BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.07.2024

Pronounced on : 31.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.6884 of 2021
and
W.M.P.(MD)No.5283 of 2021

Mohamed Hakkim ... Petitioner

Vs.

1. The District Revenue Officer,
   Trichy District,
   Trichy.

2. The Revenue Divisional Officer,
   Srirengam Revenue Division,
   Vannan Kovil,
   Trichy District.

3. The Tahsildar,
   Marungapuri Taluk,
   M.Kallupatti,
   Trichy District.

4. Mohamed Batcha ... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in Na.Ka.No.Aa5/14441/2020 dated 06.02.2021 by confirming the order of the second respondent in Na.Ka.A5/4251/2018 dated 26.06.2020 and quash the same as illegal.

For Petitioner	:	Mr.T.Vadivelan
For R1 to R3	:	Mr.V.Om Prakash Government Advocate
For R4	:	Mr.K.Ravi

ORDER

The Writ Petition is directed against the order dated 06.02.2021 passed by the first respondent, confirming the order dated 26.06.2020 passed by the second respondent.

2. The case of the writ petitioner is that the Special Tahsildar Natham Settlement Scheme, Manapparai, issued a patta in Patta No.1257 in respect of Natham S.F.No.275/12 for an extent of 0.0047 hectare at Thuvarankurichi Village, Marungapuri Taluk, Trichy District on 20.06.1994, considering the continuous possession and enjoyment of the said land from the period of his ancestors, that one Abdul Kani, S/o.Mohammed Ibrahim said to have obtained patta in respect of Natham

S.F.No.275 without any sub division, which is situated adjacent to the writ petitioner's survey number through assignment patta vide proceedings of the Revenue Divisional Officer in D.Dis.4450/80, HSD 168/88, GR.No. 1221/89, that the said land was subsequently sold to the fourth respondent in the year 1995 and he constructed a house therein, that the fourth respondent filed a patta appeal after 27 years before the second respondent to cancel the patta issued to the writ petitioner in respect of Natham S.F.No.275/12 on the strength of the assignment patta granted to his vendor, that the second respondent, after conducting enquiry, has passed an order dated 26.06.2020 rejecting the claim of the fourth respondent but also passed an order deleting the writ petitioner's name from the revenue records on the ground that the writ petitioner did not comply the conditions of Revenue Standing Orders 21(1) and 21(2) to the effect that the writ petitioner has not constructed a house within one year from the date of obtaining assignment patta, that the fourth respondent filed a revision petition before the first respondent challenging the order of the second respondent and the first respondent, after conducting enquiry, has passed the impugned order dated 06.02.2021 confirming the order of the second respondent and that therefore the writ petitioner was constrained to file the present writ petition challenging the order of the first respondent confirming the order of the second respondent.

3. The fourth respondent has filed a counter affidavit, wherein, he has taken a defence that the fourth respondent has purchased the property running east to west 63 feet and south to north 22 feet admeasuring 1386 sq.ft out of total extent of 3.50 acres in S.F.No.275 in Thuvarankurichi Village, Marungapuri Taluk, from one Abdul Kani, S/o.Mohammed Ibrahim vide sale deed dated 30.01.1995, that the said land was originally assigned to the said Abdul Kani vide order dated 31.07.1980 and was enjoyed by him without any encumbrance for about 15 years, that there was a thatched roof structure in the said land while the fourth respondent has purchased the land from the said Abdul Kani, that the fourth respondent should have been given patta for the entire extent of 0.0133 hectare purchased by him but he was given patta in Patta No.1264 in S.F.No.275/11 for 0.0086 hectare only, that the western portion of the land purchased by the fourth respondent to the extent of 0.0047 hectare was given to the writ petitioner in Patta No.1267 in S.F.No.275/12 fraudulently, that there is no documentary proof to show that the writ

petitioner has purchased any land in S.F.No.275, that the writ petitioner has usurped the land belonging to the fourth respondent with the help of revenue officials and obtained patta wrongly, that the fourth respondent's vendor got the assignment in the year 1980 and sold the land to him in the year 1995 after 15 years, that therefore the conditions now invoked by the respondents 1 and 2 are not applicable to the fourth respondent or to his vendor and that the patta issued in Patta No.1267 in S.F.No.275/12 in favour of the writ petitioner is not valid and the same is liable to be set aside and the fourth respondent has to be issued fresh patta for the entire extent purchased by him from his vendor Abdul Kani and the revenue records to be altered suitably.

