



W.P.No.29020 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

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THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.29020 of 2017

R.Sasikumar

...Petitioner

Vs.

1. The Principal Secretary Cum
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.
2. The Collector of Vellore District,
Vellore.
3. The Revenue Divisional Officer,
Vellore, at Vellore.
4. The Tahsildar of Katpadi,
Katpadi, Vellore District.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to and connected with the proceedings of the Collector of Vellore District, the 2nd respondent herein resulting in the communication/order in Na.Ka.B2 (37723)/2001 dated 24.04.2017 and to quash the same and consequently



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directing the respondents to release the properties of the petitioner and others namely i) the house property bearing Nos.1, 1/2 and 1/3 of Desai Narayana Chetty Street, Vellore Town and ii) the land of the extent of 28.24 acres in Adukumparai, Vaniyankulam Village, Vellore Taluk and District to be held, possessed and enjoyed by the petitioner and others as their absolute properties.

For Petitioner : Mr.A.Thyagarajan, Senior Counsel
for Mr.R.Ashraf Khan

For Respondents : Mr.LSM.Hasan Fisal, AGP

ORDER

This Writ petition has been filed seeking quashment of the proceedings of the 2nd respondent resulting in the communication in Na.Ka.B2(37723)/2001 dated 24.04.2017 and to consequently direct the respondents to release the properties of the petitioner and others namely i) the house property bearing Nos.1, 1/2 and 1/3 of Desai Narayana Chetty Street, Vellore Town and ii) the land of the extent of 28.24 acres in Adukumparai, Vaniyankulam Village, Vellore Taluk and District to be held, possessed and enjoyed by the petitioner and others as their absolute properties.



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2. The case of the petitioner is that his grandfather possessed vast extent of immovable properties, agricultural and non-agricultural lands, which devolved on his sons and they have been in joint holding of the said properties. It is the further averment of the petitioner that the petitioner's father elder brother who was working as Village Karnam had misappropriated an amount of Rs.16,315/- and a suit was instituted by the District Collector, North Arcot District for realising the said sum in O.S.No.64/1951, which was decreed and E.P. No.147 of 1954 was filed. However, the decree holder was under the erroneous belief that the properties were exclusively held by the petitioner's father elder brother, which was brought to court auction and sold. However, the said suit and the subsequent execution proceedings and the auction sale was not within the knowledge of the other brothers and inspite of the auction sale held on 12.3.1956, which was confirmed by the order of the court dated 4.12.1958, the possession of the properties were not taken by the Collector. Thereafter, one of the brothers instituted a partition suit for 1/3rd share in the property by filing O.P.No.278/1957 on the file of the Subordinate Judge, Vellore and later it was converted into O.S.No.93/1959. Despite the auction sale, the

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properties were in possession and enjoyment of the petitioner and his family and the said properties having not been taken possession within the period prescribed, the said orders were not enforceable and the properties having been in possession and enjoyment of all the three brothers.

2.1. In such a situation, the heirs of the three brothers, who had since died, made representation to the Collector of Vellore to pass orders enabling them to deal with the properties assuring that the amount adjudged to be due would be paid by them in which an order had come to be passed by the Collector on 19.7.1990, pursuant to which a sum of Rs.16,315/- and Rs.58,490/- were paid on 8.8.1990 and 10.8.1990 which represents the misappropriated amount and the interest calculated thereon for 41 years. It is the further averment of the petitioner that pursuant to the said payment, the Collector, vide proceedings dated 21.1.1991 directed for release of certain pieces of lands and, thereafter, patta was granted to the petitioner and his father. In the meantime, certain other distantly related persons had also claimed interest over the said property to the Collector and the said authority directed the heirs to avail certificate of heirship from the competent court to establish their right of inheritance leading to the filing of



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O.S.No.420/1994 in which orders were passed and which was produced before the Collector. Since two of the properties remained in possession of the District Collector and inspite of repeated representations by the petitioner and their father, no orders were passed by the District Collector, the petitioner was constrained to file W.P.No.22182/2007 in which this Court directed the District Collector to pass orders within a particular time frame. Pursuant to the said order, the matter was taken up for consideration, but though enquiry was conducted by issuance of notice and later a communication was issued that the plea of the petitioner could not be complied with as the property stood vested with the Government and, therefore, it could not be returned back by relying upon a Government Order dated 19.12.2001. It is the further averment of the petitioner when the erstwhile Collector had passed the order directing releasing of the lands upon receipt of the amount and patta was also issued in favour of the petitioner and his father, the present impugned order is wholly arbitrary and unsustainable as it had not taken into account the earlier order as also the fact that the properties, which are the subject matter of issue belongs to the three brothers and, therefore, it cannot be attached by the Government in respect of the dues of one of the brother. Therefore, left with no alternative,



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the present writ petition has been filed.

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3. Learned counsel for the petitioner submitted that, already one of the property was released after making payment on 8.8.1990 and 10.8.1990, however, the other properties were not released which is not sustainable. It is the further submission of the learned counsel that once the lands have been released upon receipt of the amount, which was determined and patta has also been issued in favour of the petitioner, the present communication cannot run counter to the former communication and proceedings of the District Collector issued in the year 1990. It is the further submission of the learned counsel that even otherwise, the properties being the family properties belonging to all the three brothers, the properties cannot be attached and brought to auction sale when the other two brothers are in no way connected with the property and that their share also forms part of the property. Therefore, the impugned order, which is passed in gross violation of principles of natural justice and without following the due process of law requires interference at the hands of this Court.

4. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents submitted that, once the property was sold by



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way of auction by filing suit by the then District Collector and unless the said judgment and decree in the suit is challenged in the manner known to law, the relief as sought for by the petitioner cannot be granted, that too after four decades. Accordingly, he prayed for dismissal of this Writ petition.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. It is not in dispute that a suit in O.S.No.64 of 1951 was filed by the Collector of North Arcot against the brother of the petitioner's father, with regard to certain alleged misappropriation and a decree was obtained and pursuant to the decree, E.P. No.144 of 1954 was filed for execution of the decree and through the execution proceedings, the property, which is the subject matter of the present *lis* have been attached. It is also not in dispute that the said judgment and decree and the consequential attachment has not been challenged by the petitioner or his predecessors in the manner known



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to law.

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7. The only ground on which the petitioner claims that the decree cannot be enforced upon is that the property is alleged to be in possession of the petitioner and his family. Once a decree has been passed by the Court and the property has been attached through the execution proceedings, the possession of the petitioner and his family members is illegal. Merely because possession has not been taken that cannot be a ground to claim that the order of attachment stood extinguished.

8. Till date, the said judgment and decree passed in the suit has not been challenged by the petitioner or his predecessors in the manner known to law. That being the case, as rightly pointed out by the learned Additional Government Pleader, unless the said decree is set aside in the manner known to law, the properties, which are attached cannot be handed over to the petitioner as the properties belong to the Government and it cannot be parted at the wishes of the petitioner. When the petitioner has not thought it fit to challenge the said decree, coming before this Court, that too after four decades and claiming the properties by submitting that possession of the petitioner stands established through extinguishment of proceedings is



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wholly unsustainable as the lacunae on the part of the respondents cannot form the basis for the petitioner to claim possession, when the said execution proceedings have gone in favour of the respondents.

9. In such view of the matter, this Court is of the considered view that there are no merits in the present writ petition and, accordingly, this Writ petition stands dismissed. No costs.

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

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M.DHANDAPANI, J.

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