



W.P. (MD).No.8471 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.11.2023

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD).No.8471 of 2021
and WMP(MD)No.19220 of 2023

1. Petchiammal

2. K.Deepa Ananthi

... Petitioners

Vs

1. The District Revenue Officer,
Madurai District.

2. The Revenue Divisional Officer,
Usilampatti, Madurai District.

3. The Tahsildar,
Thirumangalam Taluk, Madurai District.

4. R.Tamil Selvan

5. A.Thiruchirambalam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order, dated 30.12.2020 passed by the first respondent in Ni.Mu.No.G2/41130/2019 confirming



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impugned order, dated 05.10.2018 in Moo.Mu.No.4871/2018/A4 passed by the second respondent and restoring the patta for the subject property in Survey No.1/3A1 measuring 15 Acres 9 Cents, Urappanur Village, Thirumangalam Taluk, Madurai District in the name of the legal heirs of deceased S.T.Kalyani within a time limit that may be stipulated by this Court.

For Petitioners : Mr. T.R.Jeyapalam

For Respondents : Mr.K.S.Selvaganesan (R1 to R3)
Additional Government Pleader

No Appearance (R4, R5)

ORDER

This Writ Petition has been filed challenging the impugned order passed by the first respondent through proceedings, dated 30.12.2020 confirming the order passed by the second respondent through proceedings, dated 05.10.2018 and for a consequential direction to the second respondent to restore the patta, with respect to the subject property, in the name of the legal heirs of deceased S.T Kalyani.

2.Heard, the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents 1 to 3. Though the fourth and fifth respondents have been



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served with the notice and their names also printed in the cause list, there is no appearance either in person or through counsel.

3.This court has carefully considered on either side submissions and the materials available on record.

4.The paternal grandfather of the second petitioner and the paternal grandfather of the fourth and fifth respondents were brothers. There was an oral partition in the year 1930 and accordingly, the properties were distributed and it was enjoyed by the sharers under the partition. Thereafter, Dhinakarasamy and Velusamy entered into a registered partition deed on 28.09.1978. As per the partition, Dhinakarasamy became entitled to the subject property in S.No.1/3, Urappanur Village, Thirumangalam Taluk, Madurai District, measuring an extent of 15 acres and 9 cents. On his demise, the property was inherited by the husband of the first petitioner and father of the second petitioner along with one Rajeshwari. They in turn entered into partition, through a partition deed, dated 03.07.1984 and the share, which is the subject matter in this writ petition was allotted in favour of husband of



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the first petitioner and father of the second petitioner.

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5.It is further seen from records that the husband of the first petitioner and father of the second petitioner, filed an appeal before the second respondent for grant of separate patta for the subject property. The second respondent through proceedings, dated 03.08.1999 granted patta in favour of the husband of the first petitioner and father of the second petitioner by subdividing the S.No.1/3 as 1/3A1.

6.The fourth and fifth respondents along with others filed a suit for partition and for separate possession of 2/3 share in the entire joint family property. In this suit, the husband of the first petitioner and father of the second petitioner was the first defendant. The suit was dismissed by Judgment and Decree, dated 13.09.2017. It is brought to the notice of this Court that an appeal has been filed against the dismissal of the suit before the District Court with a delay and that the delay petition has not been ordered and appeal has not even been numbered.



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7. In the meantime, the fourth and fifth respondents submitted a petition to the second respondent to include their names also in the patta for the subject property. The second respondent through impugned proceedings, dated 05.10.2018 directed the names of the fourth and fifth respondents to be included in the patta. This order was also confirmed by the first respondent, through the impugned proceedings, dated 30.12.2020.

8. The main issue that is involved in this writ petition is with regard to the power and jurisdiction of the second respondent to pass the impugned order, dated 05.10.2018. There is no dispute with regard to the fact that the second respondent is exercising his jurisdiction under the Tamil Nadu Patta Pass Book Act, 1983. Earlier, the second respondent had passed an order on 03.08.1999, by removing the name of father of the fifth respondent from the patta and the patta was granted in the name of the husband of the first petitioner and father of the second petitioner. When such an order has been passed by the the second respondent, the second respondent cannot once again deal with the very same issue and pass a contradictory order, later by transferring the patta in favour of the



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fourth and fifth respondents. While passing the impugned order, dated 05.10.2018, the second respondent has virtually reviewed the earlier order that was passed on 03.08.1999. This jurisdiction that was exercised by the second respondent is illegal and it was beyond the power that has been vested on the second respondent under the Tamil Nadu Patta Pass Book Act, 1983. This Act does not give power of review to the second respondent.

9.The first respondent did not take into consideration this crucial aspect and had confirmed the order passed by the second respondent, only on the ground that there is a suit pending before the competent Civil Court and therefore, the parties were directed to work out the remedy in the Civil Court.

10.In the considered view of this Court, the impugned order passed by the second respondent, dated 05.10.2018 is illegal, since the second respondent has exercised the jurisdiction, which is not available. Therefore, the said order has to be set aside by this Court and consequently, the order of the first respondent must also fail. In view of



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the same, the earlier position will be restored as it stood pursuant to the order passed by the second respondent, dated 03.08.1999

11.In the result, the impugned proceedings of the first respondent in Ni.Mu.No.G2/41130/2019, dated 30.12.2020, confirming the order of the second respondent in Moo.Mu.No.4871/2018/A4, dated 05.10.2018 are hereby quashed. There shall be a direction to the third respondent to restore the patta, with respect to the subject property, in line with the earlier order passed by the second respondent, dated 03.08.1999. The parties are already at loggerheads before the competent Civil Court and subject to the result before the Civil Court, the parties are at liberty to work out their remedies.

12.This writ petition stands allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

17.11.2023

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



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N.ANAND VENKATESH, J.

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**ORDER IN
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