

## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| Date of Reserving the order | Date of Pronouncing the order |
|-----------------------------|-------------------------------|
| 28.02.2023                  | 10.03.2023                    |

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1622 of 2021andC.M.P.(MD)Nos.7016 of 2021 and 9493 of 2022

Tirunelveli Municipal Corporation,  
Rep. by its Commissioner,  
Tirunelveli.

... Appellant/3<sup>rd</sup> Respondent  
Vs.

1.S.Kanaga

...1<sup>st</sup> Respondent/Petitioner

2.The District Revenue Officer,  
Tirunelveli District,  
Tirunelveli.

3.The Revenue Divisional Officer,  
Tirunelveli.

4.M.Muthaiah

5.Rajam @ Rajeshwari, W/o.Sugumaran

6.R.Rajalakshmi

7.C.Kannan @ Kannappan

8.C.K.Mohan

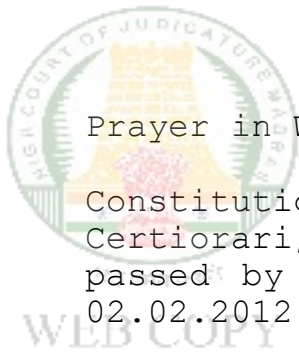
9.T.Ramamoorthi, S/o.S.Tirumalai,  
Through his Power Agent, P.Annasamy, S/o.Pandian Thevar  
10.G.Subramanian

11.Sumathi, D/o.Rajan

... Respondents

[R11 is impleaded vide Court order dated 27.02.2023,  
made in C.M.P.(MD)No.9771 of 2021]

**Prayer :-** Writ Appeal filed under Clause 15 of the Letters Patent,  
against the order dated 14.07.2021, made in W.P.(MD)No.20727 of  
2013.



Prayer in WP(MD). 20727/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in Na.Ka.Aa2/Se.Ma No.22/2011 dated 02.02.2012 and quash the same.

|                                |   |                                                                    |
|--------------------------------|---|--------------------------------------------------------------------|
| For Appellant                  | : | Mr.Isaac Mohanlal<br>Senior Counsel<br>for Mr.Aayiram K.Selvakumar |
| For 1 <sup>st</sup> Respondent | : | Mr.M.Ajmalkhan<br>Senior Counsel<br>for Mr.J.Senthil Kumaraiah     |
| For Respondents 2 & 3          | : | Mr.D.Sasikumar<br>Additional Government Pleader                    |
| For Respondents 5 to 7         | : | Mr.G.Prabhu Rajadurai                                              |
| For Respondents 9 & 10         | : | Mr.V.Raghavachari<br>Senior Counsel<br>for Mr.D.Balamurugapandi    |
| <b>(*) For Respondent 11</b>   | : | <b>Mr.H.Arumugam.</b>                                              |

#### JUDGMENT

#### DR.G.JAYACHANDRAN, J.

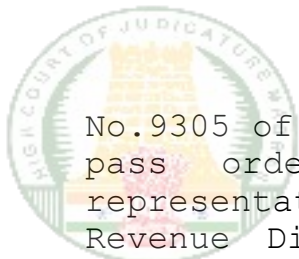
The Writ Appeal by the Tirunelveli Municipal Corporation is directed against the order passed in W.P.(MD)No.20727 of 2013, dated 14.07.2021, being aggrieved by the order, directing the Tahsildar to transfer Patta in the name of the writ petitioner (Tmt.S.Kanaga) and to carry out necessary mutation in the revenue records within the period of four weeks from the date of receipt of a copy of that order. In the course of the order, the observation of the learned Single Judge that the entries in Column Nos.17 and 19 of the Town Survey Field Register in respect Survey No.286/8, which was manipulated, is also challenged as the same has been made without any basis and contrary to the law of evidence, regarding public document.

2. For sake of convenience and brevity, the parties are described as per their ranking and status found in the writ petition.

3. The facts leading to the appeal carries a long and chequered history. Hence, the bare facts, which are relevant for deciding the appeal alone, is capsulated below:-

(a) The subject matter of the appeal is 1.05 Acres of land, which form part of old Paimash Nos.74 to 83-A Part in Vijayaraghava Mudaliyar Chattram Village, Palayamkottai Taluk.

