BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **12.02.2025**

Delivered on : **03.03.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.23890 of 2016
and
W.M.P.(MD)Nos.17236 & 17237 of 2016

Sudhanthiram, (Died)
Selvamani
(petitioner substituted vide Court order dated
14.08.2024) ... Petitioner

/Vs./

1. The District Revenue Officer,
Dindigul.
2. The Sub Collector,
Palani.
3. The Revenue Divisional Officer,
Palani Division, Palani,
Dindigul District.
4. Thangaraj @ Santhana Krishnan, ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Certiorarified Mandamus, to call for the records pertaining to impugned order of the 2nd respondent in Na.Ka.No.2356/15/A1 dated 09.11.2016 and the impugned order of the 1st respondent made in Na.Ka.No.11012/2011/Aa6 dated 29.05.2015 and quash the same as illegal consequently to direct the respondents 1 & 2 to restore the Patta issued in favour of the husband of the petitioner in pursuance of the order made by the 3rd respondent by the proceedings in Na.Ka.No.8805/06/Aa1 dated 24.11.2006 in respect of Survey No.626/4B to an extent of 27 Cents (0.11 Ares) situated at Ottanchatram.

For Petitioner : Mr.D.Venkatesh

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

: Mr.M.R.Sreenivasan for R4

ORDER

This Writ Petition has been filed challenging the order of the second respondent dated 09.11.2016 as well as the order of the first respondent dated 29.05.2015 and to consequently direct the respondents 1 and 2 to restore the patta in the name of the petitioner's husband, in pursuance of the orders passed by the third respondent dated 24.11.2006.

2. I have heard Mr.D.Venkatesh, learned counsel for the petitioner, Mr.B.Saravanan, learned Additional Government Pleader for the respondents 1 to 3 and Mr.M.R.Sreenivasan, learned counsel for the fourth respondent. I have also gone through the records, typed set of papers filed and relied on by the learned counsel for the petitioner as well as the fourth respondent as well as the impugned orders, which are challenged in the present writ petition.

3. The learned counsel for the petitioner would submit that the property comprised in Survey No.626/4 measuring 2.5 Hectares (6.17 Acres) at Ottanchathiram belonged to the petitioner's family and revenue records also were mutated in the names of the petitioner's family members. The petitioner's family also gifted an extent 1.10 Acres of land comprised in Survey No.626/4C for formation of Taluk Office. Two other properties comprised in Survey Nos.612/3, 626/1B were also gifted and in all total extent of 3 Acres was gifted by the petitioner's family. He would further submit that the survey No.626/4 was subdivided as 626/4A (1.95 Hectares = 4.8 Acres), Survey No.626/4B (27 Cents = 0.10Acres), Survey No.626/4C (1.10 Acres = 0.44 Hectares). It is the specific case of

the petitioner that out of total extent of land available in Survey No. 626/4C only an extent viz., 1.10 Acres alone was gifted and the remaining extent of lands in Survey No.626/4A, 626/4B were retained by the family of the petitioner. The grievance of the petitioner is that while effecting subdivision to Survey No.626/4B, it was wrongly classified as "pathway" and the land in Survey No.626/4B had not been gifted or acquired by the Government for formation of pathway, The classification in the revenue records reflecting in survey No.626/4B as pathway was nothing but an inadvertent error. According to the learned counsel for the petitioner the possession of lands in Survey No.626/4B was always with the petitioner and noticing the wrong classification in the revenue records, the father of the petitioner had made a requisition to the third respondent / Revenue Divisional Officer for necessary correction and the third respondent forwarded the said application of the petitioner's father to the Tahsildar, Ottanchathiram and according to the petitioner, the Tahsildar rightly found that the lands in Survey No.626/4B were never gifted and the classification as pathway was erroneous. The third respondent thereafter relying on the report of the Tahsildar, Ottanchathiram, in and by proceedings dated 24.11.2006 rectified the said defect and directed the removal of classification as pathway and issuance of patta in the name of the petitioner's father.

