

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.3994 of 2016

and

W.M.P.Nos.3319, 5788 & 6957 of 2016

D.James PeterPetitioner

Vs.

1.The Revenue Divisional Officer,
Ambattur, Chennai.

2.The Tahsildar,
Madavaram Taluk,
Chennai.

3.R.N.Dhamani,
Director, Southern Television Private Limited,
No.6, Ground Floor, Royala Towers,
No.781 & 785, Anna Salai,
Chennai-600 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records on the file of the 1st respondent relating to the 1st respondent's impugned notice/proceedings in Na.Ka.No.80/2016/ M5, dated 13.01.2016 for cancellation of Patta and to quash the same as illegal and consequently, to direct the 1st and 2nd respondent herein not to cancel the Patta issued in the name of the petitioner herein in respect of his lands comprised in survey Nos.192/3 0.47 cents and Survey No.192/4 0.58 cents totally measuring 1.05 acres in Puzhal Village, Madavaram Taluk, Thiruvallur District.

For Petitioner : Mr.B.Ganesha Moorthy

For respondents : Mr.P.Sanjay Gandhi, AGP (For R1 & R2)
Mr.J.D.Srikanth Varma (For R3)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorari Mandamus, calling for the entire records pertaining to the notice/proceedings in Na.Ka.No.80/2016/ M5, dated 13.01.2016 issued by the 1st respondent for cancellation of Patta and to quash the same as illegal and consequently, to direct the respondents 1 & 2 not to cancel the Patta issued in the name of the petitioner herein in respect of his lands comprised in survey No.192/3, measuring 0.47 cents and Survey No.192/4 measuring 0.58 cents, totally measuring 1.05 acres in Puzhal Village, Madavaram Taluk, Thiruvallur District.

2.The brief facts of the case, which are necessary to dispose of this writ petition, are as follows_

2.1.The land properties bearing Survey No.192/3, measuring 0.47 cent and S.No.192/4, measuring 0.58 cent, totally measuring 1.05 acres, situated in Puzhal Village, Madavarm Taluk, Thiruvllur District is an ancestral properties of the petitioner's father Mr.Doss @ Shanmugadass and he has been exercising all rights of possession and enjoyment of the properties without any hindrance from anybody. The patta in respect of the said properties stands in the name of the petitioner's father.

2-2.2In the year 2006, one Mr.Nithin V.Patel and Shankarlal B.Patel had filed a civil suit pertaining to the above said property, claiming permanent injunction restraining the petitioner's father, petitioner and his brothers Yovan & Arokiyan and his mother Mrs.Navamani, in O.S.No.49 of 2006 before the Sub-Court, Ponneri. While the said suit is pending, the petitioner's father died. It is further case of the petitioner that the said Mr.Nitin V.Patel and Shankarlal B.Patel have no right or tile to the said property and the property, which has been purchased by them, is only in Survey No.192/1 & 192/2 and in their Sale Deed dated 08.11.1995, wrong survey numbers have been mentioned as 192/3 & 192/4. Thereafter, the said persons realizing their mistake, had come forward for compromise in the suit dispute. Accordingly, on 17.06.2013 the above said suit was compromised and the Memorandum of Compromise dated 29.04.2013 was filed and the same was recorded. In view of the Compromise Memo, the said suit was dismissed as not pressed on 17.06.2013 by the Sub-Court, Ponneri. In the said Memorandum of Compromise, the said Nitin V.Patel and Mr.Shankarlal B.Patel have admitted that they have no title or possession in respect of the petitioner's property comprised in Survey Nos.192/3 & 192/4 and they also have admitted that the land which is comprised in Survey Nos.192/1 & 192/2 alone belongs to them.

2-3.While the facts being so, after the demise of the petitioner's father, the petitioner's mother Mrs.Navamani has executed a Settlement Deed dated 11.12.2009 to and in favour of the petitioner and the same was duly registered as Doc.No.9034 of 2009 on the file of the SRO, Redhills.

Moreover, the petitioner's brother and sisters have also executed a consent deed for settlement dated 04.02.2011 and the same was also duly registered as Doc.No.1271 of 2011 on the file of the SRO, Redhills. Thereafter, the petitioner became the absolute owner of the land comprised in Survey Nos.192/3 and 192/4 and the petitioner has got the patta transferred in his name and thereafter, the petitioner has plotted out the lands and has sold to various purchasers and some of the plots are yet to be sold.

