



W.P(MD)No.3864 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3864 of 2015

and

M.P.(MD)No.2 of 2015

Periyanayagammal Church
P.udayapatti represented by its Parish Priest,
Fr.A.James
P.Udayapatti, Pannapatti Village,
Kadavur Taluk,
Karur District.

... Petitioner

Vs.

1.The Principal Secretary and Commissioner,
for Land Administration, Chennai-600 005.

2.Berkmons

3.Savarimuthu

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records culminated in the impugned order in D Dis (K3) RP 6/2004(24570/03) dated 24.6.2010 passed by the 1st respondent on the file of the 1st respondent and quash the same as illegal, unenforceable, ultravires, without jurisdiction and directing the 1st respondent by way of Mandamus of forbear him from mutating the revenue records pursuant to the the impugned order in D Dis (K3) RP 6/2004 (24570/03) dated 24.6.2010 in any manner whatsoever and pass such other suitable orders.



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For Petitioner : no appearance

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1
: Mr.J.Parek Kumar for R2

ORDER

The learned counsel for the petitioner on the last occasion was confronted with the Judgment and decree dated 07.04.2021 made in A.S.No.7 of 2017 on the file of the Sub Court, Kulithalai. The learned counsel sought time to get instructions. The matter was adjourned. Today, there is no representation on the side of the petitioner.

2. I therefore will have to dispose of the matter based on the materials on record. The petitioner challenges the order dated 24.06.2010 passed by the Commissioner for land administration, Chepauk, Chennai, whereby the petition mentioned property was reclassified as 'street'. It was done at the instance of the private respondents herein. The stand taken in the writ petition is that the impugned order is based on the Judgement and decree dated 30.11.2009 made in O.S.No.101 of 2002 on the file of the District Munsif Court, Kulithalai. The relevant portion of the impugned order reads as follows:-



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“It is settled legal dictum that the patta is not a document of title and the civil court is alone competent to decide the title of the land. In the instance case, the District Munsif Court, Kulithalai has arrived at a conclusion that the suit land is being used as street and has declared the same. Though the respondent herein has stated that they have filed a appeal suit in A.S.No.19/10 on the file of the District Court, Karur, it is fair to restore the revenue registry as start prior to dispute arised.”

3. It is pointed out that though this decree was affirmed in A.S.No.19 of 2010 on the file of the Sub Court, Kuzhithalai, it was reversed by this Court vide Judgement and decree dated 10.07.2013 in S.A.(MD)No.203 of 2013. According to the petitioner, since the concurrent Judgements had been reversed and the matter has been remanded, the impugned order should also go as a consequence. I wanted to know what happened thereafter. The learned Additional Government Pleader for R1 and the learned counsel for the second respondent would point out that after remand, the suit was dismissed. The private respondents thereafter filed A.S.No.7 of 2017 before the Sub Court, Kulithalai. The first appellate Court vide Judgement and decree dated 07.04.2021 set aside the Judgement and decree passed by the trial court and decreed the suit as prayed for. The relief of declaration and permanent injunction sought for by the private respondents was granted. The petitioner herein had suffered adverse decree. So long as the said Judgment and decree dated 07.04.2021 in A.S.No.7 of 2017 is holding good, the impugned order



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passed by the first respondent has to be sustained.

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4. The learned counsel for the private respondents submitted that questioning the said Judgement and decree, the petitioner has filed S.A. (MD)No.719 of 2021 and that it is still pending at the notice of motion stage. It is categorically asserted that no interim order has been granted in favour of the petitioner. Thus, the current position is that the petition mentioned property had been classified as street. Therefore, the question of interfering at this stage does not arise at all. I however make it clear that the rights of the parties will abide by the outcome of S.A.(MD)No.719 of 2021. If the petitioner succeeds in the second appeal, mutation will have to be made accordingly. If the second appeal is dismissed, the impugned order will continue to hold good.

5. The Writ Petition is dismissed with the aforesaid observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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The Principal Secretary and Commissioner,
for Land Administration, Chennai-600 005.



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G.R.SWAMINATHAN, J.

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