4. The third respondent has filed a counter affidavit taking a stand that the landed property comprised in S.F.No.275 for an extent of 1.45.5 hectare at Thuvarankurichi Village, Marungapuri Taluk is classified as Natham land originally, that the said survey number was sub divided and subsequently the Special Tahsildar, Manapparai issued Natham Settlement Patta to the beneficiaries on 20.06.1994 and as such, the writ petitioner got patta in Patta No.1257 in respect of Natham land in S.F.No.275/12 for an

extent of 0.0047 hectare, that the fourth respondent made an application to the second respondent to cancel the Patta No.1257 issued to the writ petitioner as the said property was purchased by the fourth respondent, that subsequently the said survey number was sub divided and the fourth respondent purchased an extent of 0.0047 hectare in S.F.No.275/12 from the said Abdul Kani vide sale deed dated 30.01.1995 and got patta, that the writ petitioner was also a beneficiary under the Natham Settlement Scheme and he got patta, that the fourth respondent purchased the assignment land without the consent of the Special Officer of Natham Settlement and he had also not followed the terms and conditions of the Revenue Standing Orders, that the writ petitioner has not constructed any house in the property within one year from the date of order of Natham Settlement Officer as per Revenue Standing Order 21(1) but he made fence in the property, that since the writ petitioner as well as the fourth respondent have breached the terms and conditions, patta issued to them came to be cancelled and directed to maintain the village revenue records as Natham and that since both the writ petitioner as well as the fourth respondent have approached this Court with unclean hands and the writ petition is devoid of merits, they are not entitled to claim any relief.

5. The learned counsel appearing for the writ petitioner would mainly contend that the respondents 1 and 2, without considering the difference between Natham Settlement Scheme and assignment patta while rejecting the claim of the fourth respondent, have also proceeded to cancel the patta issued in favour of the writ petitioner on the ground that the writ petitioner has also not complied with the conditions as contemplated under the Revenue Standing Orders.

6. It is not in dispute that S.F.No.275 an extent of 1.45.5 hectare at Thuvarankurichi Village, Marungapuri Taluk, has been classified as Natham land. It is also not in dispute that some eligible beneficiaries were given assignment pattas and the fourth respondent's vendor Abdul Kani was also given assignment order in 1980 in respect of a portion of land in S.F.No.275 but admittedly sub division number was not mentioned. It is also not in dispute that S.F.No.275 was subsequently sub divided and according to the official respondents, the writ petitioner was given patta in Patta No.1257 in respect of S.F.No.275/12 for an extent of 0.0047 hectare and the fourth respondent's vendor Abdul Kani was given patta in Patta No.1264 in respect of S.F.No.275/11 for an extent of 0.0086 hectare.

7. The main contention of the fourth respondent is that his vendor Abdul Kani was assigned with 0.0133 hectare i.e., 1386 sq.ft but he was given patta for an extent of 0.0086 hectare only instead of granting for 0.0133 hectare.

8. As already pointed out, the respondents 1 and 2, taking note of the fact that the fourth respondent's vendor Abdul Kani has not complied with the assignment conditions, have cancelled the patta granted to the said Abdul Kani. No doubt, as rightly pointed out by the learned counsel appearing for the fourth respondent, though assignment order was given in favour of the fourth respondent's vendor in 1980, he sold the land to the fourth respondent in 1995 after the lapse of 15 years and therefore the condition that in respect of all the alienation or encumbrance made within 10 years from the date of assignment without written permission of the Revenue Divisional Officer, the Government is entitled to take back the land, has been complied with. Revenue Standing Order 21(9) contemplates that the beneficiary even after 10 years from the date of assignment cannot sell the assigned land without written permission of the Revenue Divisional Officer.

