BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **03.03.2025**

Delivered on : **11.03.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.1385 of 2025
and W.M.P.(MD)No.974 of 2025

1.K.Karuppasamy

2.K.Kanaraj

3.K.Petchi Muthu

4.K.Murugan ... Petitioners

/Vs./

1. The Revenue Officer,
Tirunelveli District.

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

3.The Tahsildar,
Manoor Taluk,
Tirunelveli.

4.V.Chinnathambi Thevar ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in Ni.Mu.K2/UDR. 08/2023 (7447/2024) dated 27.12.2024 and quash the same.

For Petitioners : Mr.H.Arumugam

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1-3

: Mr.S.M.Ramasiva for R4

ORDER

The present writ petition has been filed seeking to quash the order of the first respondent Ni.Mu.K2/UDR.08/2023 (7447/2024) dated 27.12.2024.

2. I have heard Mr.H.Arumugam, learned counsel for the petitioners, Mr.B.Saravanan, learned Additional Government Pleader for the respondents 1 to 3 and Mr.S.M.Ramasiva, learned counsel for the fourth respondent.

3. The case of the petitioners is that the petitioners are successors in title of Seeni Kone, through his son Kadal Konar. According to the petitioners, the lands of an extent of 4.76 Acres covered by patta No.72, comprised in old S.No.40/7, was issued in the name of Seeni Kone and Muthukrishnan. Subsequently, patta passbook was also issued in their

names in respect of survey No.58/5, previously S.No.40/7 in patta Nos. 29 and 111, dated 13.08.1973. It is the further case of the petitioners that the properties were partitioned amongst the legal heirs of Vellaiah Kone and Seeni Kone and Subbu Kone and in and by the said partition, the lands measuring 4.76 Acres S.No.58/5 stood allotted to the petitioner's family and patta was also issued in the name of the petitioners.

4. While so, the fourth respondent sought for patta to be issued based on the sale deeds dated 08.02.1994 and 05.06.1995 and 16.06.1995 in his favour claiming right to an undivided 1.19 Acres for the very same Survey No.58/5. According to the fourth respondent, the said property was purchased by him from Vellaichamy and having become entitled to $3/4^{th}$ right, he sought for issuance of joint patta. The Tahsildar as well as the Revenue Divisional Officer rejected the claim of the fourth respondent. However, the first respondent, vide the impugned order, placing reliance on the encumbrance reflecting the sale deed in favour of the fourth respondent, directed his name also to be included in the patta. The said order of the first respondent is under challenge in the present writ petition.

5. Mr.H.Arumugam, learned counsel for the petitioners would contend that when the fourth respondent's application was to the effect that his name was omitted during UDR survey, the first respondent being the competent authority only for rectifying mistakes committed in the UDR, could not have assumed jurisdiction to include the name of the fourth respondent, when admittedly the fourth respondent was not able to establish that his name was reflecting in the revenue records in the UDR. According to Mr.H.Arumugam, when the request for patta was only based on sale deeds in the name of the fourth respondent, it could have never be treated as a case of mistake in UDR, for the first respondent to assume jurisdiction. He would therefore contend that the first respondent ought to have referred the fourth respondent to approach the competent civil Court to redress his grievance, if any.

6. The learned counsel for the petitioners would further rely on the decision of the Hon'ble Supreme Court in the case of ***Edelweiss Asset Construction Company Limited V. R.Perumalswamy and others*** reported in ***2021-11-SCC-98*** where the Hon'ble Supreme Court held that

the revenue authorities cannot go into the disputed questions of title. For similar proposition, the learned counsel would also place reliance on the decision of the Hon'ble Division Bench of this Court reported in ***2014(59)R.C.R.(Civil) 244 (M.Subramanian V. V.K.R. Subramania Athithan)*** where in the Hon'ble Division Bench of this Court, placing reliance on the earlier Division Bench decision of this Court reported in ***2011(5)CTC 94 (Viswas Footwear Company Ltd., V. The District Collector, Kancheepuram)***, held that even the second revision powers conferred on the Special Commissioner and Commissioner of Land Administration, shall ensure that such revisions are returned with a direction to parties to approach the civil Court. The Hon'ble Division Bench further held that when the appellant therein started to claim title after 20 years, the revenue authorities ought to have relegated them to move the civil Court and set aside the orders passed by the revenue authorities. The learned counsel would also place reliance on the G.O.(Ms.)No.385, Revenue Department) dated 17.08.2004 regarding the power that can be exercised by the first respondent. The learned counsel for the petitioners would therefore pray for the impugned order being set aside.

7. Per contra, the learned Additional Government Pleader, Mr.B.Saravanan, would submit that no error has been committed by the first respondent and he has merely directed inclusion of the name of the fourth respondent without deleting any other names, which is already existing in patta No.580 and therefore, the order of the first respondent does not require to be interfered with.

