrived at an erroneous finding at the time of calculating the total extent covered under the sale deeds by mistakenly adding the mortgage deed also.

13. A careful analysis of the order of the first respondent will clearly reveal that the documents considered by the Revenue Divisional Officer were not at all considered by the first respondent herein. The first respondent has simply held that during natham settlement proceedings, it was wrongly classified as a vacant site and taking advantage of the same, the petitioner has obtained patta. This order has been passed without considering the admission made by the fourth respondent that the writ petitioner is entitled to 54 cents in the said survey number.

14. When the fourth respondent himself has admitted that the petitioner is entitled to 54 cents and the petitioner's mother has alienated only an extent of 26 cents, the order passed by the respondents 2 and 3 herein rejecting the request of patta of the petitioner are not legally sustainable. This writ petition is being disposed of only based upon the contentions of the parties raised before the revenue authorities. However, the parties are at liberty to approach the Civil Court to establish their right, title or possession over the disputed extent of land. In case, if any such suit is filed, the same shall be decided without being influenced by any one of the findings rendered by the revenue authorities or by this Court in this writ petition.

15. In view of the above said discussion, this Writ Petition stands allowed. The order impugned in the writ petition is set aside and the third respondent is directed to issue patta for an extent of 23 cents in Survey No. 451/1A1B1 in favour of the writ petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.09.2022

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Internet : Yes/No
Index : Yes/No

To

1.The District Revenue Officer,
Ramanathapuram District,
Ramanathapuram.

2.The Revenue Divisional Officer,
Ramanathapuram District,
Ramanathapuram.

3.The Tahsildar,
Ramanathapuram Raluk & District.

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.16030 of 2014

21.09.2022