



W.P.No.33736 of 2023
order dated 05.12.2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.33736 of 2023

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S.Selvarasu

.. Petitioner

Vs.

1. The District Revenue Officer,
Salem District,
Salem.

2. The Revenue Divisional Officer,
Attur,
Salem District.

3. The Tahsildar,
Thalaivasal,
Thalaivasal Taluk,
Salem District.

4. Tmt.Selvi, W/o Sakthivel

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to dispose of the appeal of the petitioner, dated 30.11.2022 and complete the enquiry proceedings in Na.Ka.No.172/2022/K5, dated 11.02.2023.

For petitioner : Mr.V.Elangovan

For respondents: Mr.P.Gurunathan, Addl.G.P.



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ORDER

This Writ Petition is filed praying for issuance of a simple Writ of Mandamus to direct the first respondent to dispose of the appeal of the petitioner, dated 30.11.2022 and complete the enquiry proceedings in Na.Ka.No.172/2022/K5, dated 11.02.2023.

2. Mr.P.Gurunathan, learned Additional Government Pleader takes notice for respondents 1 to 3. Since no adverse order is passed against the private respondent, notice to the private respondent is dispensed with.

3. The brief facts that could be culled out from the affidavit filed in support of the Writ Petition, are that, the land situated in S.No.108/8 of an extent of 0.0150.5 square meter, Kamakkapalayam Village, Thalaivasal Taluk, Salem District, is classified as Grama Natham in the Revenue Records. The above land was in possession of the petitioner's grandfather Velayutha Mudaliar and Ellappa Mudaliar for the past 40 years continuously. They had put up thatched house and residing in the above said house. During the year 1991, the Special Tahsildar had conducted a spot enquiry and reported that the petitioner's father Sellakaruppan was residing along with his father Velayutha Mudaliar for the past 30 yearas in the above said land and hence, the Special Tahsildar issued Patta in No.110 in favour of the petitioner's father Sella Karuppan.

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4. Subsequently, in the year 2004, the petitioner's father registered a settlement deed in favour of his wife, i.e. Pichayee. While so, the petitioner's father and mother executed a Will (Deed) in respect of the above land in D.No.43/2010 before the SRO in favour of the petitioner's sister Selvi (fourth respondent). Originally, the said property is in possession of the petitioner's grandfather and grandmother for the past 40 years.

5. The petitioner's sister Selvi got married in the year 1998 and living separately with her husband at Namachivayapuram Village, Thottiyam Post, Kallakurichi District and her husband P.Sakthivel was issued free house site patta by the Government in the year 2009. Thereafter, he died on 20.07.2020 while in service as Bus Conductor in the Tamil Nadu Government Transport Corporation. After death of her husband, the fourth respondent is in possession of the above assignment patta land which was allotted to her husband. But the Will (Deed) was executed subsequently only in the year 2010 by the petitioner's parents, which no way affects the petitioner's right over the land. Since the fourth respondent is already issued with free house site patta, the fourth respondent is not entitled to possess another property which was allotted under the scheme of free house site patta. Hence, the petitioner made a representation to the Tahsildar, Attur, on 10.03.2015 requesting him to conduct enquiry and to declare that the above land was in possession of the petitioner's grandparents.



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Thereafter, the Attur Tahsildar conducted field enquiry and passed an order on the petitioner's application stating that the above land was originally owned by the petitioner's grandparents. After obtaining the above certificate from the Tahsildar, Attur, the petitioner gave a representation on 21.01.2016 to the Sub-Registrar, Thalaivasal, Salem District to cancel the Will executed by the petitioner's parents. Since no action was taken, the petitioner earlier filed a Writ Petition before this Court in W.P.No.3847 of 2016, and this Court, by order dated 02.02.2016, directed the respondent therein to dispose of the said representation dated 21.01.2016 with directions stated therein.

6. However, the Sub-Registrar, Thalaivasal had not taken any action to cancel the Will (deed) which was earlier executed suppressing the fact that the petitioner's sister had already been in possession of another land allotted under free house site patta situated in S.No.193/28 at Namachivayapuram, Kallakurichi Taluk and District and hence, the Will (deed) would in no way curtail the rights of the petitioner over the land allotted to the petitioner's father and his sister.

7. According to the petitioner, the petitioner is entitled for patta in respect of the land mentioned and hence, he made a representation to the respondents 1 and 2 on 11.09.2020 and 25.09.2020, which were forwarded to the third respondent for necessary action to issue patta in favour of the petitioner. As no action is taken by the respondents, the petitioner again made a representation



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to the first respondent on 09.05.2022 to issue patta in his favour, however, as no action was taken by the respondents to issue patta, the petitioner filed W.P.No.16718 of 2022, which was disposed of on 30.06.2022 directing the respondents therein to consider and dispose of the said representation, dated 09.05.2022 with certain directions stated therein.

8. Pursuant to the above order of this Court, the second respondent conducted enquiry and rejected the representation on 31.10.2022 in Mu.Mu.5617/2022/Aa1, as against which, the petitioner preferred an appeal dated 30.11.2022 before the first respondent, who issued enquiry notice in Na.Ka.No.172/2022/K5, dated 11.02.2023 directing the petitioner to appear before the first respondent on 12.04.2023 to submit his explanation with relevant documents, subsequent to which, no order is passed on the said appeal.

9. Since the petitioner is stated to be a patient with ailments and request to direct the first respondent to pass orders on the said appeal and complete the enquiry proceedings. Hence, the present Writ Petition is filed for the relief stated supra.

10. The grievance of the petitioner is that though the appeal is pending with the first respondent, the appeal against the order of the Revenue Divisional Officer (second respondent), the petitioner preferred appeal before the first respondent and the same is pending. Therefore, this Writ Petition is filed for



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earlier disposal of the appeal.

11. Taking into account the facts and circumstances of the case, the first respondent is directed to proceed with the appeal dated 30.11.2022 on merits and in accordance with law, after giving an opportunity of hearing to both the parties as well as the fourth respondent and any other aggrieved parties and dispose of the said appeal within a period of two months from the date of receipt of a copy of this order.

12. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs.

05.12.2023

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To

1. The District Revenue Officer, Salem District, Salem.
2. The Revenue Divisional Officer, Attur, Salem District.
3. The Tahsildar, Thalaivasal,
Thalaivasal Taluk,
Salem District.

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