

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
23.02.2015	10.03.2015

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM****W.P. No.34193 of 2013**

Rama Subramanian

... Petitioner

Vs

1.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Tambaram, Chennai.

2.The Tahsildar,
Shollinganallur Taluk,
Kancheepuram District.

3.M.Poonkuzhali Moorthy

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the first respondent pertaining to his proceedings in No.Pa.Mu.3741/2013/A, dated 26.11.2013 and quash the same.

For petitioner .. Mr.G.Arul Murugan

For Respondents .. M/s.P.Rajalakshmi G.A., for RR1&2

Mr.V.Ramesh for R3

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorari, to quash the order passed by the first respondent, the Revenue Divisional Officer, Tambaram in his proceedings, dated 26.11.2013. By the said order, the patta granted in favour of the petitioner in respect of the property in question was cancelled and direction was issued to the second respondent, the Tahsildar, Solinganallur Taluk, to identify the property to enable the third respondent to take possession.

2. The petitioner's case is that he is the absolute owner of the property bearing plot No.239, Ram Nagar, South Extension, measuring an extent of about 4800 sq.ft., having purchased the same by the Registered sale deed, dated 30.10.2012. The petitioner was issued patta bearing patta No.15833, dated 05.12.2012. The petitioner intended to develop the property and divided the same into two plots and appointed a power agent for making construction in an extent of

about 2400 sq.ft. In respect of the remaining extent of 2400 sq.ft., on the eastern side, another power agent was appointed for putting up construction. The developers applied to the Corporation of Chennai for Planning Permission and on receipt of the application, the Planning Authority requested the second respondent to survey the plot for the purpose of demarcation and marking the linear measurements. The second respondent conducted the survey and submitted a report to the Corporation pursuant to which two separate planning permissions were granted. The developers of the property are said to have commenced construction, while so, the third respondent interfered with the construction activities and therefore, the petitioner filed a Suit in O.S.No.821 of 2013, on the file of the District Munsif Court, Alandur for a permanent injunction against the third respondent. The Civil Court granted an order of interim injunction on 08.09.2013, and the Suit is pending. Parallely, the third respondent filed a petition before the second respondent to cancel the patta granted in favour of the petitioner and issue fresh patta in her favour. The second respondent by proceedings dated 24.09.2013, while forwarding the application of the third respondent to the first respondent recommended for grant of patta in favour of the third respondent. Pursuant thereto, the first respondent issued notice dated 20.10.2013, for an enquiry and the

petitioner appeared for the enquiry along with his counsel on 04.11.2013. It is stated by the petitioner that the enquiry on the said date was adjourned and the petitioner was informed that fresh date of enquiry will be intimated. Therefore, the counsel for the petitioner is said to have filed vakalat before the first respondent and the petitioner was awaiting notice to be issued for fresh date of hearing. Thereafter, the first respondent passed the order dated 26.11.2013, which is impugned in this Writ Petition.

3. The learned counsel appearing for the petitioner after referring to the factual details as mentioned above, submitted that the order passed by the first respondent is unreasonable and arbitrary and wholly without jurisdiction. That the first respondent passed the impugned order without opportunity of hearing to the petitioner and therefore, the order is in violation of principle of natural justice. Further, it is submitted that there is no power for the first respondent to direct the second respondent to put the third respondent in possession of the property. Further, it is submitted that the first respondent failed to take into consideration the Suit, which is pending before the Civil Court.

4. The official respondents have not filed counter affidavit and the learned Government Advocate based on the materials available sought to sustain the impugned order by contending that after following proper procedure, the first respondent has passed the order and if the petitioner is aggrieved, he has to prefer an appeal as against the impugned order.