8. The learned counsel for the fourth respondent Mr.S.M.Ramasiva, would contend that the fourth respondent has purchased lands comprised in Survey No.58/5 under registered document No.1411/1994 and 1082/1995 and the first respondent has rightly directed the inclusion of the fourth respondent's name in the patta No.580 as one of the joint pattadhars. According to the learned counsel for the fourth respondent, right from the dates of purchase, the fourth respondent is in absolute possession and enjoyment of the title to an extent of 2.38 Acres out of 4.76 Acres purchased by the fourth respondent. He would therefore submit that there is absolutely no error in the finding arrived at by the first respondent. He would further contend that even despite giving an opportunity to the petitioners, the

petitioners have not produced any relevant document to establish their case that 4.76 Acres allotted to them. The learned counsel for the fourth respondent would further submit that in the present case, there is no title dispute and therefore, the inclusion of the fourth respondent's name in the patta was perfectly in order. He would therefore seek for dismissal of the writ petition.

9. I have carefully considered the submissions advanced by the learned counsel for the parties.

10. Admittedly, it is seen from the impugned order that the first respondent has treated the application of the fourth respondent as UDR correction. Under G.O.(Ms.)No.385, Revenue Department, dated 17.08.2004, powers have been vested with the first respondent to rectify mistakes that have crept in during UDR survey. If the fourth respondent's case was that his name or his predecessors in interest name had been omitted or erroneously deleted during the time of UDR survey, then he could have made an application to the first respondent, seeking his name to be included or necessary corrections to be made. However, the

specific case of the fourth respondent while approaching the first respondent was only based on the sale deeds in his favour. I do not find any request for rectification of any alleged errors in the UDR records that being the position, the first respondent ought not to have assumed jurisdiction and passed orders as if the subject matter pertained to corrections of UDR records.

11. Even otherwise, the claim of the fourth respondent was only under registered sale deeds in and by which the fourth respondent purchased 2.38 Acres out of 4.76 Acres and thereby claimed right to substantial portion of survey No.58/5. Admittedly, patta in respect of entire 4.76 Acres in survey No.58/5 was standing only in the name of the petitioners' predecessors and after the demise of Kadal Kone, viz., father of the petitioners, patta was also issued in the name of the petitioners. Therefore, in the absence of any request by the fourth respondent for rectification of error in the UDR records and the claim of the fourth respondent relating to title alone, when in respect of entire 4.76 Acres have been mutated in the name of the petitioners' predecessor and thereafter, in the names of the petitioners, the first respondent clearly

erred in assuming jurisdiction and deciding the matter and directed inclusion of the fourth respondent's name in the joint patta. The first respondent, ought to have relegated the fourth respondent to redress his grievances through the competent civil Court, especially, when the patta was standing in the name of the petitioners in respect of the entire extent of 4.76 Acres for the past several decades. Rule 4(4) of the Patta Passbook Act 1987 also forebears the revenue authorities from deciding disputes concerning ownership, when parties interested do not agree on ownership and the rule mandates the revenue authority to direct the parties to obtain a ruling on ownership to the competent civil Court having jurisdiction, before changing entries that had already been recorded and was existing in the various revenue records.

12. I have already found that the first respondent erred in assuming jurisdiction that did not vest with him. Even otherwise, the Tahsildar who alone was competent to carry out corrections in the patta, based on the sale deeds in favour of the fourth respondent is also not entitled to decide the dispute relating to title and any such application to the original revenue authority would also have to await the final decision of

competent civil court. Here there is a clear case of dispute in title to survey No.58/5. The petitioners' claim is that they are entitled to the entire 4.76 Acres under a oral partition, based on which revenue records have been mutated in the name of their predecessors in interest and subsequently in the names of the petitioners. The said mutation has subsisted for the past several decades. While so, when the fourth respondent claims to have purchased 2.39 Acres out of 4.76 Acres from independent third parties, who according to the fourth respondent were having lawful title to the said lands, the only course open to the first respondent was to have relegated the fourth respondent to approach the civil Court and seek relief. The ratio laid down by the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court are also to the same effect.

13. In view of the above, I am constrained to interfere with the order passed by the first respondent, directing the inclusion of the name of the fourth respondent in the patta. Accordingly, this Writ Petition is allowed and the impugned order passed by the first respondent in Ni.Mu.K2/UDR.08/2023 (7447/2024) dated 27.12.2024, is quashed.

Liberty is granted to the fourth respondent to approach the competent civil Court to establish his entitlement in Survey No.58/5 and subject to the outcome of the civil litigation, it shall be open to the fourth respondent to seek inclusion of his name in the patta and necessary modification in the revenue records. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No **11.03.2025**
NCC : Yes / No
LS

TO:-

1. The Revenue Officer,
Tirunelveli District.

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

3.The Tahsildar,
Manoor Taluk,
Tirunelveli.

P.B. BALAJI, J.

LS

Pre-delivery Order made in
W.P.(MD)No.1385 of 2025

Dated:
11.03.2025