



W.P.(MD)No.6747 of 2021

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Reserved on : 11.07.2024

Pronounced on : 21.08.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.6747 of 2021

N.Kumar Naicker

... Petitioner

Vs.

- 1.The Collector,
Office of the District Collector,
Dindigul District.
- 2.The District Revenue Officer,
Office of the District Revenue Officer,
Dindigul,
Dindigul District.
- 3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Palani,
Dindigul District.
- 4.The Tahsildar,
Office of the Tahsildar,
Vedachandur Taluk,
Dindigul District.



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5.P.Ponnusamy

6.Amudha

7.Gopinath

8.Jeevitha

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made by the fourth respondent in Na.Ka.No.5582/2019/Aa2 dated 14.10.2020 and quash the same as illegal and consequently direct the respondents 2 to 4 to remove the fifth respondent and Selvaraj name from the patta No.489 issued for Survey No.1107/3, Kalvarpatti Village, Vedachandur Taluk, Dindigul District.

For Petitioner : M/s.Kanimozhi Mathi

For R1 to R4 : Mr.M.Muthumanikkam
Government Advocate

For R5 to R8 : Mr.G.Gomathi Sankar

ORDER

The Writ Petition is directed against the order dated 14.10.2020 passed by the fourth respondent and for directions to the respondents 2 to 4 to remove the name of fifth respondent and Selvaraj from Patta No.489



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issued for Survey No.1170/3, Kalvarpatti Village, Veda sandur Taluk, Dindigul District.

2. The case of the writ petitioner is that the property comprised in Survey No.1170/3 measuring an extent of 8.33 acres in Patta No.556 situated at Kalvarpatti Village, Veda sandur Taluk, Dindigul District, originally belonged to the writ petitioner's mother Nagammal, that Patta No.556, Chitta and Adangal were issued in the name of said Nagammal and her name is also reflected in A-Register and other revenue records as owner of the said property, that after the death of the said Nagammal on 10.10.1995, the writ petitioner and his family members inherited the property and are in absolute possession and enjoyment of the property, that the fifth respondent and one Selvaraj, who is the husband of the sixth respondent and father of the respondents 7 and 8, are the owners of the property in Survey No.1170/2 measuring an extent of 3.82 acres at Kalvarpatti Village, Veda sandur Taluk, Dindigul District, that to the writ petitioner's shock and surprise, he came to know during middle of year of 2019 that new patta vide No.489 was issued in the name of fifth respondent and Selvaraj for the writ petitioner's property in Survey No.



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1170/3, that issuance of patta in their name is absolutely wrong on the part of the fourth respondent, but the respondents 5 to 8 have been using the said mistake of officials and trying to gain wrongful benefit, that the respondents 5 to 8 are third parties to the writ petitioner's family, that Patta No.356 was issued for the property in Survey No.1170/2 to an extent of 1.55 hectare in the writ petitioner's mother name Nagammal which actually belongs to the fifth respondent and Selvaraj, that the writ petitioner immediately made a representation dated 23.09.2019 along with necessary documents to the Deputy Collector, Palani to remove the name of the fifth respondent and Selvaraj and the said representation was forwarded to the fourth respondent for taking necessary action, that the fourth respondent has issued three notices calling upon the parties to appear on 25.11.2019, 24.01.2020 and 22.09.2020 for enquiry and after conducting enquiries, no order came to be passed, that the writ petitioner has then filed a writ petition in W.P.(MD)No.14409 of 2020 directing the Tahsildar to pass orders on the writ petitioner's representation dated 23.09.2019 and pending writ petition, the fourth respondent has passed an order hurriedly stating that since the respondents 5 to 8 have filed a suit in O.S.No.89 of 2020, patta will be issued as per the order of the civil Court,



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that the fourth respondent, without application of mind and without considering the fact that change of patta number is the mistake of their office, has passed the impugned order and that therefore, the writ petitioner was constrained to file the present writ petition.

3. The fifth respondent has filed a counter affidavit disputing the case of the writ petitioner and further stated that the property in Survey No.1170/3 to an extent of 8.33 acres and other properties in Kalvarpatti Village originally belonged to the fifth respondent's grandfather Kondama Naicker and he was in possession and enjoyment of the said property till his lifetime, that patta and other revenue documents were under the name of the said Kondama Naicker and after the death of the said Kondama Naicker, his wife Nagammal inherited the property and was in possession and enjoyment of the same, that the said Nagammal was not having any children and hence, the said Kondama Naicker's brothers, namely, Perumal Naicker, Oviliya Perumal, Rengasamy and Kumar were in possession and enjoyment of the property, that since the said Oviliya Perumal, Rengasamy and Kumar are not having any children, the writ petitioner's grandfather Perumal Naicker inherited the property and was in possession and



