BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD).No.13949 of 2020
and W.M.P(MD).Nos.11612 and 11613 of 2020

Bharathi ... Petitioner

Vs.

1.The Revenue Divisional Officer,
Devakottai, Sivagangai District.

2.The Tahsildar,
Devakottai, Sivagangai District.

3.Subramani

4.The District Revenue Officer,
Sivagangai District. ... Respondents

(*R4 is *suo motu* impleaded by this Court on 12.12.2023 in W.P(MD).No.13949 of 2020*)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records relating to the impugned proceedings of the first respondent dated 19.09.2020 made in Mu.Mu.No.A1/5978/2020 and quash the same.

For Petitioner : Mr.V.R.Shanmuganathan
for Mr.AL.Kannan

For Respondents : Ms.D.Farjan Ghoushia
for R1, R2 and R4
Mr.R.Sundar Srinivasan for R3

<u>O R D E R</u>

This Writ Petition has been filed challenging the impugned proceedings of the first respondent in Mu.Mu.No.A1/5978/2020 dated 19.09.2020.

2. The case of the petitioner is that the lands in Survey Nos.192/7, 430/4, 433/2, 449/4B, 449/7, 451/9, 468/3, 468/5, 470/1, 470/10, 470/14, 471/3, 471/6, 347/10, 375/16, 375/9B, 377/11, 377/3 and 434/1A and the lands in Survey Nos.322/3, 322/6, 339/1, 339/2, 330/2, 333/1, 333/3B, 333/4 and 339/3 situated at Thirumanavayal Village, Devakottai Taluk, Sivagangai District, belong to the ancestor of the petitioner and the revenue records were also standing in the name of the ancestor and subsequently, it got transferred in the name of the petitioner in the year 2002. The further case of the petitioner is that even during UDR, enquiry was conducted by issuing appropriate notice and the patta was granted in

the name of the petitioner's father and thereafter, it was transferred in the name of the petitioner in patta No.114. The petitioner further claims that he is in possession and enjoyment of the lands.

3. The further case of the petitioner is that the third respondent also claims that the name of his father is Karuppaiah and his grand father's name is Kalimuthu and taking advantage of similarity of the names, the third respondent approached the first respondent with a claim that insofar as nine survey Nos.322/3, 322/6, 339/1, 339/2, 330/2, 333/1, 333/3B, 333/4 and 339/3, the patta has to be issued in his name. The first respondent conducted enquiry and passed order on 19.09.2020 by declaring that the third respondent is the son of Karuppaiah and grand son of Kalimuthu and accordingly, a direction was issued to enter the name of the third respondent with respect to nine survey numbers and insofar as balance survey numbers, the first respondent directed the name to be restored as Karuppaiah, son of Kalimuthu. Aggrieved by the same, the present Writ Petition has been filed before this Court.

4. The third respondent has filed a counter affidavit. The third respondent has taken a stand that the petitioner has taken advantage of

similarity in names and has managed to get patta in his name with respect to nine survey numbers over which the third respondent is making his claim. According to the third respondent, the petitioner is the legal heir of one Karuppaiah, son of Kalimuthu, who belonged to Markandanpatti Village, whereas, nine survey numbers for which the third respondent was making the claim are situated at Keelavayal Village. Both Markandanpatti Village and Keelavayal Village belong to Thirumanavayal Group at Devakottai Taluk, Sivagangai District. The further case of the third respondent is that the third respondent was not aware of the fact that patta was granted in favour of the petitioner with respect to nine survey numbers and only later, it came to light that the petitioner had managed to get the mutation in the revenue records by taking advantage of similarity in names and in the said circumstances, the appeal was filed before the first respondent and the first respondent specifically found that Karuppaiah son of Kalimuthu actually belonged to Keelavayal Village, whereas, Karuppaiah through whom the petitioner was claiming the right, is the son of Kalimuthu who belonged to Markandanpatti Village and hence, the first respondent came to the conclusion that the third respondent is the legal heir of Karuppaiah, son of Kalimuthu of Keelavayal Village. It is under these circumstances, the first respondent had directed the patta to be issued in favour of the third respondent with respect to nine survey numbers and with respect to remaining 20 survey numbers, it was restored back to the original position. In view of the same, the third respondent has sought for dismissal of this writ petition.

5. The first respondent has filed a counter affidavit and the relevant portion is extracted hereunder:-

> *11. It is respectfully submitted that the Hon'ble court may be pleased to dismiss this writ petition on following grounds:*
>
> *a. The petitioner herein failed in to exhaust the statutory revision remedy available before District Revenue Officer, Sivagangai.*
>
> *b. It is proven beyond reasonable doubt that the petitioner herein has no right to claim possession of the 9 survey numbers. The words in para (2) of the affidavit filed by the petitioner herein "I submit that I am in the possession and enjoyment of the said lands without any interruption from any quarters till date" is absolutely ridiculous and utterly false. The statements of the adjacent patta land holders and field inspection report of Tahsildar reveals that all the 9 survey numbers are clearly in the possession of family of the 3rd respondent herein.*

c. The petitioner herein very much interested in stopping the enquiry of the 1st respondent simply keeps repeated argument that 3rd respondent petition should be taken as UDR scheme error and that if there is error in UDR there is no jurisdiction to the 1st respondent. In fact the petitioner herein is very well aware of the fact that the 3rd respondent herein had approached the 1st respondent to restore patta registry in favour of his father as settled in the UDR scheme, thereby rectifying the wrongful mutation carried out in 2002. The said prayer of the 3rd respondent squarely falls within the ambit and statutory jurisdiction of the 1st respondent.

