



W.P.(MD)No.8265 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.8265 of 2021

and

W.M.P.(MD).Nos.6247 and 6248 of 2021

K.Yasar Arafath

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Madurai District.

2.The Revenue Divisional Officer,
Melur Revenue Divisional Office,
Camp at Y.Othakadai, Madurai District.

3.The Tahsildar,
Madurai East Taluk,
Narasingam, Y.Othakadai,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 31.12.2020 in Na.Ka.No.43895/2020/J3 passed by the first respondent and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondents



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to restore the cancelled patta in favour of the petitioner for paying the due compensation as per the orders of this Court in W.P.(MD).No.7573 of 2020 dated 02.11.2020.

For Petitioner : Mr.K.Pandiarajan

For Respondents : Mr.R.Ragavendran
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned proceedings of the first respondent in Na.Ka.No.43895/2020/J3 dated 31.12.2020 and for a consequential direction to the respondents to restore the patta in the name of the petitioner with respect to the subject property and also to pay compensation for laying the road in the patta land belonging to the petitioner.

2. The case of the petitioner is that he had purchased the subject property in Survey No.130/4B from one Sundarakannan through a registered sale deed dated 13.08.2018 registered as Document No.3464/2018. According to the petitioner, the old Survey Number is 278/4 which corresponds to the new Survey No.130/4B.



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3. The further case of the petitioner is that the respondents all of a sudden commenced the work of laying the road and the patta land belonging to the petitioner was also utilized for this work. The petitioner left with no other option filed W.P.(MD).No.7573 of 2020 before this Court for a Mandamus to direct the respondents to restore the possession of the land which was illegally acquired to lay the road without following due process of law, or in the alternative to pay compensation to the petitioner at the prevailing market value.

4. This Writ Petition was disposed of, by an order dated 02.11.2020 and the relevant portion is extracted hereunder:

“8. Since the District Collector shall decide the issue to ascertain as to whether the possibility of taking the land or to provide the petitioner with alternate site or to pay compensation, this Court expects the District Collector to take a decision, after hearing the petitioner in person, within a period of 60 days from the date of receipt of a copy of this order. However, till such time, no further progress with laying of road shall continue with regard to the petitioner's property alone. It is made clear that if possible the proceedings before the District Collector shall be videographed, at the cost of the petitioner, so that no



further complication arises and a copy of the videograph shall be provided to the petitioner immediately, at the cost of the petitioner.”

5. Pursuant to the above order, the first respondent issued a notice dated 27.11.2020 to the petitioner. For proper appreciation, the notice that was issued by the first respondent is extracted hereunder:

“பார்வையில் காணும் மாண்புமிகு சேன்னை உயர்நீதிமன்ற மதுரைக் கிளை வழக்கு W.P.No.7573 of 2020, W.P.(MD).No. 7061 of 2020 – ன் மீதான 01.11.2020 –ந் தேதிய மாண்புமிகு சேன்னை உயர்நீதிமன்ற ஆணைகளின்படி, மனுதாரரின் கோரிக்கை தொடர்பாக, மாவட்ட ஆட்சித் தலைவர் அவர்களால், 30.11.2020 அன்று காலை 10.00 மணிக்கு மாவட்ட ஆட்சியர் அலுவலகத்தில் மேற்கொள்ளப்படவுள்ள விசாரணையில், இவ்வினம் குறித்து கைவசமுள்ள ஆவணங்களுடன் தவறாது ஆஜராகுமாறு கேட்டுக் கொள்ளப்படுகிறது.”

6. The petitioner attended the enquiry and submitted all the necessary documents. The petitioner never knew that the first respondent is calling for an enquiry with a view to cancel the patta issued in favour of the petitioner and the petitioner was under the fond hope that either his property will be restored or in the alternative, he will be paid the compensation. However, the first respondent through the impugned proceedings dated 31.12.2020 cancelled the patta issued



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in favour of the petitioner and directed the mutation of revenue records as “Vaigai River”. This pertains to an extent of 0.05.0 Hectares (6 cents).

Aggrieved by the same, the present Writ Petition has been filed before this Court.

7. The first respondent has filed a detailed counter affidavit justifying the impugned order passed. The first respondent has taken a stand that after the enquiry and after conducting inspection and after going through the documents, it was found that the sub division that was made in Survey No.130 is illegal and is against the geographical structure of the Vaigai river and hence, no patta could have been issued for Survey No.130/4 in the name of the individual. Accordingly, the patta was directed to be cancelled. The first respondent has also taken a stand that insofar as road project that was undertaken along the banks of river Vaigai, it was done under the Comprehensive Road Infrastructure Development Programme 2020-2021. Accordingly, the first respondent has sought for the dismissal of this Writ Petition.

8. Heard the learned counsel appearing on behalf of the petitioner and the learned Government Advocate appearing on behalf of the respondents.



