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W.P.(MD) No.5798 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5798 of 2023
and
W.M.P.(MD) No.5369 of 2023

B.Kumaran

... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Kalaiyarkoil,
Sivagangai District.

3.The District Registrar,
Sivagangai District.

4.The Joint Sub Registrar No.I,
Sivagangai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned Order in Na.Ka. B4/28789/2019 dated 07.02.2023



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on the file of the 1st respondent and the consequential impugned order in Na.Ka. No.1121/R1/2023 dated 08.03.2023 on the file of the 4th respondent and quash the same and further directing the 1st respondent to enter the name of the petitioner as Pattadhar and further directing the 4th respondent to receive and register any document in respect of the property in S.No. 36/5B now subdivided into 36/5B1 and 36/5B2, Aloor Group, Kalayarkoil Taluk, Sivagangai District.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 & R2 : Mr.J.Ashok

Additional Government Pleader

For R3 & R4 : Mr.M.Prakash

Additional Government Pleader

ORDER

Heard both sides.

2.The basic facts are beyond dispute. One Balasubramanian was assigned 4 acres of land in S.No.36/5 in Aloor Group, considering the fact that he is an ex-service man. The assignment was made way back on 20.09.1968. Subsequently, a portion of the land was acquired for road widening works. The sub-division was effected and the remaining area was



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numbered as S.No.36/5B. It measured around 1.54.0 hectares. Balasubramanian passed away in the year 1981. He left behind the petitioner, Kumaran and another son, by name, Senthil Kumar, as his legal heirs. Partition took place between the brothers on 04.12.2009. It was also duly registered. Senthil Kumar was allotted the eastern portion, whereas the petitioner was allotted the western portion. Patta continued to stand in the name of their father. On 05.04.2017, Senthil Kumar sold the eastern portion in favour of one Pandidurai. The said Pandidurai subsequently alienated the property in favour of one Ayyappan, vide sale deed dated 12.04.2017. The transactions were duly registered on the file of the fourth respondent. Ayyappan became the owner of the eastern portion of S.No.36/5B. The petitioner is in possession of the western portion.

3.During UDR, the property was erroneously classified as Government Punjai. A joint application was filed by Ayyappan and the petitioner in this regard. Ayyappan filed W.P.(MD) No.14785 of 2022 for correcting the mistake in the revenue records. The writ petition was allowed on 26.08.2022 in the following terms:



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“3. From a reading of the proceedings issued by the Revenue Divisional Officer on 28.09.2016 and other materials enclosed in the typed set of papers, I am more than satisfied that the patta property should not be shown as ' tharisu '. The third respondent is therefore directed to carry out necessary corrections forthwith and without any delay as sought for by the writ petitioner. The third respondent will also issue patta in favour of the writ petitioner after due enquiry. Though the partition had already taken place between Senthilkumar and Kumaran, sub-divisioning had not actually taken place. Senthilkumar fairly states that he accepts the ownership of Kumaran over the other half of the property. After the subdivisioning and correction in the revenue record, patta shall be issued immediately after due enquiry.”

4. Interestingly, while correction was made and patta was issued in favour of Ayyappan in respect of the eastern portion, the western portion continued to be classified as 'Tharisu' and the petitioner was not issued with any patta. In fact, the petitioner's request was negatived vide communication dated 07.02.2023. In fact, the District Collector, went to the extent of cautioning the Registering Authority not to entertain any document in respect of S.No.36/5B. That led to the filing of this writ petition.



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5.As rightly pointed out by the learned counsel for the petitioner, the issue raised in this writ petition is no longer *res integra*. It has already been decided in the earlier round itself. The impugned order runs counter to the order dated 26.08.2022 made in W.P.(MD) No.14785 of 2022. The learned counsel for the petitioner points out that when a joint application was filed by Ayyappan and Kumaran, Ayyappan alone was granted the benefit and Kumaran was left high and dry.

6.The factum of assignment is not in dispute. The order passed by this Court earlier had become final. In these circumstances, it is the duty of the respondents to reclassify the land. It can no longer be called as 'Tharisu'. In this view of the matter, the impugned order is set aside. The first respondent is directed to make the corresponding change in the revenue records. It is stated that sub-division has already been made. The petitioner is in possession of S.No.36/5B1. The said land will be classified as patta land and patta shall be issued in favour of the petitioner immediately without delay.



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7.The Writ Petition is allowed, accordingly. No costs.

Consequently, connected Miscellaneous Petition is closed.

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NCC :No
Internet :Yes
Index :No

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