



W.P.(MD)No.9436 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **14.03.2025**

Delivered on : **19.03.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.9436 of 2024

and

W.M.P.(MD)Nos.8563, 8565 & 22644 of 2024

Kaviarasu

... Petitioner

/Vs./

1. The District Collector

Dindigul District, Dindigul.

2. The Revenue Divisional Officer,

Palani Division, Dindigul.

3. The Tahsildar

Palani Taluk, Dindigul District.

4. R.Andumuthu

(R4 is impleaded vide court order dated

14.03.2025 in WMP(MD)No.22643/2024)

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders passed by the 3rd respondent in proceedings Na.Ka.No.7165/2023/C2 dated 19.02.2024 and quash the same as illegal



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and consequently direct the 3rd respondent to grant patta for survey No. 45/2 situated at Rajampatty Village, Palani Taluk, Dindigul District.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.S.Kameswaran
Government Advocate for R1-3

: Mr.S.Madhavan for R4

ORDER

This Writ Petition has been filed challenging the proceedings of the third respondent in Na.Ka.No.7165/2023/C2 dated 19.02.2024 and to consequently direct the third respondent to grant patta for survey No. 45/2 situated at Rajampatty Village, Palani Taluk, Dindigul District.

2. I have heard Mr.T.Lenin Kumar, learned counsel for the petitioner, Mr.S.Kameswaran, learned Government Advocate for the respondents 1 to 3 and Mr.S.Madhavan for the fourth respondent. I have also gone through the records.



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3. The case of the petitioner is that the property measuring 1.52 Acres in survey No.42/1A and 3.52 Acres in survey No.45/3 belonged to one Karupa Gounder and after his demise, his sons, Kandasamy Gounder, Vellaichamy Gounder, Arumuga Gounder were in possession and enjoyment of the said lands. It is the further case of the petitioner that the land in survey No.45/2 was being used as a pathway by the petitioner and adjoining land owners from time immemorial and when lands in survey No.45/3 came to be vested with the sons of Karupa Gounder, the Government officials entered into an oral arrangement with them to the effect that instead of laying a road in Survey No.45/2, which has been used as a pathway, the road will be laid in survey No.45/3A2 being subdivided portion 45/3 and that it would be as an exchange of land. According to the petitioner, the road was also laid in the property belonging to the sons of Karupa Gounder in survey No.45/3A2 and lands in survey No.45/2 were handed over to the sons of Karupa Gounder.

4. According to the petitioner, the oral arrangement with the Government had been acted upon and the property has been bequeathed to the petitioner under registered Will 46/2009 dated 12.11.2009 by



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Kandasamy Gounder, who is one of the sons of Kaurpa Gounder. It is the further case of the petitioner that the other two sons Vellaichamy Gounder and Arumuga Gounder had relinquished their rights and therefore, the entire lands belonged to the petitioner. The petitioner further contends that he has constructed a marriage hall in survey No. 45/2 and has been carrying on agricultural activities in the remaining lands after constructing a marriage hall. However, the patta in survey No. 45/3A2 remains in the names of Kandasamy Gounder, Vellaichamy Gounder and Arumuga Gounder till date, though a road has been laid and the general public have been using the said lands. As the petitioner did not have patta for the lands in survey No.45/2, the petitioner sent a representation on 09.08.2023 to issue patta in his favour. The second respondent by proceedings dated 24.08.2023, directed the third respondent to conduct enquiry. As the third respondent did not take any steps, the petitioner moved this Court in W.P.(MD)No.22728 of 2023 and the said writ petition was dismissed, since it was reported to this Court that the third respondent has passed an order on 19.02.2024, rejecting the petitioner's request for issuance of patta in survey No.45/2.



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5. It is also an admitted case of the petitioner that W.P.(MD)No. 4276 of 2024 had been filed as if the petitioner encroached into survey No.45/2 and in the writ petition, direction was sought for to remove the alleged encroachment. This Court by order dated 11.03.2024 directed encroachments to be removed considering that the petitioner's application for patta has also been rejected. Hence, the petitioner has challenged the rejection of patta in the present writ petition.

6. The learned counsel for the fourth respondent, who has filed the writ petition in W.P.(MD)No.4276 of 2024, for removal of encroachment would contend that the petitioner has not established the alleged exchange and therefore, the enjoyment of lands in survey No.45/2 was only by way of encroachment and further, there is a temple which can be accessed only by using the said “cart track” in survey No.45/2. He would also rely on the A register and FMB sketch which again reflect the pathway as “cart track (வண்டிப்பாதை)”. A Division Bench of this Court, in W.P.(MD)No.4276 of 2024 by order dated 11.02.2024, has directed the encroachments to be removed in the subject pathway.



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However, the said order was on the premise that the application for patta made by the petitioner had been dismissed and consequently the writ petition in W.P.(MD)No.22728 of 2023 had also been dismissed. No doubt the said orders cannot come in the way of the petitioner, challenging the order of rejection of the application for patta.

7. Admittedly, the stand of the revenue authorities is also that there was no such exchange as claimed by the petitioner and the lands in survey No.45/2 have always been classified as “cart track” and that the petitioner has made unauthorized construction in Government Poromboke land. It is further contended by the learned Government Advocate that the petitioner is fully aware of the earlier writ proceedings and has challenged the impugned order only to delay the inevitable, namely the removal of the encroachments made by the petitioner.

8. I have carefully considered the submissions advanced by the learned counsel on either side.



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9. On going through the impugned order, I find that the third respondent has passed a considered order, rejecting the petitioner's request for patta. The learned counsel for the petitioner would invite my attention to the reliance placed on by the third respondent in the impugned order to RSO 26(15) which provides for diversions of plan marked channel from its original course in order to consolidate holding or to facilitate irrigation need not be treated as encroacher. He would therefore submit that when the Government had under an oral arrangement exchanged the lands of sons of Karupa Gounder with the lands in survey No.45/2, the enjoyment of the lands in survey No.45/2 cannot be treated as encroachment.

10. First and foremost, though the petitioner claims an alleged exchange with the Government, that too under an oral arrangement, the petitioner has not been able to substantiate such an oral arrangement by production of satisfactory evidence before the third respondent. The third respondent has rightly rejected the said contention of the petitioner and based on the revenue records held that survey No.45/2 was only classified as a “cart track” and therefore, the petitioner was an encroacher.



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11. Without any document to substantiate legal possession of lands in survey No.45/2, the claim of the petitioner cannot be countenanced. There is no illegality or perversity in the order of the third respondent, rejecting the petitioner's request for patta and the mere fact that the survey No.45/3A2 still stands mutated in the names of the petitioner's ancestors will not clothing the petitioner with any right to continue to use the lands in survey No.45/2. If at all the petitioner is aggrieved by taking over of his lands / ancestral lands in survey No.45/3, it was only open to the petitioner, to challenge the said forcible acquisition or seek compensation for the land being taken from the petitioner. Without doing so, the petitioner cannot claim in the absence of any registered document of exchange or even an agreement in writing to the effect that the lands in survey No.45/2 were handed over by the Government to the petitioner's father and uncles and therefore there is absolutely no merit in the writ petition and the impugned order of the second respondent also does not deserve to be interfered with.



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12. In fine, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
NCC : Yes / No
LS

19.03.2025

TO:-

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Dindigul.
2. The Revenue Divisional Officer,
Palani Division,
Dindigul.
3. The Tahsildar
Palani Taluk,
Dindigul District.



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P.B. BALAJI, J.

LS

Pre-delivery Order made in
W.P.(MD)No.9436 of 2024

Dated:
19.03.2025