

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.440 of 2018
and
C.M.P.No.3835 of 2018

T.Hari Krishnan

.. Appellant

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Local Administration Department,
Fort St.George, Chennai-600 009.
2. The Collector, Thiruvallur District.
3. The Tahsildar,
Ambattur Taluk,
Ambattur, Thiruvallur District.
Chennai-600 053.
4. The District Revenue Officer,
Thiruvallur.
5. The Revenue Divisional Officer-I,
Ponneri.

.. Respondents

Writ Appeal filed Clause 15 of the Letters Patent against the order dated 19.08.2011 passed by the learned Single Judge in W.P.No.7101 of 2011 on the file of this Court.

WP.NO.7101/2011:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the 3rd respondent to issue patta in the name of the petitioner Thiru t. Harikrishnan in respect of his lands viz. 2 Acres 50 cents under S.No.300 and 15 cents under S.No.298 Maduravayal village Ambattur Taluk Thiruvallur District

For appellant : M/s.S.Vidya

For respondents: Mr.A.N.Thambidurai, Spl.G.P.

JUDGMENT

(The Judgment of the Court was delivered by M.Venugopal, J)

The appellant/writ petitioner has focussed the instant Intra-Court Appeal as against the order dated 19.08.2011 in W.P.No.7101 of 2011 passed by the learned Single Judge in dismissing the Writ Petition with observations made therein.

2. The learned Single Judge, while passing the impugned order on 19.08.2011 in W.P.No.7101 of 2011, filed by the appellant as writ petitioner, had observed the following and resultantly dismissed the Writ Petition with the observations made therein:

" Heard both sides.

2. The petitioner owns 2 Acres and 50 Cents of land comprised in S.No.300 and 15 Cents of land comprised in S.No.298 in Madhuravoyal Village, Ambattur Taluk, Thiruvallur District. But, however, he was not granted Patta in respect of 15 Cents of land under S.No.298. The Petitioner was granted Patta only for the lands to an extent of 0.07.0 Hectares in S.No.300/3, Madhuravoyal Village, Ambattur Taluk, Thiruvallur District, by the Tahsildar, Ambattur. However the Revenue Divisional Officer, Ponneri, the fifth respondent herein, cancelled the same vide order dated 30.06.2006.

3. Aggrieved by the order dated 30.06.2006 of the fifth respondent, the petitioner preferred an Appeal before the District Revenue Officer, Thiruvallur, the fourth respondent herein, on 14.08.2006. The District Revenue Officer, Thiruvallur rejected the same vide order dated 13.11.2009 holding that the lands in question were acquired under the Urban Land Ceiling Act long back and those lands are in possession of the Government. Further it is stated in the said order that those lands were initially owned by one Thiru.Godhandaraman and after the acquisition, the lands are vested with the Government. Therefore, the Petitioner was directed to approach the Assistant Commissioner, Urban Land Ceiling, Poonamallee, if he seeks patta for the lands that was acquired under the Urban Land Ceiling Act. The said order dated 13.11.2009 passed by the fourth respondent is challenged in this Writ Petition.

4. In these circumstances, I do not find any infirmity in the order dated 13.11.2009 passed by the fourth respondent. Since the petitioner was not granted Patta in respect of the lands in question, the question of cancellation of Patta does not arise. If the petitioner still disputes the finding of fact made by the District Revenue Officer, Thiruvallur, he is at liberty to approach the competent Civil Court to establish the title of his property or otherwise, he could also approach the Assistant Commissioner, Urban Land Ceiling, Poonamallee, as directed by the District Revenue Officer, Thiruvallur.

5. The Writ Petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed."

3. Being dis-satisfied with the order of dismissal, dated 19.08.2011 passed in the said Writ Petition, the appellant/writ petitioner has filed the present Writ Appeal mainly taking a plea that, earlier, certain lands in Maduravoyal Village, Ambattur Taluk, Thiruvallur District were owned and possessed of by the petitioner's sister's husband S.M.Kothandarama Naicker, which came to be allotted to him in a partition between him and his brothers Nataraja Naicker and Balarama Naicker (vide Partition Deed dated 19.09.1954 bearing Registration No.1781 of 1954, SRO, Saidapet). Furthermore, it is the stand of the appellant that the lands held by the said Kothandarama Naicker were : (a) Under Survey No.300 an extent of 2 Acres 50 Cents; and (b) Under S.No.298 15 Cents. In all, he owned 2 Acres 65 Cents in Maduravoyal Village, Ambattur Taluk, Thiruvallur District.