2-4.While so, the above said Mr.Nitin V.Patel and Mr.Shankarlal B.Patel have executed a Deed of Power of Attorney dated 05.11.2012 to and in favour of one S.Kalyani in respect of their land comprised in Survey Nos.192/1 and 192/2 of Puzhal Village. Through the Power of Attorney, the said Nitin V.Patel and Shankarlal B.Patel executed a Sale Deed dated 06.09.2013 in favour of the 3rd respondent herein and the same was registered in Doc.No.10569 of 2013 on the file of the SRO, Redhills, whereby they sold out their land comprised in Survey Nos.192/1 & 192/2.

2-5.To the shock and surprise of the petitioner, the petitioner received a notice dated 13.01.2016 from the 1st respondent, wherefrom the petitioner came to understand that the 3rd respondent has given a complaint for Cancellation of Patta issued in respect of the petitioner's land in Survey Nos.192/3 & 192/4. According to the petitioner, without having any jurisdiction, the 1st respondent has issued the impugned notice dated 13.01.2016 calling upon the petitioner to appear for an enquiry on 22.01.2016 at about 11.00 am. Accordingly, on 22.01.2016, the petitioner appeared before the 1st respondent and submitted his explanation in writing along with requisite documents. According to the petitioner, the 1st respondent has no jurisdiction to issue the impugned notice dated 13.01.2016 for cancellation of patta, as per Section 10 of the Tamil Nadu Patta Pass Book Act, 1983. Hence, the petitioner has come forward with the present writ petition.

3.When the matter came up on 03.02.2016, this Court has granted an interim order of stay.

4.On appearance, the Official respondents as well as the 3rd respondent have filed separate petitions in W.M.P.Nos.6957 & 5788 of 2016, respectively, seeking to vacate the interim stay and also for dismissal of the writ petition.

5.In the counter affidavit filed by the Official Respondents it has been contended that the 3rd respondent has given a petition alleging that he purchased 1.05 acres of land in S.No.192/3 & 192/4 in Puzhal Village, Madhavaram and to grant patta for the said land in his favour, by cancelling the patta already issued in favour of various person. Whereas

the petitioner herein has created a settlement deed during the year 2011 and formed a layout by name 'Anja Nagar' and subdivided the land and sold them to various persons, by physically showing the land in S.No.190, but during registration of the sale deeds, he had shown them as the lands in S.Nos.192/3 & 192/4. Based on the petition of the 3rd respondent, an enquiry was proposed to be conducted on 01.02.2016 and the petitioner, his family members and the 3rd respondent herein were directed to appear for enquiry on 01.02.2016. During the enquiry, the petitioner's brother Yovan alone appeared and his statement was recorded. Even the petitioner herein has not appeared for the enquiry on 01.02.2016. Therefore, the enquiry was adjourned to 08.02.2016. Even on 08.02.2016 the petitioner did not appear for enquiry. In the mean time, the petitioner filed the writ petition in W.P.No.3319 of 2016 and obtained interim order from this Court. According to the Official Respondents, it is incorrect to state that the 1st respondent has no jurisdiction to issue the impugned notice for cancellation of patta. According to Rule 14 of the Tamil Nadu Patta Pass Book Act, 1983, an appeal against any order of the Tahsildar shall be filed before the Officer incharge of Revenue Division, in whose jurisdiction the property lies, within a period of thirty days from the date of receipt of the order. According to Section 31(8) of the Revenue Standing Orders, the Revenue Divisional Officer, in the exercise of his general powers of revision, can entertain revision petition at any time, against the orders of his subordinates in all cases of patta transfer. Therefore, it is incorrect to state that the 1st respondent has no jurisdiction to issue the impugned notice for cancellation of patta. Thus, the Official Respondents sought for dismissal of the writ petition.

6.The 3rd respondent has also filed a detailed counter opposing the prayer of the petitioner.

7.Heard both sides and perused the materials available on record.

8.It is the only submission of the learned counsel for the petitioner that the 1st respondent has no jurisdiction to issue the impugned notice/proceedings for cancellation of patta. In this regard, the learned counsel for the petitioner has also relied upon the judgment of this Court reported in (2011) 2 MLJ 6 [P.Pathiah Moopar Vs. Revenue Divisional Officer, Collectorate Buildings, Madurai].

