



W.P.(MD) No.489 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.489 of 2020

and

W.M.P.(MD) No.370 of 2020

Magesh R Athoor

.. Petitioner

Vs.

1.The Additional Collector cum
Additional District Magistrate,
Thoothukudi District,
Thoothukudi.

2.The District Revenue Officer,
Thoothukudi District,
Thoothukudi.

3.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.

4.The Tahsildar,
Ottapidaram Taluk,
Thoothukudi District.

5.Krishnammal

6.Rajam

7.Geetha

.. Respondents



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Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order made in Na.Ka.No.D2-34931-2015 dated 10.12.2019 passed by the first respondent and quash the same.

For Petitioner	:	Mr.P.R.Prithviraj
For RR1 to 4	:	Mr.D.Ghandiraj Special Government Pleader
For R5	:	Mr.R.Paranjothi
For R6	:	No appearance

ORDER

The petitioner has filed this writ petition to quash the impugned order dated 10.12.2019 passed by the first respondent in Na.Ka.No.D2-34931-2015.

2. The petitioner would submit that the property comprised in S.No.29/1B measuring an extent of 88 cents in Sindhalakottai Village, Ottapidaram Taluk, Thoothukudi District, which belonged originally to his father Raghava Perumal for over five decades, had devolved on his demise upon the petitioner, his mother and sister viz., the sixth and



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seventh respondents. The property had been subdivided during the life time of the petitioner's father by the fourth respondent vide proceedings dated 14.03.1995 and he was assigned S.No.29/1B in Patta No.1341. The adjacent land owners were assigned S.No.21/1A and the joint patta issued in their name was Patta No.787.

3. While so, the fifth respondent, who is the adjacent owner, had made an application to the second respondent to survey the property in S.No.21/1 and assign a patta to her. In pursuance to this application, the second respondent had issued notice to the petitioner and conducted an enquiry on various dates. The petitioner would submit that he had appeared for the enquiry and given a written explanation and furnished documents showing his right to the property. The second respondent had assured the petitioner that he would forward the documents filed by the fifth respondent before the next hearing, that is, on 29.10.2019. The petitioner was under the genuine belief that he would receive those documents. However, to the utter shock and surprise of the petitioner, while the enquiry was pending before the second respondent, the first



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respondent has passed the impugned order setting aside the proceedings of the fourth respondent made on 14.03.1995 wherein a separate patta had been issued to the petitioner's father. This order was passed without issuing any notice to the petitioner or affording him an opportunity to submit his objections and documents. Therefore, aggrieved by the same, the petitioner is before this Court for the relief sated above.

4. Heard the learned counsel appearing for the parties.

5. The second respondent, District Revenue Officer, Thoothukudi, had filed a counter affidavit *inter alia* contending that the writ petitioner had only submitted Encumbrance Certificate and that it was the fifth respondent, who had submitted valid documents. He had also afforded opportunity to the writ petitioner to establish his case, which he failed to do so and therefore, no exception can be taken to the impugned order.

6. To the initial argument of the petitioner that the impugned order had been passed by the first respondent without authority, particularly



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when the entire enquiry had been done by the second respondent, the learned Special Government Pleader submitted a Government Order in G.O.Rt.No.4003, Public (Special.A) Department, dated 20.09.2019, from which it is seen that the officer who had signed the impugned order had been transferred and posted as the Additional Collector (Revenue), Thoothukudi, in the place of Mr.Veerappan, District Revenue Officer before whom the enquiry was held. Therefore, the learned Special Government Pleader would submit that the order passed is very much valid.

7. As regards the second main ground raised, the documents would clearly show that the basis on which the rejection has been made is that the petitioner has sold the property comprised in S.No.21/1B to one Mariappa Reddiar, which the first respondent states is evident from a perusal of the Encumbrance Certificate. However, a perusal of this Encumbrance Certificate would clearly show that the transaction in question is a lease deed and not a sale deed. Therefore, the petitioner continues to be the owner of the property in question. The dismissal is



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primarily on this ground. This reflects an absolute non-application of mind on the part of the first respondent. Consequently, the impugned order is set aside and the matter is remitted back for fresh consideration.

8. In fine, this Writ petition is allowed, the impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration, who shall issue notice to the petitioner and all other parties interested in the properties and pass orders, after giving each of them a reasonable opportunity to present their case and thereafter, pass a reasoned order on merits within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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P.T.ASHA, J.

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