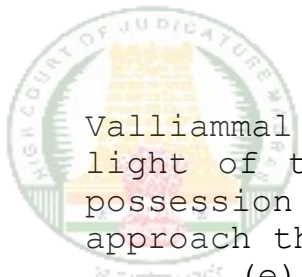
(b) Tmt.S.Kanaga the writ petitioner, claiming right over the said property through an unregistered Will, dated 22.08.2002 of one C.Valliyammal, who alleged to be the title holder of the property, gave representation on 15.09.2006, to transfer Patta in her name. Since her representation was not considered, she filed W.P.(MD)



No.9305 of 2006 to consider her representation, dated 15.09.2006 and pass orders on merit. The Tahsildar considering the said representation for grant of Patta, directed the party to approach Revenue Divisional Officer (RDO - the second respondent in the present writ petition), who is the Officer competent to consider the request for transfer of Patta. The Revenue Divisional Officer conducted enquiry on the representation. In the enquiry, apart from one Muthaiah in whose name the Patta stood, there were other claimants also and they were heard. The Revenue Divisional Officer, Tirunelveli, vide his order dated 03.09.2007, ordered transfer of the Patta in respect of S.No.286/8 (old Paimash Nos.74 to 83-B-1), which stood in the joint name of Tirunelveli Municipality (3<sup>rd</sup> respondent in the Writ Petition and the appellant herein) and Muthaiah (4<sup>th</sup> respondent in the present Writ Petition) in Patta No.320 to S.Kanaga (the writ petitioner). This order was challenged by Tirunelveli Corporation before the District Revenue Officer (the first respondent in the writ petition). It is pertinent to note that Muthaiah, the co-pattadar remained *ex parte* and he did not prefer any Revision Petition. The Revision Petition filed by the Tirunelveli Corporation was allowed by the District Revenue Officer (first respondent in the present Writ Petition), vide order dated 09.07.2010. The parties were directed to approach the Civil Court to settle their title dispute before seeking Patta.

(c) Tmt.S.Kanaga filed W.P.(MD)No.13676 of 2010 to quash the order of District Revenue Officer, dated 09.07.2010 and consequently, to direct the Tahsildar to transfer Patta in her name. The said Writ Petition was disposed on 29.06.2011 with an observation that, the District Revenue Officer ought not to have relegated the issue to the Civil Court to decide, when the third respondent (Municipality) not the owner of the property and the fourth respondent (Muthaiah - the Pattadar) not preferred any Revision. Further, the District Revenue Officer has failed to give his finding regarding ownership of the land, therefore, this is fit case for remand. Accordingly, remitted the matter back to District Revenue Officer, for fresh consideration.

(d) On considering the facts afresh, in his order dated 02.02.2012, the District Revenue Officer held that the Documents 1 to 14 relied by S.Kanaga and others, does not disclose how the three Acres of land, which includes the subject property, came to Somu Ammal, W/o.V.Kannappa Pillai. Further, when the said V.Kannappa Pillai left behind three legal heirs, namely, Veerabagu Subramaniam, Ganapathi Sundaram Pillai and Valliammal, how Valliammal alone derived title, excluding the other legal heirs. The unregistered Will of Valliammal, dated 22.08.2002 in the absence documents, like, partition deed, to show title of Valliammal, the claim of S.Kanaga to transfer Patta based on the said Will cannot be acceded. Further, the District Revenue Officer has also observed that when there is no proof for Valliammal's title, when she had no Patta in her favour or proof that she paid Kist to show her possession, the writ petitioner S.Kanaga, who claims that she derives title through



Valliammal based on a fact unproved and is a fact in dispute in the light of the claim made by the Tirunelveli Municipality, claiming possession for more than 40 years. Hence, directed the parties to approach the appropriate Civil Court for remedy.

