



W.P(MD)No.5889 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.03.2024

Delivered on : 28.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.5889 of 2021

and

W.M.P(MD)Nos.4618 and 4619 of 2021

J.Amose

... Petitioner

Vs.

1. The District Collector,
Theni, Theni District.
- 2.The Sub Collector,
Theni District, Theni.
- 3.The District Revenue Officer,
Theni District, Theni.
- 4.The Revenue Division Officer,
Periyakulam, Theni District.
- 5.The Tahsildar,
Aundipatti Taluk,
Theni District.

6.M.Raja

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari filed Mandamus, to



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call for the records relating to the impugned order in Mu.Mu.No.5158/2018/A1, dated 28.12.2020 passed by the second respondent confirming the order in Na.Ka.No.2019/0105/25/022933, dated 27.09.2019 passed by the fifth respondent and quash the above orders thereby directing the respondents 1 to 5 to grant patta in favour of the petitioner in so far as the property comprised in S.No.2338/1 situated at Jakkampatti Middle Street, Thimmarasanayakanur Village, Aundipatti Taluk, Theni District to an extent of 4361 sq.ft as per document No.3794/90, dated 05.07.1990 Aundipatti SRI is concerned.

For Petitioner : Mr.R.Karunanithi,
For Respondents : Mr.S.R.A.Ramachandran,
Additional Government Pleader for R1 to R5.
: No Appearance, for R6.

ORDER

This Writ Petition is directed against the order dated 28.12.2020, passed by the second respondent, confirming the order dated 27.09.2019 passed by the fifth respondent and for directions to the respondents 1 to 5 to grant patta in favour of the petitioner pertaining to the property measuring to an extent of 4361 sq.ft comprised in S.No.2338/1 situated at Jakkampatti Middle Street, Thimmarasanayakanur Village, Aundipatti Taluk, Theni District.



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2. The case of the petitioner is that the property measuring at 4 acres and 74 cents in S.No.2338/1 in Jakkampatti Middle Street, Thimmarasanayakanur Village, Aundipatti Taluk, Theni District originally belongs to one Pethu Chettiar; that the legal heirs of Pethu Chettiar have executed a power of attorney deed in favour of one Karuppasamy; that the Karuppasamy sold an extent of 4361 sq.ft in S.No.2338/1 in Jakkampatti Middle Street to the petitioner vide sale deed, dated 05.07.1990; that the petitioner has been in possession and enjoyment of the property, since his purchase; that the petitioner has applied through online for patta in respect of the property purchased by him; that in the meanwhile, the sixth respondent has purchased the adjacent plot to an extent of 2178 sq.ft in the same survey number on 06.07.2011; that though the Village Administrative Officer and Surveyor have visited the property and measured the same and despite repeated request of the petitioner, the fifth respondent has not passed any orders; that subsequently, the petitioner came to know that the fifth respondent has passed an order, dated 27.09.2019 rejecting the petitioner's application on the ground that the Court case is pending; that the petitioner came to understand that the sixth respondent had filed a suit in



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O.S.No.162 of 2019 before the Sub Court, Theni against the petitioner for permanent injunction restraining the petitioner and his men from interfering with his peaceful possession and enjoyment of the Car shed and hen coop in his property; that the sixth respondent has also made an application to the fifth respondent for grant of separate patta and that the fifth respondent without any enquiry had hastily granted patta to the sixth respondent, vide order dated 05.09.2019.

3. Thereafter, the petitioner has filed his representation before the third respondent on 03.10.2019, who referred the matter to the second respondent; that since no orders were passed, the petitioner was constrained to file a writ petition in W.P.(MD)No.22718 of 2019 to quash the order passed by the fifth respondent; that this Court has passed an order, dated 25.10.2019, directing the third respondent to treat the petitioner's representation, dated 03.10.2019 as a statutory appeal and to dispose of the same on merits and in accordance with law; that the third respondent called the petitioner for enquiry and in that enquiry, the petitioner gave his submission that the second respondent without considering the submission, has passed the impugned order, dated 28.12.2020 stating that no orders can be passed while pendency of the



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suit in O.S.No.162 of 2019; that the said order is a non-speaking order and passed without any application of mind and that therefore, the petitioner was constrained to approach this Court.

4. The learned counsel for the petitioner would reiterate the contentions raised in the writ petition. He would mainly contend that the suit filed by the sixth respondent is only for bare injunction; that the fifth respondent as well as the second respondent without considering the nature of the pending suit, they have passed the cryptic orders rejecting the claim of the petitioner.

5. It is evident from the records that the fifth respondent in the order, dated 27.09.2019 has cited the reason for rejection as 'Court case pending' and on that basis, he was not inclined to accept the claim of the petitioner. In the impugned order, the second respondent by mainly observing that since the suit in O.S.No.162 of 2019 came to be filed before the Sub Court, Theni, challenging the patta transfer order, dismissed the appeal and further directed the petitioner to approach the fifth respondent and apply for patta transfer on the basis of the judgment to be rendered in the suit.



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6. The petitioner has also produced the copy of the plaint filed in O.S.No.162 of 2019 and it is evident that the sixth respondent has filed the suit claiming permanent injunction restraining the petitioner and his men from in any manner interfering with peaceful possession and enjoyment of the car shed and hen coop and not with respect to the patta transfer order.

7. As rightly contended by the learned counsel for the petitioner, that the fifth respondent as well as the second respondent, without ascertaining the nature of the suit filed by the sixth respondent and even without considering the reliefs claimed in the suit, has passed the cryptic non-speaking order, rejecting the claim of the petitioner.

8. The learned Additional Government Pleader appearing for the State would submit that the matter may be remitted back to the second respondent and the second respondent may be directed to consider the matter afresh and to pass orders in accordance with law.



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9. Considering the entire facts and circumstances of the case and taking note of the way in which, the impugned order came to be passed, this Court has no hesitation to hold that the impugned order is liable to be quashed.

10. In the result, the Writ Petition is allowed and the impugned order in Mu.Mu.No.5158/2018/A1, dated 28.12.2020 passed by the second respondent confirming the order in Na.Ka. No.2019/0105/25/022933, dated 27.09.2019 passed by the fifth respondent is quashed. The second respondent is hereby directed to issue notice to all the parties concerned and to conduct enquiry and to pass orders in accordance with law within a period of 12 weeks from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.

28.03.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das



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To

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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
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and
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Dated : 28.03.2024