



W.P.(MD)No.30435 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **13.03.2025**

Delivered on : **21.03.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.30435 of 2023

and

W.M.P.(MD)No.26195 of 2023

Krishnammal

... Petitioner

/Vs./

1. The District Collector

O/o.The Collectorate,

Virudhunagar District.

2. The Revenue Divisional Officer,

Sivakasi, Virudhunagar District.

3. The Tahsildar

Sivakasi Taluk Office, Sivakasi,

Virudhunagar District.

4. Avudaiyammal

5. Kaalichamy

6. Krishnasamy

... 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 issued by 2nd respondent in his proceedings



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Na.Ka.A1/4562/2023 dated 17.10.2023 and quash the same and consequently directing the respondents to make necessary corrections in the FMB A Register in Virudhunagar District, Sivakasi Taluk, Mangalam Firka, Enjar Village, Survey Nos.1153/1A and 1153/1B and consequentially to issue patta for Survey No.1153/1A to an extent of 0.01.58 hectare and Survey No.1153/1B to an extent of 0.01.27 hectares in the name of the petitioner.

For Petitioner : Mrs.P.Jessi Jeeva Priya

For Respondents : Mr.M.Lingadurai
Special Government Pleader for R1-3

: No appearance for R4 - 6

ORDER

The petitioner challenges the order of the second respondent dated 17.10.2023 in Na.Ka.A1/4562/2023 and to consequently direct the respondents to effect corrections in the FMB and A register and issue patta to the petitioner.

2. I have heard Mrs.P.Jessi Jeeva Priya, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader for the respondents 1 to 3.



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3. The case of the petitioner is that the property and house in survey No.1153/1, Enjar Village, Mangalam Firka, Sivakasi Taluk, Virudhunagar District, was originally owned by Muthu Veerappa Thevar @ Vellai Thevar. Subsequent to the demise of Muthu Veerappa Thevar @ Vellai Thevar, the property came to be in possession and enjoyment of his three sons, viz., Veerappa Thevar, Kudandi Thevar, Muthuveerappa Thevar. Veerappa Thevar had two sons, viz., Subbaiah Thevar, Sangiliveerappa Thevar. Kudandi Thevar had two sons, viz., Sangiliveerappa Thevar, Muthuveerappa Thevar and Muthuveerappa Thevar had two sons, viz., Chinna Subbaiah and Periya Subbiah. According to the petitioner, the six grand sons of Muthu Veerappa Thevar @ Vellai Thevar were in possession and enjoyment of the lands and the extent of 2.80 Acres available was divided into two parts, one part being 1.90 Acres on the western side and the other part being 90 cents on the eastern side. The further case of the petitioner is that the extent of 1.90 cents on the western side was divided into six equal share of 31 ½ cents and the 90 cents on the eastern side also divided into six equal share of 15 cents with each of the six grand sons being entitled to



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46 ½ cents. One of the six persons, by name, Muthuveerappa Thevar, died leaving behind five daughters, viz., Koodammal, Krishnammal, Chandra, Saraswathi and Packiam. The petitioner is one of the daughters of the said Muthuveerappa Thevar. The sisters of the petitioner have executed a power of attorney in her favour, granting permission for the petitioner to enjoy her properties.

4. The grievance of the petitioner is that the fourth respondent has purchased 31 ½ cents on the western side from one Ramaiah Thevar, S/o.Chinna Subbiah, by registered sale deed dated 26.08.1974 and similarly father of the respondents 5 and 6 has purchased 32 cents on the western side from one Kalimuthu Thevar, S/o. Periya Subbiah, grand son of Muthu Thevar, by registered sale deed dated 22.01.1964. As per the above said sale deed in favour of the fourth respondent, though only an extent of 31 ½ cents was purchased, patta was issued to an extent of 36 cents and similarly, in the sale deed in favour of the father of the respondents 5 and 6, though he purchased only 32 cents, patta was issued to an extent of 36 cents. The petitioner came to know that after issuance of patta to the respondents 4 and 6, survey No.1153/1 was subdivided



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into survey No.1153/1A to 1V and because of the larger extent being allotted to the respondents 4 to 6, lesser extent of 27 cents was alone reflected in the petitioner's grand father's name in survey No.1153/1C instead of 31 ½ cents and 12 cents was alone reflected in the petitioner's father's name in survey No.1153/1V instead of 15 cents. The learned counsel for the petitioner would contend that the area that has been reduced in the petitioner's patta has been wrongly included in the patta issued to the respondents 4 to 6. The petitioner has made a representation to resurvey the lands on 14.02.2000 and the said representation was rejected by the second respondent with a direction to the petitioner to approach the competent civil Court.

5. The case of the petitioner is that taking advantage of the same, the respondents 4 to 6 are attempting to interfere with the petitioner's peaceful possession and enjoyment of the property. Therefore, the petitioner filed a suit in O.S.No.55 of 2001, before the District Munsif Court, Virudhunagar, seeking a relief of permanent injunction, restraining the fourth respondent and the father of the respondents 5 and 6 from interfering with the petitioner's possession and enjoyment.



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6. The learned counsel for the petitioner would invite my attention to the written statement filed by the fourth respondent, admitting the petitioner's title as well as possession to an extent of 46 ½ cents. He would further submit that the respondents 5 and 6 have chosen to remain *exparte* in the suit. The said suit also came to be decreed in and by judgment dated 21.12.2006. Aggrieved by the said decree and judgment, the fourth respondent and the father of the respondents 5 and 6 preferred an appeal in A.S.No.27 of 2007 on the file of the Subordinate Judge, Virudhunagar. The said appeal came to be allowed by judgment dated 29.08.2007 and the petitioner's suit for permanent injunction was dismissed. The petitioner, aggrieved by the reversal finding by the first Appellate Court, filed a second appeal before this Court in S.A.(MD)No. 563 of 2008 and this Court allowed the second appeal on 23.04.2018, clearly finding that the petitioner is entitled to 46 ½ cents. In furtherance of the said judgment of this Court, the petitioner has made an application to the second respondent on 30.05.2018 for making necessary correction in the patta and FMB sketch and also sought for demarcating the



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property in terms of the Tamil Nadu Survey and Boundaries Act. As no action was taken on the said representation, the petitioner moved this Court in W.P.(MD)No.23247 of 2018 and this Court directed the respondents to survey and measure the petitioner's property in terms of the judgment and decree of this Court in S.A.(MD)No.563 of 2008, after giving notice to parties concerned and fix the boundaries.

7. The petitioner, alleging disobedience of the said order of the Writ Court filed a contempt petition in Cont.P.(MD)No.691 of 2019 and based on interim order passed by this Court on 19.09.2022, the property was measured in the presence of the respondents 4 to 6 and the mistake committed at the time of UDR scheme was also rectified and the deficient extent was allotted to the petitioner's property and survey report was also accordingly issued. Based on the same, the petitioner has made a representation on 18.11.2022 for carrying out necessary correction in the FMB as well as A register and issue revised patta and update the same in the online platform. Since no action was taken, the petitioner once again approached this Court W.P.(MD)No. 667 of 2023 and this Court disposed of the writ petition, directing the second respondent Revenue



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Divisional Officer to pass orders on the petitioner's application, on merits. Even, thereafter complaining of disobedience, the petitioner filed Cont.P.(MD)No.1994 of 2023 and after the said contempt petition came to be filed, the impugned order was passed rejecting the petitioner's representation dated 18.11.2022.

8. The learned counsel for the petitioner, Mrs.Jeesi Jeeva Priya, would take me through the various orders passed by the competent civil Courts which also came to be confirmed by this Court in second appeal and the subsequent order passed, conducting survey and allotting the correct extent to the petitioner, as well as the written statement filed by the fourth respondent, admitting the petitioner's right, title as well as possession over the entire 46 ½ cents.

9. The learned counsel for the petitioner would therefore submit that the order of the second respondent evidences clear non application of mind and more over, when W.P.(MD)No.667 of 2023, this Court directed issuance of notice to the respondents before passing final orders, the second respondent, without even issuing any such notice, proceeded



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to pass the impugned order. She would further contend that the petitioner has clearly demonstrated an entitlement to 46 ½ cents, right from her grand father Muthu Veerappa Thevar, who had originally owned the property. She would further contend that the second respondent even ignored the fact that the petitioner's grand father's name was mentioned in the survey land register and when the fourth respondent had purchased only 31 ½ cents and the father of the respondents 5 and 6 purchased only 32 cents, they could not be entitled to any larger extent, while issuing patta in their favour.

10. The learned counsel for the petitioner would further contend that all these mistakes were corrected by the authorities, while conducting survey, pursuant to the orders passed by this Court on 19.09.2022 in Cont.P.(MD)No.691 of 2019. The learned counsel would therefore contend that the findings of the second respondent were clearly perverse and the petitioner is entitled to relief as prayed for in the writ petition.