(e) The above order of the District Revenue Officer is challenged in W.P.(MD)No.20727 of 2013 by S.Kanaga, finding fault with the order of the District Revenue Officer, directing the parties to settle the title dispute through Civil Court, despite in the earlier round of litigation, identical order passed by the District Revenue Officer was challenged and High Court remanded the matter back to the District Revenue Officer to decide the issue himself. The learned Single Judge allowed the Writ Petition, directing the respondents to transfer Patta in the name of S.Kanaga. The rival claimants over the title were directed to work out their remedy in the Civil Court. This order is now impugned in this Writ Appeal.

(f) It is pertinent and relevant at this juncture to record that S.Kanaga filed the Writ Petition only against 4 respondents namely, District Revenue Officer, Revenue Divisional Officer, Thirunelveli Corporation and one Muthaiah. Pending disposal, the writ petitioner made an endorsement that the Writ Petition relief is given up as far as the 4<sup>th</sup> respondent (Muthaiah). Petition to implead Rajam @ Rajeshwari, R.Rajalakshmi, C.Kannan @ Kannappan and C.K.Mohan was ordered on 12.02.2021 and they were impleaded as respondents 5 to 8 in the Writ Petition. Also, T.Ramamoorthi and G.Subramanian were impleaded as respondents 9 and 10, vide order dated 12.02.2021. Pending Appeal, this Court has allowed the Impleading Petition filed by one Sumathi, D/o.Rajan, and impleaded herself as 11<sup>th</sup> respondent, vide order dated 27.02.2023. The impleaded parties have placed materials to make out a *prima facie* case that they have a claim in the property in dispute and the Writ Petitioner as well the Municipality knowingly suppressed their claim in the property and trying to get orders from the Court behind their back without impleading them as parties to the *lis*.

4. Now reverting back to the order of the learned Single Judge, which is challenged before this Court, the perusal of the records and the order impugned, we find that on 08.11.2019 when the Writ Petition came up for consideration before Hon'ble Mr.Justice M.Sundar, the learned Judge on the premise that the crux and the gravamen of the dispute been narrowed down to the correlation of Paimash number and re-survey number, *qua* said land, had directed the counsels to get instruction regarding correlation of old Paimash number with the new survey number and report. Thereafter, when the case came up for consideration on 10.03.2010 before the Hon'ble Mr.Justice P.D.Audikesavalu, the learned Judge issued direction to District Revenue Officer (first Respondent) to inspect the property, which is occupied by the Tirunelveli Corporation (the third respondent), identify the survey numbers, name of the Village, in which, the land in dispute is located and the sketch plan. In



reverence to the direction of this Court, District Revenue Officer has filed his report on 27.07.2020.

5. At Paragraph No.15 of the order impugned, the learned Single Judge has discarded the report of the District Revenue Officer (first respondent) saying that, 'it is but natural that the first respondent, who has passed the impugned order (i.e., order dated 02.02.2012, impugned in the Writ Petition) will only justify his order and therefore, this Court cannot expect the first respondent to give a report in variance with his own order. Therefore, this Court does not want to place reliance on the report filed by the first respondent'. Further, the learned Single Judge has called for the original record of Town Survey Field Register and found certain manipulations in the entries and recorded that the records been manipulated.

6. This Court has to take note of fact that this Court directed the District Revenue Officer to file a detailed report about the identification of the property, sketch and the present occupier of the land. His report is pursuant to the direction of the Court and not a self-serving report filed voluntarily. Therefore, after receiving the report, without assessing the report on merits and assigning reasons, discarding it for the reasons stated above, is nothing but erroneous. Likewise, the observation about the entries in Town Survey Field Register also need more scrutiny and test.

