

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29352 of 2017
and
W.M.P.No.31615 of 2017
and
W.M.P.No.4506 of 2018

T.R.Venkatesan

..Petitioner

vs

1.The Tahsildar,
Cheyyar Taluk,
Kancheepuram District.
2.U.Sivapriya
3.L.Uma Shankar

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent herein in proceedings dated 07.11.2017 in Na.Ka.No.6652/2017/A1, quash the same and direct the first respondent herein to issue prior notice to the petitioner in view of the order of this Hon'ble Court in W.P.No.18117/2017 dated 18.07.2017.

For Petitioner : Mr.G.Magesh Kumar
For Respondents : Mrs.A.Srijayanthi, Spl GP for R1
Mr.M.Kempuraj for R2 & R3

O R D E R

The Notice issued by the first respondent / Tahsildar, providing an opportunity to all the parties to submit their respective documents to establish their ownership in proceedings dated 07.11.2017 is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner along with his sisters are the absolute owners of the properties described in the present writ petition. The respondents 2 and 3 are also claiming rights in respect of the property described in the writ petition.

3.The learned counsel appearing on behalf of the respondents 2 and 3 states that the third respondent filed an application before the Tahsildar for grant of patta in respect of the

property under the provisions of the Patta Pass Book Act, 1983 (hereinafter referred to as "the Act").

4. In view of the counter claim raised both by the writ petitioner as well as by the respondents 2 and 3, the Tahsildar directed all the parties to submit their documents for verification and enquiry. The said order issued in proceedings dated 07.11.2017 is under challenge in this writ petition. Instead of submitting the documents before the Tahsildar for enquiry, the writ petitioner has moved the present writ petition, challenging the said notice issued by the Tahsildar, directing the writ petitioner to submit all the relevant documents to establish his case.

5. The Tahsildar is the original authority under the provisions of the Patta Pass Book Act, to grant patta by conducting an appropriate enquiry. Thus, the Tahsildar is competent to issue notice, directing the parties to submit the documents relied upon by them for the purpose of establishing their civil rights in respect of an immovable property. Thus, there is no infirmity as such in respect of the inviting persons concerned for the purpose of conducting an enquiry in respect of the applications submitted by the third respondent. It is left open to the writ petitioner to participate in the process of enquiry to be conducted by the Tahsildar and establish his civil rights before the Tahsildar, who is empowered to grant patta or reject the application. Even in case of passing an order by the Tahsildar, an appeal is provided before the Revenue Divisional Officer under the provisions of the Patta Pass Book Act. Persons aggrieved are at liberty to approach the Appellate Authority. Thus, a writ proceedings against the notice issued by the Tahsildar cannot be entertained.

6. No writ proceedings can be entertained against a notice or inviting persons for enquiry in a routine manner. A writ against the notice can be entertained only on exceptional circumstances. Judicial review against such notices are limited. A writ proceedings can be entertained against such notices, if the notices is issued by an incompetent authority, having no jurisdiction or if the allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as a party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ proceedings can be entertained under Article 226 of the Constitution of India. It is left open to the respective parties to adjudicate their rights before the competent authorities by producing relevant documents and by adducing evidences. In case of any dispute regarding title, ownership or possession, the revenue officials are also incompetent to adjudicate the same.

The revenue officials under "the Act" cannot adjudicate the title, ownership or possession. In the event of any such disputes, the parties must be directed to approach the competent Civil Court of law to get a declaration of their title, ownership or possession. Under these circumstances, the first respondent also bound to keep in mind that he cannot adjudicate the title, ownership or possession of the properties under the provisions of "the Act".

7. Section 3 of "the Act" stipulates that Patta Pass Book can be granted only to an "owner". Thus, the Tahsildar is empowered to grant patta only to the owner. If there is a dispute in respect of an ownership, then he is incompetent and the parties must approach the competent Civil Court for adjudicating their civil rights. Under these circumstances, the original authority namely, the Tahsildar, cannot adjudicate the title or ownership. However, the present writ petition has been filed, challenging the very notice issued by the Tahsildar and the writ petitioner is bound to respond to the notices and submit his documents and adduce evidences for the purpose of concluding the enquiry under the provisions of "the Act".

8. This being the view of this Court, the writ petitioner has not made out any acceptable ground for the purpose of entertaining the relief as such sought for in this writ petition.

9. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

kak
To

1. The Tahsildar,
Cheyyar Taluk,
Kancheepuram District.

+1 CC to Mr. M. Kempraj, Advocate sr 50170.
+1 CC to Govt. Pleader sr 50342.

W.P.No.29352 of 2017

SP(06/08/2018)