



W.P(MD)No.7850 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7850 of 2023
and
W.M.P(MD)Nos.7271 & 7272 of 2023

1.Mary Victorial

2.Sathiaraj

... Petitioners

Vs.

1.The District Revenue Officer,
Nagercoil,
Kanyakumari District.

2.The Sub Collector,
Padmanabhapuram,
Kanyakumari District.

3.The Revenue Divisional Officer,
Revenue Divisional Office,
Kalkulam,
Kanyakumari District.



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4.The Tahsildar,
Killiyoor,
Kanyakumari District.

5.R.M.Emarald

6.R.M.Angel

7.J.Ajin

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned proceedings of the Tahsildar Killiyoor / fourth Respondent in T.R. 2018/30/04/000076SD dated 11.11.2018 and the order of the Sub Collector, Padmanabhapuram/ second respondent in Na.Ka.Aa3/5555/2020 dated 10.08.2021 and the order of the DRO, Kanyakumari / first respondent in Na.Ka.No. M4/ 42907/2021 dated 28.02.2023 and quash them all and consequently direct the respondents to restore the revenue records in respect of the Survey No. 33/10 (Old Sy.No. 2527C) and measuring 29.50 Ares (72 Cents approx) situated at Mullankanavilai Village to its original status.

For Petitioners : Mr.N.Dilip Kumar

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
for R.1 to R.4

No Appearance for 5 to 7



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ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Additional Government Pleader appearing for the official respondents. Though private respondents have been served and their names are printed in the cause list, they have not chosen to enter appearance.

2.The first petitioner was one of the joint pattadhars in Patta No. 5032 issued by Tahsildar, Vilavankodu. Patta covered 72 cents of land in Survey No.33/10. The first petitioner alienated her undivided share in favour of the second petitioner herein vide sale deed dated 22.12.2021. The second petitioner is yet to apply for mutation and substitution of his name in the place of the first petitioner. At the instance of the respondents 5 and 6 herein, the Tahsildar, Killiyoor carried out the exercise of sub dividing in the said survey number. Survey No.33/10 had been sub divided into 33/10A, 33/10B and 33/10C. The name of the first petitioner is figuring as against Survey No.33/10C alone. This mutation was done behind the back of the first petitioner. The first



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petitioner was not put on notice before passing the impugned memorandum dated 11.11.2018.

3.The learned counsel appearing for the petitioner states that as a result of mutation, the extent of the petitioners share in the said survey number has been drastically reduced. Challenging the mutation order, the present writ petition came to be filed.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

5.It is well settled that where there is joint patta, individual patta can be issued based on the consensus arrived at among the pattadhars. If no consensus could be arrived at, any person seeking separate patta will have to move the jurisdictional civil Court for partition. Only based on the partition decree, the revenue authority can effect mutation. In this case, I wanted to know if any such partition decree is available. The learned Additional Government Pleader is not able to draw my attention



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to any such partition decree. He would only state that a civil suit is pending between the parties.

6.The next question I posed is whether the first petitioner was put on notice before passing the impugned mutation order. The answer is in the negative. In fact, mutation order also does not refer to any issuance of notice to the first petitioner. For these two reasons, namely, a) effecting sub division without there being a partition decree b) violation of principles of natural justice, the impugned order is set aside.

7.This writ petition is allowed. The fourth respondent is directed to restore the original position that obtained prior to the passing of the impugned order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

07.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA



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