



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.17796 of 2017

G.D.Kalaiselvan

... Petitioner

vs.

The Zonal Deputy Tahsildar,
Srivaikundam (05) Taluk,
Tuticorin District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus to call for records pertaining to impugned order dated 03.08.2017 in Aa6/8308/2014, on the file of the respondent and quash the same and consequently directed the respondent to issue patta in survey number 1122/2A, 1122/2B, 1122/3 situated at Padmanabhamangalam Village, Srivaikundam Taluk, Tuticorin District in favour of the petitioner on the basis of the sale deed dated 14.11.2007.

For Petitioner : Mr.K.K.Senthil
for Mr.G.Karnan

For Respondent : Mr.A.Muthukaruppan
Additional Government Pleader

O R D E R

The case of the petitioner is as follows:

(i) According to the petitioner, he has purchased the properties in Survey Nos.1122/2A, 1122/2B, 1122/3 to the extent of 6 acres 57 cents through a registered sale deed dated 14.11.2007 from one Sudalaikanu for a valuable consideration. The sale deed has been referred under Section 47 of the Registration Act on the ground of under valuation of the schedule property. On completion of Section 47 of the Registration Act enquiry, the petitioner was directed to pay a sum of Rs.46,195/- (Rupees Forty Six thousand One Hundred and Ninety Five only). On such payment made by the petitioner, the document was registered eventually on 08.09.2015. Thereafter, he approached the respondent for issuance of patta for the said survey numbers by his application dated 14.06.2016. This was followed up by a number of reminders and however no action was taken on the representations submitted by the petitioner.

(ii) In the above said circumstances, the petitioner filed a



writ petition in W.P.(MD)No.3463 of 2017 and this Court has directed the respondent to pass orders on the representation of the petitioner on merits and in accordance with law, after giving due opportunity of hearing to the rival claimants if any within a period stipulated in that order. Thereafter, since no orders were passed as per the above direction, a contempt petition is filed in Cont.P.(MD)No.1281 of 2017. In the meanwhile, on 03.08.2017, the respondent passed an order of rejecting the claim of the petitioner for issuance of patta. The said order of the respondent is impugned in the present writ petition.

2. Mr.K.K.Senthil, learned Counsel appearing for the petitioner would submit that the reason as given by the respondent for rejecting the claim of the petitioner was on an erroneous appreciation of the claim of the petitioner and the rejection order came to be passed as if the petitioner was seeking change of entries in the UDR patta, when he asked for issuance of patta in respect of the properties purchased by him for a valuable consideration by a registered sale deed.

3. The learned Counsel has also submitted that no proper opportunity has been given nor any personal opportunity of hearing was granted to the petitioner before orders have been issued by the respondent.

4. At this juncture, the learned Additional Government Pleader appearing for the respondent would submit that after a direction was issued by this Court, notice was issued for appearance of the petitioner and the writ petitioner appeared for enquiry and gave statement.

5. The said statement as found in the counter affidavit filed on behalf of the respondent was not refuted by the petitioner by filing any rejoinder. Therefore, this Court has to see as to whether the order passed by the respondent is sustainable in law or not.

6. Since the petitioner has already been given notice for appearance and having appeared to the enquiry, it is not open to the petitioner to contend that no sufficient opportunity had been given to the petitioner. Therefore, the said ground raised by the petitioner has to be rejected outright as being without merits. The other issue raised by the petitioner viz., that the respondent has rejected the request of the petitioner erroneously viz., that the petitioner was seeking change of entries in the UDR patta is also not acceptable for the simple reason that was one of the reasons stated in the impugned order and holding as such the respondent has also given a finding that the documents viz., the sale deed produced by the petitioner was bogus and the petitioner was in occupation of the Government poramboke land and therefore, there could not be found valid sale consideration. Such finding of the fact cannot be agitated before this Court which is



exercising its extraordinary jurisdiction of judicial review under Article 226 of the Constitution of India. It is an admitted position that in case the petitioner is aggrieved by any finding of the respondent, it is always open to him to approach the higher authority by filing an appeal under the provisions of the Patta Passbook Act. Instead of approaching the appellate authority as provided under the statute, the petitioner has chosen to directly approach this Court by invoking its special jurisdiction of this Court.

7. This Court, time and again, has held that once a statutory remedy is provided by way of an appeal or revision, the same has to be exhausted before any person chooses to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Unfortunately, in the present case, the petitioner has directly approached this Court without exhausting the appeal remedy provided under the statute. The learned Counsel appearing for the petitioner attempted to argue the case on the basis of certain factual materials which cannot be adjudicated by this Court in its writ jurisdiction.

8. In view of the same, the writ petition is found to be not maintainable and therefore, the same is dismissed. No costs. It is always open to the petitioner to approach the appropriate authority for filing an appeal against the order passed by the respondent if he is so advised. It is also made clear that the period of pendency of the litigation before this Court shall stand excluded for the purpose of limitation provided under the Patta Passbook Act, in case any appeal is filed against the order passed by the respondent by the petitioner.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS-I)

To

The Zonal Deputy Tahsildar,
Srivaikundam (05) Taluk,
Tuticorin District.

+1 CC To MR.G.KARNAN, Advocate SR. NO. 88240
+1 CC TO The Special Government Pleader SR.NO. 88185

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