4. The learned counsel for the petitioner would submit that after a lapse of 4 years, after the said order came to be passed by the third respondent, the fourth respondent in order to wreck vengeance on the petitioner in a private property dispute, filed a revision before the first respondent, claiming that the Survey No.626/4B has been classified as pathway, and without hearing the interested parties, like neighbouring land owners, the patta was re-classified and mutated in the name of the petitioner's father. In fact, the fourth respondent also filed a writ petition before this Court in W.P.(MD)No.7019 of 2007 and the said writ petition was disposed of with a direction to the fourth respondent to prefer a revision before the first respondent.

5. Thereafter, the first respondent, in and by impugned order set aside the order of the third respondent, mainly on the ground of denial of principles of natural justice and remitted the matter to the third respondent to conduct fresh enquiry and pass orders after hearing the

petitioner's father as well as the fourth respondent. Thereafter, the second respondent after conducting enquiry, passed an order on 09.11.2016, confirming the classification of survey No.626/4B as a pathway only.

6. The contentions of the learned counsel for the petitioner are that the impugned order has not considered material documentary evidence made available to the second respondent and would contend that when the gift deed was the basis for the claim, admittedly the survey No. 626/4B of an extent of 0.11 Hectares = 27 cents was not forming the part of the said gift deed, dated 15.09.1998 and unless the lands in survey No. 626/4B measuring 0.11 Hectares = 27 cents had been acquired in a manner known to law by launching acquisition proceedings, the respondents cannot claim any right over the lands in Survey No.626/4B. The learned counsel for the petitioner would further submit that the fourth respondent had no locus to even raise this issue pertaining to Survey No.626/4B, which was purely a dispute between the petitioner's family and the Government. The learned counsel would also submit that even assuming the fourth respondent claimed the lands in Survey No.

626/4B to be a pathway, the fourth respondent would have to only approach the competent civil court and establish the claim of pathway by adducing oral and documentary evidence and cannot approach the revenue authorities for cancellation of patta and reclassification of the land as pathway.

7. The learned counsel for the petitioner would also point out from the objections of the fourth respondent before the first respondent claiming the property in Survey No.626/4B was gifted under the gift deed dated 15.09.1998 for pathway. He would further submit that on perusal of the said gift deed, it is clear that the said lands were never gifted to the Government and therefore, the fourth respondent has made a false claim before the first respondent. He would also place reliance on the gift deed dated 14.02.1996, which is relied upon by the fourth respondent himself in and by which gift deed, the pathway to reach the Taluk Office from Dindigul - Palani Main Road has been given by the family members of Natchiyappa Gounder, approved lands in Survey Nos. 613/1, 610/1 and 612 and therefore, it cannot be the case of the fourth respondent that the alleged subject pathway in survey No.626/4B is the

only pathway to reach the Taluk Office. Therefore, the learned counsel for the petitioner prayed for the writ petition being allowed.

8. Mr.B.Saravanan, learned Additional Government Pleader, appearing for the official respondents 1 to 3, would submit that the first respondent enquired into the matter and gave sufficient opportunity to the writ petitioner as well as the fourth respondent and also carried out physical inspection and arrived at a finding that the subject property is donated to the Government by the petitioner's family for construction of new office building for Taluk office, Ottanchathiram. He would further submit that the gifted property in Survey No.626/4B was subdivided as 626/4B and 626/4C and Survey No.626/4B was classified as a detail pathway to be used by the public to access the Taluk office, Ottanchathiram. He would further submit that the lands in Survey No. 626/4B have always been used as pathway right from the year 2000, after gift deed made by the petitioner's family and therefore, the petitioner has no right to reclaim the lands already gifted by the petitioner's family and the learned Additional Government Pleader sought for dismissal of the writ petition.

