IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.10.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12362 of 2018
AND
W.M.P. No.14506 of 2018

M.Jothimani
..... Petitioner
Vs

1. The District Revenue Divisional Officer,
Perambalur District,
Perambalur.

2. The Revenue Divisional Officer,
Perambalur District,
Perambalur.

3. The Tahsildar,
Perambalur District,
Perambalur.

4. Periyasami ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorarified Mandamus to call for the entire records in respect of the order passed by the District Revenue Divisional Officer dated 02.04.2018 in Na.Ka. C2/14977/2016 by confirming the orders passed by the Revenue Divisional Officer dated 24.10.2014 in Na.Ka.A2/2777/2014, order passed by the Tahsildar dated 10.03.2014 in R.T.R. No.6978-13-14 and quash the same and consequently direct the respondents to alter the revenue records and issue patta in the name of the petitioner in respect of survey No.355/7A2 with an extent of 120 sq.ft. Situated at Perambalur Taluk, Perambalur District.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader
(for RR1 to R3)

: R4 – No appearance

ORDER

The order of rejection passed by the District Revenue Officer in respect of the claim of the writ petitioner for grant of patta in proceedings, dated 2.04.2018 is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the petitioner is the owner of the property bearing Survey No.295/7A2 and constructed the house in the said property. In addition, the petitioner had purchased some more property to an extent of 120 sq. ft. in the above survey No.bearing Registration No.1921. It is contended that the 4th respondent filed the civil suit before the District Munsif Court, Perambalur for permanent injunction in O.S. No.166 of 1991, claiming that the property purchased by the petitioner is a pathway for 20 house site holders, who purchased house sites in the said lay out. The learned District Munsif tried the suit and an Advocate Commissioner was appointed and a decree was passed dismissing the claim of the 4th respondent. Thus, it is contended that the said

disputed portion is not a path way and the property right fully purchased by the writ petitioner.

3. The first appeal filed by the 4th respondent was allowed and thereafter, the Second Appeal filed by the petitioner was allowed. Thus, it is contended that the civil disputes reached finality and the Special Leave Petition (SLP) filed against the Second Appeal Judgment is also dismissed by the Hon'ble Supreme Court of India. In view of the fact, that the civil litigations reached finality, the writ petitioner became the absolute owner of the property.

4. This Court is of an opinion that in all these civil litigations, the revenue authorities are not party defendants and they have no knowledge about the decree and judgment passed by the Civil Courts as well as the appeal proceedings. The learned Additional Government Pleader appearing on behalf of the respondents brought to the notice of this Court that as per the revenue records, the said area has been classified as Theru(Street). Even today, the revenue records states that the said portion of the land is classified as street". This being the factum of the case, the writ petitioner is liable to be evicted as he is an encroacher in respect of the government land, which is classified as pathway. It is further contended by the learned Additional Government Pleader that the respondents are not parties to the civil litigations between the writ petitioner and the 4th respondent. This apart, the civil suit was only for an injunction and it is not for declaration of title or otherwise. Thus, such a decree obtained without the knowledge of the respondents cannot be binding on the respondents in respect of the revenue records maintained by the District Administration. Thus, the writ petition is to be rejected.

5. This Court is of an opinion that admittedly, the revenue authorities are not parties to the civil suits. Further, the civil suit in O.S. No.166 of 1991 was filed by the 4th respondent for permanent injunction. The suit was not for declaration of title or otherwise. Thus, the said decree will not be binding on the revenue authorities in respect of the grant of patta, pursuant to the application submitted by the writ petitioner. The patta proceedings are to be conducted by following the procedures contemplated under the Patta Pass Book Act, 1983. Section 3 of the Act, enumerates that Patta Pass Book can be granted only in respect of the owner of the property. It is to be established that a person is the owner of the property and then alone the Patta Pass Book can be issued by the competent revenue officials. The officials are bound to conduct an enquiry in this regard. The respondents on enquiry found that the said portion of the land is classified as street" in revenue records. Thus, the writ petitioner is to be construed as an encroacher and therefore, the authorities have rejected for grant of patta under the provisions of the Patta Pass Book Act. This being the factum of the case, this Court is of an opinion that if at all the writ petitioner claims any title or

ownership in respect of the portion of the land, it is left open to the petitioner to approach the competent civil Court of law by producing documents and by adducing evidences. Contrarily, this Court cannot adjudicate such complex facts and circumstances in a writ proceedings under Article 226 of the constitution of India. This being the legal principles to be followed, the writ petitioner cannot file a writ petition in respect of the complex facts and circumstances arising on the basis of certain revenue records. As per the revenue records, the disputed portion of the land is classified as "street". This being the factum of the case, the authorities competent are also bound to verify the revenue records and initiate appropriate action against all the encroachers in this regard. It is needless to state that the Government lands are to be protected in the interest of the public and the same is to be utilised for the welfare of the public at large. Thus, the encroachments ought to be removed by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905. The respondents 1 to 3 are bound to verify the revenue records in entirety and if any, portion of the land is a Government Poromoboke land or street or water body or water resources then they are bound to act immediately and evict all such encroachers from the Government lands, water bodies and water resources.

6. In this view of the matter, the writ petitioner has not established any acceptable legal ground for considering the relief as such sought for in the present petition and accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

03.10.2018

vsi2
Speaking/Non speaking order
Index : yes/no
Internet: Yes/no

To

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S.M.SUBRAMANIAM, J.

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