

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2017

Pronounced on : 24-03-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 39392 of 2015

Writ Petition No. 12263 of 2016

J. Bhavani .. Petitioner in both the WPs

Versus

1. The Tahsildar
Sriperumbadur
Kancheepuram District

2. V. Kollapuri .. Respondents in WP 39392/2015

1. The Tahsildar
Sriperumbadur
Kancheepuram District

2. V. Kollapuri

3. The Sub-Registrar
Padappai, Sriperumbadur Taluk
Kancheepuram District .. Respondents in WP 12263/2016

WP No. 39392 of 2015:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari to call for the records of the first respondent in Rc.2461/2015 (B2) and quash the order dated 07.12.2015

WP No. 12263 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari to call for the records of the first respondent in Rc.2461/2015 (B2) and quash the order dated 07.12.2015 by issuance of patta to second respondent in Patta No. 13338.

For Petitioner : Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. L. Muralikrishnan
in both the Writ Petitions

For Respondents : Mr. S.V. Durai Solaimalai
Additional Government Pleader for R1
in WP No. 39392 of 2015
Mr. A. Kumar
Special Government Pleader for RR1 and 3
in WP No. 12263 of 2016

Mr. P.L. Narayanan, Senior Advocate
for Ms. Christilla for R2
in both the Writ Petitions

COMMON ORDER

These two writ petitions have been filed by one and the same person. The respondents 1 and 2 in these writ petitions are one and the same. The learned counsel on either side have advanced common arguments in these writ petitions besides that the issue arising for consideration of this Court are identical. Therefore, by consent of counsel on either side, both the writ petitions are taken up together and are disposed of by this common order.

2. By the order dated 07.12.2015, which is impugned in these writ petitions, the first respondent ordered to cancel the Patta No. 3575 in the name of the petitioner in respect of the land comprised in Survey No.142/3C2 measuring 0.24.0 hectares

3. The petitioner would contend that she is the owner of the vacant land situated in Varadarajapuram Village, Sriperumbadur Taluk, Kancheepuram District comprised in Survey No.142/3 measuring 58 cents having purchased the same from Mr. Perumal and Elumalai by means of a registered sale deed dated 16.06.1988 registered as document No. 2935 of 1988 on the file of Sub-Registrar, Tambaram. After such purchase, the petitioner mutated the revenue records and obtained patta No. 3575 in her name. As per the Patta, the Survey number was 142/3C2. According to the petitioner, during the year 2014, one Ramakrishnan, who is the son of her vendor, attempted to interfere with her peaceful possession and enjoyment of the land in question and therefore, she has given a complaint to the police as well as revenue authorities. As a counterblast, the said Ramakrishnan set up his cousin, who is the second respondent in these writ petitions, to file an application before the first respondent to cancel the patta stands in the name of the petitioner. In the complaint, it was stated that what was sold to the petitioner was the land in Survey No.143/3 and not 142/2. On the basis of such complaint, a notice was issued by the first respondent to the petitioner. According to the petitioner, she appeared before the first respondent and

sought for furnishing a copy of the complaint given by the second respondent, but it was not served on her. In such circumstances, the petitioner has earlier filed WP No. 29265 of 2015 before this Court to quash the notice issued by the first respondent inter alia questioning the authority of the first respondent to conduct such an enquiry for cancellation of the patta issued to her. However, this Court, without expressing any opinion as regards merits, directed the first respondent to forward a copy of the complaint given by the second respondent and to proceed further in accordance with law. Thereafter, the petitioner fell ill and she could not submit a reply to the first respondent. The petitioner therefore sought three weeks time to enable her to submit a reply. However, without waiting for her reply, the first respondent has passed the order dated 07.12.2015 cancelling the patta issued to her. According to the petitioner, in the order dated 07.12.2015, an observation was made as though the petitioner was represented by one Santhosh Kumar, but she has not nominated any one to appear for enquiry before the first respondent on her behalf. In such circumstances, the petitioner has filed WP No. 39392 of 2015.

4. The petitioner has filed the second writ petition No. 12263 of 2016 on 28.03.2016 on the very same averments contained in the earlier WP No. 39392 of 2015. However, in the second writ petition being WP No. 12263 of 2016, it was stated that even though the petitioner has one month time to prefer a statutory appeal as against the order dated 07.12.2015 of the first respondent, in the interregnum, if any changes takes place in the revenue records, it would render the statutory appeal that may be filed by the petitioner otiose.

5. The learned Senior counsel appearing for the petitioner would vehemently contend that the impugned order has been passed by the first respondent without affording sufficient opportunity to the petitioner and therefore, the order is in violation of principles of natural justice. Even though the petitioner has submitted a representation seeking extension of time for her appearance before the first respondent, the first respondent, without taking note of the genuine and legitimate request made by the petitioner, has passed the impugned order. In the impugned order, reference has been made as to the representation made on behalf of the petitioner, but the petitioner has not authorised any one to represent on her behalf. It is further stated that the petitioner has filed the second writ petition being WP No. 12263 of 2016 to ensure that nothing adverse happen against the petitioner in the matter of mutating the revenue records in favour of the second respondent even before the petitioner could file a statutory appeal.