9. The learned counsel appearing for the fourth respondent, Mr.M.R.Sreenivasan, would first and foremost submit that the writ petition is not maintainable in view of effective and efficacious alternate remedy by way of revision being available to the petitioner under Section 13 of the Tamil Nadu Patta Passbook Act, 1984.

10. Without prejudice to the preliminary objection to the maintainability of the writ petition, the learned counsel for the fourth respondent would submit that the lands, which are in dispute, viz., common pathway in Survey No.626/4B has been inexistence for more than five decades and it has been created by the land owners of the locality to access the patta lands for the purpose of cultivation and also to reach Peraneickanoor village. He would further contend that the said pathway has been part of all patta lands, including the lands of the fourth respondent himself and rightly the authorities have classified in Survey No.626/4B as "detail pathway". The learned counsel for the fourth respondent would also place reliance on the gift deed dated 15.09.1998 in and by which, the petitioner's family donated 3 Acres of lands, for the

purpose of setting up the Taluk Office and would state that it would not be open to the petitioner to take advantage of the non-mentioning of the Survey No.626/4B in the settlement deed, when the pathway runs from the neighbouring land owner's property into the petitioner's property and connects the pathway which is covered in the settlement deed dated 15.09.1998. The learned counsel for the fourth respondent would further submit that the impugned has been passed after affording a fair opportunity to both the parties and there is no illegality or irregularity in the impugned order or the findings therein, warranting interference under Article 226 of the Constitution of India. He would further submit that the writ petitioner has not only challenged the order of the second respondent dated 09.11.2016, but also challenged the order of the District Revenue officer, 29.05.2016, the first respondent, who passed an order on 29.05.2015 setting aside the order of the Revenue Divisional Officer and remitting the matter to the second respondent. The said order was never challenged and pursuant to the said order, the first respondent conducted enquiry and passed the impugned order on 09.11.2016. The learned counsel for the fourth respondent would therefore contend that the order of the second respondent is only a revisable order and it can be challenged before the first respondent and hence, the writ petition, even viewed from this angle, is not maintainable.

11. The learned counsel for the fourth respondent would also place reliance on the decision of the Hon'ble Division Bench of this Court in S.P.Rajamani V. State of Tamil Nadu (W.P.No.30187 of 2017) dated 06.12.2018 and prays for dismissal of the writ petition.

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

13. The dispute appears to stem from the fact that the petitioner's family gifted an extent of 3 Acres under a registered Settlement Deed, dated 15.09.1998 for the purposes of formation of Taluk Office. The extent of 3 Acres comprised of lands gifted by the petitioner's family are admittedly as follows:

(i) In Survey No.612/3 to an extent of 1.23 Acres

(ii) In Survey No.626/1B to an extent of 0.67 Acres

(iii) In Survey No.626/4C to an extent of 1.10 Acres

14. The said gift deed is not disputed by any of the parties. It is the case of the official respondents as well as the fourth respondent that the subject lands in Survey No.626/4B measuring 27 cents was also part of the lands gifted by the petitioner's family. On a careful perusal of the settlement deed, it is clear that the lands in Survey No.626/4B measuring 27 cents was never forming part of lands gifted under the settlement deed dated 15.09.1998. It is also relevant to note that even as on the date of the gift deed survey numbers had been subdivided and Survey No.626/1B and 626/4C, part of the lands were gifted and subdivided survey No. 626/4B was never gifted by the petitioner's family. Unless the petitioner's family gifted the said lands or alternatively if the State Authorities had initiated acquisition proceedings in accordance with law and acquired the lands in Survey No.626/4B alone the respondents can claim that the lands of the petitioner were either gifted or acquired and have been used as a pathway.

