

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.13646 of 2010

& M.P.Nos.1 & 2 of 2010

V.Prakashlal

.. Petitioner

Versus

1. The District Collector,
Chennai District, Chennai - 600 001.

2. The Tahsildar,
Perambur-Purasawalkam Taluk Office,
Perambur, Chennai - 600 011.

3. Yogesh Jayanthilal sha

4. Maghna Girish Sha

5. Megul Girish Sha

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the 2nd respondent relating to the impugned proceedings of issuance of Patta in C.A.No.1379/2007, dated 24.09.2007 in respect of property in T.S.No.3135/7, measuring 54.4 sq.mts. in block no.53, Purasawalkam Village, Purasawalkam-Perambur Taluk, Chennai District and quash the same as in violation of principles of natural justice.

For Petitioner : Mr.R.Munuswamy

For Respondents : Mr.P.Sanjay Gandhi, AGP (R1 & R2)

Mr.K.F.Manavalan, (R3 to R5)

O R D E R

The prayer in the Writ Petition is for issuance of Writ of Certiorari to call for the records of the second respondent relating to the impugned proceedings of issuance of Patta in C.A.No.1379/2007, dated 24.09.2007 in respect of property in T.S.No.3135/7, measuring 54.4 sq.mts. in Block no.535, Purasawalkam Village, Purasawalkam-Perambur Taluk, Chennai District and quash the same as in violation of principles of natural justice.

2. The case of the petitioner is that the pathway is situated at T.S.No.3135/7 to the extent of 54.4 sq.mts, and the pathway leading to his property is Door No.37, situated at T.S.No.3135/16 at Ormes Road, Kilpauk, Chennai-10. The respondents 3 to 5 are the adjacent owners and they have property at Door No.36 situated in T.S.No.3135/35 and to reach their property, there is a passage adjacent to the subject passage. Dispute arose regarding the usage of the passage leading to the respective properties of the petitioner as well as the private respondents. The patta dated 06.12.2004 in favour of the petitioner was put under challenge in earlier Writ Petition No.6190 of 2007, by one Manjula Ben J. Shah and Yogesh J. Shah (3rd respondent herein). The respondents 3 and 4 of this Writ Petition are the legal heirs of the first petitioner in Writ Petition No.6190 of 2007. This Court, by an order dated 30.08.2007 in W.P.No.6190 of 2007, has dismissed the Writ Petition and directed the petitioners therein to approach the appropriate forum for necessary relief. Pursuant to the said order of this Court, the respondents 3 to 5 herein approached the appropriate authority, i.e., the second respondent herein, for cancelling the patta already given in favour of the petitioner herein.

3. The second respondent by proceedings dated 24.09.2007 issued patta, which according to the learned counsel for the petitioner, was issued behind the petitioner's back, without conducting any enquiry whatsoever and the said patta dated 24.09.2007 jointly issued in favour of the respondents 3 to 5 as well as the petitioner, pertains to the said pathway situated at T.S.No.3135/7, which is impugned in this Writ Petition. The learned counsel appearing for the petitioner submits that the present patta issued jointly in the name of both the petitioner and the private respondents, were issued behind the back of the petitioner, as no enquiry was conducted and no notice was issued. This position has also not been controverted by the officials respondents. Though the learned counsel appearing for the private respondents disputed the fact, as to whether notice has been given or not, no materials have been produced either by

the private respondents or by the Official respondents to show that a due enquiry was conducted, after communicating the petitioner herein before issuance of the impugned order.

4. Though the learned counsel appearing for both sides claimed merits of the issue by quoting certain civil cases, which ended either in favour of the petitioner or in favour of the respondents, the same cannot be gone into by this court under Article 226 of the constitution.

5. It is a factor that apparently, no notice was given and no enquiry was conducted by the second respondent before issuance of the impugned order, jointly in the name of the petitioner as well as the private respondents. There is no proof to show that the notice was issued to the petitioner or an enquiry was conducted. In the absence of any such proof to show that such enquiry was conducted and notice was issued to the petitioner, it can be ascertained that the impugned order was issued by the second respondent without hearing the concerned parties and the petitioner. Hence, the impugned order suffers from not allowing the principles of natural justice and on that ground alone, impugned order is liable to be set aside.

6. However, it is submitted by both sides that the pathway leading to the property belonging to the petitioner as well as the respondents 3 to 5, which is not one and the second pathway running adjacent to each other, though shown to be running separately are common one, according to the learned counsel for the respondents 3 to 5, on the basis of which the second respondent has passed the impugned order by issuing patta jointly in the name of the petitioner as well as the private respondents. This issue can very well be decided only by the competent authority after conducting enquiry by the second respondent before issuance of a joint patta, of course, after ascertaining any declaratory decree of this nature by the competent Civil Court.

7. In view of the aforesaid position, this Court is of the view that the impugned order is liable to be set aside. Accordingly, it is set aside. However, since there is dispute in the pathway leading to the property belonging to the petitioner as well as the private respondents, both parties shall maintain status quo till a decision is taken by the second respondent, to whom the matter is remitted back now for re-consideration and the second respondent is directed to re-consider the issue in entirety, after giving due opportunity of hearing both sides, and ultimately, pass a reasoned order of issuance of patta, recognising the right of both parties based on the records available.

8. With the above observations and directions, the Writ Petition is allowed. Needful shall be done within 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected M.Ps. are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pvs

To

1. The District Collector,
Chennai District,
Chennai - 600 001.
2. The Tahsildar,
Perambur-Purasawalkam Taluk Office,
Perambur, Chennai - 600 011.

+1 cc to Mr.R.Munuswamy Advocate sr 58474
+1 cc to Government Pleader sr 58971

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