7. The learned Single Judge, who has extracted the fact and nucleus of the dispute in his order dated 14.07.2021, as stated by Hon'ble Mr.Justice M.Sundar, vide his interim order dated 08.11.2019, as under:-

*'8. When this matter came up for hearing on 08.11.2019, the issue that is involved in the present Writ Petition has been succinctly captured and the same is extracted hereunder:-*

*'Mr.V.Meenakshi Sundaram, learned counsel on record for writ petitioner, Mr.K.Mu.Muthu, learned Additional Government Pleader on behalf of respondents 1, 2 and Mr.Aayiram K.Selvakumar, learned Standing Counsel for third respondent are before this Court.*

*2.To be noted, fourth respondent is a private respondent and learned counsel for writ petitioner has made an endorsement in the case file which reads as follows:*

*'On instructions the writ petition relief is given up as far as R4.'*

*3.This endorsement means that writ petitioner is not claiming any relief against fourth respondent.*

*4.The nucleus of instant Writ Petition is*



-land admeasuring 1.05 acres or thereabouts in paimash Nos.74 to 83A part in Vijayaraghava Mudaliyar Chattram Village, Palayamkottai Taluk, Tirunelveli District- (hereinafter referred to as 'said land' for brevity).

5.Third respondent ie., 'Tirunelveli Municipal Corporation' (hereinafter referred to as 'said Corporation' for brevity) claims that said land belongs to it and that there is a children's park in the same. For this purpose, reliance is placed on 'G.O.Ms.No.1, Education Department, dated 2<sup>nd</sup> January, 1967' (hereinafter referred to as 'said G.O' for brevity) which has been duly published in the Tamil Nadu Government Gazettee on 08.12.1967.

6.Learned counsel for writ petitioner submits that writ petitioner is not assailing said G.O, but writ petitioner-s case is that land earmarked for development or land set apart by saying 'to be developed' comprised in paimash Nos.74 to 83A part is relatable to Survey Nos.258/4 whereas writ petitioner's land comprised in Survey Nos.74 to 83B in Vijayaraghava Mudaliyar Chattram Village, Palayamkottai Taluk, Tirunelveli District, is relatable to Survey No.286/8, Patta No.320 and present T.S.No.90. In this regard, it is submitted that paimash Nos.74 to 83B originally admeasured about 3 acres belonged to one Somu Ammal, W/o.Kannappa Pillai, who had purchased the same under sale deed dated 20.09.1935, it was sold to her daughter Villayammal, that said Somu Ammal died in the year 1940 and after demise of Valliyammal on 10.04.2003, it devolved upon writ petitioner (Valliyammal's daughter). To be noted, in said G.O referred to supra, reference is to Location, Ward, Division and T.S number (Column 2), but reference is obviously paimash number as is evident from correlation register. To further buttress writ petitioner's case, reliance is placed on extract from the relevant revenue register dated 21.03.2007 wherein paimash Nos.74 to 83B part is now 286/8 and it shows V.Kannappa Pillai as occupier. To be noted, V.Kannappa Pillai is aforesaid Somu Ammal's spouse. Therefore, crux and gravamen of the entire lis now narrowed down to correlation of paimash number and re-survey number qua said land.

7.Adverting to an 'order dated 02.02.2012 made in Reference Na.Ka.Aa2/See.M.No.22/2011 by the first respondent' (hereinafter referred to as 'impugned order' for brevity), learned counsel for writ



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petitioner submits that impugned order of the first respondent ie., 'jurisdictional District Revenue Officer' (hereinafter referred to as 'said DRO' for brevity) was passed, after this Court set aside an earlier order made by DRO being order dated 09.07.2010 in W.P(MD)No.13676 of 2010 by order dated 29.06.2011 and sent it back to said DRO. To be noted, impugned order is dated 02.02.2012. Also to be noted in the impugned order, cause title has been wrongly described post remand. Obviously revision petitioner is third respondent / Tirunelveli Municipal Corporation and not writ petitioner. There is no dispute about this aspect of the matter. Order that was carried in revision is said order dated 03.09.2007 made by 'jurisdictional Revenue Divisional Officer' (hereinafter referred to as 'said RDO' for brevity) and this 03.09.2007 bears Reference Na.Ka.No.A3.Maa.Mu.21/2006.

