



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

Writ Petition (MD) No. 5308 of 2016

and W.M.P. (MD) No. 4759 of 2016

WEB COPY

S. Gunaseelan

... Petitioner

Vs.

1. The Revenue Divisional Officer,
Thamaraikulam, Periyakulam Taluk,
Theni District.

2. The Tahsildar,
Andipatti Taluk,
Theni District.

3. Rathinam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order of 1st respondent in reference Na.Ka.No. 737/2012/A1 dated 24.02.2016 and quash the same.

For Petitioner : Mr. S. Natarajan

For Respondents : Mr. V. Muruganandham
AGP for RR-1 & 2
Mr. S. Sukumar for R-3

ORDER

This Writ Petition is filed challenging the impugned order passed by the 1st respondent/ Revenue Divisional Officer, Periyakulam Taluk, Theni District, in reference Na.Ka.No. 737/2012/A1 dated 24.02.2016.

2. It is an unfortunate case, where the Revenue Divisional Officer, Periyakulam Taluk, despite the orders passed by a Division Bench of this Court and subsequently, a learned single Judge of this Court, directing him to consider the specific objection raised by the petitioner and pass orders, has mechanically passed the impugned order, without considering the orders passed by this Court.

3. The case of the petitioner in brief is as follows:

The land in dispute belongs to one Seeni Thevar, father of the petitioner and third respondent, and during his life time, there are lot of litigations went up to Supreme Court and



finally, the matter has been settled in favour of Seeni Thevar. After his death, a patta has been issued in the name of the writ petitioner herein. Against that order, the third respondent said to have filed a representation before the Revenue Divisional Officer, Periyakulam Taluk to issue a joint patta. After that, the third respondent filed a writ petition before this Court seeking a direction to dispose of his representation without impleading the writ petitioner herein. The above writ petition was allowed and against that order, the writ petitioner filed a writ appeal in W.A.(MD).No.502 of 2013 and a Division Bench of this Court, on 21.11.2013 passed the following order:

"3.In view of the facts and circumstances arising for the consideration of this Court, in the present appeal, we deem it fit to direct the 2nd respondent to permit the appellant to appear before the 2nd respondent/ Revenue Divisional Officer, Theni District, to raise the issue of maintainability of the representation before the said respondent. On such issue being raised, by the 1st respondent, the 2nd respondent shall consider the same and pass appropriate order, with regard to the said issue, within a period of 4 weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to the appellant as well as the 1st respondent herein. Admittedly, the writ appeal is disposed of with the above direction. No costs."

4. Thereafter, on remand, once again, the Revenue Divisional Officer, Periyakulam Taluk, passed an order without considering the preliminary objection raised by the petitioner. Hence, the petitioner filed another writ petition in W.P.(MD). No.6749 of 2014, dated 18.07.2014 and the learned Single Judge, setting aside the order passed by the first respondent and allowed the writ petition by passing the following order:

"Hence, for all the above reasons, the impugned order is liable to be set aside. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent shall issue notice to the petitioner, third respondent and other brothers and sisters of the petitioner and consequently, comply with the directions of the Hon'ble Division Bench referred to supra and pass a reasoned order on merits and in accordance with law. Consequently, connected Miscellaneous



5. After remand, since the first respondent did not pass any orders, writ petitioner filed another writ petition (MD). No.913 of 2015 directing the first respondent to reject the petition filed by the third respondent, dated 26.03.2014 on the file of the 1st respondent, based on his representation, dated 06.10.2014. This Court, by an order dated, 10.12.2015, without going into the merits of the case, once again directed the first respondent, to consider the petitioner's representation, dated 06.10.2014 along with the application made by the third respondent, dated 26.03.2014 and pass orders in accordance with law, within a period of twelve weeks from the date of receipt of a copy of that order. Subsequently, the present impugned order has been passed by the first respondent on 24.02.2016.

6. According to the petitioner, even in the present order, the first respondent/ Revenue Divisional Officer, Periyakulam Taluk, did not consider the preliminary objection raised by the petitioner, as directed by the Division Bench of this Court and subsequently, the learned Single Judge. Hence, the impugned order is passed without application of mind and without complying the specific orders issued by this Court.

7. The second respondent filed a counter affidavit. Even though a specific ground has been raised in the writ petition in ground No.2 that the Revenue Divisional Officer, Periyakulam did not consider the specific direction issued by this Court, there is no answer found place in the counter affidavit and it is only evasive.

8. The third respondent also filed a counter affidavit stating that the Revenue Divisional Officer, Periyakulam Taluk, considered the entire case on merits and passed orders and there are no infirmities in the order passed by the third respondent.

9. I have considered the above submissions made on either side and perused the documents carefully.

10. On a perusal of the impugned order passed by the first respondent, it clearly shows that the first respondent did not consider the directions issued by the Division Bench of this Court in W.A.(MD).No.502 of 2013, dated 21.11.2013 and subsequently the orders passed by the learned Single Judge in W.P.(MD).No.6749 of 2014 dated 18.07.2014 and in Writ Petition (MD).No.913 of 2015, dated 10.12.2015. In the impugned order, the first respondent/ Revenue Divisional Officer, Periyakulam Taluk stated that in W.A.(MD).No.502 of 2013, the Division Bench only directed the Revenue Divisional Officer, Periyakulam Taluk to dispose the petition filed by the third respondent within a period of twelve weeks and the first respondent did not consider the preliminary objection raised by the petitioner, but only considered the case on merits and passed the impugned order.



11. From the perusal of the impugned order, it is very clear that the first respondent/ Revenue Divisional Officer, Periyakulam, without even considering the earlier directions passed by the Division Bench in W.A.(MD).No.502 of 2013 and also the orders passed in W.P.(MD).No.6749 of 2014, dated 18.07.2014 and W.P.(MD).No.913 of 2015, dated 10.12.2015, mechanically passed the impugned order, granting joint patta in favour of the brothers and sisters of the petitioner (including the petitioner and third respondent). The objection raised by the petitioner is a preliminary objection regarding the maintainability of the alleged representation filed by the third respondent. Hence, the authority should necessarily consider the preliminary objection, before going into the merits of the case. That is why the Division Bench directed the Revenue Divisional Officer, Periyakulam Taluk, to consider the objection raised by the petitioner. Despite the repeated orders passed by this Court, the first respondent, failed to consider the above objection and mechanically passed the order.

12. In the above circumstances, the impugned order passed by the 1st respondent is set aside and the matter is remanded to the first respondent, and the first respondent is directed to consider the preliminary objection raised by the petitioner, as directed by this Court in W.A.(MD).No.502 of 2013, dated 21.11.2013 and W.P.(MD).No.6749 of 2014, dated 18.07.2014 and W.P.(MD).No.913 of 2015, dated 10.12.2015 and pass orders within a period of six weeks from the date of receipt of a copy of this order, after giving opportunity to the petitioner as well as the third respondent, in accordance with law. Accordingly, this Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/

Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Revenue Divisional Officer,

Thamaraikulam, Periyakulam Taluk, Theni District.

2.The Tahsildar, Andipatti Taluk, Theni District.

+1cc to M/S.S.Sukumar, Advocate in SR.No.55328

+1cc to M/S.S.Natarajan, Advocate in SR.No.55007

+1cc to Special Government Pleader in SR.No.55178

W.P(MD)No.5308 of 2016

22.09.2016

vs

PA/SS3/13.10.2016/4P/6C