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enjoyment of the same, that after the death of the said Perumal Naicker, his son Perumal Naicker-father of the fifth respondent and Selvaraj inherited the property and was in possession and enjoyment of the same till his lifetime and after his death, the fifth respondent and Selvaraj's legal heirs respondents 6 to 8 are in possession and enjoyment of the property, that patta and other revenue records got changed in the name of fifth respondent and Selvaraj, that the writ petitioner does not belong to the fifth respondent's family and he was no way connected with the above said property, that the writ petitioner's mother name is Vellathayammal and his father's name is Nava Naicker, that the writ petitioner has claimed right over the property under Nagammal by claiming that she was his mother but there was no document to prove the same, that since the writ petitioner had interfered with the fifth respondent's peaceful possession and enjoyment of the property, he filed a suit in O.S.No.89 of 2020 on the file of the Sub Court, Vedasandur for permanent injunction and he was also granted with temporary injunction in I.A.No.256 of 2020, that the writ petitioner made a representation before the fourth respondent to cancel the patta in the name of fifth respondent and Selvaraj but the same was rejected through the impugned order, that the writ petitioner has also filed



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a suit in O.S.No.169 of 2022 on the file of the District Munsif Court, Vedasandur and the same is also pending, that the writ petitioner has to prove his case before the civil Court that he is the son of Nagammal and Kondama Naicker and without proving the same, he cannot claim right over the property in dispute and that therefore, the writ petition is liable to be dismissed.

4. The fourth respondent has filed a counter affidavit stating that since civil suit was pending, the revenue authorities cannot usurp the right of the civil Court and pass any observation/comments by conducting an enquiry, that both the writ petitioner as well as the private respondents are claiming right over the property on the ground that the same are their ancestral property, that the property in dispute in Survey No.1170/3 in Kalvarpatti Village stands in the name of one Nagammal vide Patta No. 556 and during the implementation of UDR Scheme, the said lands were reflected in Patta No.489 in favour of Perumal Naicker, S/o.Perumal Naicker vide Patta No.489 and thereafter in the names of fifth respondent and Selvaraj, Sons of Perumal Naicker, that the writ petitioner has filed a writ petition to cancel the patta effected in the name of private respondents



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alleging that it was a mistake committed by the revenue authorities during UDR Scheme, that the said application was duly considered and since the private respondents have submitted that they have already filed a suit in O.S.No.89 of 2020 on the file of the Sub Court, Veda sandur and the same is pending, the fourth respondent cannot adjudicate the rights of the parties, that the writ petitioner has also filed a civil suit in O.S.No.169 of 2022 and the same is also pending, that since two civil suits are pending, this respondents with no other option has passed the impugned order directing the writ petitioner to work out his remedy before the pending civil suit and as such, the impugned order is legally valid and there is no illegality or infirmity as alleged by the writ petitioner and that therefore, the writ petition is liable to be dismissed.

5. It is not in dispute that the present writ petition in W.P.(MD)No. 6747 of 2021 when moved for admission, the same came to be dismissed as not maintainable on the ground that civil suit was pending between the parties vide order dated 26.03.2021. Challenging the dismissal of the writ petition, the writ petitioner has preferred an appeal in W.A.(MD)No.1442 of 2021 and the Hon'ble Division Bench of this Court, by setting aside the



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order of dismissal, taking note of the fact that the fifth respondent has filed a suit after the writ petitioner's representation before the revenue authorities, by observing that the question before the Writ Court was whether the suit which has been filed subsequent to the application given by the appellant for rectification of error in patta can be a bar for conducting enquiry and whether the suit can be a bar for the authorities to conduct an enquiry and that the above issues can be agitated only after filing of the counter affidavit, restored the writ petition to the Writ Court.

6. Admittedly, the property in dispute is situated in Survey No. 1170/3 to an extent of 8.33 acres at Kalvarpatti Village, Vedasandur Taluk.

7. It is pertinent to note that the writ petitioner has claimed ownership over the property in dispute through his mother Nagammal, whereas, the fifth respondent has claimed through his grandfather Kondama Naicker and according to him, since Kondama Naicker and his wife Nagammal were having no issues and also his three other brothers were also having no issues, the other brother Perumal Naicker had inherited the property and after his death, his only son Perumal Naicker



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had inherited the property and after his death, his sons fifth respondent and Selvaraj had inherited the property.

8. It is evident from the records that the writ petitioner has earlier filed a writ petition in W.P.(MD)No.14409 of 2020 seeking a Writ of Mandamus directing the District Collector, Dindigul and Tahsildar, Vendasandur to pass orders on the writ petitioner's representation dated 23.09.2019 and for removal of the names of Ponnusamy/fifth respondent herein and Selvaraj from the Patta No.489 issued for Survey No.1170/3 of Kalvarpatti Village and a learned Judge of this Court, considering the submission made by the learned Additional Government Pleader that the writ petitioner's representation has already been considered and disposed of vide proceedings dated 14.10.2020, closed the writ petition giving a liberty to the writ petitioner to work out his remedy before the appropriate forum.

