



W.P.(MD)No.16300 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.07.2024

DELIVERED ON : 23.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.16300 of 2021

R.Krishna Moorthy

... Petitioner

Vs.

1.The District Revenue Officer,
Collectorate Office,
Kokirakulam,
Tirunelveli District.

2.The Assistant Director of Survey,
District Survey Office,
Tirunelveli District.

3.The Tahsildar,
Palayamkottai Taluk Office,
Tirunelveli District.

4.The Block Development Officer,
Palayamkottai Panchayat Union Office,
Tirunelveli.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to call for records in impugned order in Pa.Mu.Ka2/1732/2020, dated 07.06.2021 on the file of the first respondent and quash the same as illegal and further directing the first respondent to rectify the UDR correction in revenue records relating to S.No.1178/124, Munnerpallam Village, Palayamkottai Taluk, Tirunelveli District.

For Petitioner : Mr.S.Kumar

For Respondents : Mr.V.OM Prakash
Government Advocate
for R.1 to R.3

: Mr.A.K.Manikkam
for R.4

ORDER

The Writ Petition is directed against the order dated 07.06.2021 passed by the first respondent and for further direction to the first respondent to rectify the UDR correction in revenue records relating to S.No.1178/124, Munnerpallam Village, Palayamkottai Taluk, Tirunelveli District.



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2. The case of the petitioner is that the land in S.No.1178, having an extent of 26 acres 65 cents at Ponnithankulam Village, now at Munnerpallam Village, Palayamkottai Taluk, originally belonged to one Deva Asirvatham, that he entered into an agreement for sale on 07.09.1981 with the petitioner's father Rengaraj, that the petitioner's father Rengaraj after agreement, formed layout for house sites in the name of Anna Colony and got approval from the Deputy Director of Town and Country Planning, Tirunelveli District, vide approval No. 114/1981, that since the original owner Deva Aasirvatham, after forming of lay out, has refused to execute the sale deed, the said Rengaraj has filed a suit in O.S.No.83 of 1985, on the file of the District Munsif Court, Tirunelveli seeking the relief of specific performance, that the suit was decreed on 20.07.1989 and in pursuance of the same, the said Rengaraj filed execution petition, that pending execution petition, the said Deva Aasirvatham died and as such, his legal representatives were brought on record, that the legal representatives of the deceased filed an application under Section 47 C.P.C., and also filed a suit in O.S.No.77 of 2004 against the said Rengaraj, that the trial Court dismissed the suit as well as the petition filed under Section 47 C.P.C., on 07.10.2004, that the legal



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representatives of the said Deva Aasirvathem have filed appeals in A.S.No.222 of 2004 and C.M.A.No.56 of 2004 and both appeals came to be allowed on 13.04.2005, that the said Rengaraj, aggrieved by the same, has filed the Second Appeal in S.A.No.644 of 2005 and a revision in C.R.P.No.743 of 2005, on the file of this Court and that this Court allowed the appeal as well as the revision and that thereafter, in pursuance of the judgment and decree, a sale deed came to be executed in favour of the said Rengaraj on 10.11.2011 through the process of Court.

3. It is the further case of th petitioner that the petitioner's father Rengaraj died leaving behind the petitioner as the legal heir, that the petitioner came to know that during UDR survey, a road leading to Aaraikulam village has been wrongly shown in the middle of the plot Nos.46 to 53, without considering the approved lay out formed in the year 1981 and as a result of which, the total extent of Plot Nos.46 to 53 was considerably reduced in the patta, that the petitioner sent a representation to the first respondent on 16.03.2016 to the first respondent and since there was no action, he filed a writ petition in W.P. (MD)No.17028 of 2019 before this Court and this Court passed an order



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dated 01.08.2019 directing the first respondent to pass final orders after getting necessary report within a period of eight weeks and that the first respondent has passed the impugned order dated 07.06.2021 after the lapse of more than 1 ½ years, rejecting the petitioner's request and that therefore, the petitioner with no other option, has approached this Court by invoking Article 226 of the Constitution of India.