d. The petitioner herein, in para (4) subsection (e) of the affidavit filed stated that a patta appeal case has to be filed within 30 days of mutation whereas in this present case, it is done after 18 years, hence it is barred by limitation. In this regard, the third respondent herein had given representations to various forums since 2001. The 1st respondent allowed the petition only after taking all these details into account and finding merit in prayer of 3rd respondent. It is also respectfully submitted that this Hon'ble Court in many cases allowed Sub Collector/ Revenue Divisional Officer to allow patta appeal petition that are filed more than 30 days in the interest of justice. In this impugned proceedings the final orders passed resulted in delivery of justice to an innocent villager for a period of 18 years of legal battle.

e. It is respectfully submitted that three reasonable *opportunities was given to the petitioner herein during enquiry of the 1st respondent. The petitioner has acknowledged the same in para 4 subsection (e) of his affidavit filed in the court.*

It is respectfully submitted that petitioner and his learned counsel were adopting delay tactics as they are fully aware that there is absolute merit to the claim of the 3rd respondent.

f. The orders of 1st respondent was passed after taking into account the

i. Death certificate of Karuppiah

ii. Legal heir certificate of Karuppiah

iii. Encumbrance certificate submitted

iv. SLR details (Revenue records before 1983)

v. Patta pass book (Revenue records before 1983)

vi. "A" register revenue records of village

vii. 10(1) register of the village

viii. Computer chitta of the village

ix. Field inspection report of Tahsildar

x. Tahsildar, Devakottai office File STPT 406/2001-2002.

It is respectfully submitted that detailed orders were passed recording all the evidences mentioned above.

g. The notices issued by the first respondent clearly stated that patta appeal case before the 1st respondent involved patta number 114 of Thirumanavayal revenue village. The 1st respondent was constrained to pass orders for other 20 survey numbers -(192/7, 430/4, 433/2, 449/5B, *449/7, 451/9, 452/5B, 468/3, 468/5, 470/1, 470/10, 470/14, 471/3, 471/6, 347/10, 375/16, 375/9B, 377/11, 377/3, 434/1A of Thirumanavayal village) under patta number 114 of Thirumanavayal revenue village after finding that*

i) The alleged patta transfer orders of Tahsildar Devakottai in file No. STPT.406/2001-2002 by which the petitioner claim to have mutated the revenue records in his name and his brothers name is completely irrelevant to the survey numbers concerned.

ii) The petitioner couldn't produce death certificate and legal heir certificate of his father Karuppiah and any patta transfer order(s) passed by the Tahsildar Devakottai. Also it is a great wonder how the petitioner herein managed to mutate revenue records in his favour and his brother favour without any legally valid documents for all the 29 survey numbers

h. The 1st respondent passed orders rightly in accordance with provisions of patta pass book act. The 1st respondent rectified a clear mistake in patta registry done in the favour of petitioner and his brother herein.

i. The 1st respondent scrutinized the before UDR records i.e.SLR records, patta pass book submitted by the 3rd respondent herein, in which patta was in the name of ancestor of the 3rd respondent herein and not in the name of ancestor of petitioner herein. The petitioner herein during enquiry couldn't even produce any relevant documents and *was very much interested in adopting delay tactics through his learned counsel.*

J. The death certificate and legal heir certificate of Mr.Karuppiah S/o.Kalimuthu produced by the 3rd respondent in Keelavayal village is in complete coherence with the revenue records. In fact all the said 29 survey numbers are in Keelavayal village while the father of the petitioner herein never belonged to that village during 1984.

k. The 1st respondent as an appellate authority is clearly allowed to pass orders when clear mistake is made in patta registry based on legal heir certificate and other relevant records produced.

l. Carrying of necessary mutation in patta registry is completely within the ambit of 1st respondent. In this particular case, the 1 respondent has exercised his legally vested powers.

m. The revenue standing order allows collecting of oral evidences in the question related to the issuance of patta and the 1st respondent has categorically done the same. The 1st respondent had conducted enquiry by allowing the learned counsel for the petitioner herein to examine villagers.

In the above circumstances, there in no merit to the grounds raised by the affidavit of the Petitioner.

n. Petitioner herein was an agent at Tahsildar Devakottai around 2000s. Having worked as an agent the *petitioner must have mutated the village revenue records by taking advantage of the confusion over the similarity in the name of father of the petitioner and 3rd respondent herein.*

o. Also the petitioner's herein brother never appeared for the enquiry of the 1st respondent nor joined in this writ petition with his brother.

6. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents 1, 2 and 4 and the learned counsel appearing for the third respondent.

7. The issue that arises for consideration in the present case is as to whether the impugned proceedings of the first respondent dated 19.09.2020 requires the interference of this Court.

8. The first respondent has taken a very clear stand that the third respondent approached the first respondent to restore the patta in favour of his father as per UDR scheme. In view of the same, the first respondent claims that this matter does not involve any correction to be carried out for a mistaken entry during UDR and this is a case which squarely falls within the ambit and jurisdiction of the first respondent under the Patta Passbook Act.

9. The entire confusion revolves around the identity of Karuppaiah, son of Kalimuthu. The petitioner is claiming his right from Karuppaiah and the third respondent is also claiming his right from one Karuppaiah. Curiously, the name of the father of Karuppaiah in both the cases is Kalimuthu. The only differentiating factor is that the petitioner is claiming patta with respect to one Karuppaiah who died in the year 1998 at Markandanpatti Village, whereas, the third respondent is claiming right under Karuppaiah who died on 20.10.1991 and who belonged to Keelavayal Village. The first respondent through the impugned proceedings has come to the conclusion that the third respondent is the son of Karuppaiah belonging to Keelavayal Village and that even during UDR, the patta with respect to nine survey numbers stood in the name of the said Karuppaiah and the third respondent was in possession and enjoyment of the property as per the report of the Tahsildar. Therefore, the patta with respect to nine survey numbers was directed to be issued as joint patta in the name of the third respondent and his brothers and sisters in patta No.114. With respect to remaining survey numbers, it was directed to be restored in the name of Karuppaiah, son of Kalimuthu.

10. There is no dispute between the petitioner and the third respondent in identifying Karuppaiah through whom they are making their claim. There is also no dispute with regard to the Village. Insofar as the petitioner is concerned, the claim is made with respect to Karuppaiah belonging to Markandanpatti Village and with respect to the third respondent, the claim is made to Karuppaiah belonging to Keelavayal Village. Both the petitioner and the third respondent are in possession of the Death Certificate and the Legal Heir Ship Certificate. In view of the same, it will be more appropriate to send this case to the file of the District Revenue Officer, Sivagangai District. There are two reasons for coming to this conclusion. The first reason is that there is already an appeal remedy available as against the order passed by the first respondent on 19.09.2020. That apart, it is the District Revenue Officer, who conducted enquiry during UDR and who had issued patta with respect to all 29 survey numbers in favour of the father of the petitioner. In view of the same, it will be more appropriate for the District Revenue Officer, Sivagangai District, to go into this issue and verify the relevant documents and the claim made by the petitioner and the third respondent and pass a final order.

11. The enquiry which the District Revenue Officer, Sivagangai District, will undertake, will pertain only to nine survey numbers over which the third respondent is making a claim. However, with respect to remaining 20 survey numbers, even the third respondent did not make any claim and inspite of the same, the first respondent has proceeded to withdraw the patta granted in favour of the petitioner and directed the same to be restored in the name of Karuppaiah, son of Kalimuthu. This direction ought not to have been given by the first respondent, since no claim was made by anyone with respect to the remaining 20 survey numbers, for which, the patta already stood in the name of the petitioner. In view of the same, the proceedings of the first respondent in Mu.Mu.No.A1/5978/2020 dated 19.09.2020 is interfered and set aside insofar 20 survey numbers, for which, the first respondent had directed the same to be restored to the name of Karuppaiah, son of Kalimuthu and there shall be a direction to the first respondent to restore the patta with respect to 20 survey numbers in the name of the petitioner.

12. It will be left open to both the petitioner as well as the third respondent to put forth all their claims before the District Revenue Officer, Sivagangai District and the District Revenue Officer, Sivagangai District, shall deal with the same on its own merits and in accordance with law and in line with the revenue records that are available with the Department. Final orders shall be passed by the District Revenue Officer, Sivagangai District, within a period of three months from the date of receipt of a copy of this order. In view of the same, the District Revenue Officer, Sivagangai, is added as the fourth respondent in this Writ Petition.

13. Ms.D.Farjana Ghoushia, learned Special Government Pleader takes notice on behalf of the impleaded fourth respondent.

14. The claims that were raised by the petitioner and the third respondent are left open and this Court intentionally did not go into any of those claims while passing this order. Therefore, the impleaded fourth respondent shall apply his mind afresh and pass final orders.

15. In the result, this Writ Petition is partly allowed with the above directions. There shall be no order as to costs. Connected miscellaneous petitions are closed.

12.12.2023

Index :Yes/No
Internet : Yes/No
ssb

To

1.The Revenue Divisional Officer,
Devakottai, Sivagangai District.

2.The Tahsildar,
Devakottai, Sivagangai District.

3.The District Revenue Officer, Sivagangai District.

N.ANAND VENKATESH.J.,

ssb

Order made in
W.P.(MD).No.13949 of 2020

Dated :
12.12.2023