



**W.P(MD)No.788 of 2022**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 16.03.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

**W.P(MD)No.788 of 2022**

1.S.M.Palanisamy

2.M.Ponnusamy

... Petitioners

**Vs.**

1.The District Collector  
Karur District,  
Karur.

2.The District Revenue Officer  
Karur District,  
Karur.

3.The Revenue Divisional Officer,  
Karur District,  
Karur.

4.The Tahsildar  
Karur District,  
Karur.

... Respondents



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records relating to Na.Ka.No.A2/13238/2017 dated 28.02.2019 passed by the first respondent and quash the same and to consequently direct the respondents 1 to 4 herein to grand patta in favour of the petitioners in respect of 72 cents of lands situated at S.Nos.273/B, 274 situate at Sempadampalayam Village, Karur Taluk and District.

For Petitioner : Mr.P.Samuel Gunasingh

For Respondents : Mr.N.Muthu Vijayan  
Special Government Pleader

### **ORDER**

The writ petitioners, two brothers, both sons of S.P.Muthusamy Gounder and residents of Kangeyam in Tiruppur District, have filed the present writ petition in the nature of Certiorarified Mandamus seeking records relating to the order passed by the first respondent / District Collector, Karur, in Na.Ka.No.A2/13238/2017



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dated 28.02.2019 and to quash the same and to consequently direct the first to fourth respondents namely, District Collector, Karur District, District Revenue Officer, Karur, Revenue Divisional Officer, Karur and Tahsildar, Karur, to grant patta in favour of the petitioners with respect to 72 cents of land at Survey Nos.273/B and 274 at Sempadampalayam Village, Karur Taluk and District.

2. In the affidavit filed in support of the writ petition, which affidavit was filed by the second petitioner, it had been stated that their father S.P.Muthusamy Gounder originally owned lands measuring 2.87 acres in Survey No.327/2 at Sempadampalayam Village, Karur District. There were further lands in Survey Nos.273/B and 274 over which though the father was not the owner, a drainage water storage pond was situated.

3. It is contended by the petitioners that the said lands namely, lands in Survey Nos.273/B and 274 were not suitable for habitation and therefore, the father S.P.Muthusamy Gounder entered into an exchange deed with those who lived in Survey Nos.273/B and 274



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and by an exchange deed which incidentally was not registered and in which incidentally the Government was not a party, the 1.25 acres lands, out of larger area 2.87 acres in Survey No.327/2 was transferred to them and the lands measuring 72 cents in Survey Nos.273/B and 274 were transferred to the father of the petitioners.

4. Let me halt in narration of the facts to observe that the exchange deed is invalid in the eyes of law. It did not convey any right to the father of the petitioner herein. As a matter of fact, the issue of consensus ad idem itself is to be examined since the holder of the larger area of lands measuring about 2.87 acres was able to coerce the Harijans who had residing in a smaller piece of land to convey by exchange their land for a portion of his lands.

5. The contention that the lands in Survey Nos.273/B and 274 measuring 72 cents were inhabitable for living purposes is a statement only made by the petitioners. That cannot even be a reason for the father of the petitioners to reach out to those people and exchange lands. If that had been done, it would be done only for profit and not out



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of charity. If it had been done out of charity, then today the petitioners cannot lay a claim for patta for such land.

6. It had been further stated in the affidavit, that the lands in Survey No.327/2 were acquired by the Government after following due process. In the counter affidavit, it had been stated very specifically that the exchange of lands were initiated, after the notification of such land acquisition. This itself shows that there was an ulterior motive in executing that exchange deed. The lands in Survey Nos.273/B and 274 were not lands which were acquired by the Government. Therefore, the only conclusion which can be reached on the basis of these facts is that the father of the petitioners had exchanged and given to the Harijans, lands which were actually acquired by the Government and had taken over their lands.

7. It is also seen that for the total 2.75 acres of land after it had been acquired by the Government sufficient compensation had been deposited. The father of the petitioners had withdrawn the compensation relating to 1.50 acres. The compensation for the balance, 1.32 acres is



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still lying unclaimed by the petitioners herein. The petitioners can very well take that compensation and be happy and be satisfied. On the other hand, they now lay a claim for the other lands namely, lands on Survey Nos.273/B and 274 over which they have no right and cannot claim title. That is the land which they have occupied unlawfully by way of an exchange deed executed after, the notification for the land acquisition had been issued. This fact is clear from the counter affidavit filed by the first respondent.

