



W.P.No.7063 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.7063 of 2020

and

W.M.P.No. 8418, 8422 and 8425 of 2020

Paramanandham

...Petitioner

-Vs-

1. The District Collector,
Rajaji Salai,
Chennai – 600 005.

2. The Tahsildar,
Aminjikarai Taluk,
Chennai – 600 030.

3. The Revenue Divisional Officer,
Chennai Central Zone,
Chennai.

4. Sarasu

5. Shankar

6. Mangalai

7. Mallika

8. Dhinakaran

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari calling for the records pertaining to the proceedings of the third respondent in Na.Ka.No. 4613/2018/A5 dated 23.12.2019 and quash the same.

For Petitioner	:	Mr.Richardson Wilson For M/s. P.Wilson Associates
For R1 to R3	:	Mr.R.L.Karthika Government Advocate
For R4 & R5	:	Notice unserved
For R6 to R8	:	Mr.B.Manoharan

ORDER

This writ petition is filed seeking for issuance of Certiorari to quash the proceedings of the third respondent in Na.Ka.No. 4613/2018/A5 dated 23.12.2019.

2. The case of the petitioner is as follows:-

2.1 The Petitioner's mother Sakkubai had purchased a house and ground in Aminjikarai Village, bearing Old Survey No. 70/A/3 and new Survey No. 70/5, under registered sale deed dated 05.06.1960, registered as Document No. 1757 of 1960 in the Sub Registrar Office of Sembiam. Initially, the land in Survey No. 70/5 in Aminjikarai Village was acquired by



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A.Thirupuresa Gurukkal in O.P No.13/32 and then A.Thirupuresa Gurukkal sold the said land to R.Gopalaswamy vide Sale Deed Document No. 276/42 dated 06.03.1942. Later, R. Gopalswamy sold the property to Paripurna Ammal and Paripurna Ammal sold the property to Chinnammal Mathews vide Document No. 1570/52 dated 28.05.1952. Eventually, Chinnammal Mathews sold the property to Sakkubai Ammal vide Document No. 1757 of 1960 dated 05.06.1960.

2.2 The petitioner's mother had applied for issuance of patta in respect of above mentioned property. The second respondent after due inspection and enquiry ordered the name of petitioner's mother to be entered in the Adangal column of the T.S.L.R rectifying the classification of village site as "Ryotwari Manai thereby extracting the T.S.L.R as *"T.S. No. 66 of Block No.27 of Aminjikai Village, Old Survey No. 70/5 pt., Classification: Ryotwari Manai, Extent: 0.06.94.0. Registered Holder: Tmt. Sakkubai Ammal W/o. Sadayappa Mudaliar"*.

2.3. The Tahsildar, Egmore- Nungambakkam Taluk issued a copy of Survey Plan dated 23.12.1983 along with the Extract from the Town Survery



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Land Registrar pertaining to petitioner's mother wherein the property's details are provided as "T.S. No. 66 of Block No. 27, Old Survey No. 70/5 Pt. Municipal Door No.23 of Aminjikai Villagar".

2.4. The petitioner's mother Sakkubai during her lifetime filed a suit in O.S.No. 1395 of 1983 against (1) Radha (2) Muniammal and (3) Dharman seeking the relief of declaration and recovery of possession. At the time of filing of the suit by petitioner's mother in O.S No. 1395 of 1983, the new Survey Number of the property purchased by petitioner's mother under the aforesaid Sale Deed dated 05.06.1960 was not correctly stated in the schedule of the plaint. However, the boundaries were properly mentioned therein. The old survey No. 70/A/3 was correctly stated in the schedule to the plaint. However, the new survey number was mentioned as 70/3 instead of mentioning as 70/5. The error in the schedule to the plaint remained unnoticed despite the fact that the supporting documents, copy of sale deed and the sketch contain the exact new Survey No. 70/5. The said error has crept is only due to typographical mistake and that there was no dispute in identifying the property which forms part of encroachment.



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2.5. The suit filed by the petitioner's mother in O.S. No. 1395 of 1983 was decreed ex-parte on 15.12.1983. The said error was crept in the decree also. The appeal filed against the Judgement and decree was also dismissed. The decree for declaration and for delivery of possession to the extent of 371 sq.ft out of 7500 Sq.ft., on the southern portion of the property abutting the river which was also a part of Survey No. 70/5 of the said Aminjikai Village became final and in view of that (1) Radha (2) Muniammal and (3) Dharman were to vacate and handover that portion of the property to the petitioner which they failed to do so.

