

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.22002 of 2018

J.Malliga
rep.by Power of Attorney
Agent K.R.Srinivasan ... Petitioner
vs.

- 1.The Commissioner of Land Administration,
Chepauk,
Chennai-600 005
- 2.The District Collector,
Salem District,
Salem.
- 3.The District Revenue Officer,
Salem District, Salem. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records relating to the order of the 2nd Respondent dated 6.10.2017 in Roc.No.9348/2017/E1 and quash the same in so far as it relates to the Petitioners.

For Petitioner : Mr.K.Selvaraj
For Respondents : Mr.J.Pothiraj, Spl.G.P.

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondents.

2.No counter is filed on behalf of the Respondents.

3.According to the Petitioner, one S.Jayaraman, Son of Sundaram Pillai, was the absolute owner of the property, measuring 30,400 sq.ft. at Ward G, Block 10, T.S.No.16/1, Old Survey No.633, Periyeri Village, Salem Taluk and District. Because of the fact that Patta land of said Jeyaraman was

wrongly classified as 'Government Land', during the Town Survey Period, the said Jayaraman, filed a Petition for re-classification of his Patta Land, before the Director of Land Survey and Settle Department, Chennai-8. After due enquiry, an Order dated 23.02.1996 was passed by the Director of Land Survey and Settlement Department, wherein, it was held that the aforesaid land of Jayaraman was wrongly classified as 'Government Land' during the Town Survey Period and therefore, it was ordered to restore the said land as Patta Land, in the name of S.Jayaraman. Based on the Order of Director of Land Survey, the Tahsildar, Salem, by an Order dated 10.03.1997 had classified the Land in Survey No.16/1, Ward G, Block 10, measuring 29,186 sq.ft. as Patta Land in the name of S.Jayaraman.

4.The aforesaid Jayaraman, by means of a 'Will' dated 13.01.1998 bequeathed his land measuring 24,500 sq.ft in Ward G, Block 10, Town Survey No.16/1, Old Survey No.633 at Periyeri Village, Salem, to his daughter J.Mallika. On 07.03.2018, the said S.Jayaraman died, leaving behind his daughter, viz., J.Mallika and as per the Will dated 13.01.1998 of the said Jayaraman, Mallika became the owner of the property measuring 24,500 sq.ft., in T.S.No.16/1. The said Mallika, in turn had executed a Registered General Power of Attorney, dated 20.12.2002 in favour of K.R.Srinivasan, for development of the said land as well as sale of the said property.

5.At this juncture, the Learned Counsel for the Petitioner submits that the Tamil Nadu Housing Unit for Police had encroached a portion of the said J.Mallika's property and had constructed a building in 2002. Hence, the said J.Mallika filed a suit before the Hon'ble 2nd Additional District Munsif, Salem, in O.S.No.1870 of 2004, against the First Respondent/The Commissioner of Land Administration and the Commissioner of Police, Salem City and the Assistant Executive Engineer, Tamil Nadu Housing Unit for Police for the relief of permanent injunction, declaration and mandatory injunction to remove the constructed portions in the aforesaid property.

6.Continuing further, the Learned Counsel for the Petitioner contends that since the Revenue Authorities had not implemented the Order of Land Survey and had not issued Patta in respect of the aforesaid Lands, the daughter of Jayaraman, viz., J.Mallika, filed W.P.No.1851 of 2011, seeking necessary directions. This Court, by means of an Order dated 28.01.2011 in W.P.No.1851 of 2011, was pleased to direct the Assistant Director, Land Survey Department and the Tahsildar, Salem Taluk Office, to take proper action by making necessary entries within a period of eight weeks, for issuance of Patta. Based on the Order of this Court and the Order of the Director of Land Survey, the Headquarters Deputy Tahsildar, Salem, through an

Order dated 05.05.2011, issued Patta for the land in Town Survey No.16/1, in the name of S.Jayaraman, father of Mallika.

