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W.P. No.34290 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.34290 of 2024 & W.M.P. No.37153 of 2024

R. Sankar

Petitioner

vs.

1. The District Collector
Krishnagiri
Krishnagiri District
2. The District Revenue Officer
Krishnagiri
Krishnagiri District
3. The Sub-Collector
Hosur
Krishnagiri District
4. The Tahsildar
Hosur Taluk
Krishnagiri District
5. The Commissioner
Hosur Municipality
Hosur
Krishnagiri District
6. S. Prakash

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the second respondent issued in Pa.Mu. 32138/2023/J2 dated 14.08.2024, quash the same and consequently, direct the official respondents to cancel the patta standing in the name of the 6th

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respondent in respect of land measuring to an extent of 405 sq. ft. (9' wide and 45 ft. depth) comprised in Town Survey No.165 situate at Keezhkollar Street, Bagalur Road, Hosur Taluk, Krishnagiri District and restore the same to its original structure as common pathway within a time frame.

For petitioner	Ms. R. Divyapreathika
For RR 1 to 5	Mr. T.K. Saravanan Government Advocate
For R6	Mr. Rathina Asohan

ORDER

(made by M. SUNDAR, J.)

Captioned 'writ petition' ('WP' for the sake of brevity) pertains to 'land comprised in Town Survey No.165 situate in Keezhkollar Street, Bagalur Road, Hosur Taluk, Krishnagiri District' ('said land' for the sake of convenience). It comes to light from the case file that the dispute pertains to an extent of 405 sq. ft. (9' width and 45' length) *qua* said land. Therefore, this 405 sq. ft. shall be referred to as 'said disputed land' for convenience.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the listing on 02.12.2024 which reads as follows:

'W.P. No.34290 of 2024
and W.M.P. No.37153 of 2024

M.SUNDAR,J.,
and

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K.RAJASEKAR, J.,

(Order of the Court was made by M.SUNDAR, J.)

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 25.11.2024, which reads as follows:

*'W.P.No.34290 of 2024
&
W.M.P.No.37153 of 2024 in W.P.No.34290 of
2024*

*M.SUNDAR,J.,
and
K.RAJASEKAR, J.,*

*(Order of the Court was made by
M.SUNDAR, J.)*

Captioned writ petition pertains to land comprised in 'Survey No.165 situate in Keezhkollar Street, Bagalur Road, Hosur Taluk, Krishnagiri District' [hereinafter 'said land' for the sake of convenience].

2. Learned counsel for writ petitioner Ms.R.Divyapreathika submits that an 'order dated 14.08.2024 bearing reference g/K/32138/2023/n\$2 made by R2' [hereinafter 'impugned order' for the sake of brevity] has been called in question. Learned counsel submits that impugned order has been made erroneously.

3. Issue notice to official respondents.

4. Mr.T.K.Saravanan, learned Government Advocate, accepts notice for all five official respondents.

5. Mr.T.K.Saravanan, learned Government Advocate, submits, on instructions, that the impugned order has been under Section 13 of the 'Tamil Nadu Pattapass Book Act, 1983 (Tamil Nadu Act 4 of 1986)' [hereinafter 'said Act' for the sake of brevity and convenience] and that a civil suit will lie against such order. Learned State



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counsel requests for time to produce relevant material. Request acceded to.

6. List in the Admission Board i.e., Motion List one week hence.

List on 02.12.2024.'

2. Ms.R.Divyapreathika, learned counsel on record for writ petitioner is before us.

3. Adverting to earlier proceedings dated 25.11.2024, Mr.T.K.Saravanan, learned Government Advocate for all the official respondents viz., R1 to R5 placed before us an order of Hon'ble Supreme Court dated 06.02.2020 made in Civil Appeal No.1318 of 2017. A copy of the order has been furnished to the learned counsel for writ petitioner. Learned counsel for writ petitioner requests for time to peruse the order and revert to this Court.

4. Be that as it may considering the trajectory the matter has taken, we deem it appropriate to now issue notice to the private respondent i.e., R6 also.

5. Issue notice to R6.

6. Mr.Rathina Asohan (Enrollment No.308/1973 with address for service at No.6-C, Lakshmi Bhavan, 609, Anna Salai, Chennai – 600 006) who is present in Court accepts notice for R6. Let learned counsel file vakalatnama and Registry to show the name of learned counsel if vakalatnama is in order.

7. List a fortnight hence. List on 16.12.2024.'

3. R5 (Commissioner, Hosur Municipality) made an order/notice dated 24.01.2013 bearing reference Na.Ka.No.9774/2012/F1. This order/notice is addressed to R6



(S.Prakash) and it calls upon the noticee to remove encroachment

qua said disputed land within 7 days. This notice also mentions that it has been issued under Section 182 of Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920). (To be noted, District Municipalities Act, 1920, has since been repealed by the Tamil Nadu Urban Local Bodies Act, 1998, *vide* Section 200).

