



W.P.(MD)No.13748 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.01.2023

Pronounced on : .01.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.13748 of 2018

and

W.M.P(MD) Nos.12483 and 19588 of 2021

Ponnuthai

... Petitioner

Vs

1.The District Revenue Officer,
Madurai, Madurai District.

2.The Revenue Divisional Officer,
Usilampatti, Madurai District.

3.Mariammal

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings of the first respondent in Na.Ka.No. 71322/2018/J4 dated 11.05.2018.



W.P.(MD)No.13748 of 2018

For Petitioner : Mr.T.Pon Ramkumar
For R1 & R2 : Mr.M.Prakash
Additional Government Pleader
For R3 : Mr.P.Paranthaman

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 11.05.2008 cancelling the patta granted to the petitioner by setting aside the order of the Revenue Divisional Officer, namely, the second respondent herein.

2. Heard Mr.T.Pon Ramkumar, learned counsel for the petitioner, Mr.M.Prakash, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.Mr.P.Paranthaman, learned counsel for the third respondent.

3. The case of the petitioner is that the land in Survey No.202/3 situated at Kallikudi Road, Kamarajar (Sweeper) Colony, T.Kallupatti,



W.P.(MD)No.13748 of 2018

Peraiyur Taluk, Madurai District, measuring an extent of 2.5 cents is classified as natham land. The said land was in enjoyment by her and her husband for more than five decades. Her husband died on 01.09.2003. Taking note of the continuous possession and enjoyment of the property, the Tahsildar, Periyur, by his proceedings dated 08.10.2010 in Na.Ka.No. 17843/C5 had granted patta in favour of the petitioner for the aforesaid property. The third respondent was attempting to interfere with the possession and enjoyment of the property claiming that she had been granted patta. As the same was resisted, the third respondent herein filed a suit in O.S.No.399 of 2000, on the file of the District Munsif, Tirumangalam, seeking for permanent injunction in respect of Survey No. 202/10 situated at Kallikudi Road, T.Kallupatti, Periyur Taluk. The said suit came to be dismissed on 18.12.2007. Being aggrieved against the same, the third respondent herein had filed an appeal suit in A.S.No.80 of 2009 on the file of the Sub Court, Tirumangalam, which was allowed in her favour. Aggrieved against the same, the petitioner had preferred a second appeal in S.A.No.1276 of 2011 before this Court and the same had been dismissed on 20.02.2012, but however, with a direction to the District Collector, Madurai,



W.P.(MD)No.13748 of 2018

to take appropriate action with regard to the disputed property. Thereafter, the third respondent herein had approached this Court in W.P(MD)No.8483 of 2017 seeking for a Mandamus to the respondents to enquire and dispose of the appeal filed by her. The second respondent, by detailed speaking order dated 30.11.2017, rejected the appeal filed by the third respondent and confirmed the patta granted in favour of the petitioner. Being aggrieved against the same, the third respondent herein preferred an appeal before the first respondent and the first respondent, by the impugned order had set aside the well considered order passed by the second respondent.

4. The learned counsel for the petitioner would contend that the first respondent had not assigned any reason whatsoever to set aside the well considered order passed by the second respondent. He would submit that the first respondent had extracted the various facts leading to the appeal and thereafter, had stated that the various documents have been examined and that on examination of all the documents, passed orders cancelling the patta issued in favour of the petitioner and also the order of the second respondent. Hence, he would submit that an order passed by the second



W.P.(MD)No.13748 of 2018

WEB COPY

respondent without assigning any reason is arbitrary and colourable exercise of power. He would further submit that this Court, while dealing with the second appeal, had held that the suit laid by the third respondent is in respect of Survey No.202/10 and the petitioner only claims right and title in respect of Survey No.202/3. This Court had also held that since there is no dispute as regards Survey No.202/10, the injunction granted by the Court in respect of the plaint schedule property can be sustained. He would also submit that the Advocate Commissioner had given a finding that even the disputed portion of the property falls within Survey No.202/3. When that being so, the reliance upon the suit filed by the third respondent cannot be put against the petitioner in deciding her entitlement for patta. This aspect has been completely overlooked by the first respondent while passing the order. Hence, he sought interference of the order passed by the first respondent.