9. As already pointed out, the fifth respondent has also taken a stand that the writ petitioner's mother is not Nagammal but his mother is Vellathayammal and his father name is Nava Naicker and not Kondama



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Naicker. The fifth respondent has produced copy of the Aadhaar Card of the writ petitioner, wherein, the writ petitioner has been shown as son of Naavanayakar but in the death certificate of Nagammal, her husband name has been shown as Navanayyakkar and not Kondama Naicker as claimed by the fifth respondent.

10. It is evident from A-Register that Survey No.1170/2 is shown to be in the name of Nagammal (கொ.நாகம்மாள்) and Survey No.1170/3 in the name of Perumal Naicker (பெருமாள் நாயக்கர்).

11. As rightly contended by the learned counsel appearing for the respondents 5 to 8, despite a specific stand taken by the private respondent that the writ petitioner is not the son of Nagammal, the writ petitioner has not produced any iota of materials to prove that he is the son of Nagammal and Kondama Naicker. As rightly contended by the learned Government Advocate appearing for the respondents 1 to 4, whether the writ petitioner is the son of Nagammal and Kondama Naicker, cannot be gone into in the present proceedings.



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12. As already pointed out, the fifth respondent has filed the suit in O.S.No.89 of 2020 and is pending on the file of the Sub Court, Vendasandur and the writ petitioner has also filed the suit in O.S.No.169 of 20222 and the same is pending on the file of the District Munsif Court, Vendasandur. No doubt, in the plaint filed by the writ petitioner, he has shown his father's name as Kondama Naicker @ Nava Naicker. Admittedly, both the suits are for permanent injunction and not with respect to declaration with regard to the title to the property in dispute.

13. As already pointed out, the writ petitioner has given a representation for removal of the names of fifth respondent and Selvaraj in patta for the property in Survey No.1170/3 of Kalvarpatti Village, but as rightly pointed out by the learned counsel appearing for the respondents 5 to 8, the writ petitioner in the plaint in O.S.No.169 of 2022 has shown the land measuring 1 hectare 55.00 ares in Survey No.1170/2 in Patta No.356 of Kalvarpatti Village as the suit property. In the affidavit filed in support of the present writ petition, the writ petitioner has claimed that the property in Survey No.1170/2 was owned by the fifth respondent and his brother Selvaraj and patta for that land came to be issued wrongly in the



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name of Nagammal. Moreover, the writ petitioner has filed a writ petition in W.P.(MD)No.11557 of 2023 seeking a Writ of Mandamus directing the Tahsildar and Taluk Surveyor of Vendasandur to conduct survey and fix boundaries of the writ petitioner's property in Survey No.1170/2 at Kalvarpatti Village, Vendasandur Taluk and this Court vide order dated 11.05.2023 has disposed of the said petition with directions. In the suit filed in O.S.No.169 of 2022 and the writ petition in W.P.(MD)No.11557 of 2023, the writ petitioner has not claimed ownership over the property in Survey No.1170/3 but on the other hand, has claimed ownership only with regard to the property in Survey No.1170/2. The writ petitioner has not offered any reason or explanation for these material contradictions in his case.

14. Moreover, the fourth respondent, taking note of the fact that civil suit was pending by observing that patta transfer can be made subject to the result of the suit, dismissed the writ petitioner's representation. But the fact remains that, the suit in O.S.No.89 of 2020 came to be filed during the pendency of the enquiry in pursuance of the writ petitioner's representation given to the fourth respondent. As already pointed out, since the suit is only for bare injunction, the fourth respondent ought to



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have proceeded with the enquiry and passed an order.

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15. Taking note of the subsequent developments and filing of the suit and writ petition with regard to the property in Survey No.1170/2 and in the absence of any materials to show that the writ petitioner is claiming through Nagammal and Kondama Naicker, the writ petitioner is not entitled to get the relief claimed and as such, the impugned order dismissing the writ petitioner's representation cannot be found fault with.

16. In the result, the Writ Petition is dismissed. However, the writ petitioner is at liberty to canvass his case before the competent civil Court, if so advised. No costs.

21.08.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The Collector,
Office of the District Collector,
Dindigul District.
- 2.The District Revenue Officer,
Office of the District Revenue Officer,



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Dindigul,
Dindigul District.

3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Palani,
Dindigul District.

4.The Tahsildar,
Office of the Tahsildar,
Vedachandur Taluk,
Dindigul District.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
W.P.(MD)No.6747 of 2021**

Dated : 21.08.2024