4. Be that as it may, this 24.01.2013 order/notice made by R5 was assailed by the writ petitioner before us (R. Sankar) *vide* W.P.No.15873 of 2013 and a Hon'ble Single Judge of this Court disposed of the writ petition on 27.01.2021. A careful perusal of this 27.01.2021 order brings to light that R5 has filed an additional affidavit before learned Single Judge regretting issue of 24.01.2013 order/notice and making an averment in unequivocal terms that 24.01.2013 order/notice was erroneously issued. Technically speaking, there is no mention in the 27.01.2021 order in W.P. No.15873 of 2013 that this 24.01.2013 order/notice is either withdrawn by R5 or set aside by Court. Therefore, we make it clear that this 24.01.2013 order/notice stands effaced. For the purpose of specificity, we make it clear now that 24.01.2013 order/notice bearing reference Na.Ka.No.9774/2012/F1 made by R5 is set aside.

5. Be that as it may, pursuant to 27.01.2021 judicial order in



W.P. No.15873 of 2013, R5 (Commissioner, Hosur Municipality), appears to have conducted enquiry afresh and made an order dated 28.07.2021 bearing reference Se.Mu.Aa.Na.Ka.No.9774/2012 (F1) but that order is not before this Court.

6. When things stood as above, R4 (Tahsildar, Hosur Taluk) has made an order signed on 13.01.2023 bearing reference no. Na.Ka.9150/2022 (A2). In this order, there is a mention about *de novo* order dated 28.07.2021 made by R5 (Commissioner, Hosur Municipality). It appears from this narrative that the *de novo* order of R5 says that R5 does not have powers to cancel patta and that the Revenue Department has to be approached.

7. Proceedings before Revenue Department commenced and sequence of hierarchy of orders is, order of R4 (Tahsildar, Hosur Taluk) signed on 13.01.2013 bearing reference no. Na.Ka.9150/2022 (A2), followed by order of R3 (Sub-Collector, Hosur) dated 05.07.2023 bearing reference no. Pa.Mu/473/2023/B3 and order of R2 (District Revenue Officer, Krishnagiri) dated 14.08.2024 bearing reference no.Pa.Mu.32138/2023/J2.

8. This 14.08.2024 order of R2 (District Revenue Officer, Krishnagiri) is the impugned order in the captioned WP.



9. This Court, having set out the factual narrative, *i.e.*, short facts imperative for appreciating this order, and also having captured the trajectory the matter has taken thus far, took up the main WP with the consent of learned counsel on both sides.

10. As already alluded to in the earlier proceedings dated 02.12.2024 (extracted and reproduced in paragraph 2, *supra*), learned State counsel placed reliance on a judgment of Hon'ble Supreme Court dated 06.02.2020 made in Civil Appeal No.1318 of 2017 in the case of **Edelweiss Asset Construction Company Ltd. vs.R.Perumalswamy and others**. Learned State Counsel drew our attention to paragraph 19 which reads as follows:

'19. Under the Tamil Nadu Patta Pass Book Act 1983 and the Tamil Nadu Patta Pass Book Rules, 1987, the Tahsildar is not empowered to adjudicate upon a 'title dispute'. A combined reading of Section 14 and Rule 14(4) indicates that where there exists a dispute with respect to ownership of a land between parties with respect to a patta entry, the correct procedure to be adopted is to approach a civil court having competent jurisdiction. The entry records will be updated on the basis of the decree of the civil court upon adjudication.'

11. The case on hand before us appears to be a case, which, in the classical sense, fits into the **Edelweiss** principle laid down by Hon'ble Supreme Court. Therefore, we deem it appropriate to relegate writ petitioner and R6 to the Civil Court. It is open to the writ petitioner to approach the Civil Court. When the Civil Court is

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approached, the impugned order and the orders made by |
(Tahsildar, Hosur Taluk) and R3 (Sub Collector, Hosur) prior to the
impugned order, can also be scrutinised in trial. Therefore, we
neither set aside the impugned order nor sustain the same. We make
it clear that we are leaving it open to the Civil Court to examine the
suit on its own merits and in accordance with law in trial. Though
obvious, for the sake of specificity, we clarify that all the rights and
contentions of the writ petitioner, R6 and any other person who may
be concerned with the matter, are preserved for the purpose of being
canvassed in the Civil Court if the Civil Court is approached.

12. In the light of the narrative, discussion and dispositive
reasoning thus far, we dispose of the captioned WP as closed by
neither acceding to nor rejecting the certiorarified mandamus prayer
but making a order by writing that we leave it open to the parties to
approach Civil Court and seek an appropriate remedy. Consequently,
captioned W.M.P. thereat also is disposed of as closed. There shall be
no order as to costs.

(M.S., J.) (K.R.S., J.)
16.12.2024

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NC : Yes/No
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M. SUNDAR, J.

and

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