5. The learned counsel appearing for the third respondent submitted that the first respondent has not passed the impugned order under the Revenue Standing Orders or under any Enactment and the petitioner is not an aggrieved person. It is submitted that the first respondent has cancelled the patta No.13605, in respect of the land in survey No.36/25, granted in favour of the third respondent for plot No.237 and confirmed the patta granted in favour of the Writ Petitioner in patta No.15833 for the land in survey No.35/22. Further, the first respondent directed the second respondent to direct the parties to be present for identifying the respective properties based on which the parties can enjoy their respective properties. Therefore, it is submitted that the petitioner cannot be in any manner aggrieved by the impugned order. It is further submitted that the third respondent is the owner of plot No.237, comprised in Survey No.36/25, bearing

patta No.13605, traceable to two sale deeds registered as document Nos.4683 and 4684 of 2008. Further, it is submitted that the third respondent is in possession of the property ever since the date of her purchase. Further, it is submitted that plot No.235, belongs to M.Ganesan, who is the power of attorney holder of the third respondent and the builder, and the same is to be developed into residential apartments and the plot measured 4800 sq.ft., which was sub-divided as survey Nos.235-A and 235-B, pursuant to which the planning permission was granted on 22.06.2013. Further, it is submitted that plot No.235, is a corner plot having two roads namely, Ram Nagar, 10th, Main Road and Ram Nagar, Fourth cross street on its southern and western boundaries respectively. It is further submitted that the Writ Petitioner also sub-divided his plot in plot No.239, by obtaining planning permission on 16.02.2013 and the plot was sub-divided as plot No.239-A and 239-B and the western boundary is shown as plot Nos.235 and 237. Therefore, it is submitted that pursuant to a sub-division, plot No.239, belonging to the writ petitioner is the third plot facing 10th main road.

6. Further, the learned counsel submitted that the case of the third respondent is that the petitioner has encroached into plot

No.237, belonging to the third respondent and putting up construction and when the same was resisted, the Suit has been filed and when the Injunction Application was being argued before the Civil Court, this Writ Petition has been filed and an interim order has been obtained. Therefore, it is submitted that the Writ Petitioner is illegally constructing an apartment in Plot No.237 instead of Plot No.239. Further, it is submitted that the first respondent has not directed the second respondent to put the third respondent in possession of the property after dispossessing the petitioner and the first respondent has infact cancelled the patta in favour of the third respondent and not the patta granted in favour of the Writ Petitioner. Further, the impugned order has been passed after giving full and effective opportunity to the Writ Petitioner. With the above submissions, the learned counsel prayed for dismissal of the Writ Petition.

7. Heard the learned counsels appearing on either side and perused the materials placed on record.

8. The petitioner is aggrieved by the order passed by the first respondent dated 26.11.2013. On a perusal of the impugned order, it is seen that the first respondent has infact rendered a finding that

there is no error in the patta granted in favour of the Writ Petitioner in respect of Plot No.239. Not stopping with that finding, the first respondent held that the petitioner is wrongly constructing the shop in Plot No.237, infact, the findings is not a categorical finding, but the first respondent was of the reasonable belief, presumably based on the report of the second respondent. Consequently, the first respondent cancelled the patta granted in favour of the third respondent in Plot No.13605, by which Survey No.36, was sub-divided as 36/25, and directed fresh sub-division to be carried out in Plot No.237. This direction was to be implemented by the second respondent. Further, the first respondent reiterated that the petitioner has purchased plot No.239, for which sub-division was done as Survey No.35/22 and patta No.15833 was granted to the petitioner and the first respondent further held that there is no error in the patta granted in favour of the Writ Petitioner.

9. As the first respondent directed the second respondent to carry out fresh sub-division of Plot No.237, and further directed the second respondent to call upon the petitioner and the third respondent to be present in their properties and the second respondent was directed to identify and intimate the petitioner and the third

respondent their respective properties and advice them to enjoy the same accordingly.

