



W.P(MD)No.7259 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

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Rathinammal

... Petitioner

Vs.

1.The Tahsildar

Office the Taluk Office,

Andipatty,

Theni District.

2.The Head Surveyor

Office of Taluk Office,

Andipatty,

Theni District.

3.The Inspector of Police

Kadamalaigundu Police Station,

Theni District.

... Respondents



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 and 2 to conduct survey in the petitioner's land in Survey No.1562/1 to an extent of 1155 square feet and to the petitioner's daughter to an extent of 1320 square feet situated at Thangammalpuram Village, Andipatty Taluk, Theni District, on the basis of the petitioner's online application dated 03.03.2023.

For Petitioner : Mr.C.Jeganathan

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

ORDER

The Writ Petition has been filed in the nature of a Mandamus seeking a direction to the respondents 1 and 2 / Tahsildar, Andipatty, Theni District and the Head Surveyor of the said Tahsildar Office, to conduct survey of the land in Survey No.1562/1 measuring 1155 square feet and the lands in the name of the daughter of the



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petitioner measuring 1320 square feet both at Thangammalpuram Village, Andipatty Taluk, Theni District. The petitioner had given an online application on 03.03.2023.

2. In the affidavit filed in support of the writ petition, it had been stated that the petitioner had purchased lands in Survey No.435/5, 1562/1 and 1562/9 totally measuring 1 acre 57 cents at Thangammalpuram Village, Andipatty Taluk, Theni District, from Rajuthevar by a registered sale deed, dated 08.02.1977 and registered as document No.263 of 1977 in the office of the Sub Registrar, Chinnamanoor. The petitioner claimed that she had been enjoying the property. During UDR survey the land in Survey No.1562/1 was mentioned as Natham. The revenue records reflected it as Natham Promoboake. It had been further stated that the District Collector and Tahsildar had taken a decision to give free patta to landless poor in the village. The petitioner had sought allotment of the lands to herself and for her daughter for construction of house. Accordingly, a portion of land was given by way of a patta to the petitioner herein and also to her daughter on 03.01.2011 measuring 1155 square feet to the petitioner and



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1320 square feet to her daughter. The petitioner claims that she had also constructed a house and she is paying house tax for the property.

3. The learned Special Government Pleader stated that there was a conditional assignment of the land to the petitioner to construct a house. It is stated that this was in the year 2011 and after nearly 12 years, the petitioner had come forward with this particular writ petition. It is stated that the petitioner had not satisfied the condition of the assignment. It is also stated that there were rival claimants namely, Annamalai, Murugan, Karnan all sons of Sakkathevar and also by one Bose, son of Paramasivam Thevar.

4. The learned counsel for the petitioner, however, stated that they were vendors of the land and therefore, stated that the petitioner has title to the lands consequent to the sale deed, dated 08.02.1977 which had been registered as Document No.263 of 1977. With respect to construction of the house, it is stated in the affidavit that the petitioner is paying property tax which would indicate that some construction must



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have been put up by the petitioner herein. These are facts which have to be ascertained by the Tahsildar / first respondent herein. It is a fact that the District Collector had granted patta in the name of the petitioner herein and in the name of the daughter of the petitioner herein with respect to portion of the land in Survey No.1562/1 measuring 1155 square feet to the petitioner and 1320 square feet to the daughter of the petitioner. If the petitioner is actually paying house tax, then a reasonable presumption can be drawn that they must have put up a proper construction. Whether it is a proper construction or only a small mud construction or hut, is a fact which can be examined only by the respondents and proved by the petitioner. But at any rate, the possession cannot be disputed. Even if there are rival claimants, and if it is established that they are vendors, then the petitioner title will have to be affirmed by the respondents herein.

5. A direction is given to the first respondent / Tahsildar to identify the land in Survey No.1562/1 for which conditional assignment was granted in the name of the petitioner to an extent of 1125 square feet



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and to the daughter of the petitioner to an extent of 1320 square feet at Thangammalpuram Village, Andipatty Taluk, Theni District and further examine whether the petitioner had put up any construction and whether the petitioner had been paying property tax to the panchayat for the said construction. These are facts which can be ascertained only by the Tahsildar, and if it is so, then the lands may be surveyed in accordance with law and before that, the title of the petitioner may also be examined and if notice is required, notice may also be served on the aforementioned Annamalai, Murugan, Karnan sons of Sakkathevar and also Bose, son of Paramasivam Thevar and the nature of their claim may be examined and if they had actually sold the lands, then the first respondent may proceed further with the application given by the petitioner herein for survey of the lands.

6. The entire exercise by the first respondent/ Tahsildar, Andipatty, Theni District, may be completed within a period of twelve weeks after following procedure as stated below :

The procedure is :



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- 1) to inspect the lands
- 2) to establish whether the petitioner had put up any construction
- 3) To examine the documents relating to property tax furnished by the petitioner
- 4) To examine the sale deed produced by the petitioner for the aforementioned land
- 5) To examine the assignment granted in favour of the petitioner and the daughter of the petitioner by the District Collector
- 6) To examine whether the averments made by Annamalai, Murugan, Karnan all sons of Sakkathevar and Bose, son of Paramasivam Thevar, are genuine and whether they are vendors of the lands to the petitioner herein.

After examining all these facts, let survey be conducted by the respondents 1 and 2. If for some reasons, the survey is not conducted, then reasons as to why the survey cannot be conducted may be given in



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writing to the petitioner herein, who can then take it up further in manner known to law.

7. With the above directions, the Writ Petition stands disposed of. No costs.

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

RM



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To
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C.V.KARTHIKEYAN, J.

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