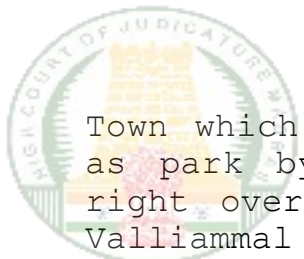
8.It is also argued that scope of hierarchy of quasi judicial authorities under 'Patta Pass Book Act, 1983 (Tamil Nadu Act 4 of 1986)' (hereinafter referred to as 'said Act' for brevity) is restricted to such correlation and revenue register entries. Complaining that correlation has not been correctly read, instant Writ Petition has been filed.

9.Faced with the above situation, learned State Counsel for respondents 1, 2 and learned Standing Counsel for third respondent seek time to get further instructions on the correlation aspect and make submissions in this regard.

10.List on 25.11.2019.'

8. Later, after receiving report from DRO and on perusal of the records particularly the Town Survey Field Register, the order impugned passed. While passing the order, already respondents 5 to 10 were impleaded and their specific case is that, the writ petitioner Kanaga as well the Tirunelveli Corporation have not placed the entire facts before the writ court and the vital facts regarding rival claims intentionally suppressed. Unfortunately, this plea not been addressed by the learned single judge. In spite of clear dispute over title and the failure of Kanaga not establishing her right or the right of her predecessor in title (Valliammal) which was pointed out by the first respondent, the learned single judge for reason best known has proceeded on the premise that the lis is only regarding identification of the property and not the title. Therefore the observation in the impugned order at para 20 is factually erroneous.

9. This is a piece of land at the heart of Palayamkottai



Town which is lying vacant substantially with a portion maintained as park by the municipality. Kanaga, the writ petitioner claims right over the property on the premise that she from her mother Valliammal as her only daughter got the property through a Will dated 22.08.2002. According to her, the land in New Survey No.286/8, old Adangal Nos.74 to 83B1 to an extent of 3 acre situated at Palayamkottai Town original belongs to Late.Somuammal, W/o. Kannappa Pillai through a registered sale deed dated 20.09.1935 in Document No.2595/1935, who is the petitioner's grandmother. After the demise of the said Somuammal the above said land devolved upon her only daughter namely Valliyammal. The said valliyammal had alienated a portion of the above said property to an extent of 1 acre 44 cents in favour of several persons through various sale deeds and the remaining 1 Acre 2 Cents been bequeathed to her through a Will dated 22.08.2002 and died on 10.04.2003.

10. The Tirunelveli Municipal Corporation claims right over the property stating that land in Old Survey No.286/8 and present new T.S.No.19 comprising in patta No.320 of Palayakamkottai Zone originally an Inam land. After the abolition of Inam under the Act 26/1963, under the settlement proceedings patta was issued in respect of the above said land jointly in the name of the Palayamkottai Municipality and one M.Muthiah. The then Palayamkottai Municipality was included in the territorial area of present Tirunelveli Municipal Corporation which came into existence on 01.06.1994. Ever since the said land is the property of the Corporation and same is in continuous possession and enjoyment of the Corporation without any interference. The said land is being used as one of the Children's park in the Maharaja Nagar colony.

11. Pending writ petition, respondents 5 to 8 got impleaded in the writ petition stating that the claim of Kanaga, the writ petitioner that she got the property through the Will of Valliammal is not correct. Infact, Valliammal died intestate and the Will based on which Kanaga has filed the suit is the concocted document and the respondents 5 to 8 have brought to the notice of this Court that the suit in O.S.No.91 of 2014 on the file of the District Judge, Tirunelveli for partition of the subject property filed and final decree passed on 03.12.2019. Therefore they are entitled for 57.40 cents on the western side. Based on the decree patta has also issued in their favour.

12. Few months after allowing the petition, Dr.T.Ramamoorthi through his Agent filed an implead petition claiming right over the property alleging that Valliammal on 07.10.1964 sold 25 cents of the suit property to P.V.Amirtharaj. Two months later, she also executed a ratification deed dated 22.09.1964 from out of 25 cents, he has purchased 12.05 cents on 08.08.1994 on the western side and the remaining 12.5 cents was sold to one Jamal Mohideen Beevi. He also question the genuineness of the Will relied by Kanaga. He has



brought to the notice of the Court in his affidavit to impugna, the fact that when he came to know about the proceedings before the DRO for impleading that was not considered. Hence he filed a Revision Petition in C.R.P(MD)No.2248 of 2008 before this Court. He sought permission to get impleaded in the DRO proceedings, but he could not succeed. Since by then DRO has passed an order which is impugned in the writ petition and to put forth the case, he sought for impleading himself in the pending writ petition filed by Kanaga and the same was allowed.