6. The learned Senior counsel appearing for the petitioner would vehemently contend that the first respondent ought not to have decided the title in favour of the second respondent in respect of the land in question. Instead, the first respondent ought to have directed the parties to approach the competent Civil Court. In support of such contention, the learned Senior counsel for the petitioner relied on the Division Bench Judgment of this Court in (C. Sabesan Chettiar (deceased) and others vs. The District Revenue Officer, Coimbatore District, Coimbatore and others) reported in (2011) 5 CTC 241 wherein it was held that the Tahsildar acting under powers vested in him under Tamil Nadu Patta Passbook Act cannot decide title of parties to property and the parties have to be directed to approach the Civil Court to get their title declared. Therefore, it is contended by the learned Senior counsel for the petitioner that the order dated 07.12.2015 passed by the first respondent is without jurisdiction and the first respondent ought to have directed the petitioner and the second respondent to approach the civil court to get their title declared. The learned Senior counsel for the petitioner therefore prayed for allowing the writ petitions.

7. On the contrary, the learned Additional Government Pleader as well as the Special Government Pleader appearing for the respective official respondents would oppose the plea of the petitioner. According to the learned Special Government Pleader, the impugned order has been passed after thoroughly scrutinising the revenue records and after affording due opportunity to the petitioner to put forth her case. In the order dated 07.12.2015, clear finding has been given that the petitioner has obtained the patta in respect of the land in question by misrepresentation. Further, the petitioner was represented by one Mr. Santhoshkumar during the course of enquiry before the first respondent. Even though the petitioner disputed having authorised any one to represent her during the course of enquiry, it is not explained as to how a person claiming himself to be representing the petitioner could produce copies of documentary evidence before the first respondent at the time of her enquiry. In any event, the first respondent, after elaborate discussion of the rival submissions has come to a definite conclusion that the patta issued in favour of the petitioner has to be cancelled. If the petitioner is aggrieved by the order dated 07.12.2015, she has to prefer a statutory appeal before the Revenue Divisional Officer and this writ petition is not maintainable.

8. The learned Senior counsel appearing for the second respondent would contend that the petitioner is fully aware of the fact that the land purchased by her is in Survey N.143/3 and

not in Survey No.142/3. Even from a bare perusal of the sale deed produced by the petitioner would disclose that the petitioner has purchased vacant land in Survey No.143/3 from Perumal and Elumalai and not in Survey No.142/3. On the other hand, the second respondent derived title from his father M. Vaidyanathan and the "A" Register maintained in the Village of the year 1964 shows that Patta No.3031 of Varadarajapuram stands in the name of M.Vaidyanathan and two others. According to the learned Senior counsel for the second respondent, the sale deed dated 16.06.1988 in favour of the petitioner is a sham and bogus one. In order to circumvent her right, the petitioner has executed a sale deed dated 31.04.2011 in favour of her mother Balammal and such sale deed has been executed only to grab the land belonged to the second respondent. Further, the petitioner, without any title to the land measuring 600 square feet obtained patta in her name for the entire extent. During the course of enquiry by the first respondent, all the misdeeds committed by the petitioner stood exposed and the first respondent rightly ordered to cancel the patta issued to the petitioner. In any event, as against the order dated 07.12.2015 of the first respondent, the petitioner has to only file a statutory appeal which she has also filed as per the averments in the second writ petition No. 12263 of 2016 and such appeal is pending. When the petitioner has already filed a statutory appeal, the present writ petition need not be adjudicated by this Court and he prayed for dismissal of the writ petition.

9. In support of his contentions, the learned Senior counsel appearing for the second respondent relied on the decision of this Court in (Selvaraju vs. The District Revenue Officer, Thanjavur District, Thanjavur and others) 2015 (6) CTC 654 as well as the Division Bench Judgment of this Court in (Vishwas Footwear Company Limited, rep. by its Director V. Ravi vs. The District Collector, Kancheepuram and others) reported in 2011 (5) CTC 94 to contend that as against the order of cancellation of patta, the remedy is only to file a civil suit and in such event, relief sought for by way of writ petition under Article 226 of The Constitution of India is not maintainable.

10. I heard the learned counsel on either side and perused the documentary evidence made available. On perusal of the affidavits filed in support of the writ petitions, it is evident that the petitioner did not challenge any of the findings rendered by the first respondent in the order dated 07.12.2015 to the effect that "the revenue registry has been changed in the name of the Tmt. K.R. Bhavani without verifying any valid supporting documents or authenticity. It is also evident that records have been manipulated to appear as though Tmt. K.R.

