



W.P(MD)No.27480 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27480 of 2022

D.Sounthararaj

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep. by its District Collector,
Tiruchirapalli District,
Tiruchirapalli.

2.The District Revenue Officer,
Tiruchirapalli District,
Tiruchirapalli.

3.The Revenue Divisional Officer,
Tiruchirapalli,
Tiruchirapalli District.

4.The Tahsildar,
Taluk Office,
Tiruverumbur Taluk,
Tiruchirapalli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to issue patta to the petitioner's land in S.No.310/9 in Navalpattu Village, Thiruverumbur Taluk, Tiruchirapalli District to an extent of 3 Acres as per the judgment and decree passed by the learned 1st Additional Sub Judge,



W.P(MD)No.27480 of 2022

Tiruchirapalli in O.S.No.1405/2016 dated 30.08.2018 and by acting as per the memorandum issued by the 3rd Respondent in Oo.Mu.A2/2318/2022 dated 17.05.2022 within a time frame that may be fixed by this Court.

For Petitioner : Mr.G.Kannan

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner seeks issuance of patta in respect of the petition mentioned land. The petitioner states that in respect of the petition mentioned land, he filed O.S.No.1405 of 2016 on the file of the I Additional Sub Court, Tiruchirappalli seeking the relief of declaration and permanent injunction and that the said suit was decreed in his favour on 30.08.2018. The specific case of the writ petitioner is that the decree obtained by him in the said suit has not been challenged or set aside till date. The learned counsel would further contend that the revenue authority is obliged to act in consonance with the decree passed by the competent civil Court. In spite of the petitioner's request, the respondents have not issued patta, the petitioner is constrained to move this Court for relief.



W.P(MD)No.27480 of 2022

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3.The fourth respondent has filed counter affidavit and the learned Special Government Pleader took me through its contents. The first ground urged by the learned Special Government Pleader is that request for issuance of patta in respect of the petition mentioned land was rejected vide proceedings dated 03.03.2020 and that therefore, the present writ petition for issuance of Writ of Mandamus will not lie.

4.I do not find any substance in this objection. As rightly pointed out by the learned counsel for the petitioner, the said order was passed on the representation filed by one C.Palani. It is true that the copy of the said order has been marked to the petitioner also. But the petitioner cannot question the said order because it was not passed on his application for mutation of patta.

5.I need to make some observation regarding the ex-parte decree dated 30.08.2018 made in O.S.No.1405 of 2016 on the file of I Additional Sub Court, Tiruchirappalli. The suit was for the relief declaration and permanent injunction. The suit was filed in the year 2016 and decreed two years later. The defendants did not file written statement. They remained ex-parte. Therefore, the trial Court was constrained to pass an ex-parte decree. I direct the District



W.P(MD)No.27480 of 2022

Collector, Tiruchirappalli to conduct an enquiry as to why the said suit was allowed to be decreed ex-parte. When the Government is a defendant in a civil suit and civil rights are involved, the Government Pleaders appointed to defend the interest of the Government are expected to see to it that no ex-parte orders or decrees are passed against the Government. It is possible that due to non-cooperation of the officials, some time such orders can be passed. But even then, the Law Officers ought to be present before the Court. If there has been non-cooperation from the side of the Officials, the Law Officers shall file memo to that effect and such memo shall be taken on record by the Court. In this case, when declarative decree has been passed in favour of the plaintiff, the Government ought not to have kept quiet. It ought to have filed a petition for setting aside the same. In the alternative, it could have filed first appeal. Nothing of that appears to be have been done. The District Collector, Tiruchirappalli shall hold an enquiry and fix responsibility on the erring official. If the Law Officer is found to be at fault, then the matter will be referred for consideration of Law Secretary, Government of Tamilnadu for appropriate further action at his end. The first respondent shall file compliance report as to the action taken on or before 01.03.2023. The learned Special Government Pleader is directed to forward a copy of this order to the Law Secretary, Government of Tamilnadu.



W.P(MD)No.27480 of 2022

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6.I carefully went through the contents of the ex-parte judgment. The learned Trial Judge has not traced the title of the petitioner at all. The petitioner's claim is that the land was assigned in favour of one Saroja in the year 1983. But the said assignment order was not marked as an exhibit before the trial Court. The Trial Court has been swayed by the self serving averments made by the plaintiff. In such cases, the Trial Court has a further duty. Since public interest is involved, it should have issued subpoena or any other coercive process to compel the District Collector himself to appear before the Court in such cases. The Trial Court should not have taken the easy route of passing an ex-parte decree.

7.The District Revenue Officer will therefore test the claim of the writ petitioner independently and not be swayed merely by the ex-parte decree passed in favour of the writ petitioner.

8.The second respondent will hear the petitioner in person and a proper enquiry shall be held and final order on merits and in accordance with law will be passed within a period of twelve weeks from the date of receipt of a copy of this order. I make it clear that I have not gone into the merits of the matter. All



W.P(MD)No.27480 of 2022

the contentions of the writ petitioner are left open. The second respondent will

also not go by the stand taken by the fourth respondent before this Court.

Merely because the fourth respondent has filed a counter affidavit opposing the writ petitioner's prayer, that does mean that the issue has been foreclosed. The second respondent will take an independent call in the matter.

9.The writ petition is disposed of accordingly. No costs.

20.01.2023

NCS : Yes/No
Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.27480 of 2022

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To:-

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Tiruchirapalli.
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W.P(MD)No.27480 of 2022

G.R.SWAMINATHAN, J.

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W.P(MD)No.27480 of 2022

20.01.2023