15. In the counter affidavit filed by the third respondent, strangely, contentions are raised that the subject property in Survey No.626/4B was donated to the Government. I have already discussed the averments in

the settlement deed and found that Survey No.626/4B was never gifted in the first place. It is further contended that the property donated in Survey No.626/4B was subdivided as Survey Nos.626/4B and 626/4C and the subdivided survey No.626/4B has been earmarked as “detail pathway” for use of general public to reach the Taluk office. The said contention cannot be countenanced for the simple reason that as I have already indicated even at the time of gift deed, survey No.626/4C was subdivided and an extent of 1.10 Acres had been gifted, no portion of Survey No. 626/4B was gifted under the said settlement deed dated 15.09.1998. Therefore, to contend that the property in Survey No.626/4B was subdivided into Survey No.626/4B and 626/4C is wholly unsustainable and cannot be given any credence whatsoever. Insofar as the contentions of the fourth respondent that the adjacent land owner had executed a settlement deed in respect of patta property only to connect the pathway covered under the settlement deed dated 15.09.1998 is concerned, from the said settlement deed relied on by the fourth respondent, viz., 14.02.1996, I find that the said gift deed has been executed by one Palanisamy and his brothers, gifting lands to form a pathway to reach the Taluk office from Dindigul - Palani Main Road. The said lands gifted are comprised in Survey Nos.613/1, 610/5 and 612. It is seen from the village map, which is also enclosed in the typed set filed by the fourth respondent that the lands in Survey Nos. 613, 612 would directly connect Dindigul - Palani Main Road to the taluk office. The contention of the fourth respondent that only if survey No.626/4B is also made available the pathway would exist to reach the Taluk office is therefore clearly unacceptable and contrary to record.

16. Even other wise, when the case on which the fourth respondent has sought to challenge the patta issued to the petitioner and the case of the official respondents is only revolving around the gift deed dated 15.09.1998 executed by the petitioner's family, and when there is absolutely no reference to Survey No.626/4B, in the said settlement deed, the entire case set up by the official respondents is false. That apart the petitioner has also filed the revenue records to show that the mutation has always been in the name of the first petitioner, Sudhanthiram, in respect of Survey No.626/4 and only subsequent to the impugned proceedings, the name of the first petitioner, Sudhanthiram has been removed and the description is shown as pathway.

17. Even in the impugned order of the second respondent having observed that the lands in Survey No.626/4B was neither gifted nor acquired for the purposes of pathway to reach the taluk office in the manner known to law, the second respondent ought not to have held that the classification of survey No.626/4B as pathway was not wrong or improper.

18. With regard to existence of an alternate remedy to be availed under the statute and the writ petition not being maintainable. No doubt, there is an alternate remedy by way of revision under Section 13 of the Tamil Nadu Patta Passbook Act, as contended by the fourth respondent. However, when this court has entertained the writ petition and the writ petition has been pending before this Court for the past eight years and more and only now taken up for final disposal, the petitioner cannot be relegated to avail the alternate statutory remedy of revision. All the contentions of the parties had been placed before this court and the same has also been considered on merits and therefore, no prejudice would be caused to any of the parties, if the issue is decided in the present writ

petition instead of driving the petitioner to file a revision under Section 13 of the Tamil Nadu Patta Pass Book Act at this length of time.

19. For all the above reasons, I am inclined to interfere with the impugned order and in fine the impugned order passed by the second respondent is set aside. However, it is open to the fourth respondent to file a civil suit to establish the existence of a pathway in Survey No. 626/4B and long usage of the same by the general public and seek appropriate relief before the civil court of competent jurisdiction, in accordance with law.

20. This Writ Petition is allowed, with the above liberty. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
NCC : Yes / No
LS

03.03.2025

TO:-

1. The District Revenue Officer
   Sivagangai District,
   Sivagangai.
2. The Revenue Divisional Officer,
   Devakottai, Sivagangai District.
3. The Thasildar,
   Taluk Office, Karaikudi,
   Sivagangai District.

P.B. BALAJI, J.

LS

Order made in
W.P.(MD)No.23890 of 2016

Dated:
03.03.2025