



WEB COPY

W.P(MD)No.15617 of :



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2024

Delivered on : 18.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.15617 of 2021

and

W.M.P(MD)Nos.12576 and 12577 of 2021

S.Rajeswari

: Petitioner

Vs.

1. The District Revenue Officer,
Sivagangai District, Sivagangai.

2.The Tahsildar,
O/o.The Tahsildar,
Devakottai, Sivagangai District.

3.S.Andiappan

: 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 pertaining to the impugned order in Pa.Mu.B4/25054/2018, dated 29.12.2020 on the file of the first respondent and quash the same as illegal and consequently, direct the respondents to restore the patta No.1160 in the name of the petitioner in respect of the property in S.No.23/1B to an extent of 63 cents and 23/2 to an extent of 1 acre 68 cents situated at Thirani Village, Devakottai Taluk, Sivagangai District within the time frame as fixed by this Court.



WEB COPY

W.P(MD)No.15617 of :



For Petitioner : Mr.T.Thirumurugan

For Respondent : Mr.A.K.Manikkam,
Special Government Pleader, for R1 and R2.

Mr. V.R.Shanmuganathan, for R3.

ORDER

This Writ Petition is directed against the order, dated 29.12.2020 passed by the first respondent and for direction to the respondents to restore the patta No.1160 in the name of the petitioner in respect of the property situated in S.No.23/1B to an extent of 63 cents and S.No.23/2 to an extent of 1.68 acres of Thirani Village, Devakottai Taluk, Sivagangai District.

2. The case of the petitioner is that the property measuring 63 cents in S.No.23/1 B and 1.68 acres in S.No.23/2 of Thirani Village, Devakottai Taluk, Sivagangai District originally belonged to one Kaliyammal wife of Lakshmanan, as the said property came to be received by her in an oral partition effected between her family members; that the petitioner has purchased the said property from the said Kaliyammal vide sale deed, dated 26.09.2018 and subsequently, patta was also transferred in Document No.1160 in the petitioner's name and she has been enjoying the properties till now; that



the third respondent, who is totally stranger to the property attempted to disturb the petitioner's enjoyment and hence, the petitioner has filed a civil suit in O.S.No.272 of 2020 on the file of the District Munsif Court, Devakottai, claiming permanent injunction and the same is pending; that the third respondent in the meanwhile had given an appeal before the first respondent seeking cancellation of patta issued in favour of the petitioner; that the first respondent has passed the impugned order cancelling the patta standing in the petitioner's name and also directed the second respondent to make necessary corrections in the revenue records and insert the name of the third respondent's father for the lands in S.No.23/2 and the Veeranan's name for the land in S.No. 23/1B .

3. It is the further case of the petitioner that the first respondent has no right to decide the title of the property, when the civil suit is pending; that the first respondent had gone into the ownership issue and almost conducted trial like a civil Court and passed order as if the father of the third respondent has right over the property; that the petitioner is an innocent subsequent purchaser of the property in dispute as he has purchased the same from the said Kaliyammal on 26.09.2018 after paying the entire sale consideration and he has also obtained patta in his name, that though the first respondent has sent a



summon, he could not appear due to Covid-19 and that since the impugned order came to be passed as an ex-parte order, without giving reasonable opportunity, the same is liable to be set aside.

4. The first respondent has filed a counter affidavit stating that the entire dispute revolves around that properties comprised in S.No.23/1B and 23/2 of Thirani Village, Devakottai Taluk, Sivagangai District; that the third respondent has made an UDR appeal before the first respondent to cancel the patta issued in favour of the petitioner; that the appeal was taken on file and enquiry notice were served on the writ petitioner as well as her vendor Kaliyammal and enquiry was held on 05.02.2019 and 21.06.2019; that the first respondent has also called for the report from the Village Administrative Officer; that S.No.23/1 was sub-divided into S.No.23/1A, 1B and mutated as 23/1A in the third respondent name vide patta No.838 and 23/1B in the name of Kaliyammal during UDR proceeding; that S.No.23/2, which was in the name of Subbiah, was mutated in the name of Kaliyammal during UDR and then the said survey number stands in the name of the petitioner vide patta transfer proceeding, dated 27.09.2018; that the first respondent, after conducting proper enquiry and on verification of all the materials on records, has come to the conclusion that the patta for S.No.23/1B and 23/2 was mistakenly changed in



W.P(MD)No.15617 of :

the name of the petitioner's vendor during UDR survey and subsequently, transferred to the writ petitioner by way of patta transfer and consequently, cancelled the patta issued to the petitioner and that therefore, the impugned order passed by the first respondent is in accordance with law and there is no illegality or infirmity.

