



W.P.(MD)No.4025 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.01.2025

Pronounced on : .01.2025

CORAM:

THE HONOURABLE **MRS.JUSTICE N.MALA**

W.P.(MD)No.4025 of 2024

S.Sundara Krishnan

... Petitioner

/Vs./

1. The District Collector,
Collector Office,
Tuticorin, Tuticorin District.
2. The District Revenue Officer,
District Revenue Office,
Tuticorin, Tuticorin District.
3. The Sub Collector/the Revenue Divisional Officer,
Revenue Divisional Office,
Tuticorin, Tuticorin District.
4. The Tasildhar,
Taluk Office,
Tuticorin,
Tuticorin District.

5. Lakshmi @ Velkani Koraira

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned order dated 21.05.2018 in D6/17516/2017 passed by the



W.P.(MD)No.4025 of 2024

2nd respondent and quash the same and thereby direct the 2nd respondent to conclude the enquiry in his proceeding Na.Ka.No. D6/27480/2021 within stipulated time.

For Petitioner : Mr.B.Rajesh Saravanan

For R1 to R4 : Mr.R.Raghavendran
Government Advocate

For R5 : Mr.R.J.Karthick

ORDER

This writ petition is filed for a writ of certiorarified mandamus to quash the order of the second respondent dated 21.05.2018, and for a consequential direction to the second respondent to conclude the enquiry proceedings within a stipulated time.

2. The brief facts of the case are as follows:

(i)The subject property in S.No.575/2 in Meelavittan Village, Tuticorin Taluk, Tuticroin District, to an extent of 98 cents on the eastern side originally belonged to one Ramasamy Nadar. Though the petitioner traces the title to the subject property right from one Ramasamy Nadar, the same is not referred, suffice it to state that the said property was



W.P.(MD)No.4025 of 2024

bequeathed to him by his mother namely, Pushpammal, under a registered deed of Will in Doc.No.36/1989. After the demise of the petitioner's mother, the said Will came into effect and the petitioner became the absolute owner of the property. The petitioner was in possession and enjoyment of the same.

(ii) According to the petitioner, at the time of UDR, the subject property was subdivided as S.No.575/2G4 and mutated in his mother's name and patta was issued in PattaNo.1415. The fifth respondent was the adjacent owner of the western side of the property. Though the fifth respondent had no connection with the subject property, the fifth respondent opposed the issuance of patta in favour of the petitioner's mother and preferred an appeal before the third respondent. The third respondent vide order dated 08.06.2017, allowed the appeal filed by the fifth respondent, by cancelling the subdivision made as S.No.575/2G4A and 575/2. Challenging the same, the petitioner preferred a revision before the second respondent. The second respondent, vide the impugned order dated 21.05.2018, confirmed the order of the third respondent. Aggrieved by the order passed by the second respondent, the petitioner has filed the above writ petition for the aforesaid relief.



W.P.(MD)No.4025 of 2024

WEB COPY

3. The second respondent filed a detailed counter in support of the impugned order.

4. The learned counsel for the petitioner submitted that as the fifth respondent had no right to 98 cents in S.No.575/2G4A in Meelavittan Village, Tuticorin Taluk, Tuticorin District, the second respondent ought to have allowed the revision petition and directed issuance of patta in favour of the petitioner. The learned counsel for the petitioner further submitted that the petitioner not only traced his title to the property but also established possession for more than 35 years and therefore, the order of the second respondent was *per se* illegal, arbitrary and against law and the same deserved to be set aside.

5. The learned Government Advocate appearing for the respondents 1 to 4 reiterated the submissions made in the counter. The learned Government Advocate submitted that the impugned order was passed after affording adequate opportunity of hearing to the petitioner and the fifth respondent and on the basis of the relevant materials



W.P.(MD)No.4025 of 2024

produced before the second respondent. The learned Government Advocate further pinpointed the following:

- There was a dispute as to title and if the petitioner was aggrieved by the order of the second respondent, the only remedy available to the petitioner was to approach the civil Court;
- Instead of approaching the civil court, the petitioner addressed a petition to the District Collector, Tuticorin, based on which, an enquiry was taken up and the same is pending;
- The authorities had no power to re-open and to pass fresh order on the same cause of action and on the basis of the same documents;
- From the field inspection, it was found that the petitioner was not in possession of the property to an extent of 98 cents on the eastern side of the subject survey number and therefore, the Tahsildar, Tuticorin, ordered subdivision and granted patta only for an extent of 55 cents, which was found to be in possession and enjoyment of the petitioner;
- In "A" Register, it was mentioned that in respect of S.No.575/2G4 to an extent of 0.24.5, patta was issued in Patta No.3079 in favour of Velammal Nattathi and 35 others. Based on this, the second



W.P.(MD)No.4025 of 2024

WEB COPY

respondent found that though the document of the petitioner related to 98 cents on the eastern side, on ground it was found that the petitioner was in possession of only 50 cents and therefore, subdivision was made for 50 cents in S.No.575/2GA4. The remaining 48 cents was in possession and enjoyment of other persons, who had put up houses and fenced the lands.

The learned Government Advocate therefore submitted that there were no merits in the writ petition and the same deserved to be dismissed.

6. The learned counsel appearing for the fifth respondent submitted that as there was serious dispute as to title, the only remedy available to the petitioner was to approach the civil court to establish his title.

7. I have given my anxious consideration to the submissions made by the learned counsels and carefully perused the materials available on record.

8. The second respondent has merely extracted the statement, submissions of the petitioner and the counter petitioner and the revenue



W.P.(MD)No.4025 of 2024

officials' reports in the impugned order. The second respondent has merely adopted the revenue officials' report and concluded that the petitioner was not in possession of 98 cents in S.No.575/2G4A. There is absolutely no application of mind and no independent assessment of the materials on record. The order is very cryptic and bereft of reasons. I find that except stating that the petitioner had not established his possession for the entire 98 cents of land, there is absolutely no other reason assigned and there is absolutely no discussion on the various issues raised by the petitioner. Therefore, I am of the considered view that the impugned order cannot be sustained and it is liable to be set aside. The impugned order is set aside and the matter is remanded to the second respondent for fresh consideration.

9. It is pertinent to note here that the petitioner submitted a representation to the District Collector against the order of the second respondent and as per the direction of the District Collector, an enquiry is pending before the second respondent. The second respondent is justified in submitting that the second respondent has no right to re-open and pass fresh orders on the same cause of action. As this Court has set aside the



W.P.(MD)No.4025 of 2024

WEB COPY

order of the second respondent and remanded the matter back to the second respondent for fresh consideration, the pending enquiry in pursuance of the District Collector's direction is a futile exercise and the same shall be closed. The second respondent is directed to dispose of the revision petition filed by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. It is needless to state that the second respondent shall provide sufficient opportunity of hearing to the petitioner as well as the fifth respondent and thereafter pass orders on merits and in accordance with law.

10. In fine, this Writ Petition is allowed. No costs.

.01.2025

Index : Yes / No
NCC : Yes / No
CM



W.P.(MD)No.4025 of 2024

WEB COPY

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W.P.(MD)No.4025 of 2024

N.MALA, J.

CM

Order made in
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Dated:
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