IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9215 of 2013
and M.P.No.1 of 2013

D. Srinivasan ... Petitioner

Vs.

1.The District Collector,
Thiruvallur,
Thiruvallur District.

2.The Revenue Divisional Officer,
Ponneri-Sub Division,
Ponneri, Thiruvallur District.

3.The Tahsildar,
Ponneri Taluk,
Ponneri, Thiruvallur District.

4.G.George,
Eswaran Koil Street,
Munivel Nagar, Karanodai,
Chennai-600 067.

5.S.Jayaraman,
1/343-B, Old Library Street,
Cholavaram, Chennai-600 067. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari after calling the connected records, pertaining to the impugned order No.Na.Ka.4158/2012/A1 dated 25.03.2013 of the 2nd respondent and quash the same as illegal and void.

For Petitioner : Ms. K. Sheeba
for M/s. Paul and Paul

For Respondents 1 to 3 : Mr.R. Vijayakumar
Additional Government Pleader

For Respondents 4 & 5 : No appearance

O R D E R

The order of Revenue Divisional Officer, Ponneri-Sub Division, passed in proceedings dated 25.03.2013, in respect of cancellation of patta is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner made a submission that in respect of title of the property, the writ petitioner has already filed O.S. No.189 of 2012 and the suit is pending before the District Munsif Court, Ponneri. The suit is yet to be decided by the competent Civil Court. However, during the pendency of the civil suit, the parties approached the Revenue Divisional Officer, Ponneri and the second respondent conducted an enquiry and cancelled the patta granted in favour of the writ petitioner in the impugned order. Challenging the same, the present writ petition is filed.

3. This Court is of the view that granting of patta, cancellation of patta or alteration of revenue records has to be undertaken by the competent authority only if the parties have settled the dispute in relation to the title of the immovable property through civil Court. When the civil suit is pending before the competent Civil Court, the Revenue Authorities need not take any decision in respect of granting or cancellation of patta or changes in any other revenue records. In this regard, it is relevant to consider the provision of The Tamilnadu Patta Pass book Act, 1983, herein after called as 'The Act'.

Section 3 of the said Act states that

> “ The Tahsildar shall issue a patta pass book to every owner in respect of land owned by him, on an application made by him in this behalf. Any application received under this section shall be acknowledged by the Tahsildar or any other officer authorised by him in this behalf.”

Section 4 deals with Presumption of correctness of entries in the patta pass book:-

> “ The entries in the patta pass book and the certified copy of entries in the patta pass book shall be presumed to be true and correct, until the contrary is proved or a new entry is lawfully substituted therefor.”

Section 10 deals with Modification of entries in the patta pass book:-

“Where any person claims that any modification is required in respect of any entry in the patta pass book already issued under section 3 either by reason of the death of any person or by reason of the transfer or interest in the land or by reason of any other subsequent change in circumstances, he shall make an application to the Tahsildar for the modification of the relevant entries in the patta pass book.”

Section 11 deals with Persons who are required to furnish information:-

“Any person whose rights or interests are required to be, or have been entered in any patta pass book under this Act shall be bound, on the requisition of the Tahsildar engaged in preparing or modifying the entries in the patta pass book, to furnish or produce for his inspection within such time as may be specified in such requisition, or within such further time as the Tahsildar may, in his discretion allow, all such information or documents needed for the correct preparation or revision thereof as may be within his knowledge or in his possession or power.”

Section 12 deals with appeal:-

“ Any person aggrieved by an order made by the Tahsildar under this Act may, within such period as may be prescribed, appeal to such authority as may be prescribed and the decision of such authority on such appeal shall subject to the provisions of section 13, be final.”

Section 13 deals with revision:-

“ Any officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government, by notification in this behalf for such area as may be specified in the notification, may of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit.”

4. In this regard it is relevant to take note of the Tamil Nadu Patta Pass Book Rules, 1987, herein after called as 'The Rules'

Rule 14 deals with Appeal:-

> " An appeal against any order of the Tahsildar passed under the Act shall be filed before the officer in charge of Revenue Division in whose jurisdiction the property lies within a period of thirty days from the date of the receipt of the order."

Rule 15 deals with Revision on application:-

> " An application under section 13 to the District Revenue Officer or such officer as may be authorised by the Government in this behalf by Notification for revision of an order passed by the Tahsildar or the appellate authority shall be filed within ninety days from the date of receipt of the order."

5. Thus, it is clear that an application for revision is to be entertained by the District Revenue Officer, by virtue of section 13 of the Act and under rule 14 of the Rules.

6. Now, this Court has to examine the very spirit of the patta pass book Act. Section 3 stipulates issue of patta pass book. The language adopted in the said provision is that "The Tahsildar shall issue a patta pass book to every owner in respect of land owned by him." Thus, it is clear that the Tahsildar is authorised to issue the patta only to the owner in respect of land owned by him and not otherwise. In this regard, this Court shall draw an inference in respect of the power conferred to the Tahsildar. To say that the Tahsildar is competent to issue patta only in respect of every owner in respect of land owned by him. Thus, if the title is clear in respect of an immovable property, then only the Tahsildar is competent to issue patta in favour of the owner of the land.

7. Accordingly, this Court is of the firm opinion that the primary requirement for issuance of patta pass book is the title of the property. The title of the property has to be made clear by the parties by producing relevant documents, then only the Tahsildar will have jurisdiction or is competent to issue patta in favour of owner of such land. In all other cases the Tahsildar or any other appellate authority under the patta pass book Act cannot have any jurisdiction to decide the title.

8. In respect of the title of the property, the competent Civil Court alone can decide the title of the property in question. For instance, if civil suit is instituted by any one of the parties before the competent Civil Court, then it is preferable that the Tahsildar/Appellate Authority has to wait for the final decision or the out come in the civil suit. When the civil suit before the Court of competent jurisdiction is pending,

then the Tahsildar/Appellate Authority cannot enter into the arena of adjudicating the title of the property in question. When the civil Court has undertaken the process of deciding the title of a particular land/property, the Tahsildar and the Appellate Authority cannot have any jurisdiction to adjudicate the merits and the demerits of the title in respect of the property in question. If such a parallel proceeding is allowed to continue in respect of the title of the immovable property, the same will create confusion and further will lead to conflicting positions, as to weather the title is to be decided under the patta pass book Act or through the judgement rendered by the Civil Court.

9. In order to avoid such conflicting simultaneous proceedings in this regard, this Court is of the opinion that when the civil suits are pending before the competent Court having civil jurisdiction, then the Tahsildar or the appellate authority cannot hold any enquiry in respect of title of the property or otherwise. So also the competent authority under the patta pass book Act need not deal with any such application in respect of grant of patta under section 3 or modification required under section 10 of the Act.

10. At the outset no application under the patta pass book Act needs to be entertained and adjudicated when the title of the property is in question and sub judice before the competent civil Court. The Tahsildars/Appellate Authorities necessarily have to wait for the final judgement in the civil suit by the competent civil Court.

11. Intermittent intervention by the Tahsildar and the Appellate Authority are causing lot of inconvenience and conflicting interest both between the parties as well as to the authorities. If such Intermittent intervention are allowed, then the parties may take undue advantage from and out of orders passed by the competent authority either granting patta or cancellating patta. Thus, this Court is of the view that the Tahsildar/Appellate Authority need not entertain any application when the title of the particular property is in dispute.

12. The said position is very clear in view of section 3 of Patta Pass Book Act. Section 3 unambiguously enumerates that the Tahsildar can issue patta pass book to an owner in respect of land owned by him. The word “owner” has been defined in section 2 sub clause 6 of the Patta Pass Book Act as under:-

> “ 'Owner' means any person holding land in severalty or jointly or in common under a ryotwari settlement or in any way subject to the payment of revenue direct to the Government, and includes a full owner or limited owner but does not include a mortgagee, lessee or a tenant.”