5. Countering his argument, the learned counsel for the third respondent would submit that the petitioner is trying to interfere with the possession of her property. He would further submit that the property in



W.P.(MD)No.13748 of 2018

Survey No.202/10 in patta No.304 has been originally assigned in favour of one Mahalingam, who was succeeded by the husband of the third respondent, namely, Ramakrishnan. The said Ramakrishnan executed a settlement deed in favour of the third respondent on 04.02.2000 in respect of the property assigned and from the date onwards, she has been in possession and enjoyment of the property. The petitioner has been trying to dispossess the third respondent and therefore, she was constrained to file a suit in O.S.No.399 of 2000 on the file of the District Munsif, Thirumangalam. The trial Court, on an erroneous consideration had rejected the claim of the petitioner. Hence, she had filed an appeal suit in A.S.No.80 of 2009. After detailed consideration of various materials available before the lower appellate court, the lower appellate court had granted injunction as prayed for by the third respondent. The petitioner had unsuccessfully challenged the same before this Court in S.A.No.1276 of 2011. The second respondent while considering the appeal of the third respondent, had failed to see that the civil Courts have recognized the claim of the petitioner and therefore granted a decree as prayed for. Since this aspect has been clearly overlooked, the first respondent had rightly



W.P.(MD)No.13748 of 2018

interfered with the order passed by the second respondent and had cancelled the patta issued in favour of the petitioner. He would also rely upon the findings of the appellate Court that the Advocate Commissioner had given a detailed report supporting the claim of the third respondent. He would further submit that if the petitioner was aggrieved against the order of the first respondent, she ought to have filed a civil suit before the appropriate Court for redressing her grievance.

6. I have considered the rival submissions made by the learned counsel appearing on either side.

7. The fact leading to this writ petition is with regard to the claim of the property. It is not disputed that the nature of the land claimed by both the petitioner and the third respondent is natham. The claim of the petitioner is that she has been granted patta in respect of the Survey No. 202/3. The claim of the third respondent is that she has been granted patta in respect of Survey No.202/10. The claim between the petitioner and the third respondent is in respect of two different survey numbers. But however, the Advocate Commissioner's report relied upon by the civil



W.P.(MD)No.13748 of 2018

WEB COPY

Courts would show that there is dispute with regard to possession of a portion of Survey No.202/3. The suit that was laid by the third respondent was in respect of his specific property covered in Survey No.202/10. When that being so, in the light of the Advocate Commissioner's report, the disputed portion lies in Survey No.202/3, the Lower Appellate Court and the Second Appellate Court had granted a decree of injunction in respect of the property comprised in Survey No.202/10. The third respondent had not initiated any civil proceedings in respect of Survey No.202/3. It is seen from the Judgment of the First Appellate Court that the petitioner had admitted that she is in possession of Survey No.202/3 by constructing in its entirety. This evidence of the petitioner was also taken into consideration for grant of injunction against her in respect of Survey No.202/10.

8. As rightly pointed out by the learned counsel for the petitioner, the first respondent in the impugned order had not assigned any reason whatsoever. Further, it is not the case of the third respondent that she is entitled for patta in respect of Survey No.202/3. The third respondent had been canvassing her case only in respect of Survey No.202/10. Further,



W.P.(MD)No.13748 of 2018

WEB COPY

it is the case of the third respondent that her father-in-law had been assigned patta for Survey No.202/10. When that being so, it is very surprising as to how the first respondent had come to the conclusion that the patta in Survey No.202/3 has been given in favour of the father-in-law of the third respondent. It is also not disputed that the petitioner is not claiming any right and title over Survey No.202/10 and she has always been restricting her claim only with in respect Survey No.202/3.

9. In view of the restricted claim of the third respondent only in respect of the property comprised in Survey No.202/10, I am of the view that the order of the first respondent directing cancellation of patta in favour of the petitioner in respect of Survey No.202/3 is nothing but an order passed without application of mind and therefore, it is liable to be set aside.

10. In the light of the aforesaid findings and reasonings, the order of the first respondent in Na.Ka.No.71322/2018/J4 dated 11.05.2018 is set aside and the order of the second respondent in Na.Ka.No.3066/2014/A4 dated 30.11.2017 is restored.



W.P.(MD)No.13748 of 2018

WEB COPY

11. In fine, this Writ Petition is allowed. However, no order as to costs. Consequently, connected miscellaneous petitions are closed.

.01.2023

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

To:

- 1.The District Revenue Officer,
Madurai, Madurai District.
- 2.The Revenue Divisional Officer,
Usilampatti, Madurai District.



WEB COPY



W.P.(MD)No.13748 of 2018

K.KUMARESH BABU, J.

cp

**Pre-Delivery Order Made in
W.P.(MD)No.13748 of 2018**

.01.2023