7.It is also contended that the General Power of Attorney Holder of the Petitioner, viz., K.R.Srinivasan, had divided the said Malliga's property into 6 plots in T.S.No.16/1 and with the consent of J.Mallika, he sold those Plots, viz., Plot Nos.1, 2, 3, 4 and 6, by receiving the consideration from the respective Purchasers. The respective Purchasers had paid a total sum of Rs.34 lakhs to the said J.Mallika for purchase of 5 plots, viz., Plot Nos.1, 2, 3, 4 and 6 in the said T.S. No.16/1 and the said Mallika duly acknowledged the payment of the aforesaid sum from them.

8.When that be the fact situation, the Petitioner received a Notice dated 23.06.2017, from the Office of the Second Respondent/District Collector, Salem District, Salem, regarding an enquiry on 10.07.2017 at 5.00 p.m. in respect of the aforesaid lands, on the Petition of one B.V.Nagaraj. Immediately the Petitioner had engaged a Counsel to find out the nature of the Petition as well as the claim of B.V.Nagaraj over the said property. On enquiry, it is found by the Petitioner's Counsel that the 3rd Respondent/the District Revenue Officer, Salem District, Salem, without conducting any enquiry and without giving any opportunity to the owners, viz., the Purchasers, had passed an Order on 19.10.2015, behind their back and by the said Order, the 3rd Respondent had directed the removal of Jayaraman's name from the Revenue Records in respect of the land in T.S.No.16/1 and to replace the name of B.V.Nagaraj and three others.

9.It is also the case of the Petitioner that one of the Purchasers of the Land, viz., Meena had filed a suit before the Hon'ble 2nd Additional Subordinate Court, Salem, in O.S.No.583 of 2017, to cancel the Sale Deed dated 03.06.2011, registered as Document No.1667/2011, on the file of the Joint Sub-Registrar, No.3, Salem West, Sivadhapuram, Salem and had also sought for return of the sale price of Rs.2,50,000/- from the Petitioner. The above case was settled on 25.10.2017, before the District Legal Service Authority, Salem and the Petitioner had returned back the sale consideration of Rs.2,50,000/- to the said Meena. Hence, the sale Deed dated 03.06.2011 in Document No.1667/2011 was cancelled, so that the said Malliga alone became the absolute owner of the said Plot No.5 to the extent of 1,400 sq.ft in T.S.No.16/1.

10.The grievance of the Petitioner is that no Notice was issued to her prior to the passing of Order dated 19.10.2015 and further no opportunity was given to her to disprove the claim of B.V.Nagaraj. Indeed the said B.V.Nagaraj, had made a false claim based on fabricated documents and ex-parte collusive

decrees, which are mentioned in the Order dated 19.10.2015. That apart, the 3rd Respondent had not followed the relevant provisions of the Tamil Nadu Patta Pass-Book Act, 1983. To put it precisely, he had no jurisdiction to entertain the Appeal Petition of B.V.Nagaraj and others. As per the Act, only the Revenue Divisional Officer is an Appellate Authority. Admittedly, in this Case, the Order re-classifying the land from the 'Government Land' to 'Patta Land' was made by the Director of Land Survey as early as on 23.02.1996 and Patta was given in the name of S.Jayaraman.

11.Continuing further, the Learned Counsel for the Petitioner contends that without providing any opportunity to the Petitioner and other Purchasers of the land from the Petitioner, by an Order dated 06.10.2017, the Second Respondent/District Collector, Salem District, Salem, had rejected the claim of B.V.Nagaraj and others over the property of the Petitioner in T.S.No.16/1 and it is further stated in the Order that the land measuring 30,400 sq.ft in T.S.No.16, Block No.10, Ward 'AD' of Perieri Village, Salem Taluk, Salem District, is part and parcel of the land acquired by the Deputy Collector, Salem and it is a Government property and not a private property.

12.In sum and substance, the stand taken on behalf of the Petitioner is that the aforesaid finding of the Second Respondent/District Collector, Salem District, Salem, is a baseless and a wrong one and against the documentary evidence.

