BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.09.2016

Coram

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD)No.10114 of 2011

G.Mohandass ...Petitioner

-Vs-

1.The District Revenue Officer,
Thanjavur.
2.The Revenue Divisional Officer,
Thanjavur District,
Thanjavur.
3.The Tahsildar,
Orathanadu Taluk Office,
Thanjavur District.
4.Mr.Govindarajulu Naidu (died)
5.D.Mala
6.Muthuvel
7.Murugavel ...Respondents
(Respondents 5 to 7 impleaded as Lrs of deceased R-4 vide order of this Court dated 02.03.2012 in M.P.No.1 of 2012)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the orders in T.P.8/2010/U2 dated 25.08.2011 passed by the 1st respondent and the Orders in Na.Ka.6968/08/A5 dated 13.04.2010 passed by the 2nd respondent and quash the same.

For petitioner :Mr.D.Gnanasekaran
For Respondents :Mr.R.Anandharaj
Government Advocate For RR-1 to 3
Mr.G.Karnan for RR-5 to 7
R-4 died

<u>ORDER</u>

The writ petition has been filed challenging the orders passed by the first and second respondents, transferring patta in favour of the fourth respondent.

2. According to the petitioner, the petitioner is in possession and enjoyment of the property in SF.No.13/3, Patta No.198 in Muthambalpuram Village, Orathanadu Taluk, Thanjavur District to an extent of 1.50 cents and his name has been entered in patta Passbook under Section 5 of the Patta Passbook Act, 1987 and chitta, adangal have been issued in his name. In the said circumstances, the fourth respondent made an application before

the third respondent/Tahsildar, Orathanadu Taluk, Thanjavur District for transfer of patta in his name, where, the petitioner contested the above application. But, the third respondent, without conducting any enquiry, submitted a report before the second respondent/Revenue Divisional Officer, Thanjavur. Based on the said report, without considering the claim of the petitioner, the second respondent passed an order, cancelling the patta, stands in the name of the petitioner and granted patta in favour of the fourth respondent. Challenging the above order, the petitioner filed WP.(MD).No.6008 of 2010 before this Court and the above writ petition was disposed of by directing the petitioner to approach the first respondent herein. Consequently, the petitioner filed a revision before the first respondent and the first respondent also passed an order, dismissing the above revision. Challenging the above order passed by the first and second respondents, the petitioner has filed the present writ petition.

3.According to the petitioner, since his name was entered in the Patta Passbook, the third respondent ought to have invoked Section 10 of the Act and make any modification and against that order passed by the Tahsildar under Section 10 of the Patta Passbook Act, an appeal lies under Section 12 of the Act before the second respondent. Hence, the impugned order has been passed in violation of the Section 10 of the Patta Passbook Act and the respondents 1 and 2 ought to have directed the 4th respondent to appear before the Civil Court and they have no power to cancel the patta.

4.The learned counsel for the petitioner contended that the impugned orders passed by the respondents is without jurisdiction and without passing any order under Section 10 of the Patta Passbook Act, the second respondent/Revenue Divisional Officer cancelled the patta stands in the name of the petitioner, which is also confirmed by the first respondent. Apart from that, the petitioner was in possession and enjoyment of the property from 1997 and that fact was also not considered by the respondents 1 & 2.

5.Per contra, the learned counsel appearing for the respondents 5 to 7, who are the legal heirs of the 4th respondent (since died) submits that the property has been purchased by one Muthusamy, father of the 4th respondent in the year 1997 and during his life time, he executed a Will in favour of his son viz., 4th respondent. At that time, he was a minor. After attaining majority, he came to know that patta stands in the name of the petitioner. Hence, he had filed a petition before the third respondent/Tahsildar. After considering the report submitted by the third respondent, the second respondent, by passing an elaborate order, allowed that petition. Against which, the petitioner filed a revision before the first respondent/District Revenue Officer, Thanjavur and that was also dismissed by the first respondent.

6.I have heard the submissions made on either side and perused the records carefully.

7.Sofar as the first contention raised by the petitioner regarding the jurisdiction of the respondents, the learned counsel for the respondents 1 to 3 contented that there is no application before the Original Authority/Tahsildar, Orathanadu Taluk, Thanjavur District, under Section 10 of the Patta Passbook Act and hence, no order has been passed by the Tahsildar, so, no appeal lies before the second respondent. Sofar as Section 10 of the Patta Passbook Act is concerned, it is applicable only in cases, where, modification of entries in patta is required, viz., due to the death of the pattadhar or a reason of transfer or any subsequent change of circumstances. But, in the instant case, where petitioner is claiming right based on the patta granted in favour of the writ petitioner, considering his possession, without any proof of his title. Whereas, the respondent No.4 is claiming his right, based on the sale deed, registered in the name of his father and on the basis of the subsequent Will. Hence, in the present case, Section 10 of the Patta Passbook Act will not apply and the proper remedy for the petitioner is to file an appeal before the appellate authority viz., the first respondent/District Revenue Officer, Thanjavur District. Here, as per the direction of this Court, the writ petitioner has filed a revision before the first respondent/District Revenue Officer, Thanjavur Distirct and the revisional authority, after affording opportunity to the parties, dismissed that revision, hence, there is no error in the jurisdiction.

8.The next contention raised by the petitioner regarding possession, if the petitioner has any right over the suit property, it is for him to approach the competent Civil Court and get a decree in his favour and thereafter he can approach the authorities for change of patta, the Revenue authorities, has no power to grant pata, where title of the property is in dispute.

9.In the above circumstances, there is no error in the impugned orders passed by the first and second respondents and this Court do not find any reason to interfere with the impugned orders passed by the respondents 1 & 2. Hence, this writ petition is dismissed. However, liberty is granted to the petitioner to approach the competent Civil Court to establish his title, if he is so desired. Consequently, connected M.P.(MD).No.2 of 2011 is also dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar(CS)

To

1.The District Revenue Officer,
Thanjavur.

2.The Revenue Divisional Officer,
Thanjavur District,
Thanjavur.

3.The Tahsildar,
Orathanadu Taluk Officer,
Thanjavur District.

+1cc to the Special Government Pleader in SR.52389
+1cc to Mr.G.Karnan, Advocate in SR.52938
+1cc to Mr.R.Giridharan, Advocate in Sr.53003

W.P.(MD).No.10114 of 2011
14.09.2016

vs
PBK/CK 04.10.2016 ::4P-7C: