



W.P(MD)No.19127 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19127 of 2014

and

M.P(MD)Nos.1 of 2014 & 1 of 2015

V.Samikannu @ Suruliandi

... Petitioner

Vs

- 1.The Additional Chief Secretary /
Commissioner of Land Administration,
Chepauk, Chennai – 600 005.
- 2.The District Revenue Officer,
Office of the District Revenue Officer,
Theni District.
- 3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Periyakulam, Theni District.
- 4.The Tahsildar,
Office of the Tahsildar,
Aundipatty, Theni District.
- 5.R.Samikannu
- 6.R.Srinivasan
- 7.Jothipommu Nayacker



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8.Soundrapandi

9.Muthuram

10.Subburaj

11.Kamaiyasamy

12.Jakkamuthu

13.Rajendran

14.Pomminayacker

15.P.Thangapandi

16.B.Ponraj

17.R.Ponraj

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent's impugned order D.Dis.K4/RP 05/2005 (36359/04) dated 28.10.2014 insofar as the portion the order requested the fourth respondent to again sub divide the petitioner's land measuring 0.04.0 hectares panchayat union Road and quash that portion as arbitrary, capricious, non application of mind and injustice and consequently direct fourth respondent to issue patta for the entire land in Survey No.166/1B2 an extent of 45 cents without any subdivision in the name of the petitioner.

For Petitioner : Mr.K.Anandan

For Respondents : Mr.P.Gandhiraj
Special Government Pleader
for R.1 to R.4

Mr.V.Kannan
for R.5, R.6,R.8 to R.13 & R.15 to R.17



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ORDER

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Heard both sides.

2. The writ petitioner's father late K.Veluchamy Nayacker purchased 45 cents of land in Survey No.166/1B, Malayandinayackenpatty Village from one Jakkuthayammal vide registered sale deed dated 21.04.1956 (Document No. 537/1956). The remaining extent of land in the said survey number was also purchased by the petitioner's father's pangalis from the same vendor on 16.03.1959. Joint Patta No.2472 issued in respect of the said survey number reflected the names of the petitioner's father pangalies. Be that as it may, Survey No. 156/1B was sub divided during natham settlement in the year 2000. Survey No.166/1B2 measuring an extent of 26 cents was shown as common vacant land. A road was also sought to be laid by the local body across 45 cents of land that had devolved on the petitioner herein.

3.The petitioner filed O.S.No.67 of 2000 before the District Munsif Court, Andipatti for restraining the authorities from forming the road. During the pendency of the suit, his request came to be rejected by the Sub Collector, Periyakulam vide proceedings dated 12.05.2000. The petitioner thereupon withdrew the suit and filed W.P.No.19002 of 2002 challenging the order of the



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Sub Collector, Periyakulam. The writ was disposed of by relegating the petitioner to avail the appeal remedy. The petitioner filed an appeal before the District Revenue Officer, Theni on 12.07.2002. The appellate authority set aside the order of the Sub Collector, Periyakulam and remanded the matter for fresh enquiry. The sub division made earlier was set aside and patta was issued in favour of the petitioner for the entire extent of 45 cents. Challenging the said order dated 22.09.2003, the villagers / private respondents herein filed an appeal before the District Revenue Officer on 30.10.2003. The District Revenue Officer vide order dated 28.07.2004 set aside the order dated 22.09.2003 passed by the Revenue Divisional Officer, Periyakulam and classified the land in dispute as common public land. Aggrieved by the same, the petitioner preferred a revision before the Commissioner of Land Administration, Chepauk, Chennai. The revision was disposed of on 28.10.2014 in the following terms:

“10. The arguments and written arguments of the revision petitioner and the respondents have been carefully considered and other connected records have also been verified. According to the Updating Registry Scheme 'A' Register, an extent of 1.58.5 hectare in S.No.166/1B has been classified as ryotwari dry land and registered in the names of Tvl.Suruliyandi Naicker, Narayanasamy Naicker and Devarsamy under Patta No.2472. This dry land has been taken



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up for Natham Settlement Scheme as the agricultural land was used for non-agricultural purposes. During the scheme, the S.No.166/1B was sub divided as 166/1B1 to 1B8, of which the S.No.166/1B1 and 1B2 were classified as Dry land and the land under dispute the S.No.166/1B2 was recorded in the Remarks column as 'common vacant land'. The respondents have claimed that the suit land has been used as common land by the villagers for a long time and the revision petitioner has no possession and enjoyment over the suit land. However, the Tahsildar, Theni, in his inspection report dated 11.2.2014, has stated that the land in S.No.166/1B2 is under the possession and enjoyment of the revision petitioner and an extent of 0.04.0 hectare of land running through the S.No.166/1B2 is used as Panchayat Union Road.

11. Since the land under dispute is not a Natham poramboke land but a patta dry land, the respondents cannot claim it as a common public land. There is no force in the contention of the respondents that the revision petitioner has not raised the objection to the recording of 'common public land' during the Natham Settlement Scheme as the Special Tahsildar, Natham Settlement Scheme, has no power to change the classification of a patta land used for non agricultural purposes. If only a part of agricultural land used for house site it should be sub divided and classified as 'ryoti manai' and the remaining extent should naturally be retained as dry land and registered in the name of the pattadar as it is always a patta land. In the Updating Registry Scheme, F.M.B a detail has



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been shown for cart track in S.No.166/1B, which was converted into a Panchayat Union road. The District Revenue Officer, Theni, in his impugned order has misconstrued the facts and treated the land as if the land was a Natham Poromboke land.

12. In these circumstances, the order passed by the District Revenue Officer, Theni, in proceedings No. 53094/2003/D4, dated 28.7.2014, is hereby set aside. The Tahsildar, Andipatti, is requested to sub divide the land measuring 0.40.0 hectare which is shown in his report as the Road formed by the Panchayat Union, and register the remaining extent of land in S.No.166/1B2, in the name of the revision petitioner as it was prior to the Natham Settlement Scheme. Accordingly, the revision petition is allowed.”

Since Survey No.166/1B2 measuring 4 cents has been retained as road, the petitioner has filed the present writ petition.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order insofar as it is adverse to him.

5.The official respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents. He raised a



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technical objection. He pointed out that the petitioner having filed the suit for declaration and permanent injunction in O.S.No.95 of 2000 and having withdrawn the same, cannot now maintain the present writ petition. He also would point out that a pucca road has been laid down by the Panchayat Union and that it is used by the members of the general public and that therefore this Court ought not to put the clock back.

6.The learned counsel appearing for the private respondents endorsed the stand of the learned Special Government Pleader and further argue that for almost three decades, the disputed land is being used as a public road and that therefore it would not be just and proper to interfere with the impugned order passed by the Commissioner of Land Administration. Alternatively, the learned counsel appearing for the petitioner submitted that in any event under Section 137 of the Tamil Nadu Panchayat Act, 1994, the land could always be acquired.

7. I carefully considered the rival contentions and went through the materials on record.

8. I would go by the official entries. The land was originally comprised in old Survey No.166/1. In the village accounts, it was covered under Patta No. 1072 and stood in the names of Suruliyandi Nayacker, Narayanasamy Nayacker



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and Devarsamy Nayacker. In other words, the entire 166/1 was shown as a patta land. During UDR, it was sub divided into Survey Nos.166/1A and 166/1B. 166/1A was stood in the names of the petitioner's father whereas Survey No.166/1B reflected the names of the petitioner's father's Pangalies. However, 45 cents of land purchased by his father fell in Survey No.166/1B. Only during the natham settlement, Survey No.166/1B was sub divided. We are concerned with the Survey No.166/1B2 alone. The Commissioner of Land Administration had made it clear that only 4 cents in Survey No.166/1B2 would be classified as road and remaining 22 cents will vest only with the petitioner.

9. The logic which impelled the Commissioner of Land Administration (CLA) to restore 22 cents of land in favour of the petitioner would equally apply in the case of the remaining 4 cents also. When before UDR and during UDR, the land in question was a patta land, I fail to understand as to how it could have been classified as road during natham settlement.

10. At the same time, as rightly pointed out by the learned Special Government Pleader as well as the learned counsel appearing for the private respondents, it is too late in the day to put the clock back. The petitioner having filed the suit for declaration and permanent injunction and having withdrawn the same, cannot now lay any claim of title over the same. At the



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same time, when this Court acknowledges the petitioner's rights over the land in question, he must be appropriately compensated. Section 137 of the Tamil Nadu Panchayats Act, 1994 reads as follows:

“137. Immovable property required by Village Panchayats and Panchayat Union Councils may be acquired under the Land Acquisition Act, 1894.- Any immovable property which any Village Panchayat or Panchayat Union Council is authorised by this Act or any Rules made thereunder to acquire may be acquired under the provisions of the Land Acquisition Act, 1894 (Central Act I of 1894), and on payment of the compensation awarded under the said Act, in respect of such property and of any other charges incurred in acquiring it, the said property shall vest in the Village Panchayat or Panchayat Union Council, as the case may be.”

The road appears to have been formed in the year 2000. The Revenue Divisional Officer / third respondent is directed to quantify the compensation payable to the petitioner by taking into account the market value of the land that has been over which the Panchayat road has been formed which reference to the position that obtained in the year 2000. The petitioner will be entitled to payment of interest from the date when the road was formed till the compensation is paid. The order impugned in this writ petition is sustained



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subject to the direction to the Revenue Divisional Officer / third respondent to pay compensation to the petitioner. This amount shall be paid within a period of twelve weeks from the date of receipt of a copy of this order.

11. This writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.08.2023

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

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G.R.SWAMINATHAN, J.

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