Bhavani is the title holder of the land in S.No.142/3C2 of Varadarajapuram Village. Thus, it is concluded that the wrong entries appeared in the revenue registry without mentioning any authenticity is liable to be cancelled".. The petitioner only would contend in these writ petitions that the order dated 07.12.2015 has been passed in violation of principles of natural justice and her request for extension of time for her appearance has not been considered by the first respondent. The petitioner also disputed that the observations made by the first respondent in the order dated 07.12.2015 to the effect that she was represented by Thiru. S. Santhoshkumar is not correct and she did not authorise any person to represent her before the first respondent. In this context, useful reference can be made to the observations made by the first respondent in the order dated 07.12.2015 which reads as follows:-

"Moreover, Tmt. Bhavani did not participate in the enquiry for which notices were issued several times. Instead, Thiru. S. Santhoshkumar claiming to be her representative has filed written statement on behalf of Tmt. Bhavani. In the said written statement it has been stated that S.No.143/3 has been erroneously mentioned in their purchased document instead 142/3 and that it has been mentioned inadvertently."

11. It is seen from the above passage mentioned in the order passed by the first respondent that the petitioner, pursuant to the notice issued to her, did not participate in the enquiry however, she was represented by Mr. S. Santhoshkumar. It is also reiterated in the counter affidavit of the first respondent in para No.3 that "if really the petitioner has not been represented by any one, as alleged by her, it is not known as to how a person claiming himself to be representing the writ petitioner could produce copies of documents, decree of District Munsif, Sriperumbadur etc., which are ought to have been in her custody". Therefore, according to the first respondent, the petitioner was represented by Mr. Santhoshkumar during the course of enquiry but it is repudiated by the petitioner. In any event, such factual disputes need not be gone into by this Court in these writ petitions especially when the petitioner has already filed a statutory appeal as against the order dated 07.12.2015 of the first respondent. Therefore, in such view of the matter, it is suffice to direct the petitioner to raise all the points which are raised in these writ petitions before the appellate authority and such grounds cannot be adjudicated by this Honourable Court.

12. As mentioned above, in the second writ petition, being WP No. 12263 of 2016 filed by the petitioner, it was contended

that they have one month time to prefer an appeal as against the order dated 07.12.2015 passed by the first respondent. It is further stated that the order dated 07.12.2015 was received by the petitioner on 09.12.2015, however, even before the receipt of the order by the petitioner, on 08.12.2015 itself the patta was transferred in the name of the second respondent. According to the learned Senior counsel for the petitioner, if, on the basis of the transfer of patta in the name of the second respondent, he alienates or encumbers the property in question, it will prejudice the right of the petitioner to file an appeal. It is further stated that the second respondent is attempting to alienate or encumber the property to third parties and it would deprive the right of the petitioner.

13. I have considered the above submission of the learned Senior counsel for the petitioner. At the time of admission of the second writ petition namely WP No. 12263 of 2016, by order dated 10.08.2016, this Court granted an interim stay and the interim stay is in force. Further, even though the petitioner has contended in WP No. 12263 of 2016 that they are taking steps to file an appeal as against the order dated 07.12.2015 of the second respondent, there is no documentary evidence filed to show that such an appeal was in fact filed. Even in the counter affidavit, the respondents did not say that the petitioner has filed an appeal. In any event, the disputes involved in these writ petitions are required to be agitated before the appellate Authority and it is open to the petitioner to agitate all the points which are raised in these writ petitions before the Appellate Authority who is competent to entertain an appeal as against the order dated 07.12.2015 of the first respondent. In such circumstances, taking note of the facts involved in this case and the specific apprehension raised on behalf of the petitioner, there will be an interim direction to the second respondent not to alienate or encumber the property in question till the disposal of the appeal that may be filed by the petitioner as against the order dated 07.12.2015. If any such appeal is already filed or to be filed by the petitioner against the order dated 07.12.2015 of the first respondent, the appellate authority shall consider it and dispose of the same on merits and in accordance with law, after affording an opportunity of hearing to the parties concerned, as expeditiously as possible, preferably within a period of four months.

12. Accordingly, both the writ petitions are disposed of with the directions indicated hereinabove. No costs. Consequently, connected MP No. 1 of 2015 in WP No. 39392 of 2015, WMP No. 10601, 10602 and 20054 of 2016 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Tahsildar
Sriperumbadur
Kancheepuram District
2. The Sub-Registrar
Padappai, Sriperumbadur Taluk
Kancheepuram District

+1cc to Ms.Christella, Advocate, S.R.No.18530
+1cc to Mr.Muralikrishnan, Advocate, S.R.No.19192
+1cc to the Government Pleader, S.R.No.18819
+1cc to Ms.Christella, Advocate, S.R.No.18531(11/04/2017)

WP No. 39392 of 2015

WP No. 12263 of 2016

NMJ(CO)
RS(10/04/2017)

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