



W.P(MD)No.16960 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16960 of 2021

and

W.M.P(MD)No.13895 of 2021

G.Mohandass

... Petitioner

Vs

1.The District Revenue Officer,
Thanjavur,
Thanjavur District.

2.The Revenue Divisional Officer (Orathanadu),
Thanjavur,
Thanjavur District.

3.The Tahsildar,
Orathanadu Taluk Office,
Orathanadu,
Thanjavur District.

4.Mala

5.Muthuvel

6.Murugavel

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to consider the petitioner's representation dated 30.10.2020 and further to restore



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the patta, namely, Patta No.198 on the file of the third respondent to the petitioner's name, in respect of the Nanjai land measuring Acre 1.50 cents situated at Survey No.13/3, Muthambalpuram revenue Village, Orathanadu Taluk, Thanjavur District after deleting Patta No.1340 in the names of respondents 4 to 6 in respect of the said property, within a stipulated period of time as this Court.

For Petitioner : Mr.D.Gnanasekaran

For Respondents : Mrs.S.Jeyapriya
Government Advocate for R.1 to R.3

Mr.R.Ghireedharan for R.4 to R.6

ORDER

Heard the learned counsel on either side.

2.The property in question belonged to one Muthusamy Naidu. The said Muthusamy Naidu was blessed with three daughters and one son by name Govindarajulu. The writ petitioner was born to the first daughter of Muthusamy Naidu. The private respondents are children of Govindarajulu. The petitioner's patta in respect of the petition mentioned property is presently standing in the name of the private respondents. The petitioner wants this Court to direct the authority to cancel the said patta and restore the earlier position.



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3.As rightly pointed out by the learned counsel appearing for the private respondents, this request cannot be accepted. This is for more than one reason. The petitioner had already filed W.P(MD)No.10114 of 2011 before this Court. Vide order dated 14.09.2016, the writ petition was dismissed and liberty was given to him to approach the civil Court to establish his title. It is necessary to note here that in the earlier case also the issue was mutation of patta. The petitioner availing the said liberty, filed O.S.No.3 of 2013 on the file of District Munsif Court, Orathanadu. The petitioner sought the relief of declaration as well as permanent injunction. The trial Court dismissed the suit on 31.10.2014. Aggrieved by the same, the petitioner filed A.S.No.2 of 2015 before the Sub Court, Pattukottai. The first appellate Court disallowed the prayer regarding declaration. It however confirmed that the petitioner is in possession of the property. Liberty was given to the respondents to take recourse to due process of law for securing possession from the writ petitioner. Aggrieved by the same, the private respondents herein filed S.A(MD)No.561 of 2017. The judgment and decree dated 08.01.2018 passed by the Sub Court, Pattukottai was confirmed and the second appeal came to be dismissed.

4.Contending that in the light of these subsequent developments, the patta mutated in favour of the private respondents should be cancelled, the present writ petition has been filed.



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5.The subsequent developments in my view do not advance the case of the writ petitioner. The prayer of the petitioner in the earlier round of litigation was also for transfer of patta in his favour. The petitioner was given liberty to move the jurisdictional civil Court for establishing his title. The petitioner could not succeed before the trial Court as well as the first appellate Court. Only when the petitioner succeeds in establishing his title over the property, the petitioner can ask for consequential transfer of patta in his favour. This is because as per Patta Passbook Act, one who possesses patta is *prima facie* holding title also.

6.The next question that arises for consideration is whether on the strength of his current possession he is entitled to patta. The first appellate Court has not held that the petitioner is entitled to possession. It has only recognised his present possession but the character of the possession is tentative. The defendants have been given liberty to secure possession from the petitioner by due process of law. Such a person in my view is not entitled to patta.

7. Of course, there is some merit in the contention of the learned counsel appearing for the petitioner that on the strength of an unregistered Will patta should not have been mutated. The learned counsel placed reliance on the



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decision of the Hon'ble Apex Court rendered in Special Leave Petition (C) No. 13146 of 2021 (*Jitendra Singh Vs State of Madhya Pradesh & Others*) dated 06.09.2021. But this issue had already been dealt with in the earlier round of litigation. On the strength of this decision of the Hon'ble Apex Court, I cannot revisit the issue. Once the issue has been decided, even if there is a change in the legal position, still the Court cannot revisit the issue. Otherwise settled matters can be unsettled at any point of time. Though the technical principles of *res judicata* are not applicable to writ proceedings, still, the spirit behind the same cannot be lost sight of. The learned counsel appearing for the petitioner states that he had filed independent second appeal challenging the judgment and decree of the first appellate Court. If that be so, the rights of the parties will abide by the outcome of such second appeal.

8. With this observation, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.01.2023

Index : Yes / No
Internet : Yes/ No
NCC : Yes / No
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G.R.SWAMINATHAN, J.

MGA

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