5. The third respondent has filed counter affidavit stating that the entry during UDR was made without any notice or enquiry with settlement pattadhars or their legal heirs and without any continuity of documents or materials in support of said Kaliyammal; that the lands in S.No.23/2 measuring 1.68 acres vide pata No.175 belonged to Subbiah, father of the third respondent; that thereafter, under a partition deed, dated 19.10.1972 between the said Palaniyandi and his brother Subbiah, said lands were allotted to the third respondent's father Subbiah; that the third respondent's father had been in possession and enjoyment of the said lands by forming a garden and digging a huge well for irrigation since 1972 till 2004; that a mistake had crept in during UDR ; that the said Kaliyammal based on the illegal patta obtained during UDR has sold the property to the petitioner; that the first respondent has conducted a detailed enquiry and passed orders on 29.12.2020 restoring the revenue records in the name of settlement pattadhars; that the petitioner had



W.P(MD)No.15617 of :

laid the suit for bare injunction in O.S.No.272 of 2020 after a long gap, but as of now no title suit is pending between the parties; that the first respondent had not decided the title of the property, but only rectified the UDR mistake and restored the patta in the name of the settlement pattadhars.

6. It is not in dispute that the petitioner has filed a suit in O.S.No.272 of 2020 claiming permanent injunction against the third respondent restraining the defendant and his men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the property in dispute. Even according to the petitioner, the third respondent has preferred an appeal before the first respondent in the year 2018 and during the pendency of the appeal proceedings, the suit in O.S.No.272 of 2020 came to be filed by him.

7. No doubt, after filing of the suit, the impugned order came to be passed. But the fact remains that the suit itself came to be filed during the pendency of appeal before the first respondent. More importantly, the above suit is only for bare injunction and not for declaratory relief with regard to the title to the property in dispute.

8. Considering the above, as rightly contended by the learned Special Government Pleader appearing for the official respondents and the learned



counsel appearing for the private respondent, the contention of the petitioner that the impugned order passed during the pendency of the suit in O.S.No.272 of 2020 is without jurisdiction and is not legal, cannot be sustained.

9. As rightly contended by the learned counsel for the petitioner, the first respondent or the revenue authorities have absolutely no power or jurisdiction to decide the title to the property in dispute and the competent Civil Court alone is having jurisdiction to go into the title to the property in dispute. In the case on hand, it is the specific stand of the revenue authorities that the patta for S.No.23/1B and 23/2 was mistakenly changed in the name of the petitioner's vendor and consequently in favour of the petitioner.

10. It is not in dispute that the S.No.23/1 was originally in the name of one Veeranan S/o.Palaniyandi and the land in S.No.23/2 was in the name of one Subbiah S/o.Narayanan as per SLR extracts. It is the specific contention of the respondents that S.No.23/1 was sub divided into S.No.23/1A, 23/1B and S.No.23/1A was mutated in the name of the third respondent and 23/1B was mutated in favour of Kaliyammal and that S.No.23/2 was mutated in the name of Kaliyammal, all during UDR proceedings.



11. As rightly contended by the official respondents, the first respondent has neither considered nor decided the title to the property in dispute, but taking note of the mistake crept during UDR proceeding has restored the patta in favour of the earlier pattadhars and as such, the order of the first respondent cannot be faulted on the ground that he has decided the title to the property in dispute.

12. The learned counsel for the petitioner would mainly contend that the first respondent has not given any reasonable opportunity to the petitioner to take part in the enquiry and that therefore, the impugned order, which came to be passed in violation of principles of natural justice, cannot be legally sustained.

13. As rightly pointed out by the learned Special Government Pleader appearing for the official respondents, the petitioner in the affidavit filed in support of the writ petition has specifically stated that the first respondent has sent a summon, but he could not appear due to Covid-19 and the first respondent has passed the impugned order as an ex-parte order without giving reasonable opportunity.



14. It is pertinent to note that the petitioner herself has admitted the receipt of summons from the Office of the first respondent. It is evident from the impugned order that the enquiry was held on 05.02.2019 and 21.06.2019 and at that time, there was no Covid-19. Though the petitioner has stated that summon was sent to her, she has not elaborated anything further. As already pointed out, the impugned order came to be passed only on 29.12.2020 and Covid-19 lock-down came into force from third week of March 2020.

15. As rightly contended by the learned Special Government Pleader, the petitioner has not offered any reason or explanation for not appearing before the first respondent for the hearings in 2019. The petitioner has also not taken any steps to appear through her counsel and she has neither sent any objections nor sent any letter seeking extension of time. Considering the above, the contention of the learned counsel for the petitioner that the impugned order came to be passed in violation of principles of natural justice cannot be entertained.

16. As rightly contended by the learned Special Government Pleader appearing for the respondents, the first respondent in the impugned order has also observed that if anybody is aggrieved by the impugned order, they are at



W.P(MD)No.15617 of :

liberty to approach the competent civil Court to redress their grievance.

Considering the above, this Court has no hesitation to hold that the impugned order is perfectly in order and the same cannot be found fault with.

Consequently, this Court concludes that the Writ Petition is devoid of merits and the same is liable to be dismissed.

17. In the result, the Writ Petition is dismissed. The petitioner is at liberty to approach the competent civil Court for deciding the title to the property in dispute, if so advised. Consequently, connected Miscellaneous No costs.

18.07.2024

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

To

1. The District Revenue Officer,
Sivagangai District, Sivagangai.
2. The Tahsildar,
O/o. The Tahsildar,
Devakottai, Sivagangai District.



W.P(MD)No.15617 of :

K.MURALI SHANKAR, J

DAS

Pre-delivery order made in
W.P(MD)No.15617 of 2021
and
W.M.P(MD)Nos.12576 and 12577 of 2021

Dated 18.07.2024