9. The learned Government Advocate appearing for the respondents 1 to 3 would submit that as per Revenue Standing Order 21(1), the beneficiary has to construct a house in the assigned land and construction has to be completed within one year from the date of assignment and that the fourth respondent's vendor has not constructed any house within the stipulated period and even on that ground, the Government is entitled to take back the land. It is not the case of the fourth respondent that his vendor has complied with the assignment conditions.

10. Considering the above, the impugned order rejecting the claim of the fourth respondent cannot be found fault with. But at the same time, the respondents 1 and 2, by holding that the writ petitioner has also not constructed any house in the property within the period stipulated since the issuance of patta, have passed orders to delete the name of the writ petitioner in the records and to restore the said land as Natham. The official respondents have nowhere whispered that the writ petitioner was also assigned with the said land by imposing conditions. Even according to the official respondents, the writ petitioner was given patta under the Natham Settlement Scheme. At this juncture, it is necessary to refer the

decision of this Court in the case of ***K.Siva Shanmugam (Deceased) and others Vs. The District Collector, Tiruvannamalai and others*** in ***W.P.No. 10456 of 2018 dated 25.03.2021***, wherein, a learned Judge of this Court has made distinction between the nature of the land and observed as follows:-

> *"8.In the present case, it is not disputed that the property is classified as grama natham and therefore, this Court cannot assume that the Government is the owner of the property. Unless the property is a Government land or a poramboke land, the Government cannot initiate summary proceedings for evicting anyone by cancelling the patta. In the present case, the assignment patta was in favour of first petitioner in the year 1968 and it is also seen that the cancellation of assignment patta was initiated beyond the period of three years. In the present case, the proceedings were initiated only in the year 2017 and the petitioner was dispossessed without following due process or complying with the Principles of Natural Justice. The second respondent has confirmed the order of the third respondent mechanically without independently considering the grounds raised by the petitioner in the memorandum of appeal. When the property is classified as Grama Natham and the petitioner given assignment and the patta treated as a grant from Government, patta for*

residential property in respect of the land classified as grama natham must be in recognition of person's enjoyment. If the assignment patta granted in favour of the petitioner is not a grant but just an acknowledgement of the petitioner's independent right then the impugned order cancelling the assignment patta for violation of the conditions, cannot be sustained. As indicated by this Court in several judgments, the cancellation of assignment patta beyond the period of 3 years, in cases, where the original assignment was given prior to 1973 is also illegal. Therefore, this Court is of the firm view that the impugned order passed by the second respondent, confirming the order of the third respondent is illegal, arbitrarily and unconstitutional and the same is liable to be set aside."

11. In the absence of any evidence or material to show that the writ petitioner was given assignment by imposing conditions, the impugned order cancelling the patta issued in favour of the writ petitioner cannot be sustained and as such, the same is liable to be quashed.

12. In the result, the Writ Petition is partly allowed. The impugned order of the first respondent dated 06.02.2021 cancelling the patta issued in favour of the writ petitioner is quashed and the order rejecting the claim

of the fourth respondent is confirmed. The fourth respondent is at liberty to approach the competent civil Court, if so advised. Consequently, connected Miscellaneous Petition is closed. No costs.

31.07.2024

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

To

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   Trichy.

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   Vannan Kovil,
   Trichy District.

3. The Tahsildar,
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   M.Kallupatti,
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K.MURALI SHANKAR,J.

csm

Pre-Delivery Order made in
W.P.(MD)No.6884 of 2021
and
W.M.P.(MD)No.5283 of 2021

Dated : 31.07.2024