



W.P(MD)No.17251 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 14.02.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17251 of 2020

and

W.M.P(MD)No.14440 of 2020

1.M.Pappa

2.N.Adhimoolam

3.M.Viji Kutty

4.M.Muthu Vijaya Rajesh

5.M.Muthu Visalatchi

... Petitioners

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The District Revenue Officer,
O/o.District Revenue Office,
Thoothukudi Collectorate Campus,
Thoothukudi District.



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3.The Revenue Divisional Officer,
O/o.Revenue Divisional Office,
Kovilpatti,
Thoothukudi District.

4.The Tahsildar,
O/o.Tahsildar,
Ottapidaram,
Thoothukudi District.

5.Ragu

6.Nagamani

7.Rajathi

8.Velammal

9.Muniyammal

10.Gurusamy (Died)

11.Sithanachi

12.Muthuselvi

13.Uthirakani

14.Muniyasamy

***(R.11 to R.14 were suo motu impleaded
vide order of this Court dated 12.01.2024)***

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorari, to call for the records
relating to the impugned order passed by the fourth respondent in his



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proceedings Na.Ka.Aa2/2172/2020 dated 14.09.2020 and quash the same as illegal.

For Petitioners : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

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

Mr.M.P.Senthil for R.6 to R.9

R.10 - Died

ORDER

Heard the learned Senior Counsel appearing for the petitioners, the learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the respondents 6 to 9.

2.The tenth respondent had passed away and his legal heirs were *suo motu* impleaded as the respondents 11 to 14. Court notices sent to the respondents 11 to 14 could not be served. It appears that the respondents 11 to 14 are not residing at Puthurpandiyapuram, Ottapidaram. Since there is substantial representation on the side of the



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contesting parties and since I am only proposing to remand the matter, the writ petition is being taken up for disposal even though the respondents 11 to 14 have not been served.

3.The revenue record in respect of the petition mentioned properties reflected the names of the writ petitioners till the year 2013. The respondents 6 to 10 approached the jurisdictional Tahsildar in the year 2013 and included their names in the joint patta. This was done without notice to the writ petitioners herein. Aggrieved by the same, the petitioners filed appeal before the Revenue Divisional Officer, Kovilpatti. The Revenue Divisional Officer, Kovilpatti set aside the order passed by the jurisdictional Tahsildar and vide order dated 06.03.2017 remanded the matter to the file of the Tahsildar, Ottapidaram. Challenging the same, the respondents 6 to 9 filed revision before the District Revenue Officer, Tuticorin. Who vide proceedings dated 07.05.2019 confirmed the order passed by the Revenue Divisional Officer.



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4.The Tahsildar, Ottapidaram issued enquiry notice to the petitioners herein fixing the enquiry date as 31.08.2020. It is seen that this notice was served on the petitioners only on 07.09.2020. Enquiry held on 31.08.2020 was adjourned to 09.09.2020. A fresh notice was also issued to the petitioners. This was also received by the petitioners on 07.09.2020 i.e., two days prior to the enquiry date. The petitioners are said to be residing in Chennai. They engaged a counsel and requested through him to the Tahsildar, Ottapidaram to adjourn the enquiry dated to some other date. This request for adjournment was not accepted. On 14.09.2020, the Tahsildar, Ottapidaram passed the impugned order directing the inclusion of the names of the respondents 6 to 10 in the joint patta in respect of the petition mentioned lands. This order is put to challenge in this writ petition.

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



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6.The contesting respondents (respondents 6 to 9) have filed counter affidavit and the learned counsel took me through its contents. The learned counsel submitted that the private respondents herein are not aliens or strangers. Both the petitioners as well as the private parties have common ancestry and that therefore non-inclusion of their names in the first instance was illegal and the said illegality has now been undone. Therefore, the matter does not call for interference.

7.The learned Additional Government Pleader also submitted that the impugned order can very well be justified on merits.

8.I carefully considered the rival contentions and went through the materials on record. Though I do find the contentions of the learned counsel appearing for the private respondents to be having some force, I consciously refrain from going into the merits of the matter. It is well settled principle of law that justice must not only be done but also seen to be done. This is second round of litigation. The petitioners herein had earlier filed appeal before the Revenue Divisional Officer, Kovilpatti and got the order passed by the jurisdictional Tahsildar to set aside. That



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order was also confirmed by the District Revenue Officer, Tuticorin. The only reason for remanding the matter to the Tahsildar, Ottapidaram was to ensure that fair enquiry is conducted. In other words, any order for inclusion of the names of the private respondents in the joint patta should be done only after hearing the petitioners. In this case, the enquiry was held on 09.09.2020. The enquiry notice itself was received only on 07.09.2020. It is not as if the petitioners kept quiet after receiving the enquiry notice. They engaged a counsel. The counsel appeared before the Tahsildar, Ottapidaram on 09.09.2020 and submitted a letter for requesting adjournment. That such a request was made is specifically referred to in the impugned order itself. The authority has not given any reason for rejecting the said request.

9.In fact, the Tahsildar, Ottapidaram assumes that the petitioners were given two opportunities. This is factually incorrect. The notice regarding the enquiry held on 31.08.2020 was received only on 07.09.2020. It is obvious that the petitioners were given only one opportunity. Since the time given for attending enquiry was too short, they ought to have been given reasonable time for presenting their case.



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The concept of reasonable opportunity is fundamental. The Tahsildar, Ottapidaram failed to bear the said mandate in mind.

10. In this view of the matter, the impugned order is set aside. The matter is remitted to the file of the fourth respondent. The petitioners as well as the private respondents 6 to 9 will appear before the Tahsildar, Ottapidaram on **01.03.2024 at 03.00 p.m** either in person or through counsel. In the meanwhile, the Tahsildar, Ottapidaram shall send enquiry notice to the respondents 11 to 14 herein. This enquiry notice shall be sent well in advance. I make it clear that I have not gone into the merits of the matter. Final order on merits and in accordance with law will be passed by the Tahsildar, Ottapidaram after hearing both the parties on or before 31.05.2024.

11. This writ petition is allowed on these terms. It is stated that some alienations have taken place in the meanwhile. Since the matter has been remitted to the file of the Tahsildar, Ottapidaram, the Sub Registrar, Keezhur, Tuticorin shall not entertain any further document pertaining to the petition mentioned properties till passing of final order



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by the Tahsildar, Ottapidaram. This restraint order will hold good only till then and not thereafter. There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

14.02.2024

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

To

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Thoothukudi District,
Thoothukudi.
- 2.The District Revenue Officer,
O/o.District Revenue Office,
Thoothukudi Collectorate Campus,
Thoothukudi District.
- 3.The Revenue Divisional Officer,
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- 4.The Tahsildar,
O/o.Tahsildar,
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