10. The primary ground on which the petitioner challenges the impugned order is by contending that the first respondent passed the order without conducting an enquiry. This submission appears to be incorrect, since the first respondent had issued notice dated 20.10.2013, calling upon the petitioner to appear for hearing on 04.11.2013. The receipt of the notice has not been denied by the petitioner. The petitioner would further admit that he along with his counsel attended the hearing on 04.11.2013, but the petitioner would take a stand that hearing was adjourned and the impugned order has been passed without issuing any fresh notice. The contention that the hearing was adjourned and the petitioner was informed that the fresh date of hearing would be fixed is not substantiate. In any event, the impugned order does not cancel the patta granted in favour of the Writ Petitioner, rather the patta granted in favour of the third respondent and the sub-division of the property as Survey No.36/25 alone has been set aside. Therefore, the third respondent is the aggrieved person on account of the impugned proceedings. In such circumstances, the petitioner cannot have any grievance in this regard.

11. The only issue which concerns the petitioner is that the first respondent has come to a conclusion that the petitioner is constructing shops in Plot No.237, when he has purchased the Plot No.239. In the Suit filed by the petitioner in O.S.No.821 of 2013, in paragraph 8 of the plaint, the petitioner has stated that the third respondent is owner of Plot No.237, which is on the western side of the petitioner's A-Schedule property and that the third respondent has nothing to do either with the entire A-Schedule property or the eastern side or the western side of the total extent of 4800 sq.ft., of A-Schedule property. Therefore, having raised such a plea, it is but appropriate for the petitioner to canvas his case before the Civil Court and establish the location of the property its four boundaries and linear measurements. Obviously, the first respondent does not have jurisdiction to go into these aspects, since it is not a pure and simple boundary dispute or dispute with regard to the linear measurements. Therefore, necessarily the petitioner has to work out his remedies in the Civil Suit.

12. It was argued by the learned counsel for the third respondent that the petitioner cannot invoke jurisdiction of the Civil Court as well as the jurisdiction of this Court and it amounts to

invoking parallel remedies for the same cause of action. This submission is not fully correct in the light of the facts of the present case, though the petitioner may not be aggrieved by the entirety of the order passed by the first respondent, but there is a finding rendered by the first respondent that the petitioner is wrongly constructing the shops in Plot No.237. Therefore, necessarily the petitioner has to challenge the order passed by the first respondent.

13. In the light of the above, the Writ Petition is partly allowed and the findings rendered by the first respondent that the petitioner is wrongly constructing the shop in plot No.237, alone is set aside and the issue is left open to be decided in the pending Suit. In the light of the above observations, if the second respondent is permitted to proceed further as directed by the first respondent and initiate fresh proceedings for sub-division in Plot No.237, it would ineffect amount to pre-deciding the whole issue, which is now seized of by the Civil Court. Therefore, though that portion of the order, directing fresh sub-division proceedings to be initiated for Plot No.237, the said direction should be kept in abeyance and should await the decision of the Civil Court. It is stated that the petitioner as well as the third respondent have argued the Injunction Application and when orders were to be passed by the

Civil Court, the present Writ Petition has been filed. It is to be noted that the Suit was filed on 06.09.2013 and the proceedings of the first respondent came to be passed pursuant to a representation given by the third respondent on 05.09.2013. Therefore, the first respondent could have awaited the decision of the Civil Court before passing the impugned order. However, he failed to do so and proceeded to pass the impugned order on 26.11.2013, when admittedly, the order of interim injunction was in force. Therefore, the impugned order to the extent to which, this Court has upheld the same has to be necessarily kept in abeyance till a decision is arrived at by the Civil Court.

14. In the result, the Writ Petition is partly allowed as indicated above and in respect of other directions issued by the first respondent in the impugned order dated 26.11.2013, is directed to be kept in abeyance and the petitioner and the third respondent shall agitate their rights in the pending Suit and the first and second respondents shall await the decision of the Civil Court. No costs. Consequently, connected miscellaneous petitions are closed.

10.03.2015

pbn.

Index :Yes/No

Internet:Yes/No

To

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Tambaram, Chennai.
- 2.The Tahsildar,
Shollinganallur Taluk,
Kancheepuram District.

T.S. SIVAGNANAM, J.
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Pre-Delivery O r d e r in
W.P. No.34193 of 2013

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