



W.P.(MD)No.15375 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2024

Pronounced on : 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.15375 of 2021

and

W.M.P.(MD)No.12268 of 2021

Indumathi

... Petitioner

Vs.

1. The Tahsildar,
Paramakudi,
Ramanathapuram District.

2. The District Collector,
Ramanathapuram District.

3. Gangadharan

4. Sumitra @ Sumathi

... 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 impugned proceedings in Number O.Mu.(L1)/3503/2017



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dated 22.03.2017 on the file of the first respondent and to quash the same and further directing the respondents 1 and 2 to sub divide and issue separate patta to the petitioner in accordance with final decree dated 15.02.1995 passed in I.A.No.390 of 1985 in O.S.No.19 of 1983 on the file of the Sub Court, Paramakudi.

For Petitioner : Mr.Vinoharan
for Mr.G.Prabhu Rajadurai

For R1 & R2 : Mr.P.Thambidurai
Government Advocate (Civil Side)

For R3 & R4 : Mr.M.R.Sreenivasan

ORDER

The Writ Petition is directed against the order dated 22.03.2017 passed in O.Mu.(L1)/3503/2017 by the first respondent and for further direction to the respondents 1 and 2 to issue separate patta in respect of the property in accordance with the final decree passed in I.A.No.390 of 1985 in O.S.No.19 of 1983 dated 15.02.1995.

2. The case of the writ petitioner is that the property in dispute and other lands were owned by one Tulasi Iyer, who purchased the same on 16.11.1953, that the writ petitioner and the fourth respondent are the



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daughters and the third respondent is the son of one Kasthuri Seethalakshmi Ammal, who is the daughter of the said Tulasi Iyer, that after the death of their mother, the respondents 3 and 4 filed a suit for partition in O.S.No.19 of 1983 on the file of the Subordinate Court, Ramanathapuram against the writ petitioner, that preliminary decree came to be passed on 07.04.1984, that an appeal filed in A.S.No.224 of 1984 challenging the judgment and decree passed in O.S.No.19 of 1983 came to be dismissed on 08.04.1985, that the respondents 3 and 4 filed a petition in I.A.No.390 of 1985 for final decree and the same came to be passed on 15.02.1995 and that the property now in dispute was allotted to the share of the writ petitioner.

3. It is not in dispute that the third respondent filed a suit in O.S.No. 41 of 1995 against the writ petitioner and the Government for declaration that the above said property belonged to the writ petitioner and the third respondent and for injunction restraining the Government authorities from interfering with their possession, that the Government authorities have taken a defence that the property in dispute was a river poramboke, that after full trial, the suit was decreed on 17.02.1998, that the Government



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authorities have preferred an appeal in A.S.No.120 of 2000 before the Principal District Court, Ramanathapuram, that the learned Principal District Judge allowed the appeal in part by holding that the portion of the said property would fall within the river poramboke, that the third respondent preferred a second appeal before this Court in S.A.No.448 of 2002 and that this Court, vide judgment dated 11.06.2012, allowed the second appeal and thereby setting aside the judgment of the appellate Court and restored the judgment of the trial Court.

4. It is also not in dispute that the writ petitioner has sent a letter to the first respondent informing the judgment of this Court in the second appeal and requested them to amend the boundaries and issue separate patta on 10.03.2017 and the first respondent has issued the impugned memorandum dated 22.03.2017 informing that patta cannot be issued in respect of water body poramboke. Challenging the impugned memorandum, the present writ petition came to be filed.

5. The learned counsel appearing for the writ petitioner would reiterate the contentions raised in the writ petition.



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6. The learned Government Advocate (Civil Side) appearing for the respondents 1 and 2 would submit that since the property in dispute is a river poramboke, the first respondent has rightly refused to grant any patta.

7. As already pointed out, the third respondent has filed a suit against the Government authorities to declare their title over the property in dispute and restraining the Government authorities from interfering with their possession and in the second appeal before this Court, this Court, by specifically holding that the Government authorities have not produced any specific document to show that the disputed portion is a river poramboke in the revenue records and that they have also not produced any document to show that already steps were taken to remove the encroachment and once encroachment was made removed but again was repeated, allowed the second appeal.

8. Since the judgment and decree of the competent civil Court declaring the title of the writ petitioner over the suit property and granting permanent injunction restraining the Government authorities from



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interfering with her possession has already been confirmed by this Court, this Court is at loss to understand as to how the first respondent by taking the very same plea, which was taken earlier and rejected, has rejected the claim of patta in respect of the property in dispute.

9. It is not the case of the Government authorities that they have preferred any SLP before the Hon'ble Supreme Court challenging the judgment and decree passed in the second appeal in S.A.No.448 of 2002 or that they have filed any review petition and that the same are pending.

10. As rightly contended by the learned counsel appearing for the writ petitioner, since the competent civil Court has already declared that the property in dispute was not a river poramboke, the Government authorities are clearly estopped from taking such a stand again, for rejecting the plea of the writ petitioner and the third respondent. Considering the above, the impugned memorandum/order dated 22.03.2017 cannot legally be sustained and as such, the same is liable to be set aside.



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11. In the result, this Writ Petition is allowed and the impugned memorandum/order passed in O.Mu.(L1)/3503/2017 dated 22.03.2017 is set aside. The first respondent is hereby directed to sub divide and issue patta to the writ petitioner taking note of the judgment of this Court passed in S.A.No.448 of 2002 and in accordance with the final decree dated 15.02.1995 passed in I.A.No.390 of 1985 in O.S.No.19 of 1983 on the file of the Subordinate Court, Ramanathapuram. Consequently, connected Miscellaneous Petition is closed. No costs.

11.03.2024

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

To

1. The Tahsildar,
Paramakudi,
Ramanathapuram District.
2. The District Collector,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
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Dated :11.03.2024