

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.19865 of 2013

Dr.T.C.Gnanasekaran

[PETITIONER]

Vs

- 1 The Revenue Divisional Officer
Brough Road, Erode 638 011.
- 2 The Tahsildar
Erode Taluk, Erode District.
- 3 Nirmaladevi
4. K.Duraisamy [RESPONDENTS]
[R3 & R4 impleaded as per order
dt 6.9.2013 in M.P.No.1/13 in W.P.19865/2013]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the first respondent to dispose of the petitioner's Appeal Petition dated 15.06.2012 made in Oo.Mu.No.4438/2012/A1 pending on the file of the first respondent within the time frame fixed by this Court.

For Petitioner : Mr.N.Manokaran

For Respondents : Mrs.P.Rajalakshmi - R1 & R2
Government Advocate

Mr.V.Balamurugan - R3 & R4

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.N.Manokaran, learned Counsel appearing for the petitioner, Mrs.P.Rajalakshmi, learned Government Advocate appearing for the respondents 1 & 2 and Mr.V.Balamurugan, learned counsel appearing for respondents 3 & 4.

3.The petitioner has filed this Writ Petition for issuance of Writ of mandamus to direct the first respondent to dispose of the Appeal Petition dated 15.06.2012 made in Oo.Mu.No.4438/2012/A1 pending on the file of the first respondent. The said Appeal Petition has been filed challenging the grant of joint pata in favour of the respondents 3 & 4 by the second respondent.

4.The petitioner would state that his mother was the original owner of the property and patta stood in her name and subsequently, his mother sold the property in his favour for valuable consideration by sale deed dated 19.01.2007, registered as document No.92/2007 and the petitioner is said to have been in possession and patta No.104 was issued in his name as per Patta Transfer Order dated 26.2.2010, by the Zoneal Deputy Tahsildar, Erode.

5.The fourth respondent is the son of Tmt.Samivathal, petitioner's vender and the third respondent is the daughter of the fourth respondent. It appears that the fourth respondent filed a Suit in O.S.No.159 of 2007 against the third respondent for partition and the suit was decreed pursuant to a compromise. Based on the said decree, the fourth respondent filed an Application before the second respondent and their names have been included along with the petitioner as joint pattadars. Aggrieved by the same, the petitioner has preferred an appeal petition before the first respondent, which is stated to be pending.

6.The objections raised by the second respondent is that subsequently, the petitioner has filed a Suit in O.S.No.469 of 2011 to set aside the final decree in O.S.No.159 of 2007 dated 10.11.2010 and when the said Suit is pending, the question of directing the first respondent to dispose of the Appeal petition cannot be granted and if any order is passed by the first respondent in the Appeal Petition, it would usurp the jurisdiction of the Civil Court.

7.It has to be noted that the order cancelling the patta granted in favour of the petitioner was passed by the second respondent without notice to the petitioner and his name has been deleted and the names of respondents 3 & 4 have been included. The basis of making the respondents 3 & 4 as 'joint pattadars' to the property appears to be based on the decree in O.S.No.159 of 2007. Therefore, the first respondent would have the jurisdiction to go into the matter as to whether the second respondent was justified in cancelling the exclusive patta granted in favour of the petitioner vide Patta Transfer Order dated 26.02.2010 and effected patta transfer in favour of respondents 3 & 4. It is well open to the respondents 3 & 4 to raise objections before the first respondent and if the first respondent is of the view that the matter requires adjudication by the Civil Court, then it is always open to the first respondent to pass necessary orders in that regard. However, this by itself will not remove the jurisdiction of the first respondent to exercise his appellate power under the provisions of Patta Pass Book Act.

8. Accordingly, the Writ Petition is disposed of by directing the first respondent to consider the Appeal Petition filed by the writ petitioner, after notice to the petitioner and the respondents 3 & 4 and after hearing their submissions including the submissions made by the respondents 3 & 4 regarding the jurisdiction of the first respondent, the first respondent is directed to finalise the proceedings as per the directions issued above, within a period of two months from the date of receipt of a copy of this order. It is also open to the petitioner to place the legal position before the first respondent, which he has placed before this Court the decision in the case of T.R.DINAKARAN V. THE REVENUE DIVISIONAL OFFICER [2012 (3) CTC 823]. No Costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1 The Revenue Divisional Officer
Brough Road, Erode 638 011.
- 2 The Tahsildar
Erode Taluk, Erode District.
- +1 cc to Mr.K.Balamurugan, Advocate, SR.17483
- +1 cc to Mr.N.manokaran, Advocate, SR.17568
- +1 cc to Government Pleader, SR.17630

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