13.The Learned Counsel for the Petitioner brings it to the notice of this Court that as against the Order of the Second Respondent/District Collector, Salem District, Salem, dated 06.10.2017, one A.M.Raju and others have filed Writ Petition Nos.26856 to 26858 of 2017 before this Court and this Court, by means of Order dated 04.04.2018, was pleased to direct the Petitioners therein to prefer individual Appeals before the Commissioner of Land Administration, Chennai-5 and further directed the Commissioner of Land Administration to entertain the Appeals without putting the issue of Limitation and to decide the Appeals on merits and in accordance with Law, within a period of twelve weeks from the date of entertainment of the Appeals. Being aggrieved against the Order dated 06.10.2017 of the Second Respondent/the District Collector, Salem District, Salem, the Petitioner has filed the present Writ Petition.

14.In response, the Learned Special Government Pleader for the Respondents 1 to 3 submits that in similar matter in W.P.No.26856 to 26858 of 2017, dated 04.04.2018, this Court had permitted the Petitioners therein to file individual Appeals before the Commissioner of Land Administration, Chepauk, Chennai-5, by enclosing the relevant and authenticated documents

together with Petitions for Stay and granted four weeks' time from the date of receipt of copy of the said order and proceeded to observe that the Official Concerned, on receipt of Appeals, may entertain the same, if the papers are otherwise in Order and categorically mentioned that the issue of 'Limitation' cannot be put against the Petitioners. Further, this Court, in W.P.Nos.26856 to 26858 of 2017, on 04.04.2018, had directed the Petitions for Stay to be taken up and disposed of in accordance with Law, within a period of four weeks from the date of entertainment of the Appeals. Till such time, the possession of the Petitioners therein, in respect of the properties, was directed not to be disturbed by Respondents 2 to 6 etc. Also the Commissioner of Land Administration, Chepauk, Chennai-5 was directed to take up the Appeals and give a final disposal on merits and in Accordance with Law within a period of twelve weeks from the date of entertainment of the Appeals and he was also directed to communicate the decision to the Petitioners therein. Also that till the disposal of the Appeals by the Commissioner, Land Administration, Chennai-5, the Petitioners therein were directed not to create any 3rd party right in respect of the superstructure and site in question and further directed not to alter the physical features.

15. Considering the fact that in similar/identical matter in W.P.No.26856 to 26858 of 2017, dated 04.04.2018, this Court had directed the Petitioners therein to prefer individual Appeals before the Commissioner of Land Administration, Chepauk, Chennai-5, etc., this Court, in the interest of justice and fair play, directs the present Writ Petitioner to prefer individual Appeal before the Commissioner of Land Administration, Chepauk, Chennai-5, by enclosing necessary documents together with Petition for Stay, within a period of four weeks from the date of receipt of copy of this Order. The 'concerned Official', on filing of the Appeal and receiving the same, is directed to entertain the same and it is further directed by this Court that the plea of 'Limitation' shall not be put against the Petitioner. Further, the said Appeal, along with the Petition for Stay, are to be taken up within a period of four weeks from the date of entertainment of the Appeal. Till such time, the Petitioner's possession, in respect of the properties in question, is not to be disturbed by the Respondents 1 to 3. Within a period of twelve weeks, the Commissioner of Land Administration, Chepauk, Chennai-5, shall dispose of the Appeal and to communicate the Order passed therein to the Petitioner. Till the disposal of the Appeal by the Commissioner of Land Administration, Chepauk, Chennai, the Writ Petitioner (in W.P.No.22002 of 2018) is directed not to create any 3rd Party rights or encumbrance over the Property, viz., in respect of the superstructure and the site in question and further she is directed not to alter the physical features.

With the above observations/directions, the Writ
Petition shall stand disposed of. No costs. Connected
Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

msk

To

1.The Commissioner of Land Administration,
Chepauk,
Chennai-600 005

2.The District Collector,
Salem District,
Salem.

3.The District Revenue Officer,
Salem District, Salem.

+1 CC to Mr.K. Selvaraj, Advocate sr 60402.

+1 CC to Govt. Pleader sr 60873.

SS (CO)
SP (18/09/2018)

W.P.No.22002 of 2018

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