



W.P.(MD) No.1755 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2024

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.1755 of 2018
and
W.M.P.(MD) Nos.1877 and 1878 of 2018**

M.Murugesan

... Petitioner

/vs./

**1.The Revenue Divisional Officer,
Usilampatti,
Madurai District.**

**2.The Tahsildar,
Usilampatti Taluk,
Madurai District.**

3.Anitha Devi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the Impugned Notice issued by the 1st Respondent in Na.Ka.No.2759/2017/A2, dated 06.12.2017 and quash the same as illegal.



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For Petitioner : Mr.J.Lawrance

For R1 & R2 : Mr.B.Saravanan
Additional Government Pleader

ORDER

The above writ petition has been filed for the issue of a Writ of Certiorari to quash the impugned notice issued by the first respondent in Na.Ka.No. 2759/2017/A2, dated 06.12.2017.

2. It is the case of the petitioner that the property in S.Nos.121/1, 121/3 and 121/4, measuring an extent of 5 acres, situated at Panniyan Village, Usilampatti Taluk, Madurai originally belonged to one Periyasamy Thevar, the paternal grandfather of the petitioner's father, late Muniyandi. After the demise of Periyasamy Thevar, his son Mirasu Mayandi Thevar inherited the property and was enjoying the same. After his demise, the petitioner's father, Muniyandi inherited the property and was enjoying the same. The petitioner would submit that his father was employed in Andhra Pradesh and taking advantage of their absence in the village, the third respondent in connivance with the Revenue Officials had got the patta changed in her name.



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3. As soon as the petitioner's father came to know about this illegal mutation in the year 2008, he had filed an appeal in Na.Ka.No.3149/2008 before the then Revenue Divisional Officer, Usilampatti to cancel the patta issued in favour of the third respondent. After a detailed enquiry, the Revenue Divisional Officer by his order dated 25.09.2010 had cancelled the patta issued to the third respondent and directed the second respondent to issue patta in the name of the petitioner's father, Muniyandi and three others as joint pattadhars. Thereafter, the patta was issued in the name of the petitioner's father in respect of the aforesaid survey numbers and he was enjoying the same without any interruption. There appears to be no challenge to this cancellation.

4. On 12.11.2010, the petitioner's father had executed a registered settlement deed in favour of the petitioner's brother, Thangapandi, in favour of the petitioner on 16.10.2010 and in favour of his wife, Karuppayee on 18.02.2011. The petitioner would submit that they have been in possession and enjoyment of the same since then. The petitioner's father passed away on 22.01.2016 leaving behind him surviving his wife, sons including the petitioner and three daughters as his legal representatives and they were issued with a joint patta by the second



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respondent.

5. While so, the third respondent had filed a petition before the second respondent to cancel the patta issued in favour of the petitioner's father, Mayandi and to issue the same in her favour. The third respondent, who was fully aware about the demise of the petitioner's father, deliberately impleaded the petitioner's father as a respondent before the second respondent. The second respondent by notice dated 23.02.2016 directed the parties to appear for enquiry on 03.03.2016.

6. The petitioner would submit that he had appeared before the second respondent and informed him about the death of the petitioner's father and a memo to that effect was also filed. However, the matter was adjourned for enquiry to 27.06.2016 even without a direction to the third respondent to implead the legal representatives of late Mayandi. The petitioner would submit that the third respondent has suppressed the earlier order of the Revenue Divisional Officer dated 25.09.2010 cancelling the patta issued in favour of the third respondent and issuing the same in the name of the petitioner's father.



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7. Aggrieved by this notice and enquiry, the petitioner's mother and brother had approached this Court by filing a writ petition in W.P.(MD) No.11414 of 2016 impleading the third respondent as a party. In the course of hearing, the second respondent had informed the Court that he would not conduct any enquiry pursuant to the notice issued by him. In the light of the above statement, the petitioner had withdrawn the said writ petition on 26.07.2016.

8. Thereafter, once again the third respondent had filed a petition before the first respondent making false allegations and seeking change of patta in her name. The first respondent thereafter issued a notice dated 06.12.2017 directing the petitioner, his mother and his brother to appear for enquiry. Challenging the same, the petitioner is before this Court.

9. The third respondent has not challenged the order of the first respondent dated 25.09.2010, which was passed after hearing both the parties extensively in and by which the patta granted to the third respondent was cancelled and the patta was granted in favour of the petitioner, his mother and his brother. The third



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respondent had thereafter filed an application for cancellation of patta before the second respondent totally suppressing the order dated 25.09.2010 of the first respondent.

10. Once again, a petition has been filed before the first respondent suppressing the earlier order dated 25.09.2010 and that too against a dead person. The third respondent has not filed any suit for declaration and on the contrary has filed a suit for bare injunction, which was decreed by judgment and decree dated 28.01.2013. The petitioner, his mother and his brother had filed a suit O.S.No.15 of 2013 on the file of the learned District Munsif cum Judicial Magistrate No.1, Usilampatti, for permanent injunction which was also dismissed for default. Since the third respondent had not chosen to challenge the order passed by the first respondent dated 25.09.2010, a fresh enquiry on the very same subject matter cannot be permitted to go on.

11. Therefore, the Writ Petition stands allowed. The impugned notice issued by the first respondent in Na.Ka.No.2759/2017/A2, dated 06.12.2017 is set aside. No further proceedings shall be initiated pursuant to this notice.



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No costs. Consequently, connected Miscellaneous Petitions are closed.

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

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To

1.The Revenue Divisional Officer,
Usilampatti,
Madurai District.

2.The Tahsildar,
Usilampatti Taluk,
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P.T.ASHA, J.

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