



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.09.2018

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A (MD) No.1272 of 2018

and

C.M.P (MD) No.8944 of 2018

1.Tharujadhulla

2.M.Syed Abudhahir

... Appellants/Respondents 2 & 3

Vs.

1.Mohammad Ibrahim

... 1st Respondent/Writ Petitioner

2.The Revenue Divisional Officer,
Ramanathapuram District.

... 2nd Respondent/1st Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 11.08.2018 made in W.P(MD)No.11940 of 2018, on the file of this Court.

Prayer in WP(MD). 11940/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records of the impugned order passed by the 1st respondent in Mu.Mu.A6-3396/2018 dated 24.05.2018 an quash the same.

For Appellant : Mr.M.Ajmal Khan,
Senior Counsel

for Mrs.Porkodi Karnan

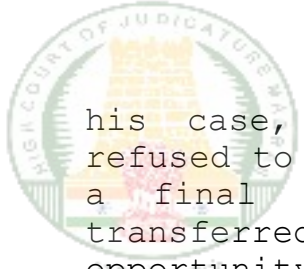
For R - 2 : Mrs.J.Padmaavathi Devi,
Special Government Pleader.

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

Aggrieved by the order passed by the learned Single Judge in W.P(MD)No.11940 of 2018, dated 11.08.2018, the Writ Appeal is filed by the appellants, who are the second and third respondents in the Writ Petition.

2. The facts of the case are that according to the first respondent/writ petitioner, a notice of enquiry issued by the second respondent/the Revenue Divisional Officer was served on him on the previous day of enquiry. On that day, despite the request for grant of an adjournment for producing the relevant materials to establish



his case, the second respondent/the Revenue Divisional Officer refused to adjourn the matter and reserved the case 'for orders' and a final order was passed on 24.05.2018, wherein patta was transferred in favour of the appellants/respondents 2 and 3. As no opportunity was given to the first respondent/writ petitioner to put forth his case by providing the relevant materials, the aggrieved first respondent/writ petitioner has preferred the Writ Petition.

3. When the Writ Petition came up for hearing on 07.06.2018, the learned Single Judge originally granted an order of interim stay and called for the records from the second respondent/the Revenue Divisional Officer for perusal.

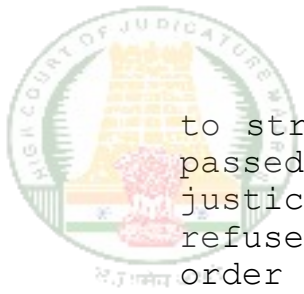
4. Thereafter, on perusal of the records, it was found that no reasonable opportunity was given to the first respondent/writ petitioner before the order was passed on 24.05.2018 by the second respondent/the Revenue Divisional Officer. Therefore, the learned Single Judge has set aside the order and directed the second respondent/the Revenue Divisional Officer to redo the exercise, after affording reasonable opportunity to all the parties concerned. The learned Single Judge has also specifically directed the second respondent/the Revenue Divisional Officer to issue notice to the appellants/respondents 2 and 3 and provide them also reasonable opportunity of putting their respective claims and thereafter, decide the matter on merits and granted three months time to decide the issue.

5. Aggrieved by the said order passed by the learned Single Judge, the appellant/respondents 2 and 3 have preferred the present Writ Appeal.

6. The learned counsel appearing for the appellants/respondents 2 and 3 would submit that the earlier order passed by the Tahsildar itself is illegal, as it was passed without giving notice to the appellants/respondents 2 and 3. Therefore, setting aside the order of the second respondent/the Revenue Divisional Officer would amount to revival of the illegal order passed by the Tahsildar. Therefore, the order passed by the learned Single Judge may be set aside and the Writ Appeal may be allowed.

7. The learned counsel appearing for the appellants/respondents 2 and 3 also relied upon the decision in Raj Kumar Soni and another Vs. State of Uttar Pradesh and another reported in (2007) 10 SCC 635, wherein in paragraph No.17 it is held as follows:-

"17. In M.C.Mehta Vs. Union of India reported in (1999) 6 SCC 237, this Court, relying upon Gadde Venkateswara Rao Vs. Government of Andhra Pradesh reported in AIR 1966 SC 828 observed: (SCC p.244, para 17)



to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.""

8. Heard the submissions made on either side and perused the materials available on record.

9. We are not inclined to look into the merits of the case on either side of the parties, as it is only the procedural defect that has been challenged.

10. As stated earlier, the Tahsildar had passed an order without notice to the appellants/respondents 2 and 3 and the Appellate Authority, namely, the Revenue Divisional Officer, had passed an order without giving an opportunity to the first respondent/writ petitioner. Therefore, both the authorities have not followed the principles of natural justice. The appellants/respondents 2 and 3 have rightly challenged the order of the Tahsildar before the Revenue Divisional Officer, namely, the second respondent. Hence, we are of the considered view that the order of the Tahsildar need not be set aside, as prayed for by the learned counsel appearing for the appellants/respondents 2 and 3. It would be suffice to direct the second respondent/the Revenue Divisional Officer to issue proper notice affording the parties sufficient time to produce the relevant materials in respect of their claims.

11. The second respondent/the Revenue Divisional Officer is also directed to fix a date enabling the parties to appear either in person or through the counsel by producing the relevant materials in support of their claim. However, the said exercise would be completed within three months from the date of receipt of a copy of this order. The other condition imposed by the learned Single Judge that the parties are restrained from encumbering the property till the final decision is taken by the second respondent/the Revenue Divisional Officer to continue.

12. With the above directions, the Writ Appeal is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/



To

The Revenue Divisional Officer,
Ramanathapuram District.

+1CC TO M/s. POLAX LEGAL SOLUTIONS IN S.R.NO.84002.

PS

DS SV SAR-1 15.10.2018 4P/3C

W.A (MD) No.1272 of 2018
12.09.2018