4. The first respondent has filed a counter affidavit stating that the land in S.No.9, Ryot Punjai, measuring an extent of 18.88.0 hectares, in Ponmithithankulam Village, Tirunelveli Taluk and District was in possession of one Deva Asirvadam, as per the Settlement Register signed on 23.11.1970 by the Assistant Settlement Officer, Kovilpatti, that subsequently the Village was merged with Muneerpallam Village and the Survey No.9 was renumbered as 1178 as per the order of the Settlement Officer, Madurai, dated 21.06.1974, that a sale deed was executed in favour of the petitioner on 10.11.2011 for the suit property even though the agreement was entered into by his father with earlier land owner, that the petitioner got possession of plot Nos.46 to 53 in approved lay out LPR (TK) 114/81 formed in Survey No.1178 in



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Munneerpallam Village, that the petitioner submitted a representation to the first respondent on 16.03.2016, 32 years after Updating Registry Scheme records, to rectify the error, that the UDR scheme was announced by the Government of Tamil Nadu during the year 1984 and according to the Scheme, the team of officials from the Revenue and Survey Department have jointly inspected each and every wet and dry lands and after verification of records and village accounts, patta was issued to the land owners, that after the completion of UDR scheme sufficient time was granted to the land owners to report the mistake or error crept during the commissioning of the scheme, that when the petitioner received the land, a road was already laid through Plot Nos.49, 50 and 51 of the property, that existing metal road was upgraded to thar road during the year 2001 by the Village Roads Division of State Highways, that since there was a Nilavial Pathai existed through the Survey No.1178 before UDR, a road was laid by the local authorities after following due procedure, rules and with oral consent from the owner, pattadar and the father of the petitioner, that the petitioner after a period of 32 years raised an objection before the first respondent that Nilavial Pathai shown in S.No.1178/124 and 1178/186 is defective and



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requested to rectify the error, that the request of the petitioner was examined with reference to the records and it is confirmed that there was no mistake committed in the above file, that there were traces of Nilavial Pathai in S.No.1178 of Munnerpallam Village and was demarcated before Updating Registry Scheme and that the representation of the petitioner was rightly decided by the first respondent.

5. It is not in dispute that when the property in dispute was originally owned by Deva Asirvadam, he entered into a sale agreement with the petitioner's father Rengaraj on 07.09.1981 and thereafter the said Rengaraj formed lay out in the name of Anna Colony and got approval from the Deputy Director of Town and Country Planning, vide approval No.114/1981, that since the said Deva Aasirvatham failed to perform his part of the contract, the petitioner's father was constrained to file a suit in O.S.No.83 of 1985 seeking the relief of specific performance and that the suit was decreed on 20.07.1989.



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6. It is also not in dispute that the matter went upto High Court and the High Court, by setting aside the judgment and order passed by the appellate Court, has restored the decree for specific performance and in pursuance of the same, the sale deed came to be executed in favour of the petitioner's father on 10.11.2011. The petitioner, after coming to know that a road leading to Araaikulam Village has been laid in the middle of the Plot Nos.46 to 53 without considering the approved lay out formed in the year 1981, sent a representation to the first respondent to rectify the mistake crept in revenue records and since there was no action, the petitioner was forced to file a writ petition in W.P.(MD)No.17028 of 2019 and this Court has passed an order dated 01.08.2019 directing the first respondent to pass orders on the representations of the petitioner dated 16.03.2016 and 21.03.2016 after getting necessary report from the third respondent, Tahsildar and such endeavour shall be undertaken by the first respondent and final order shall be passed within a period of eight weeks from the date of receipt of a copy of that order. Though this Court has passed orders in the Writ Petition on 01.08.2019, the impugned order came to be passed on 07.06.2021, after a lapse of nearly two years.



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7. It is not in dispute that at the instance of the petitioner's father Rengaraj, the lay out in the name of Anna Colony came to be approved by the Deputy Director of Town and Country Planning, Tirunelveli District, vide approval No.114/1981. The main contention of the petitioner is that such a road was not at all shown prior to UDR survey and only during UDR survey, a road has been shown in the middle of Plot Nos.46 to 53. According to the petitioner, UDR scheme came to be announced by the Government of Tamil Nadu during the year 1984 and even before that scheme came into force, approval for lay out was obtained by the petitioner's father.

8. The case of the respondent is that there existed a Nilavial Pathai and only in that Nilavial Pathai, the road now in dispute has been laid and according to them, the then existing metal road was upgraded to thar road during the year 2001 by the Village Roads Division of State Highways. It is the further contention of the respondents that though the road was laid in the year 2001, the petitioner himself has become the owner of the property in the year 2011 and that therefore, the petitioner



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has no locus standi to challenge the laying of the road and that 32 years after Updating Registry Scheme, the petitioner has raised objection and as such, the same cannot be sustained.