9.But, it is the contention of the learned counsel for the 3rd respondent that the petitioner has not approached this Court with clean hands. Actually, the petitioner's father had executed a settlement deed in favour of the petitioner in respect of S.No.190/1, 190/3 and not S.Nos.192/3 & 192/4. The

land in Survey No.190 is a government poramboke land. In this regard, the learned counsel appearing for the 3rd respondent has also invited the attention of this Court to a copy a 'A' Register maintained in Office of the Deputy Tahsildar, and pointed out that S.No.190 was described as Tharisu. But, suppressing all these facts, the petitioner has filed the present writ petition with false averments and obtained interim order of stay from this Court.

10.The learned Additional Government Pleader has also made his detailed submission, stating that the 1st respondent is competent authority to deal with the appeal as against the order passed by the 2nd respondent. Moreover, while the enquiry was under progress, the petitioner has obtained the interim order of stay from this Court.

11.From the materials available on record and the submissions made on either side, I do not find any valid ground to entertain the present writ petition. The only ground raised by the learned counsel for the petitioner is that the 1st respondent is not the competent authority, which is not legally correct. Section 10 of the Act empowers the 2nd respondent to make an order or modification in the entries in the Patta, after conducting enquiry. Further from the perusal of the materials on record, I find that the 2nd respondent has not made any modification in the Patta and he has only placed his report before the 1st respondent for passing proper final order. Further, according to Section 31 (8) of the Revenue Standing Orders, the Revenue Divisional Officer, in the exercise of his general powers of revision, can entertain revision petition at any time, against the orders of his subordinates in all cases of patta transfer. Therefore, it is incorrect to state that the 1st respondent has no jurisdiction to issue the impugned notice for cancellation of patta.

For the foregoing reasons, I do not find any valid ground to quash the impugned order. The writ petition fails and the same is liable to be dismissed.

In fine, the writ petition is dismissed and the interim stay granted by this Court is vacated. The 1st respondent is directed to pass appropriate orders, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

SSV

To

1.The Revenue Divisional Officer,
Ambattur, Chennai.

2.The Tahsildar,
Madavaram Taluk,
Chennai.

+4 ccs to J.D.Srikanth Varma, Advocate, sr.16494

+1 cc to M/s.B.Ganesamoorthy, Advocate, sr.16403

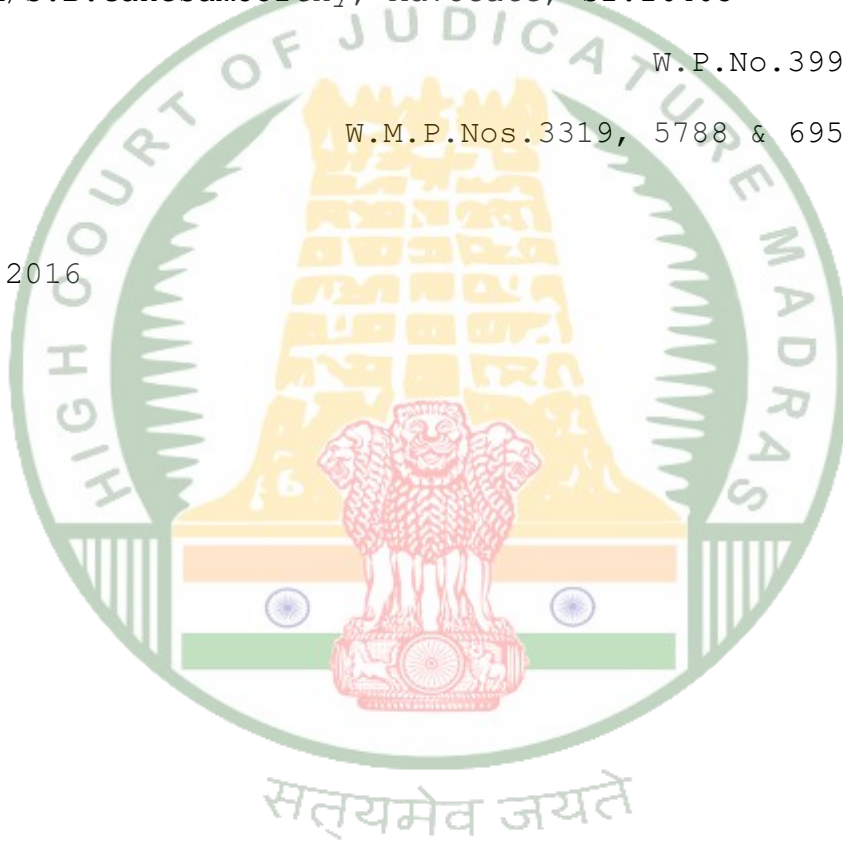
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