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9. The primary submission that was made by the learned counsel for the petitioner is that the enquiry itself that did not pertain to the cancellation of patta and enquiry was called for only to decide as to whether the property belonging to the petitioner has to be restored or in the alternative, the petitioner has to be paid compensation. However, to the shock and surprise of the petitioner, the first respondent proceeded to cancel the patta issued in favour of the petitioner and to that extent, the petitioner was never put on notice and he was not given any opportunity.

10. The learned counsel apart from the above submission also relied upon certain materials to substantiate the fact that the subject property was never a part of river Vaigai and it was always considered to be the independent patta land. The learned counsel submitted that the earlier order passed by this Court in W.P.(MD).No.7573 of 2020, unfortunately, ended up in the cancellation of patta and thereby, the petitioner has been deprived of his land and he has also been deprived of compensation and he is now left high and dry.

11. Per contra, the learned Government Advocate appearing on behalf of the respondents by placing heavy reliance upon the counter filed by the first respondent submitted that the first respondent has given sufficient reasons as to



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why the petitioner is not entitled for any compensation and as to why the patta granted in favour of the petitioner must be cancelled. The learned Government Advocate submitted that there could not have been any sub division made in Survey No.130, since the geographical structure clearly shows that it is a part of Vaigai river and therefore, there is no question of granting any patta in an individual's name. The learned counsel further submitted that there is no error of law apparent on the face of the order passed by the first respondent and it does not require the interference of this Court and accordingly, the learned Government Advocate sought for dismissal.

12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. This Court has to consider the preliminary ground that was raised by the learned counsel for the petitioner. According to the petitioner, the scope of enquiry before the first respondent was not for cancellation of patta and enquiry was called for only to decide as to whether the land has to be restored in favour of the petitioner or in the alternative, the petitioner must be paid the compensation for the land that has been taken over by the respondents.



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14. The petitioner had earlier approached this Court mainly on the ground that his property in Survey No.130/4B bearing Patta No.2097 measuring an extent of 6 cents has been illegally acquired for laying the road without following the due process of law. This ground that was taken by the petitioner was considered and an order was passed in the Writ Petition on 02.11.2020 directing the District Collector to deal with the claim made by the petitioner. Pursuant to the same, the District Collector had also issued notice dated 27.11.2020 to the petitioner calling him for an enquiry. Even in the said notice, specific reference has been made only to the order passed by this Court in W.P.(MD).No.7573 of 2020.

15. On carefully reading the order passed by the first respondent, it is seen that the first respondent has proceeded to cancel the patta that was granted in favour of the petitioner by assigning various reasons. The petitioner was not given an opportunity before this exercise was undertaken by the first respondent. To that extent, there is clearly violation of principles of natural justice.

16. When a person is called for an enquiry to deal with a particular issue and if the authorities propose to expand the scope of enquiry, the concerned



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person must be put on notice regarding such expansion of the scope of enquiry failing which the person aggrieved will not even know that there is an enquiry being conducted covering some other issues also. If ultimately, such an enquiry results in civil consequences, the same is liable to be interfered on the ground of violation of principles of natural justice.

17. In the instant case, the purpose for which the enquiry was initiated was different from the ultimate purpose for which the order was passed by the first respondent. The petitioner never knew that the first respondent is going to cancel the patta and only upon receiving the impugned order, the petitioner came to know that the first respondent has cancelled the patta and directed mutation of the revenue records. In view of the same, the petitioner never had an opportunity to put forth his grounds of defence by placing the relevant materials to substantiate as to why the patta granted in favour of the petitioner should not be cancelled. This vital opportunity has been denied to the petitioner and hence, this Court has to necessarily interfere with the impugned proceedings of the first respondent.

18. In the light of the above findings, it is not necessary to go into the merits of the matter by dealing with the stand taken by the District Collector in



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the impugned order and the explanation that is being given by the petitioner for the same. This exercise must in fact be carried out only by the District Collector and this Court does not want to take up the role of the District Collector and deal with the issue on merits. Therefore, this Court is inclined to remit the matter back to the file of the first respondent to issue a fresh notice and conduct an enquiry after affording an opportunity to the petitioner.

19. In the light of the above discussion, the impugned proceedings of the first respondent in Na.Ka.No.43895/2020/J3 dated 31.12.2020 is hereby quashed. The matter is remanded back to the file of the first respondent. The first respondent is directed to issue fresh notice to the petitioner by clearly spelling out the scope of the enquiry. The petitioner, on receipt of the same, shall give his reply along with all the relevant materials. The enquiry shall be conducted after affording an opportunity to the petitioner. While giving his reply, the petitioner will also be entitled to seek for the relief of restoration of his property or in the alternative for payment of compensation. This process shall be completed by the first respondent within a period of three (3) months from the date of receipt of a copy of this order.



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WEB COPY 20. In the result, this Writ Petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To

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Nsr

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