



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.4561 of 2013

C.Sundharavadivel

... Petitioner

Vs.

1. The District Collector,
Dindigul District.

2. The Assistant Director (Health Services),
Palani.

3. The Revenue Divisional Officer,
Kodaikanal.

4. The Tahsildar,
Kodaikanal.

5. The Chief Land Surveyor,
O/o.Tahsildar, Kodaikanal.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 4th respondent herein to issue patta in favour of the petitioner excluding the area of the Primary Health Centre Building in Survey No.580/1 situated at Poolathur Village as per 4th respondent proceeding in Na.Ka.No.5207/95/B1 dated 29.06.2012 and to make necessary entry in the patta pass book.

For Petitioner	:	Mr.Muthugeethaiyan
For Respondents	:	Mr.J.GunaseelanMuthiah Government Advocate.

ORDER

The petitioner has come up with this writ petition seeking for the issuance of a writ of mandamus to direct the fourth respondent to issue patta in favour of the petitioner excluding the area of the Primary Health Centre Building in Survey No.580/1 situated at Poolathur Village, as per the proceedings of the fourth respondent in Na.Ka.No.5207/95/B1, dated 29.06.2012 and to make necessary entry in the patta pass book.



2. According to the petitioner, originally, the two acres of land in New Survey No.580, situated at Poolathur Village, Kodaikanal Taluk belonged to one Rangasamy. Subsequently, the said property devolves upon his son Arangabalakrishnan and the Arangabalakrishnan died intestate and his property devolves upon his wife Subbulakshmi and his daughter Rameela. But after the death of Arangabalakrishnan, his wife Subbulakshmi executed a gift deed in favour of the District Collector gifting the entire property. Subsequently, the daughter Rameela sold the above property in favour of the petitioner. It is further stated that when the petitioner tried to carry out maintenance work, the respondents 1 to 4 obstructed and therefore, the petitioner filed a suit in O.S.No.63 of 1996 on the file of the District Munsif Court, Kodaikanal and the trial Court partly decreed the suit in his favour holding that his vendor namely, Ramila is entitled to 1 acre in Survey No.580. Thereafter, the petitioner has approached the respondents seeking patta and the District Collector, after obtaining opinion from the Government Pleader, has also directed to grant patta in respect of one acre. Based on the said recommendation, the Tahsildar passed an order dated 29.06.2012 to grant patta in respect of one acre to the petitioner. Even though the order has been passed in the year 2012, no patta has been granted to the petitioner. Therefore, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that as per the decree of the Civil Court made in O.S.No.63 of 1993, dated 30.07.2004 and subsequent to the order passed by the Tahsildar dated 29.06.2012, the petitioner is entitled for granting patta in respect of one acre. He would further submit that merely because an appeal is pending before the appellate Court against the judgment and decree passed in O.S.No.63 of 1996 in the absence of any order of stay of judgment and decree, the respondents cannot refuse to grant patta. In support of his submissions, learned counsel appearing for the petitioner relied on the following decisions:-

“(i) Giridharilal Chandak and Bors Vs. S. Mehdi Ispahani reported in 2011 (5) CTC 252 and

(ii) Inderchand Jain (dead) through Lrs Vs. Motilal (Dead) through lrs. reported in (2009) 14 SCC 663”

4. Per contra, learned Government Advocate submitted that as against the judgment and decree passed in O.S.No.63 of 1993, dated 29.06.2012, they have filed an appeal in A.S.No.20 of 2015 before the Sub Court, Palani and the appeal is pending. In the above circumstances, until the appeal is disposed of, patta cannot be granted in favour of the petitioner.



5.I have considered the submissions made on either side and perused the entire materials available on record.

6.Admittedly, the trial Court partly decreed the suit filed by the petitioner by a judgment and decree dated 30.07.2004 in respect of one acre of land in favour of the petitioner, which was also accepted by the District Collector as well as the Tahsildar by an order dated 29.06.2012 and now, after 11 years, the respondents have filed an appeal before the Sub Court, Palani in A.S.No.20 of 2015.

7.Now, merely because an appeal is pending, the respondents cannot refuse to grant patta referring the pendency of the appeal without any order of stay. In similar circumstances, the Supreme Court in Inderchand Jain's case (supra) has held as follows:

"29.Order 41, Rule 1 of the Code stipulates that filing of an appeal would not amount to automatic stay of the execution of the decree. The law acknowledges that during pendency of the appeal it is possible for the decree holder to get the decree executed. The execution of the decree during pendency of the appeal would, thus, be subject to the restitution of the property in the event the appeal is allowed and the decree is set aside. The court only at the time of passing a judgment and decree reversing that of the appellate court should take into consideration the subsequent events, but, by no stretch of imagination, can refuse to do so despite arriving at the findings that the plaintiff would not be entitled to grant of a decree.

8.This Court in Girdharilal Chandak's case (supra) has held as follows:

"15.Order 41, Rule 5 (1) CPC, makes it clear that an appeal shall not operate as a stay of the proceedings under a decree or order appealed from, except so far as the Appellate Court may order. It also makes it clear that the execution of a decree need not be stayed merely by reason of an appeal having been preferred from the decree. As a matter of fact, the Explanation to Sub Rule (1) of Rule 5 of Order 41, goes a step further by stating that even an order granted by the Appellate Court for the stay of execution will be effective only from the date of communication of such order to the Court of first instance. However, it permits the Court of first instance even to act upon an affidavit sworn to by the appellant, to the effect that an Appellate Court had stayed the execution of the decree. In other words, the stay is made operative only prospectively.



17. Therefore, the petitioner cannot even contend that the principles of Order 41, Rule 5 CPC, cannot be invoked to the proceedings under the Rent Control Act, in view of the above observations of the Supreme Court that Order 41, Rule 5, embodies only a general principle of law. In any case, in *Atma Ram Properties (P) Ltd vs. Federal Motors (P) Ltd* {2005 (1) SCC 705}, which arose out of the provisions of *Delhi Rent Control Act, 1958*, the Supreme Court held in paragraph 8 that it is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the Court below. The Court pointed out that a prayer for the grant of stay of the proceedings or on the execution of the decree or order appealed against has to be specifically made to the Appellate Court. In paragraph 9 of the Report, the Supreme Court further reiterated that "to secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant". To come to the above conclusions, the Supreme Court relied upon the provisions of Order 41, Rule 5 CPC, despite the fact that the proceedings in that case also arose only under the Rent Control Act. Therefore, if a person who seeks an order of stay and suffers a refusal, is himself obliged to pay the fair rent, the petitioner who did not even seek a stay of the orders of both the Courts below, cannot be placed better off.

9. Following the above said legal position, the respondents cannot deny patta to the petitioner. In the above circumstances, the fourth respondent is directed to issue patta in favour of the petitioner as per the proceedings of the Tahsildar, dated 29.06.2012. However, it is made clear that the transfer of patta in favour of the petitioner is subject to the result of the appeal filed by the respondents in A.S.No.20 of 2015 which is now pending on the file of the Sub Court, Palani. The respondents are directed to issue patta within a period of twelve weeks from the date of receipt of a copy of this order.

10. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar



To

1. The District Collector,
Dindigul District.

2. The Assistant Director (Health Services),
Palani.

3. The Revenue Divisional Officer,
Kodaikanal.

4. The Tahsildar,
Kodaikanal.

5. The Chief Land Surveyor,
O/o.Tahsildar, Kodaikanal.

+1cc to The Special Government Pleader, SR.No.71122

+1cc to Mr.Muthugeethaiyan, Advocate, SR.No.70794

sms

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