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11. The learned Special Government Pleader, Mr.M.Lingadurai, would invite my attention to the impugned order of the second respondent and state that detailed enquiry has been conducted and only thereafter, the order has been passed and further, a revision remedy if available before the District Revenue Officer and admittedly it has not been availed of by the writ petitioner and would therefore seek for dismissal of the writ petition.

12. There is no appearance on behalf of the respondents 4 to 6. I have carefully considered the submissions advanced by the learned counsel for the petitioner as well as the learned Special Government Pleader.

13. On a careful perusal of the records, it would clearly demonstrate the fact that the original extent of 2.80 Acres was divided as two parts, with the western portion comprising 1.90 Acres and the eastern portion, 90 cents. The six male heirs of Muthu Veerappa Thevar, being grand sons, through three sons, Veerappa Thevar, Kudandi Thevar and



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Muthu Veerappa Thevar, have divided the said total extent of 2.80 Acres with each of them getting 31 ½ cents in the western side and 15 cents in the eastern side. In all each of the grand sons were entitled to 42 ½ cents. Admittedly, the respondents 4 to 6 have purchased the properties only from the grand sons of Muthu Veerappa Thevar. The grievance of the petitioner is that despite conveying only 31 ½ cents to the fourth respondent by a registered sale deed dated 26.08.1974 and the father of the respondents 5 and 6, 32 cents vide sale deed dated 22.01.1964, they have been issued patta for 32 cents and 36 cents respectively. In other words, without noticing the actual extent sold to the respondents 4 to 6, patta has been mutated in respect of a larger and incorrect extent.

14. As rightly contended by the learned counsel for the petitioner, Mrs.Jeesi Jeeva Priya, the fourth respondent, who is the defendant in the suit filed by the petitioner, has clearly admitted not only the title of the petitioner in respect of entire 46 ½ cents, but, also factum of physical possession being with the petitioner. The said suit came to be decreed and though the judgment and decree of the trial Court was reversed in the first Appeal, this Court, in S.A.(MD)No.563 of 2008, restored the



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judgment and decree of the trial Court clearly finding the petitioner's entitlement to be 46 ½ cents. Unfortunately, the second respondent, ignoring the vital findings rendered by this Court, while confirming the judgment and decree of the trial Court, wherein the issue of entitlement of the petitioner to 46 ½ cents has been elaborately dealt with, has erroneously proceeded to reject the petitioner's application on the ground that the petitioner has not provided any documents.

15. The second respondent has also not factored the survey conducted in the presence of respondents 4 to 6 and finding that mistake had been committed at the time of UDR scheme. The same was also rectified after survey and correct FMB sketch was also issued by the surveyor. In the presence of such overwhelming material evidence, the second respondent clearly erred in holding that the petitioner has not produced any documents and therefore, the petitioner was not entitled to correction sought for. The findings of the second respondent are clearly unsubstantiated and contrary to the available materials produced by the petitioner, especially, the judgment of the competent civil Court as well as the survey conducted rectifying the mistakes and accepting the case of



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the petitioner, that too in pursuance of the orders of this Court in contempt petition. The respondents 4 to 6 have also not seriously contested the case of the petitioner, especially, since even in the written statement of the fourth respondent, it has been conceded that the petitioner is entitled to 46 ½ cents.

16. Insofar as the arguments of the learned Special Government Pleader that the petitioner has a remedy by way of revision to the District Revenue Officer, under Section 13 of the Patta Passbook Act, I do not find the existence of such remedy being a bar for passing orders, in the present writ petition, especially, considering the non consideration of even orders of this Court, while rejecting the petitioner's application. Therefore, this is a case where the petitioner can certainly bypass the alternate remedy and seek remedy under Article 226 of the Constitution of India, considering the fact that the petitioner has been driven from pillar to post, right from 2000.

17. In fine, this writ petition is allowed and the impugned order passed by the second respondent is set aside and the official respondents



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are directed to effect necessary corrections in the FMB and A register in survey Nos.1153/1A and 1153/1B, situated at Enjar Village, Mangalam Firka, Sivakasi Taluk, Virudhunagar District and thereafter, issue patta in respect of survey No.1153/1A 0.01.58 Hectares, in respect of survey No. 1153/1B to an extent of 0.01.27 Hectares in the name of the petitioner. The said exercise shall be carried out within a period of four weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
NCC : Yes / No
LS

21.03.2025



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TO:-

1. The District Collector
O/o.The Collectorate,
Virudhunagar District.
2. The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.
3. The Tahsildar
Sivakasi Taluk Office, Sivakasi,
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P.B. BALAJI, J.

LS

Pre-delivery Order made in
W.P.(MD)No.30435 of 2023

Dated:
21.03.2025