13. When the Act is unambiguous in respect of entertaining of an application and issuance of patta to the owner, the Tahsildar/Appellate Authorities cannot entertain any application or revision for modification in respect of patta during the pendency of the civil suit or otherwise in respect of the title of the property. In other words when the title is clear and when the title regarding an immovable property attained the finality between the parties, then only Tahsildar/Appellate Authority are competent to issue patta pass book under the provision of the Tamil Nadu Patta Pass Book Act, 1983 and not otherwise. In respect of modification also the same principles are to be adopted and cancellation of patta or modification in any revenue records also to be undertaken only if the dispute regarding title is resolved.

14. At the outset, for entertaining any application under the Tamil Nadu Patta Pass Book Act, 1983, the respective parties submitting an application should have clear title in respect of the property. When it is brought to the knowledge of the Tahsildar/Appellate Authority in respect of the pendency of the civil suit before the competent Civil Court, then no application should be entertained nor any order should be passed.

15. The head of the department namely the Commissioner of Land Administration, Chepauk, Chennai has to take note of these provisions of the Tamilnadu Patta Pass Book Act, 1983 and the Rules made thereunder and issue a consolidated instructions to all the Tahsildars/Appellate Authorities to avoid all such conflicting decisions and creation of conflicting interest between the parties in this regard. However, in the case on hand the patta was cancelled in the impugned proceedings by the Revenue Divisional Officer, when admittedly a civil suit in O.S.No.189 of 2012 is pending before the District Munsif Court, Ponneri. Further, the impugned order had been issued only after the institution of the suit by the writ petitioner. Thus, it is very clear that the impugned order, cancelling the patta issued during the pendency of the civil dispute between the parties in O.S.No.189 of 2012, cannot be sustained.

16. Under these circumstances, the second respondent ought to have returned the application submitted by the parties in view of the pendency of the civil suit in O.S.No.189 of 2012. Contrarily, he had gone to the extend of adjudicating the title of the property and cancelled the patta. Such an action of the second respondent is inappropriate and he is not competent to decide the title of the property and any enquiry in this regard is certainly an infringement of law and findings in this regard cannot be entertained by this Court.

17. Thus, it is made clear that when the title regarding

the property is sub judice before the competent civil court, the Tahsildar/Appellate Authority cannot go into the question regarding the title of the property. Accordingly, no application needs to be entertained either for grant of patta or modification of revenue records in this regard. Thus, the order passed by the Revenue Divisional Officer in proceedings dated 25.03.2013 is quashed and the writ petitioner as well as the other contesting respondents are at liberty to adjudicate the matter before the competent civil Court in O.S.No.189 of 2012 in respect of title of the property. Only after attaining finality in civil litigations the application seeking grant of patta or modification shall be entertained.

18. The learned counsel for the writ petitioner made a submission that civil suit in O.S.No.189 of 2012 is still pending. The parties to the dispute is not permitted to take any advantage in respect of the orders passed by the Tahsildar/Appellate Authority under the patta pass book Act till the civil suit which is pending before the competent Court in O.S.No.189 of 2012, attains finality.

19. With these observation, this writ petition stands allowed. Consequently, the connected Miscellaneous Petition is also closed. However, there shall be no order as to costs.

20. Registry is directed to issue a copy of this order to the Commissioner for Land Administration, Chepauk, Chennai for issuing consolidate instructions in this regard.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Thiruvallur,
Thiruvallur District.

2.The Revenue Divisional Officer,
Ponneri-Sub Division,
Ponneri, Thiruvallur District.

3.The Tahsildar,
Ponneri Taluk,
Ponneri, Thiruvallur District.

4 The Commissioner,
Land Administration,
Chapauk, Chennai.

+1cc to M/s.Paul & Paul Advocate SR.No.74805

+2cc to the Government Pleader, High Court, Madras
SR.Nos.75319 & 75293

W.P.No.9215 of 2013
and M.P.No.1 of 2013

SDR 20.11.2017