

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.584 of 2015

Rajalakshmi

... Petitioner

Vs

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Tahsildar,
Thuckalay,
Kalkulam Taluk,
Kanyakumari District.

3.Subash chandram

... 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 relating to the impugned order in Na.Ka.No.47/7880/2013 dated 18.03.2013 on the file of the second respondent quash the same, and consequently direct the second respondent to issue Patta in favour of the Petitioner herein in respect of 9 cents of land in R.S.No.41/7 of Villukuri village, Kalkulam Taluk, Kanyakumari District.

For Petitioner : No Appearance

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader
for R.1 & R.2

Mr.B.Brijesh Kishore for R.3

ORDER

None appears for the writ petitioner.

2. The counsel had reported no instructions. I went through the averments set out in the affidavit filed in support of the writ petition.

3. The petitioner purchased the petition mentioned property vide registered sale deed dated 05.04.2011 from one S.Kandhan. The said S.Kandhan purchased the same in Court auction held on 06.11.2009 which was confirmed on 28.01.2010 in E.P.No.118 of 2006 in O.S.No.764 of 1992 on the file of the Principal District Munsif Court, Padmanabhapuram. The petitioner applied for issuance of patta in her name. Since it was not considered, the petitioner filed W.P(MD)No.13595 of 2011. It was disposed of on 29.11.2011 in the following terms:

“3. The petitioner is the purchaser of two properties from a person who purchased them in a Court auction on sale held in execution of a decree passed in O.S.No.764 of 1992. For one property purchased by the petitioner she has already been issued with Patta No.134. But for the other property, no patta is issued so far. No reasons are also stated and the application is also not returned or rejected. Hence, the above Writ Petition.

4. Considering the facts and circumstances, this Writ Petition is disposed of directing the second respondent to consider the representation of the petitioner dated 21.09.2011, conduct an enquiry and pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order. No costs.”

Pursuant to the said direction, the Tahsildar, Kalkulam held enquiry and negatived the petitioner's request vide letter dated 18.03.2013. Challenging the same, this writ petition came to be filed.

4. The learned Additional Government Pleader appearing for the official respondents submitted that the impugned order is well reasoned and that it does not warrant interference.

5. The learned counsel appearing for the third respondent submitted that the petition mentioned property was settled in his favour by his father way back in the year 2006. The auction sale took place subsequently. The petitioner's vendor's name was never entered in the revenue record. Delivery of possession was also not taken. As on date, the third respondent is very much residing in the petition mentioned property. He had put up construction also. Taking note of the ground reality, the Tahsildar, Kalkulam passed the impugned order and the learned counsel appearing for the third respondent called upon this Court to sustain the same and dismiss of the writ petition.

6. I carefully considered the contentions advanced by the learned counsel appearing for the respondents and went through the materials on record.

7. It is not in dispute that the father of the third respondent was the judgment debtor. O.S.No.764 of 1992 was decreed on 01.08.1996. Subsequently, E.P.No.118 of 2006 was filed and the petition-mentioned property was brought to sale on 2009. The father of the third respondent was very much a pattadhar. The decree passed against the third respondent's father had not been set aside. The auction sale confirmed in favour of S.Kandhan / the vendor of the petitioner has also not been set aside. Therefore, S.Kandhan

was entitled to enter his name in the revenue record. Merely because S.Gandhan failed to get his name entered in the revenue record will not take away the rights of the petitioner who had purchased the property from the said S.Gandhan. The petitioner is entitled to step into the shoes of S.Gandhan who had stepped into the shoes of Sivasankaran, the father of the third respondent. The second respondent / Tahsildar failed to take into account the sequence of events. He had instead gone by who was in physical possession. That is an irrelevant consideration. Having purchased the property from S.Kandhan, the petitioner is entitled to enter her name as a joint pattadhar. The order impugned in this writ petition is set aside.

8. The second respondent shall pass order including the name of the petitioner in the revenue record in respect of the property comprised in Survey No.41/7 for an extent of 9 cents in Villukuri Village. This shall be done within a period of eight weeks from the date of receipt of a copy of this order. I make it clear that the only relief that has been granted in this writ petition is that the petitioner's name shall also be entered as a joint pattadhar. It is for the petitioner to work out her rights in the manner known to law as against the third respondent before the jurisdictional civil Court.

9. This writ petition is allowed on these terms. There shall be no order as to costs.

17.08.2023

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

To

1.The District Collector,
Nagercoil,
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2.The Tahsildar,
Thuckalay,
Kalkulam Taluk,
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G.R.SWAMINATHAN, J.

MGA

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