13. While fact being so, the learned Single Judge, ignoring the rival claims over the property not only by the Corporation but also by other third parties. Further, there is a cloud over the genuineness of the Will relied by Kanaga and the Will is alleged to be a concocted document. The Learned Single Judge has failed to note that the dispute is not only regarding the identities of the property but also the identity of ownership. Already a decree been passed in respect of the property in favour of the third parties which renders hopelessly bad that the direction to issue patta to a person who has no title. Not stopping with that when the appeal pending before this Court, one Sumathi has filed impleading petition stating that the suit property belongs to her and she and her mother have filed a suit in O.S.No.120 of 2016 before the IV-Additional District Court, Tirunelveli for partition and separate possession in which Tirunelveli Corporation is a part/defendant. Later Kanaga, the writ petitioner has also got herself impleaded in the said suit by filing I.A.No.257 of 2017 and the same was allowed on 26.06.2018. She has further stated that she claims right over the property based on the decree passed in the civil suit in O.S.No.91 of 2014 on the file of the District Court, Tirunelveli, where the respondents 5 to 8 are parties.

14. Thus it is clear as crystal that Kanaga has filed the writ petition just impleading DRO, RDO, Tirunelveli Municipality and Muthiah. (Later giving up her claim against Muthiah) knowing that there was a suit pending making title claim over the property. Pending writ petition respondents 5 to 10 got themselves impleaded and informed the Court that there is rival claim over the property and title suits are pending. Despite disclosure of these information, the learned Single Judge has concluded that some of the private respondents seems to be having some dispute with the petitioner insofar as the portions of the property conveyed to them. The same cannot be tested in the writ petition and this is left open to the parties to agitate the dispute independently before the appropriate forum.

15. It is not some parties claiming right over some portion of the property. Multiple disputes already pending before the Civil Court regarding the title over the property. While so, ignoring the title dispute, the learned Single Judge has directed the first



respondent to issue Patta in favour of Kanaga, who has come to the Court with unclean hands suppressing material facts, particularly rival claim over the title. She has not impleaded all the necessary parties in the writ petition. Conveniently got an order for issuance of Patta even without establishing her right over the property.

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16. Therefore, this Court finds non application of mind and misapplication of mind by the learned Single Judge while appreciating the facts placed before him renders his conclusion bad. The Learned Judge has deviated himself in testing a public document and commenting upon it without giving opportunity to the custodian of the documents.

17. For the above said reasons, the order of the learned Single judge dated 14.07.2021 is quashed and set aside in toto. If any of the parties approach the Civil Court to establish their right, the observations made in the impugned judgment by the learned Single Judge shall not be taken into consideration for any purpose.

18. In fine, this Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

**(\*)Corrected as per the order of this  
court dated 20/04/2023 order in WA(MD)  
No.1622/2021.**

Sd/-

Assistant Registrar(CS II)

// True Copy //

/05/2023

Sub Assistant Registrar(CO)

SMN2

To

**To be substituted to the order which is already despatched on  
31/03/2023**

- 1.The District Revenue Officer,  
Tirunelveli District,  
Tirunelveli.
- 2.The Revenue Divisional Officer,  
Tirunelveli.



W.A.(MD)No. 21



+1 CC to M/s.D.BALAMURUGAPANDI, Advocate ( SR-14393[1] dated 10/03/2023 )

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate ( SR-14691[F] dated 13/03/2023 )

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate ( SR-14803[F] dated 13/03/2023 )

+1 CC to M/s.SPL.GP ( SR-14765[F] dated 13/03/2023 )

W.A. (MD)No.1622 of 2021

DATED : 10.03.2023

KB(29.03.2023) 11P 7C

MK(02.05.2023) 11P 7C