



W.P.(MD) No.1395 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.1395 of 2017

and

W.M.P(MD)No.1145 of 2017

M.Basheer Ahamed

.. Petitioner

Vs.

1.The District Collector,
Theni District.

2.The Revenue Divisional Officer,
Periyakulam,
Theni District.

3.The Tahsildar
Theni Taluk,
Theni District.

4.The Special Tahsildar,
Town Survey Settlement Scheme,
Theni – Allinagaram.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating with the order passed by the 2nd respondent in



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Roc.No.2141/98 dated 30.07.1998 and the consequential order in Na.Ka.No.628/2016/A6, dt.29.07.2016 issued by the 3rd respondent and quash the same as it is arbitrary and illegal and in consequence direct the respondents to issue a patta in favour of the petitioner, for his property measuring 10 cents out of 89 ½ cents in the total area of 3 acre 58 cents, comprised in Survey No.2301 in Theni Allinagaram Village, in Theni District, after subdividing the same as according to his sale deed dated 18.12.1997.

For Petitioner :Mr.R.Suriyanarayanan,
For Respondents :Mr.P.Thambidurai,
Government Advocate

ORDER

This writ petition is filed challenging the order passed by the second respondent in Roc.No.2141/98 dated 30.07.1998 and the consequential order in Na.Ka.No.628/2016/A6, dt.29.07.2016 issued by the third respondent and quash the same as it is arbitrary and illegal and consequentially direct the respondents to issue patta in favour of the petitioner, for his property measuring an extent of 10 cents out of 89 ½ cents in the total area of 3 acre 58 cents, comprised in Survey No.2301 in Theni Allinagaram Village, in Theni District, after subdividing the same according to his sale deed, dated 18.12.1997.



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2.The petitioner's contention is that the property, which had been purchased by him on 18.12.1997 from one K.I.M.Hakeem measuring a larger extent of 3 acres and 57 cents, was originally assigned to one Periyakaruppa Thevar, who had sold the property to the petitioner's vendor's father viz., Ismail Khan, under a registered sale deed dated 24.10.1956 and pursuant to which, patta was mutated in his favour and he had been enjoying the same during his life time. He died on 21.02.1984 and thereafter, his son viz., Mohammed Sheriff inherited the property and after his demise on 18.09.2005, his legal heirs inherited the same and ultimately, the property came to the hands of Hakeem by a registered settlement deed, dated 01.02.1991. The said Hakeem has sold the portion of the lands to various persons including the petitioner.

3.After the purchase, the petitioner had given an application to the first respondent to survey and sub-divide the property and issue separate patta. Since the said request was not acceded to, he was constrained to file a writ petition in W.P(MD)No.5927 of 2010 before this Court and this Court directed the petitioner to send a representation to the third



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respondent to effect change and also directed the third respondent to dispose of the same within 8 weeks from the date of receipt of a copy of this order. Based on the order of this Court, the petitioner submitted a fresh representation to the third respondent, who informed the petitioner that there was an appeal suit in A.S.No.70 of 2008 pending before the Sub-Court, Theni, for cancellation of the assignment of the land, subject to the result of the said appeal, he would process the application.

4. On enquiry, the petitioner came to know that one Thirupathi Raja, who is one of the purchasers from his vendor, filed a suit in O.S.No.61 of 2006 and the same was dismissed. Against which, an appeal in A.S.No.70 of 2008 has been filed before the Sub-Court, Theni. Ultimately, the same was allowed on 21.02.2011 with an observation that the cancellation of the assignment of the land in S.No.2301 was invalid. After that the petitioner submitted a fresh representation dated 16.06.2011 to the third respondent seeking patta in his favour. As the third respondent had not issued patta, the petitioner was constrained to file W.P(MD)No.14832 of 2011 before this Court, which was disposed of



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on 03.02.2014 directing the third respondent to consider the petitioner's representation and pass orders within a period of four weeks. Since the said order was not complied with, the petitioner was constrained to institute contempt petition in Cont.P(MD)No.1403 of 2014 and pending the same, the third respondent issued enquiry notice on 03.03.2016 and ultimately passed the impugned order rejecting the petitioner's request stating that the land in S.No.2301, is a assignment land and the same had been resumed to the Government by the second respondent's proceedings dated 30.07.1998. The said order indicated as if notices were served to Ismail Khan Rowther on 08.05.1998 and 02.06.2008 by affixture on his door. The said contention is absolutely false, since Ismail Khan Rowther died as early as on 21.02.1984 and his grandson had sold the property to several persons as early as in the year 1991 itself. Therefore, the petitioner and the other purchasers are the interested persons and they have to be put on notice, but however, no notice was issued and no enquiry was conducted and hence, the present writ petition is filed.



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5. During the course of argument, the learned counsel for the petitioner produced a copy of the judgment of the Division Bench of this Court in W.P(MD)No.721 of 2020 and submitted that in the proceedings relating to the cancellation of the assignment issued to the predecessor in title to the petitioner herein, the Division Bench took note of the fact that the lands had been resumed without notice being served on the persons in occupation.

6. In fact, the learned Single Judge had observed that on perusing the original records, it could be seen that there was no document showing the assignment in favour of Ismail Khan Rawther. On the contrary, Ismail Khan Rawther had purchased 3 acres 80 cents under a registered sale deed from one Periya Karuppa Thevar on 24.10.1956 and patta had also been issued in favour of the said Ismail Khan Rawther. This was challenged and ultimately, the Division Bench had upheld the judgment and decree of the learned Single Judge. It also appears that a suit has been filed by one of the purchasers viz., Thirupathi Raja for injunction and the said suit was dismissed. Against which, an appeal was filed,



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which was also dismissed and confirmed the plaintiff's right to the property. Therefore, the impugned order not only suffers from infirmity but also suffers from non-application of mind and is a non-speaking ones.

7.In the light of the above fact, the orders impugned have to be necessarily be set aside. Accordingly, this Writ Petition is allowed and the respondents are directed to issue patta in favour of the petitioner, measuring an extent of 10 cents, out of 89 ½ cents in the total area of 3 acre 58 cents, comprised in Survey No.2301 in Theni Allinagaram Village, at Theni District, after subdividing the same as according to his sale deed, dated 18.12.1997, after issuing notice to the interested persons if any. No costs. Consequently, the connected miscellaneous petition is closed.

19.08.2024

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



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P.T.ASHA, J.
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