



W.P.(MD) No.21029 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.21029 of 2017

and

W.M.P(MD)Nos.17271 to 17273 & 18722 of 2017

Udayakumar

.. Petitioner

Vs.

1.The District Revenue Officer,
Collectorate Building,
Ramanathapuram,
Ramanathapuram District.

2.The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.

3.The Tahsildar,
Taluk Office,
Thiruvadanai Taluk,
Ramanathapuram District.

4.The Village Administrative Officer,
Kavvur Group,
Thiruvadanai Taluk,
Ramanathapuram District.

.. Respondents



W.P.(MD) No.21029 of 2017

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent vide proceedings No. Ni.Mu.(A7)5718/2015, dated 16.08.2016 and the pursuant impugned order passed by the 3rd respondent vide proceeding No.T.R. 2017/0103/27/021404TR, dated 29.05.2017 and quash the same as illegal and consequently direct the respondents to restore the Patta in the name of the petitioner and his brother Chellathurai.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.B.Saravanan
Additional Government Pleader

ORDER

The petition has been filed to call for the records of the 2nd respondent relating to the proceedings No.Ni.Mu.(A7)5718/2015, dated 16.08.2016 and the consequential order passed by the 3rd respondent in his proceeding bearing no.T.R.2017/0103/27/021404TR, dated 29.05.2017 and quash the same and consequently to restore the patta in the name of the petitioner.



W.P.(MD) No.21029 of 2017

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2. The petitioner's contention is that the property comprised in Survey Nos.135/4, 135/5, 158/11, 160/5, 167/5 in Patta No.527 and Survey No.171/1 in Patta NO.532 in Kavvur Group, Karungalathur village, Ramanathapuram district originally belonged to one Chellaiah s/o Velayudhakone. On 15.12.1971, he had executed a registered Will wherein he has bequeathed all his properties both moveable and immovable in favour of his three sons, namely Velayudham through 1st wife, Vellaichamy through 2nd wife and Nagalingam through 3rd wife equally. The said Chellaiah had executed a partition list on 13.04.1989 after execution of the Will wherein the properties comprised in Survey Nos.135/4, 135/5, 158/11, 160/5, 167/5 and 171/1 and other properties were allotted to the share of Velayudham s/o Chelliah Konar. He died intestate leaving behind his 3 sons and others. The said Velayudham is the only son through his 1st wife that there are no other issues through his 1st wife. The properties which have been allotted to Vellaichamy and Nagalingam are not the subject matter of the writ petition. Thereafter, the son Velayudham expired leaving behind his wife Kamala and his sons. They had inherited the properties which fall to the share of Velayudham.



W.P.(MD) No.21029 of 2017

WEB COPY

3. The said Kamala executed a general power of attorney appointing her brother Chellathurai to deal with the property without power of sale. On 11.02.2010, Kamala had sold a portion of the property standing in the aforesaid survey numbers for meeting the family expenditure and the marriage expenses of her son Rathinavel @ Ganesh in favour of the petitioner and his brother Chellathurai. From the date of purchase, they have been in possession and enjoyment of the same. The patta was also mutated from the name of Chelliah, Kamala's father-in-law in favour of the petitioner's brother, namely Chellathurai in Patta No. 9182 in respect of Survey No.135/4 and in favour of the petitioner in Patta No.9183 in respect of Survey No.135/5 measuring an extent of 0.31.5 ares vide proceedings of the 3rd respondent, dated 20.07.2010. The other survey numbers were transferred in the joint name of Chellathurai and the petitioner in Patta No.9184. The petitioner would submit that he had applied for subdivision in respect of his share and the same was also ordered and the subdivisions were carried out. The patta was accordingly mutated in the name of the purchasers.



W.P.(MD) No.21029 of 2017

WEB COPY

4. While so, one Manickam and 3 others disturbed the peaceful possession and enjoyment of the property by the petitioner and his brother. A suit for bare injunction in O.S.NO.29 of 2010 was filed by them which was dismissed. Since Manickam and others were close relatives, the people in the village had advised them not to interfere with the peaceful possession of the petitioner and his brother and they had also agreed to the same and therefore, the plaintiffs have not filed an appeal.

5. It appears that one Thirunavukarasu claiming a right to the property and applied for transfer of patta and started interfering in the petitioner's peaceful possession and enjoyment of the property compelled him to file a suit in O.S.No.28 of 2017 for declaration and enjoyment against the said Thirunavukarasu. An enquiry notice was received on the petition filed by the said Thirunavukarasu directing the petitioner and his brothers to appear for an enquiry on 13.10.2015. Though they had appeared, the 2nd respondent was not available and the officials of the 2nd



W.P.(MD) No.21029 of 2017

respondent obtained statement from the petitioner and received his documents.. Thereafter, without affording any further opportunity, the impugned order came to be passed in and by which the patta granted to them was directed to be transferred in the name of Chellaiah Konar. Therefore, the petitioner is before this Court.

6. Against the said order, the petitioner has filed a revision before the 1st respondent and obtained a stay order of the order passed by the 3rd respondent. This order has not been proceeded with in the light of the pendency of this writ petition which appears to have been filed by the petitioner. After filing of the revision before the 1st respondent, the petitioner cannot file this writ petition for the same relief.

7. In view of the above, this Court direct the 1st respondent to dispose of the revision in Na.Ka.B6/59359/2016 within a period of six (6) weeks from the date of receipt of copy of this order.



W.P.(MD) No.21029 of 2017

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8. With the above direction, this Writ Petition stands disposed of.

No costs. Consequently, connected Miscellaneous Petitions are closed.

03.09.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

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W.P.(MD) No.21029 of 2017

P.T.ASHA, J.

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W.P.(MD) No.21029 of 2017

03.09.2024