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W.A.No.3070 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

W.A.No.3070 of 2023

and

C.M.P.No.25413 of 2023

E.Thimarayan

... Appellant

Vs.

1.The District Collector,
Krishnagiri District.

2.The Tahsildar,
Tahsildar Office,
Krishnagiri District,
Krishnagiri.

... Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.09.2023 in W.P.No.27009 of 2023 on the file of this Court.

For Appellant : Mr.V.Raghavachari
Senior Counsel



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For Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.G.Krishna Raja
Additional Government Pleader

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The Writ Appeal is directed against the order of the learned Single Judge dated 14.09.2023 in W.P.No.27009 of 2023, dismissing the writ petition filed by the appellant for issuance of a Writ of Mandamus directing the respondents to issue patta to the appellant in respect of a land comprised in S.No.73/4 corresponding to R.S.No.537 and 538 in Agaram Village, Krishnagiri Circle.

2.It is the case of the appellant that he is a person belonging to Adi Dravida Community. Since the appellant was residing in the Village doing agricultural operations, an extent of 3 Acres of land in Old S.No.73/4, which was subsequently resurveyed as R.S.No.537 and 538, was allotted to him. It is his further case that he was in absolute enjoyment of the said property for



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more than 50 years. It is stated by the appellant that an application was submitted by him in 1995 and the then Sub-Collector and Tahsildar recommended for issuance of patta in favour of the appellant. It is his case that, by orders of Tahsildar in 1976, possession was handed over to the appellant by the Revenue officials. Thereafter, it appears that the appellant has submitted several representations to the Revenue officials for issuance of patta. It was in the said circumstances, the appellant filed the writ petition in W.P.No.27009 of 2023 for issuance of a Writ of Mandamus directing the respondents to issue patta to the appellant by considering his representation dated 10.06.2023.

3.The writ petition filed by the appellant was dismissed by the learned Single Judge holding that the appellant was not given any assignment in accordance with Revenue Standing Orders and that therefore, the appellant cannot claim title or right over the property. Merely because the appellant was given permission to enter upon the land, the learned Judge observed that the same would not confer any right to claim title or patta on the appellant. Since the learned Additional Government Pleader submitted before the



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learned Single Judge that the land falls under Krishnagiri Town area which has potentials, the learned Judge observed that, due to urbanisation of Krishnagiri Town, such valuable land cannot be assigned in favour of the appellant, especially when the extent is 3 Acres. While observing that any eligible person may apply for house site patta for a small extent, the request of the appellant was held to be unjust and therefore, the learned Judge dismissed the writ petition. Further, taking note of the fact that the appellant is in possession of the property, the learned Judge directed the respondents to initiate appropriate action to protect the Government land and utilise the same for larger public interest.

4.Pursuant to the order of the learned Single Judge, it is now submitted by the learned Additional Advocate General that possession has been secured from the appellant by initiating proceedings for eviction.

5.Aggrieved by the order of the learned Single Judge dismissing the writ petition, the above Writ Appeal is filed by the writ petitioner mainly on the ground that the learned Judge failed to consider the fact that the



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appellant has been in possession of the property for more than five decades pursuant to the policy decision taken by the Revenue to assign the land in favour of the eligible persons of depressed class.

6.Learned Senior Counsel appearing for the appellant contended that permission was duly given wayback in the year 1976 to cultivate the land. Stating that the appellant took the barren land and made it fit for cultivation, the learned Senior Counsel contended that the learned Judge ought to have considered the eligibility of the appellant for assignment in his favour. When the appellant has applied for patta and the learned Judge has also observed that patta can be issued in favour of eligible persons, learned Senior Counsel submitted that the writ petition ought to have been allowed with a direction atleast to consider the representation of the appellant for assignment for grant of patta. Stating that the lands are agricultural lands and that several others have been given patta for an extent of 3 Acres, learned Senior Counsel submitted that the appellant is entitled to be considered on par with others who were also given possession in respect of an extent of 3 Acres as seen from the proceedings of the Tahsildar dated 12.03.1976.



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7.The question whether the appellant is entitled to assignment, has to be considered by the Tahsildar after hearing the appellant. The learned Additional Advocate General submitted before this Court that the proceedings relied upon by the appellant dated 12.03.1976 is not traceable in the office of the Tahsildar and that therefore, the said document might be forged or fabricated. It is true that the document that was relied upon by the appellant is not corroborated by any other document or Revenue records. Even the document that is produced before this Court is only a photocopy without the signature of Tahsildar. The photocopy of the proceedings cannot be readily accepted.

8.However, since the fact that the appellant is in possession of an extent of 3 Acres is not in issue, this Court is of the view that the appellant's claim has to be considered in the light of the Revenue Standing Orders and Executive instructions passed by the Government from time to time. If similarly placed persons were given assignment pursuant to the proceedings relied upon by the appellant dated 12.03.1976, there is no reason why the



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same should be denied to the appellant. In that view of the matter, this

Court is unable to sustain the order passed by the learned Single Judge.

When a person is in possession of the property and his claim is that he is entitled to get assignment as he was given possession pursuant to the proceedings of the Revenue, the possession of the appellant till such time his claim is considered on merits, cannot be considered unlawful. Even an encroacher is entitled to get notice. Without following the principles of natural justice, the appellant has now been directed to vacate by the learned Judge and the appellant has been duly vacated. Considering the various aspects, this Court is of the view that the appellant has been unlawfully dispossessed. Since this Court has already held that the view expressed by the learned Single Judge dismissing the writ petition cannot be sustained, the appellant is also entitled to be in possession of the property till such time his claim for assignment is duly considered on merits.

9. Therefore, this Writ Appeal is allowed and the impugned order of the learned Single Judge dated 14.09.2023 is set aside.



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10.The respondents are directed to put the appellant in possession of

the same extent of land in which the appellant was in possession earlier.

After restoration of possession within a period of six weeks from the date of receipt of a copy of this judgment, the respondents are directed to consider the application or representation of the appellant for assignment of land. In case the land cannot be assigned in favour of the appellant, the possession of the appellant will be treated unlawful. Thereafter, it is open to the respondents to initiate action for resumption of land or for eviction by resorting to the provisions of Land Encroachment Act. If the documents relied upon by the appellant, for any reason, is held to be forged or not traceable, it is open to the respondents to consider the representation based on the available materials, by considering the nature of possession of neighbouring land owners who are given patta or assignment. If the neighbours who are in possession have obtained patta, the proceedings of the Tahsildar or Revenue officials granting patta in favour of them shall also be considered at the time of enquiry. From the records, it is seen that there is an issue regarding identity of property. If the proceedings of Tahsildar in 1976 is not with reference to the property for which the appellant claims



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title, the request of the appellant can be straightaway rejected. No costs.

Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (P.D.B., J.)
14.11.2024

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Internet : Yes

Index : Yes

Neutral Citation : Yes

To

1.The District Collector,
Krishnagiri District.

2.The Tahsildar,
Tahsildar Office,
Krishnagiri District,
Krishnagiri.

S.S. SUNDAR, J.



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and
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