



W.P.(MD) No.15370 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.15370 of 2023

and

W.M.P.(MD) Nos.12962, 12964 and 23497 of 2023

P.Varathappan

.. Petitioner

Vs.

1.The District Collector,
Collectorate,
Karur District.

2.The Revenue Divisional Officer,
Kulithalai, Karur District.

3.The Tahsildar,
Kadavur Taluk,
Karur District.

4.P.Kamaraj

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the impugned order dated 30.05.2023 in proceedings Na.Ka.A1/2700/2019 on the file of the second respondent and quash the same as illegal.



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For Petitioner : Mr.A.M.Ramanathan
For RR1 to 3 : Mr.D.S.Nedunchezhiyan
Government Advocate
For R4 : Mr.S.M.Mohangandhi

ORDER

The petitioner has come to this Court seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is therefore humbly prayed that this Honorable Court may be pleaded to issue a writ, order or direction in the nature of WRIT OF CERTIORARI calling for the records relating to the impugned order dated 30.05.2023 in proceedings Na.Ka.A1/2700/2019 on the file of the 2nd respondent, quash the same as illegal and pass such further or other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render Justice.”

2. The petitioner would submit that an extent of 0.68.5 Hectares in S.No.156/2 situate at Edayapatti (Melpagam) Village, Kadavur Taluk,



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Karur District, was originally classified as “assessed punja waste land” in the revenue records and the same was assigned to the petitioner's vendor S.Palanisamy by way of assignment by the third respondent on 30.04.2003. All entries were carried out in the revenue records by the revenue authorities. Thereafter, by registered sale deed dated 20.12.2017, the petitioner has purchased the subject property from the said Palanisamy by way of registered sale deed and he has been in exclusive possession and enjoyment of the same till date without any hindrance. The patta also stood in the petitioner's vendor's name in Patta No.2381.

3. The fourth respondent, who was the adjacent land owner sought to form a pathway to his land through the property of the petitioner, which was resisted by the petitioner. Thereafter, the fourth respondent had approached the authorities as if the petitioner has encroached his pathway. In this regard, the petitioner has filed W.P.(MD) No.18988 of 2018 before this Court seeking to remove the encroachment by considering the fourth respondent's representation dated 18.05.2018. By



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order dated 31.08.2018, this Court had directed the authority to dispose of the representation within a period of eight weeks. After issuing notice to all parties, the Revenue Divisional Officer, Kulithalai, had issued a notice dated 09.11.2019 calling the parties for an enquiry on 02.12.2019. The fourth respondent claimed that the existing pathway in S.No.156/2 had been assigned to his vendor.

4. The petitioner would state that there is no pathway in existence either in the revenue record or in the FMB at any point in time. The fourth respondent has alternate pathways and access to his property. The fourth respondent is the owner of S.F.Nos.155/1A and 175/1. Between these two survey numbers, the petitioner's land in S.No.156/2 is situate. The fourth respondent's intent is to use this land to connect both his land situate on either side of the petitioner's land. Therefore, the petitioner was constrained to file O.S.No.232 of 2009 on the file of the Sub-Court, Kulithalai, against the petitioner which includes all the respondents herein and the fourth respondent was the sixth respondent in the suit. He has filed a counter claim claiming easementary right over the subject



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property of the suit. While the suit and the counter claim were pending, the fourth respondent filed W.P.(MD) No.21710 of 2021 seeking a mandamus to respondents 1 to 3 to remove the encroachment made in S.F.No.156/2 classified as “Nilaviyal Pathai” by considering his representation dated 15.11.2021 within a time frame. The writ petition was disposed of asking respondents 1 to 3 to survey the land in question, demarcate its extent and also the extent of encroachment and then remove the encroachment if any therein, after affording sufficient opportunity to all parties concerned.

5. Based on the direction of this Court, the third respondent held an enquiry on 05.12.2022 where the petitioner had appeared and submitted his written explanation and has also brought to the notice of the third respondent the pendency of O.S.No.232 of 2019. Thereafter, the second respondent vide his proceedings dated 09.12.2022, had directed the petitioner to appear before him on 21.12.2022 to offer his explanation. Once again the petitioner had appeared and offered his explanation including the pendency of the suit. Despite the above, the



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second respondent has passed the impugned order cancelling the assignment patta granted to the petitioner's vendor. The petitioner would submit that he has constructed a dwelling house and is residing in the said property and has also developed the property by cultivating coconut trees, tamarind trees and other crops. Therefore, the petitioner has filed the present writ petition.

6. When the writ petition came up 'for admission' on 28.06.2023,, this Court passed the following order:

“Mr.N.Muthuvijayan, learned Special Government Pleader takes notice for respondents 1 to 3.

2. Issue notice to fourth respondent through Court and also privately, returnable by 20.07.2023.

3. It is claimed that there is a violation of the assignment condition in the sale was effected within the family member. But it has to be examined whether even that sale is prohibited under the assignment/allotment. There is also a civil suit pending. Petitioner is the plaintiff seeking declaration of title. The petitioner is in possession.



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Let the possession continue and no coercive action be taken to disturb the possession.”

7. The fourth respondent has filed an application for vacating the order dated 28.06.2023, and in the said affidavit filed in support of the same, he would submit that the property in question has been classified as “Government Tharisu Land” during UDR and the petitioner's vendor has got the patta in his name by hiding the fact that his father owned lands to an extent of 4.40.0 Hectares in S.No.156/1. The fourth respondent would submit that this is the land through which he and his forefathers have been accessing their adjacent lands and that they have been using these lands as a pathway. He would submit that the entire claim of the petitioner is based only on the patta and the impugned order cannot be found fault with. Further, the petitioner ought not to have filed the writ petition, but should have challenged the order before the first respondent. Therefore, he sought to have the writ petition dismissed.

8. Heard the learned counsel on either side.



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9. From the records, it appears that as early as in the year 2003, assignment patta had been granted in favour of one Palanisamy under an assignment by the third respondent on 30.04.2003. The petitioner has purchased this property 14 years thereafter on 20.12.2017. The petitioner's vendor's title or possession had never been called into question. It is after the petitioner had purchased the property, that the trouble had started.

10. Be that as it may, the civil suit in O.S.No.232 of 2019 has been filed by the petitioner before the Sub-Court, Kulithalai, seeking declaration that the entire lands belong to him and for an injunction restraining the fourth respondent from disturbing his possession. The revenue authorities are parties to the said proceedings. In fact, the fourth respondent has filed a counter claim claiming easementary right over the property. Without the civil Court deciding these rights, the second respondent ought not to have cancelled the patta, which has been granted to the petitioner's vendor as early as in the year 2003, that too when there is a conflict with reference to the title. Therefore, the impugned order is arbitrary and has to necessarily be set aside.



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11. The fourth respondent is claiming easementary right over the property in question and also claiming adverse possession. Therefore, till such time that is established, the order cancelling the patta is totally wrong and attempts to foreclose the petitioner's claim in the suit.

12. In the result, this writ petition is allowed and the impugned order dated 30.05.2023 passed by the second respondent is set aside. The assignment patta shall be restored in the name of the petitioner's vendor within a period of four weeks from the date of receipt of a copy of this order. The parties shall work out their rights in the civil suit, which is now pending before the Sub-Court, Kulithalai. No costs. Consequently, connected miscellaneous petitions are closed.

30.09.2024

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

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P.T.ASHA, J.

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To

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- 3.The Tahsildar,
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