

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. Nos.33718 of 2013 and 32406 of 2014

Hariharan .. Petitioner in W.P.
No.33718 of 2013

A.Unchiyammal .. Petitioner in W.P.
No.32406 of 2014

v.

1.The District Collector,
Office of Collectorate,
Kancheepuram.

2.The District Revenue Officer,
Kancheepuram,
Kancheepuram District.

3.The Revenue Divisional Officer,
Kancheepuram,
Kancheepuram District.

4.The Thasildar,
Uthiramerur Taluk,
Kancheepuram District.

5.Unjjyammal .. Respondents in W.P.
No.33718 of 2013

1.The District Collector,
Office of Collectorate,
Kancheepuram.

2.The District Revenue Officer,
Kancheepuram,
Kancheepuram District.

3.The Revenue Divisional Officer,
Kancheepuram,
Kancheepuram District.

4.The Thasildar,
Uthiramerur Taluk,
Kancheepuram District.

5.The Zonal Deputy Tahsildhar,
Uthiramerur Taluk,
Kancheepuram District.

6.K.Gopinath

7.Hariharan

8.Parameshwari

9.Bhuvaneshwari

10.Parimala

11.S.Bhavani

12.R.Usha

.. Respondents in W.P.
No.32406 of 2014

Prayer in W.P. No.33718 of 2013: Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to grant patta as expedite as taking into consideration of the proceedings in view of Na.Ka.164/2012/A2 dated 10.09.2012 pending on the file of the second respondent.

Prayer in W.P. No.32406 of 2014: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the Impugned Notice of the second respondent in Na.Ka.23620/2012/N3 dated 19.11.2014 and to quash the same and consequently direct the second respondent not to proceed with any enquiry based on the report of third respondent in his proceedings in Na.Ka.1642/2012/A2 dated 10.09.2012 in respect of the petitioner's patta No.13 pertaining to the land measuring 2 acre and 48 cents in S.No.2/1 of Adavapakkam Village, Uthiramerur Taluk, Kancheepuram District till the disposal of the Civil Suit in O.S. No.210 of 2014 on the file of the Sub Court, Kancheepuram.

For petitioner in W.P.
No.33718 of 2013

: Mr.S.Arivazhagan

For petitioner in W.P.
No.32406 of 2014

: Mr.A.Ilaya Perumal

For respondents in W.P.
No.33718 of 2013

: Mr.S.Gunasekaran,
Government Advocate
for R1 to R4

Mr.A.Ilaya Perumal for R5

For respondents in W.P. : Mr.S.Gunasekaran,
No.32406 of 2014 Government Advocate
for R1 to R5

Mr.D.R.Ashok Kumar for R6 to 12

COMMON ORDER

Heard Mr.S.Arivazhagan, learned counsel for the petitioner in W.P. No.33718 of 2013, Mr.A.Ilaya Perumal, learned counsel for the petitioner in W.P. No. 32406 of 2014, Mr.S.Gunasekaran, learned Government Advocate for respondents 1 to 4, Mr.A.Ilaya Perumal, learned counsel for fifth respondent in W.P. No.33718 of 2013, Mr.S.Gunasekaran, learned Government Advocate for respondents 1 to 5 and Mr.D.R.Ashok Kumar, learned counsel for respondents 6 to 12 in W.P. No.32406 of 2014 and with their consent, the writ petitions are taken up for final disposal.

2.The issue involved in the writ petitions relating to grant of patta in respect of land in S.No.2/1 of Adavapakkam Village, Uthiramerur Taluk, Kancheepuram District. A.Unchiyammal/the petitioner in W.P. No.32406 of 2014 has filed the writ petition to quash the notice issued by the second respondent, the District Revenue Officer, Kancheepuram, Kancheepuram District dated 19.11.2014 by which the petitioner was called upon to attend the enquiry on 18.12.2014.

3.Though several grounds have been raised by the petitioner to challenge the notice issued by the second respondent, the primary ground of challenge is by contending that the petitioner has filed a comprehensive suit in O.S. No.210 of 2014 on the file of Sub Court, Kancheepuram wherein the petitioner has sought for a declaration to declare that the plaintiff is the absolute owner of the suit schedule property and for consequential decree of permanent injunction. In the said suit, an Interlocutory Application has been filed in I.A.Sr. No.8345 of 2014 to grant an order of interim injunction restraining the second defendant therein, who is the District Revenue Officer, Kancheepuram District, second respondent herein not to conduct any enquiry based on the notice issued to the writ petitioner in respect of the cancelling of patta granted to the plaintiff for the land in question. Such application was returned by the Civil Court calling upon the petitioner to state as to how the petition is maintainable. The petitioner has re-presented the papers on 03.11.2014 stating that the petition is maintainable in terms of Rule 4(4) of Patta Pass Book Rules. Once again the petition was returned by the Civil Court on the ground of maintainability and the petitioner re-presented the papers on 30.11.2014. However, the petition has neither been numbered nor rejected. Therefore, the petitioner is now before this Court seeking a direction to the second respondent not to proceed with the enquiry.

Mr.Hariharan, the petitioner in W.P. No.33718 of 2013 has filed the petition to expedite the enquiry, pursuant to the notice issued by the second respondent.

4.Learned counsel for the petitioner would further submit that in the light of the decisions of this Court in the case of Vishwas Footwear Company Ltd. vs. The District Collector, Kancheepuram and others reported in 2011 (5) CTC 94, remedy shall lie only before the Civil Court. He has also placed reliance on the unreported decision of this Court in W.P. No.22150 of 2014 dated 21.08.2014 wherein this Court made a similar observation as made by the Hon'ble Division Bench and held that enquiry into title to a property cannot be conducted by the Revenue Officials, when a Civil Suit is pending.