4. As a matter of fact, the said property was in exclusive possession and ownership of the said Kothandarama Naicker ever-since the partition till his life-time. Subsequently, on 05.05.1980, executed an unregistered Will, in which he had bequeathed to the petitioner the aforesaid 2 Acres and 65 Cents. After execution of the Will, he died on 10.10.1981 at Pallavaram. Therefore, the appellant/writ petitioner contends that upon the death of Kothandarama Naicker, the appellant/writ petitioner came to succeed to the above said lands of 2 Acres and 65 Cents by virtue of the Will, and therefore, the appellant/writ petitioner is the absolute owner and in possession and enjoyment of the same ever-since then.

5. It is to be noted that the appellant made repeated representations in regard to the issuance of Patta and Field Map in his name before the Office of the third respondent/Tahsildar, but of no avail. He also submitted together with his application dated 31.07.2000 the copies of the relevant documents therein. Later, a reminder dated 20.08.2000 was issued and Lawyer's notices, dated 01.09.2000 and 10.09.2000. In spite of the same,

there was no response forthcoming from the third respondent's side. Hence, the appellant/writ petitioner was performed to make personal visits to the office of the third respondent, which ended in vain. Apart from that, the third respondent gave evasive reply.

6. Owing to the relentless endeavours of the appellant, the Village Administrative Officer of Maduravoyal Village issued a Certificate on 08.06.2006 stating that the Patta bearing No.4103 was registered in the writ petitioner's name for 0.07.0 Are in Nanja Survey No.300/3B1. After verification, the appellant/writ petitioner found that the Certificate does not relate to his lands and they are under S.No.300 only. Based on the erratic Certificate issued, the power connection was given in the appellant's name. In this connection, it is the plea of the appellant/writ petitioner that on an earlier occasion, he bona-fidely believed that the Patta related to his lands. However, unfortunately, this Patta has no connection to S.No.300 and further, the fifth respondent-RDO, Ponneri had later cancelled the Patta. The cancellation of Patta was in respect of the lands under different Survey Number, i.e. S.No.300/3B1, which does not relate to the writ petitioner. The situation now that prevails is as if the appellant/writ petitioner was not yet granted Patta for his lands measuring an extent of 2.50 Cents under S.No.300. In this regard, the writ petitioner/appellant is knocking at the doors of the respondents for issuance of Patta.

7. Apart from S.No.300, in respect of another Survey Number in S.No.298, the appellant/writ petitioner has lands measuring an extent of 0.15 Cents, which was bequeathed to him by his Uncle Kothandaraman Naicker under the same Will, dated 05.05.1980 referred to supra. Even to this extent of land of 0.15 Cents, the respondents are yet to issue the Patta.

8. Learned counsel for the appellant, finding that the appellant's grievances are not redressed, was constrained to file a Writ Petition in W.P.No.19144 of 2008 seeking to issue a Writ of Certiorarified Mandamus to call for the records with reference to the Order Na.Ka.No.4571/2006/A1, dated 30.06.2006 on the file of the fifth respondent and to quash the same and inter-alia to direct the fifth respondent to issue Patta for the writ petitioner's said lands in Maduravoyal Village. This Court disposed of the said Writ Petition on 08.08.2008 with direction to the fourth respondent to dispose of the appeal/revision filed by him against the order of the fifth respondent. The appellant/writ petitioner has also filed a Contempt Petition in Cont.P.No.966 of 2009 against the fourth respondent-DRO, for not having complied with the order passed in the said Writ Petition. The fourth respondent, during the course of hearing of the Contempt Petition, produced an order purported to have been issued on 13.11.2009 to show that as if the directions issued by this Court were complied with, which according to the appellant, is not a correct one. Finally, the Contempt Petition came to be disposed of and while closing the said Contempt Petition, by

order dated 28.07.2010, this Court gave liberty to the petitioner to challenge the said order dated 13.11.2009 in the manner known to law.

9. The pith and substance of the contentions advanced on behalf of the appellant/writ petitioner is that after orders came to be passed in the Contempt Petition, the appellant had addressed a written communication to the respondents, on 20.12.2010 and 19.01.2011 in regard to the issuance of Patta in his name for 2.65 Acres. Till date, the respondents have not submitted any reply. Hence, the appellant/writ petitioner has filed the present Writ Petition in W.P.No.7101 of 2011 seeking for passing of an order by this Court in directing the third respondent/Tahsildar, Ambattur Taluk to issue Patta in his name in respect of his lands in 2 Acres 50 Cents in S.No.300 and 15 Cents in S.No.298 in Maduravoyal Village, Ambattur Taluk, Ambattur, Tiruvallur District.