2.6. The petitioner's mother had filed Execution Petition in E.P No. 3492 of 1988 against the said (1) Radha (2) Muniammal and (3) Dharman to execute the decree. Pending execution proceedings, they died and their legal heirs who are the respondents 4 to 7 were impleaded. The executing Court had ordered delivery of property. Even though the Executing Court had ordered delivery of the property in favour of mother of the petitioner. The property could not be delivered due to the obstructions raised by the respondents 4 to 7. After the demise of petitioner's mother, petitioner was brought on record as the sole legal heir of petitioner's mother in the Execution Petition. The portion of petitioner's mother's property in survey No. 70/5



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continued to be encroached by the above said persons. The legal heirs of the respondents in the Execution Proceedings adopted the same course of resistance and obstructions against the execution of the decree.

2.7. The petitioner filed an Application in E.A No. 9971 of 2010 under Order XXI Rule 97 for removal of obstructions made by the sixth and seventh respondents which was allowed. The sixth and seventh respondent filed an appeal against the above said order in A.S No. 436 of 2020 before the XVI Additional City Civil Court, Chennai which was dismissed by the order dated 10.01.2013. Having been aggrieved by the dismissal of the appeal sixth and seventh respondents preferred S.A No. 710 of 2013 before this Court and this Court disposed the Second Appeal by the judgement dated 19.07.2013 confirming the order of delivery passed in E.A. No. 9971 of 2010 against the sixth and seventh respondents. The sixth and seventh respondent filed a suit in O.S No. 2162 of 2004 for declaration declaring that the judgment and decree made in O.S. No. 1395 of 1983 as “ab initio void”. The sixth and seventh respondents have exhausted all avenues to obstruct the execution of the decree dated 15.12.1983.

2.8 The eighth respondent, who is the son of the seventh respondent having failed to establish his title before Civil Court, has approached the



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respondents with unclean hands to issue patta in his favour. The eighth respondent has not brought to the notice of the respondents about the detailed and long civil dispute.

2.9. The second respondent vide letter No.Na.Ka. A1/2030/2018 dated 29.10.2018 called the petitioner to give necessary answer as to why patta registered in the name of petitioner's mother should not be cancelled based on the appeal filed by the eighth respondent. The petitioner gave a written explanation dated 14.11.2018 before the second respondent narrating the sequence of events and also submitted petitioner reply along with the list of documents to the notice sent by the second respondent dated 29.10.2018. The second respondent by his proceedings in Na.Ka. A2/2030/2018 dated 04.01.2019 has recommended to the third respondent to change the description of the subject property from "Ryotwari" to "Government Poromboke".

2.10. The third respondent by Proceedings in Na.Ka.No.4613/2018/A5 dated 23.12.2019 in turn recommended the first respondent to change the description of the subject property from "Ryotwari" to "Government



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Poromboke". The third respondents in contrary to the judgment referred above went on to recommend the change the description. Aggrieved by the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that the impugned order passed by the third respondent in Na.Ka.No. 4613/2018/A5 dated 23.12.2019 is recommendation by the third respondent to the first respondent/District Collector to classify the land as Government Poromboke based on the representation of the fourth to eighth respondents. The learned Counsel appearing for the petitioner further submitted that he is having Civil Court judgment and decree in his favour and requested that he may be permitted to approach the first respondent by way of a representation.

4. The learned Counsel appearing for the sixth to eighth respondents has no objection for the above submission and they are also willing to approach the first respondent.

5. Heard both sides and perused the materials available on record.

6. In view of the above submission made by the learned counsel for the petitioner, the petitioner is directed to submit a representation to the first



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respondent within a period of four weeks from the date of receipt of copy of this order and on receipt of the same, the first respondent may conduct detailed enquiry after giving due notice to both the parties, opportunity of personal hearing, to consider the documents filed by both the parties at the time of enquiry, on merits, in accordance with law and pass appropriate orders by following the above principles of natural justice within a period of three months thereof.

7. The writ petition is disposed of with the above said observations and directions. No costs. Consequently connected miscellaneous petitions are closed.

25.07.2024

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Index:Yes/No

Speaking Order : Yes/No

Neutral case citation: Yes/No

J.SATHYA NARAYANA PRASAD, J.

ns1

To



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