

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.11.2018

Pronounced on : 16.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 17547 of 2013
and
M.P.Nos.1 and 2 of 2013

Vasudevan ... Petitioner
vs.

- 1.The Collector,
Kancheepuram District.
- 2.The Sub - Collector,
Chengalpattu,
Kancheepuram District.
- 3.The Tahsildar,
Thirukazhukundram Taluk,
Thirukazhukundram,
Kancheepuram District.
- 4.The Secretary,
Dhanalakshmi Srinivasan College
of Engineering and Technology,
East Coast Road,Mamallapuram. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for records on the file of the 3rd respondent and quash the proceedings of the 3rd respondent passed in proceedings No. Na.Ka.No.1754/2012/A1 dated 17.09.2012 and consequently direct the 3rd respondent to conduct a fresh enquiry in accordance with law.

For Petitioner : Mr. S.L.Sudarsanam

For Respondents : Mr.B.Anand,
Government Advocate for R.1 to R.3
: Mr.P.Vasanthakumar for R.4

O R D E R

The instant writ petition is for a Writ of Certiorarified Mandamus calling for records on the file of the 3rd respondent and quash the proceedings of the 3rd respondent passed in proceedings No. Na.Ka.No.1754/2012/A1 dated 17.09.2012 and consequently direct the 3rd respondent to conduct a fresh enquiry in accordance with law.

2. The respondent No.4 herein M/s. Srinivasan Charitable and Educational Trust filed the writ petition in W.P.No.17889 of 2010 challenging the order dated 30.06.2010 passed by the 3rd respondent. This court pass the following order which is extracted hereunder:-

"3. This Court, by an order dated 09.03.2010 made in W.P.No. 4745 of 2010 directed the 3rd respondent to consider the representation of the petitioner therein, who is the 4th respondent in this writ petition, after hearing the objections of the petitioner herein. The grievance of the petitioner is that without hearing him the impugned order came to be passed by the 3rd respondent.

4. From the impugned order it could be seen that the petitioner was not heard by the 3rd respondent fairly conceded that the petitioner has not been heard by the 3rd respondent before passing the impugned order. In view of the above stated position, the impugned order of the 3rd respondent dated 30.06.2010 is liable to be set aside and is accordingly set aside and the matter is remitted back to the 3rd respondent to pass appropriate orders afresh, after hearing the petitioner as well as the 4th respondent, within a period of two weeks from the date of receipt or production of a copy of this order. The writ petition stands ordered accordingly. Connected miscellaneous petition is closed. There shall be no orders as to the costs."

3. The 3rd respondent by an order dated 17.09.2010 rejected the application of the petitioner for granting patta in his favour. The petitioner contends that the impugned order dated 17.09.2012 is not in compliance with the order dated 12.01.2012 in as much as there was no proper enquiry. The petitioner also has sent a legal notice dated 05.10.2012 stating the order dated 17.09.2012 was not passed by after any enquiry. It is stated in the legal notice that the impugned order is completely unreasoned order and that is without consideration of documents which could have been adduced by the petitioner.

4. It is stated that the respondent No.4 herein has no right to get patta in their favour. This matter comes after notice. It

is the contention of the petitioner that the Tahsildar while passing order under Section 10 has not followed the order dated 17.09.2010 of this Court in letter and spirit.

5. Section 12 of the Patta Pass Book Act, 1983 provides for an appeal against the order of the Tahsildar. Section 12 reads as under:-

" 12. 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."

6. The order passed in appeal by the Competent Authority is subject to further revision under Section 13 of the Patta Pass Book Act which reads as under:-

"13. 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: Provided that no such order prejudicial to any person shall be made unless he has been given a reasonable opportunity of making his representation."

7. The Patta Pass Book Act, 1983 therefore provides for a hierarchy forums. The petitioner has to challenge the order dated 30.07.2012 by filing an appeal before the Competent Authority as provided under the Patta Pass Book Act, 1983. Since there is an alternate efficacious remedy available to the petitioner, the writ petition is not maintainable. The petitioner is so advised to file an appeal before the Competent Authority under Section 12 of the Patta Pass Book Act, 1983. Since the writ petition is pending before this Court and the petitioner had obtained stay from this Court.

8. The petitioner is entitled to the benefit of the Section 14 of the Limitation Act for the period during the pendency of the writ petition in this Court. The petitioner if so advised is at liberty to file an appeal before the Competent Authority within 4 weeks from today. The Competent Authority shall consider the appeal in accordance with law. Be noted, this Court is not expressing any opinion on the merits of the case. The Competent Authority is directed to dispose the appeal within the period of 6 weeks from the date of receipt of a copy of this

order and also to consider whether order dated 17.09.2010 passed by this Court has been followed in letter and spirit. Accordingly the writ petition stands disposed of. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

gsp/pkn

To

- 1.The Collector,
Kancheepuram District.
- 2.The Sub - Collector,
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- 4.The Secretary,
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East Coast Road,
Mamallapuram.

+1cc to Mr.P.Vasanthakumar, Advocate SR.No.77266

W.P.No. 17547 of 2013
and
M.P.Nos.1 and 2 of 2013

RR(CO)
GMY(06/12/2018)

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