10. Per Contra, it is the submission of the learned Special Government Pleader appearing for the respondents that the third respondent/Tahsildar, Ambattur Taluk, had passed the order only after taking into account all the attendant circumstances of the present case in an integral fashion and the writ petitioner was granted Patta only for the lands to an extent of 0.07.0 Are in S.No.300/3B1, Madhuravoyal Village, Ambattur Taluk, Thiruvallur District. In fact, an appeal was preferred by the appellant/writ petitioner before the fifth respondent-RDO, who cancelled the said Patta granted, by order dated 30.06.2006, against which, the appellant/writ petitioner preferred further appeal before the fourth respondent-DRO, who rejected the same by order dated 13.11.2009 holding that the lands in question were acquired under the Urban Land Ceiling Act long ago and those lands are in possession of the Government and that those lands were initially owned by the said Kothandaraman and after the acquisition, the lands vested with the Government. Consequently, the appellant was directed to approach the Assistant Commissioner, Urban Land Ceiling, Poonamallee, if he seeks Patta for the lands that were acquired under the Urban Land Ceiling Act. Subsequent to said order dated 13.11.2009 passed by the fourth respondent/DRO, Thiruvallur, the appellant/writ petitioner has filed the present Writ Petition in W.P.No.7101 of 2011.

11. In regard to the submission of the Will executed by Kothandarama Naicker, it is not out of place to make a pertinent mention that the said document is an unregistered one and ordinarily, the Will, in law, has to be probated. Also that, it cannot be lost sight of that the appellant/writ petitioner is laying a claim for issuance of patta before the competent Revenue Authority based on the unregistered Will not being probated.

12. It cannot also be gainsaid that Section 4 of the Tamil Nadu Patt Pass-Book Act, 1983 relates to presumption of correctness of entries in the patta pass-book. Further, Section 5 of the said Act deals with making of entries of registration

of alienation or transfer in the patta pass-book. To put it precisely, Section 6 of the Act unerringly points out that the entries in the patta pass-book be prima-facie evidence of title. If any modification of entries in the patta pass-book is required, there is remedy provided under Section 10. Section 11 of the Act relates to persons to furnish information. Section 12 deals with filing an appeal and disposal of the same. Section 13 of the Act relates to filing of Revision. More particularly, Section 14 of the said Act speaks of "bar of suits", which runs as under:

"Section 14: Bar of suits: No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass-book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass-book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass-book shall be amended in accordance with any such declaration."

13. In view of the fact that the appellant/writ petitioner was not issued with Patta in respect of the lands in question, the issue of cancellation of Patta does not arise on any score, in the considered opinion of this Court. If the appellant/writ petitioner contradicts/disputes the finding of facts recorded by the competent authority, namely the fourth respondent-DRO, Thiruvallur, then it is always open for the appellant/writ petitioner to avail the other remedy available to him in the manner known to law and in accordance with law. The appellant/writ petitioner also has an option to approach the Civil Court as per Section 14 of the Tamil Nadu Pata Pass-book Act, 1983, as extracted supra.

14. Viewed in that perspective, and also looking at from any angle and also this Court, after going through the impugned order passed by the learned Single Judge in dismissing the Writ Petition, does not find any perversity of approach or material irregularity or patent illegalities. Consequently, the Writ Appeal fails.

15. In fine, the Writ Appeal is dismissed, leaving the parties to bear their own costs.

16. Before parting with the case, this Court makes it lucidly clear that the dismissal of the present Writ Appeal by

this Court for the reasons assigned herein, will not fetter the appellant/writ petitioner to approach the competent Civil Court in the manner known to law and in accordance with law, if he so desires or if he is so advised.

17. Consequently, C.M.P. is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Local Administration Department,
Fort St.George, Chennai-600 009.
2. The Collector, Thiruvallur District.
3. The Tahsildar,
Ambattur Taluk,
Ambattur, Thiruvallur District,
Chennai-600 053.
4. The District Revenue Officer,
Thiruvallur.
5. The Revenue Divisional Officer-I,
Ponneri.

+ 2 cc to M/s.R.S.Vaideeswaran, Advocate, SR.16155
+ 1 cc to The Govt.Pleader, SR.16704

W.A.No.440 of 2018

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