8. It is contended by the learned counsel for the petitioners that the lands namely, 72 cents at Survey Nos.273/B and 274 has been classified as Sakkiliyar Natham and therefore the land could criticize such classification stating that they cannot be classified as belonging to any particular community. The fact is that those who were residing there were asked to move away by the father of the petitioners. That is evident by the very fact that the exchange deed was not registered. In the exchange deed, the Government was not made a party. The exchange deed was executed after the land acquisition proceedings had commenced. There is no bonafide at all in any of the acts of the father of



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the petitioners. The petitioners cannot claim innocence of such act and cannot seek indulgence of this Court.

9. Nobody can be permitted to take away lands from Harijans and in exchange for those lands hand over lands which were to be acquired by the Government. The fate of those Harijans who were originally living in Survey Nos.273/B and 274 are still a question mark. They might have been accommodated in the lands which had been acquired. But the fact remains that they have been displaced from their lands, where they were originally residing and that land where they were originally residing, had been taken over by the father of the petitioners herein under an unlawful document termed as an exchange deed. The petitioners had taken over possession of the lands in Survey Nos.273/B and 274, and had filed an application seeking grant of patta. That application had been rejected by the District Collector/ first respondent.

10. It is complained by the learned counsel for the petitioners that an opportunity of being heard was not given and if opportunity had been granted, the petitioners could have explained the



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facts to the first respondent. The principles of natural justice have now expanded that when grant of opportunity is an empty formality, notice need not be issued. In the instant case, the records speak for themselves. The petitioners rely on the possession, on the basis of an unregistered exchange deed which by the very fact that it was unregistered, though related to substantial lands measuring 72 cents, is not valid in the eyes of law.

11. Further, by the exchange deed the father of the petitioners occupied Government natham land which again is unlawful and such occupation was done, without making the Government as a party in the exchange deed. The father of the petitioners just walked into 72 cents of land and today the petitioners claim patta the same. The father of the petitioners displaced the original owners who were downtrodden people. Principles of natural justice cannot and need not be applied in this particular case. The petitioners are very well aware that they have occupied lands for which they have no title and for which they cannot claim title and for which they cannot even claim any right of possession also, since the first date of entry into possession was on the



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basis of an unlawful document after displacing the original innocent occupants.

12. The grievance of the learned counsel for the petitioners that no opportunity was granted, is rejected by me. The learned counsel for the petitioners, wanted me to point out that in the acquisition proceedings it had been stated that the lands in Survey Nos.273/B, 274 were unfit for occupation. If they were unfit for occupation and if they are today also unfit for occupation, the petitioners need not seek patta for the same and need not seek possession of the same. The petitioners can very well take the compensation amount which is still lying.

13. I am not convinced with any of the arguments advanced.

14. The learned counsel for the petitioner placed reliance on the judgment of a learned Single Judge in *W.P.No.28654 of 2014 dated 06.12.2019 in K.Kannaiyan and Others Vs. The District Collector, Salem and another*, wherein, the learned Single Judge has observed that when an order is passed, based on the earlier recommendations made by the



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Tahsildar or other officials, then copies of such recommendation should be given. In Paragraph No.6 of the order, it has been held as follows :

*"6. This Court finds that neither the copy of the report of the Special Tahsildar dated 28.10.2013 was furnished to the petitioners nor the petitioners were put on notice prior to passing the impugned order especially when the first respondent stated that three of the writ petitioners have ancestral properties and therefore, it would dis-entitle them for grant of house site patta. Therefore, to this extent, this Court is of the view that there has been a violation of the principles of natural justice. The petitioners ought to have been afforded an opportunity to put forth their case and more particularly when the report of the Special Tahsildar dated 28.10.2013 has been referred to and relied upon by the first respondent while passing the impugned order."*

15. In the instant case, the petitioners claim patta for lands to which they are not entitled to claim such patta.



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16. The learned counsel for the petitioner placed reliance on the recommendation given by the Tahsildar, Karur, which recommendation had no date, but issued in August 2013. The Tahsildar had no right to give such an opinion. He had based that opinion on the basis of the exchange deed which on the face of it, had been unlawfully executed. The Tahsildar has no authority to state that the Government lands can be handed over to private individuals on the basis of unlawful document.

17. I direct that if the said Tahsildar is still employed at any post and is holding any office, the District Collector, Karur, must take suitable action against the said Tahsildar for recommending that the petitioners can be granted patta. It must be kept in mind that the word 'Public Servant', and the Tahsildar is a public servant has been defined only in the Prevention of Corruption Act, 1989 and no other enactment and the definition itself places an obligation on the public servant to do service for the public and not for any individual and not certainly for any unlawful gratification.



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18. Accordingly, the writ petition stands dismissed. No

costs.

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

RM



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**C.V.KARTHIKEYAN, J.**

RM

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