5.Learned counsel for the private respondents in W.P. No.32406 of 2014 submitted that enquiry has commenced in the year 2011 itself, the matter was proceeded with and reports were being prepared by the subordinate officials of the second respondent, the petitioner has thereafter filed the suit with a view to drag on the enquiry and Rule 4 is not a bar, since proceedings have already been commenced much prior to the institution of the civil proceedings. Learned counsel further submitted that in terms of Section 14, there is a bar of Civil Court from entertaining the suit.

6.After hearing the learned counsel for both sides and perusing the materials placed on record, it is evident that the petitioner in W.P. No.32406 of 2014 has already approached the Civil Court and filed a suit for declaration wherein Official respondents are also defendants in the suit and I.A. has been filed to prohibit the second respondent herein from enquiring into the matter on the application filed by the private respondents for grant of patta in their favour. Since the petitioner has already chosen to proceed before the Civil Court, it is appropriate for the petitioner to prosecute his remedy before the Civil Court and not parallelly by filing the writ petition. Though the Civil Court entertained the application and rejected the same on the ground of maintainability and the petitioner is justified the Court below in re-presenting the same, it appears that the petition has not been returned, as the same is a non speaking order. Therefore, this Court is the view that the application should not be returned by the Civil Court

7.Accordingly, the petitioner is directed to re-present the papers before the Civil Court along with the copy of this order within a period of two weeks from the date of receipt of a copy of this order. The Civil Court shall consider and decide the question of maintainability, after hearing the petitioners, respondents and official respondents, who are defendants in the application and pass reasoned order on merits and in accordance with law within a period of three weeks thereafter. The second respondent shall abide by the

direction, to be passed by the Civil Court. The writ petitions are disposed of accordingly. No costs. Consequently, connected M.Ps. are closed.

vga

-s/d-
Assistant Registrar(CS-III)
Dt:24/2/2015

True Copy

Sub-Assistant Registrar

To

1.The District Collector,
Office of Collectorate,
Kancheepuram.

2.The District Revenue Officer,
Kancheepuram,
Kancheepuram District.

3.The Revenue Divisional Officer,
Kancheepuram,
Kancheepuram District.

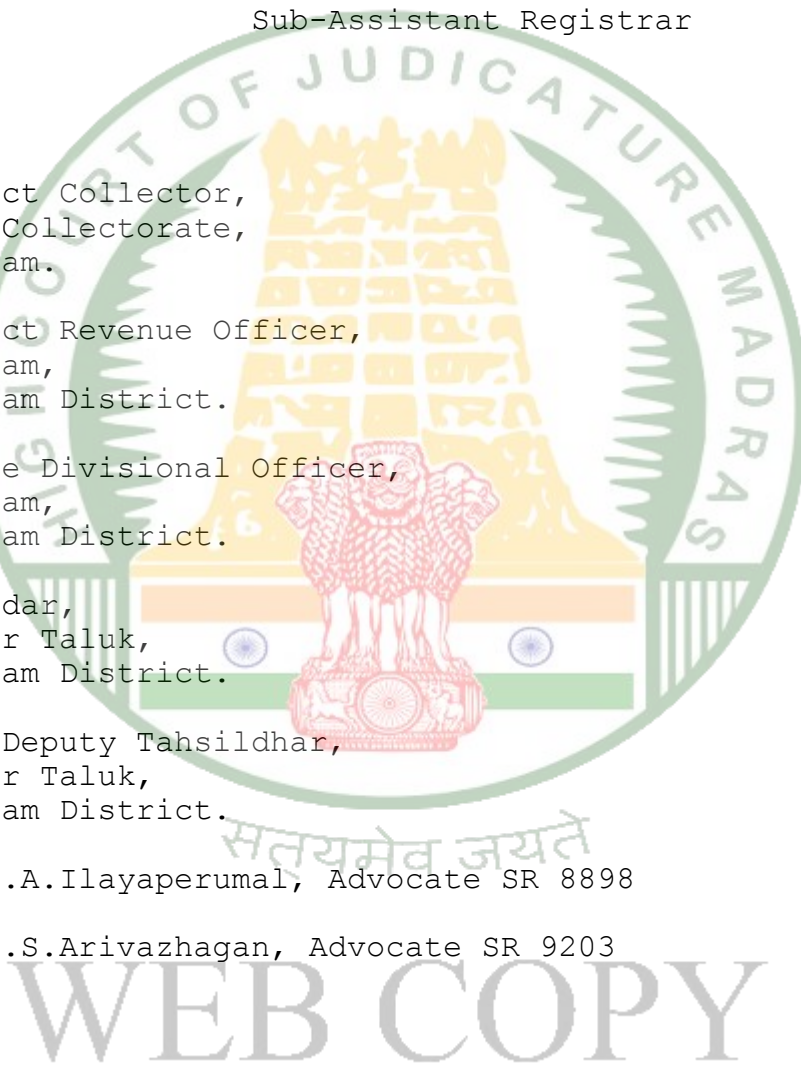
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5.The Zonal Deputy Tahsildhar,
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Kancheepuram District.

+ 1 cc to Mr.A.Ilayaperumal, Advocate SR 8898

+ 1 cc to Mr.S.Arivazhagan, Advocate SR 9203

ksj(co)
prk24/2



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