9. As already pointed out, the sale deed came to be executed in favour of the petitioner's father on 10.11.2011, but the proceedings between the plaintiff's father and the original owner Dava Aasirvadam was pending from 1985 onwards. As already pointed out, though the suit for specific performance came to be decreed as early as on 20.07.1989 and when the execution petition was pending, the legal representatives of Deva Aasirvadam have filed appeals and Civil Miscellaneous Appeal and that went upto the High Court and that since the Second Appeal and the Revision came to be dismissed on 20.08.2010, the execution proceedings were proceeded and sale deed was executed by the Court

10. Admittedly, the Plot Nos.46 to 53 are the lands originally belonged to Deva Aasirvadam and subsequently to the petitioner's father. Even as per the approval granted by the Deputy Director of Town and Country Planning, vide approval No.114/1981, Plot Nos.46 to 53 were



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only shown as vacant space and no pathway or Nilavial pathai was shown to be existing at that time. No doubt, the respondents in their counter statement have taken a new stand that there was no demarcation of Nilavial Pathai before 1973 itself and that they have not furnished any other particulars such as width and length of the Nilaviyal Pathai which existed earlier. Admittedly, they have not produced any iota of materials to substantiate the same.

11. When the matter was in part-heard stage, a query was made as to whether there was any scope for invoking the provisions of the Land Acquisition Act, since the private lands came to be used by the local authorities for laying the road. The learned Government Advocate, on instructions from the first respondent would submit by reiterating the initial contentions that there was no scope for granting compensation. As rightly pointed out by the learned Counsel for the petitioner, in the counter affidavit, they have stated that since there was Nilavial Pathai existing through S.No.1178 before UDR, a road was laid by the local authorities after following the procedures and that oral consent was taken from owner, pattadars and the father of the petitioner.



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12. Admittedly, the first respondent in the impugned order has not referred about the so called consent obtained from the owner, pattadar and the petitioner's father. Even in the counter statement, they have not elaborated anything further. As rightly pointed out by the learned Counsel for the petitioner, the respondents have not produced any materials to show that they have obtained necessary consent from the original owner Deva Aasirvadam or from the petitioner's father who fought with legal battle with the original owner for more than 25 years.

13. It is pertinent to note that in the impugned order, the first respondent has referred the report given by the second respondent and the third respondent. The third respondent in his report has suggested that in case of handing over 10% of land meant for common purpose, the road in dispute can be shifted. More importantly, the second respondent in his report admitting the mistake committed at the UDR period and suggested that since there is vacant land on the northern side, the existing road in dispute can be extended to northern side and the portion that is occupied in Plot Nos.46 to 53 can be restored and patta can be granted in



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favour of the petitioner. But the first respondent without taking note of the reports of the second and third respondents, by reiterating the same contention that the owner has not handed over the roads and 10% space meant for common purpose and since the road in dispute came to be laid only in the Nilaviyal pathai, rejected the petitioner's representation.

14. Considering the entire facts and circumstances of the case and taking note of the reports of the respondents 2 and 3 and also in the absence of any materials to show that the consent was taken from the original owner or from the petitioner's father for laying the road, the impugned order cannot be sustained. It is pertinent to note that when the matter was taken up for admission, this Court has recorded the submission made by the learned Counsel for the petitioner that the petitioner has undertaken to gift 10% of the land to the local body. Hence, the petitioner is to be directed to gift 10% of the land meant for common purpose to the local body and on the receipt of the same, the first respondent is directed to issue necessary directions to the other respondents to shift the road in dispute to the northern side and the land



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that is occupied in Plot Nos.46 to 53 has to be restored and patta has to be granted in favour of the petitioner.

15. In the result, the Writ Petition is allowed and the impugned order is quashed. The petitioner is directed to gift 10% of the land meant for common purpose to the local body and on execution of necessary documents therefor, the first respondent is directed to issue necessary proceedings directing the other respondents to shift the existing road in dispute to the northern side and restore the land that was occupied in Plot Nos.46 to 53 and for issuance of patta therefor. There shall be no order as to costs.

23.08.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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PRE-DELIVERY ORDER MADE IN

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