

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :18.07.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21318 of 2015
and
M.P.No.1 of 2015
and
W.M.P.Nos.2647, 3916, 6024 of 2018

Mr.P.Ramadoss

..Petitioner

vs

- 1.Commissioner of Land Administration,
Ezhilagam,
Chepauk, Chennai - 600 005.
 - 2.The Collector,
Thiruvallur,
Thiruvallur District.
 - 3.The District Revenue Officer,
Thiruvallur,
Thiruvallur District.
 - 4.The Tahsildhar,
Ambhatur Taluk,
Ambattur,
Chennai - 600 053.
 - 5.Cholambedu Village Public Welfare Association,
Represented by its President, Mr.N.Murugesan,
10-16, Perumalkoil Street,
Cholambedu,
Tirumullaivoyal,
Chennai - 600 062.
 - 6.The Branch Manager,
Tamil Nadu Mercantile Bank Limited,
Valasaravakkam Branch,
Door No.91, First Floor,
Sree Pushpa Complex,
Kamakodi Nagar,
Valasaravakka, Chennai.
- (R6-Impleaded as per order dated 20.03.2018
in W.M.P.No.2736 of 2016
in W.P.No.21318 of 2015)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st Respondent bearing Ref No.K1/4068/2014, dated 02.07.2015, and to quash the same, as arbitrary and illegal.

For Petitioner : Mr.S.Thiruvengadam

For Respondents : Mr.D.Raghu, GA for R1 to R4
Mr.T.Saikrishnan
for M/s.Sai Bharath for R5
Mr.S.Sethuraman for R6

O R D E R

The Call Notice issued to the writ petitioner in proceedings dated 02.07.2015, asking the writ petitioner to appear either in person or through his learned counsel for hearing of an appeal submitted before the Commissioner of Land Administration is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the Patta was granted by the Divisional Revenue Officer in favour of the writ petitioner long back. Under these circumstances, the appeal submitted to the Commissioner of Land Administration, after a lapse of many years is not maintainable. The learned counsel appearing on behalf of the writ petitioner contended that the Commissioner of Land Administration has no power to entertain an appeal after a lapse of so many years. The appeal is to be entertained within a period of ninety days from the date of passing of the order by the original authority. Thus, the notice itself is liable to be quashed. The learned counsel urged this Court by stating that the writ petitioner is the original owner of the property in question. Patta was granted in his favour and he is in possession of the property for long years. Therefore, the appeal now entertained by the Commissioner of Land Administration is without jurisdiction.

3.The learned counsel appearing on behalf of the 5th respondent made a submission that the land in question is a Government Poromboke land and water catchment area. Therefore, the writ petitioner is an encroacher and the patta was granted illegally in favour of the writ petitioner by the competent authorities and after noticing the fact that the land in question is a Government Poromboke land, the 6th respondent Association has filed an appeal before the Commissioner of Land administration to cancel the patta and utilize the land for public purpose and for the welfare of the people, who are residing in that particular locality. Thus, there is no

irregularity in respect of preferring an appeal before the Commissioner of Land Administration and even, the Commissioner has got powers to entertain any application at any point of time, even otherwise also, the Commissioner has also the Suo-Motu power to revise or review the order passed by the Sub Ordinate authorities.

4.The learned counsel appearing on behalf of the official respondents 1 to 5 also supported the contentions raised on behalf of the 5th respondent and further, stating that the Commissioner of Land Administration has got powers under the statute to entertain an appeal even if filed belatedly. Further, in the present writ petition, the writ petitioner is an encroacher and in occupation of the Government Poromboke land. Therefore, such technical objections can never be raised in a writ petition in view of the fact that the petitioner is an encroacher. If at all, the petitioner is the absolute owner of the property, he has to establish the same before the competent Civil Court of Law. The challenge in the present writ petition is only a notice and it is an opportunity provided to the writ petitioner to defend his case with the Commissioner of Land Administration. For all these reasons, the writ petition is liable to be rejected.

5.Considering the arguments as advanced by the respective learned counsels for the parties to the present lis, this Court is of an opinion that no writ petition can be entertained against a hearing notice, which is impugned in this writ petition in a routine manner. Hearing notice is an opportunity provided to a person to defend his case before the competent authority in an appeal. Commissioner of Land Administration is exercising the quasi judicial powers and is empowered to adjudicate the matter on merits and to consider all the legal grounds by the respective parties during the hearing of the appeal. Even, the legal practitioners are permitted to submit their case before the Commissioner of Land Administration. In the hearing notice, it is clarified that the petitioner is entitled to engage a duly authorized learned counsel for the purpose of defending his case. When such an opportunity is given to the writ petitioner, instead of defending the case, the writ petitioner has chosen to prefer the present writ petition that the Commissioner has no jurisdiction to entertain the appeal. Even the point of jurisdiction, delay and other merits and demerits can be raised before the Appellate Authority by the writ petitioner.

6.A writ against a hearing notice can be entertained only on limited grounds and on exceptional circumstances. As far as the petitioner is concerned, the Commissioner of Land Administration is exercising the statutory powers and on receipt of an appeal

from the 5th respondent, stating that the land in question is a Government Poromboke land, issued notice to the writ petitioner to submit his documents and other defense statements, if any. Thus, it is left open to the writ petitioner to participate in the appeal proceedings and defend his case on merits and in accordance with law either in person or through an authorized learned counsel.

7.The learned counsel for the 5th respondent cited the judgment of the Hon'ble Division Bench of this Court dated 23.02.2018 passed in W.A.No.95 of 2014 and the relevant paragraph 8 is extracted hereunder:

"8. The first respondent raised a question with regard to the suo motu jurisdiction of the Commissioner of Land Administration under Act 21 of 1948. The said issue is no more res integra in view of the Full Bench judgment of this Court dated 24 July 2007 in Special Commissioner and Director of Survey and Settlement, Chepauk vs. M.Arumugam [2007 (4) CTC 538]. The Full Bench made it very clear that the authorities under the Act, have suo motu powers to interfere with the orders passed by the lower authorities. Such being the legal position, the first respondent cannot be heard to say that the Special Commissioner and Commissioner of Land Administration erred in exercising suo motu power under Act 21 of 1948."

8.In view of the fact that already there is a lapse of time, the first respondent is directed to hear the appeal at the earliest possible and pass final orders on merits and in accordance with law by providing a reasonable opportunity to all the parties concerned within a period of twelve weeks from the date of receipt of a copy of this order.

9.With this direction, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

2. The Collector,
Thiruvallur,
Thiruvallur District.

3. The District Revenue Officer,
Thiruvallur,
Thiruvallur District.

4. The Tahsildhar,
Ambhatur Taluk,
Ambattur, Chennai - 600 053.

5. The Branch Manager,
Tamil Nadu Mercantile Bank Limited,
Valasaravakkam Branch,
Door No.91, First Floor,
Sree Pushpa Complex,
Kamakodi Nagar,
Valasaravakka, Chennai.

+1cc to M/S.S.THIRUVENGADAM, Advocate, S.R.No.47643

+1cc to Mr.Sai Bharath & Ilan, Advocate, S.R.No.47643

W.P.No.21318 of 2015

NRI (CO)
SMI/02.08.2018

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