



W.P.(MD)No.23381 of 2018

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 18.02.2025

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.23381 of 2018

and WMP(MD) Nos.21227 & 21228 of 2018

Pappa @ Shanthi

... Petitioner

Vs

1. The District Revenue Officer,
Madurai.

2. The Revenue Divisional Officer,
Usilampatti, Madurai.

3. The Tahsildar,
Usilampatti Taluk, Madurai.

4. Vijaya

5. Jeyabalan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records relating to the impugned order dated 22/10/2018 passed in Ne.Mu.No. 35102/2016/G2 by the first respondent confirming the impugned order dated 30/06/2016 passed in Na.Ka.No.2703/2013/A2 by the second respondent and quash the same and consequentially restore the order



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dated 15/03/2013 in R.T.R. No.3001 of 2012 passed by the third respondent and restoring patta No.1927 for Survey No.176/16B, Seemanuthu Village, Usilampatti Taluk, Madurai District measuring 40 Ares in the name of the petitioner.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.B.Saravanan(R1-R3)
Additional Government Pleader

Mr.R.Murali (R4, R5)

ORDER

The writ petition has been filed challenging the order of the first respondent, dated 22.10.2018, confirming the order of the second respondent, dated 30.06.2016 and consequently to restore the patta in the name of the order of the third respondent, dated 15.03.2013.

2.I have heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The learned counsel for the petitioner would submit that though the order of the first respondent is appealable to the District Revenue Officer under Patta Pass Book Act, the only reason why the



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statutory remedy is not availed on and the instant writ petition has been filed is because of the fact that the Revenue Divisional Officer has ignored the finding of the competent Civil Court, in a suit between the petitioner and the 4th respondent. He would take me through the Judgment and Decree of the Civil Court in O.S.No.153 of 1999, where the decree came to be passed in the presence of the 4th respondent, who was the 2nd defendant in the said suit. The learned counsel would also submit that aggrieved by the Judgment and Decree, the 4th respondent has preferred an appeal, which was also dismissed. However, according to the petitioner's counsel, suppressing the said decree and dismissal of the appeal in O.S.No.153 of 1999, the 4th respondent has filed yet another suit in O.S.No.19 of 2015 and the same is admittedly pending. In the meantime, the impugned order has been passed by the first respondent.

4.The short contention raised by the learned counsel of the petitioner is that when the Civil Court had granted a decree, which has become final and the decree, entitles the writ petitioner to have access from Batlagundu Road and based on the decree, sub-division had been effected. Without properly appreciating the finding rendered in the earlier



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suit in O.S.No.153 of 1999 the first respondent has directed to recall of the sub-division.

5.The only prayer of the counsel for the petitioner is to remit the matter to the first respondent for fresh consideration of the request and by the 4th respondent for cancellation of the sub-division, taking into account the available materials namely, the Commissioner's Report as well as plan filed by the Advocate Commissioner, in which, the Advocate Commissioner has given the linear measurements of the subject properties. He would further contend that the 4th respondent did not even chose to file his objections to the Advocate Commissioner's report in the earlier suit.

6.Per contra, learned counsel appearing for the respondents 4 and 5 would submit that none of the sale deeds and even in the decree passed in O.S.No.153 of 1999, the linear measurements have been specified and therefore, there is no illegality or perversity in the order of the 1st respondent, which is impugned in the present writ petition. He would further submit that the petitioner cannot compel the revenue



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authorities to adopt a particular linear measurement, unless there is consensus between the parties. Hence, prays for dismissal of the petition.

7.The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that any direction issued by this Court would be complied by them and it is only a rival dispute between the petitioner and the 4th respondent.

8.Considering the submissions advanced by the learned counsel on either side, my attention is invited to the rough sketch enclosed along with the typed set of papers. Both the counsels placed reliance on the sketch filed by the 4th respondent in O.S.No.19 of 2015, which is a suit filed by the 4th respondent against the writ petitioner herein.

9.On a perusal of the sketch, I find that in the sketch that has been relied on by the 4th respondent, he has given measurement of the four outer boundaries. However, the linear measurements of the properties belonging to the petitioner and the 4th respondent are not



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given. It is seen from the sketch and reading it along with Judgment in O.S.No.153 of 1999, it is clear that while declaring entitlement of the writ petitioner, the competent Civil Court has given a categorical finding that the petitioner has access to reach Batlagundu road by using the 'CDEF' portion. The vendor of the writ petitioner made an attempt to take away 'CDEF' portion by executing a rectification deed. However, the said rectification deed has been set aside in O.S.No.153 of 1999 and the same has attained finality, since the appeal preferred by the 4th respondent was also dismissed. Therefore, the first respondent was certainly entitled to look into the Commissioner's report as well as survey plan, after affording an opportunity to the petitioner and the 4th respondent before taking any decision on the linear measurement of the property. Without doing so, the 4th respondent merely proceeded to set aside the sub-division which was ordered only pursuant to the Judgment and Decree in O.S.No.153 of 1999.

10. In view of the above, the impugned orders deserve to be set aside and the matter is remitted to the first respondent for fresh consideration of the matter, after affording a fair opportunity by way of



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personal hearing to both the petitioner as well as the respondents 4 and 5 and also taking into account the documents that have been relied on by the Civil Court in O.S.No.153 of 1999, which came to be confirmed in A.S.No.139 of 2009 and thereafter, the 2nd respondent shall pass final orders on the application of the respondents 4 and 5 for cancellation of the sub-division, in accordance with law. The said exercise shall be completed within a period of eight weeks from the date of receipt of copy of this order.

11. Accordingly, this writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

18.02.2025

Index : Yes / No
NCC : Yes / No
PNM

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P.B. BALAJI, J.

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