



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)Nos.488 and 489 of 2011
and
M.P(MD)Nos.1, 1 and 2, 2 of 2011

W.A(MD)No.488 of 2011

K.Gandhi ... Appellant/Petitioner

Vs.

1.The Sub-Registrar,
Keeranur, Kulathur Taluk,
Pudukkottai.

2.The Tahsildar,
Kulathur Taluk,
Pudukkottai District.

3.P.Bakialakshmi ... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 05.04.2011 made in W.P(MD) No.2554 of 2011 on the file of this Court and allow this Writ Appeal.

Prayer in WP(MD). 2554/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in Stay Petition No. 10/2011 dated 22/02/2011 and quash the same and consequently forbear the 1st respondent from registering any document of sale etc., at the instance of the 3rd respondent in respect of the petitioners property measuring 5 acres 80 cents of land in S.No. 18/7-B situated in Mathur Village, Kulathur Taluk, Pudukkottai District.

**W.A(MD) No.489 of 2011**

K.Gandhi

... Appellant/Petitioner

Vs.

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- 1.The District Revenue Officer,
Office of the District Revenue Officer,
Pudukkottai, Pudukkottai District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Pudukkottai, Pudukkottai District.
- 3.The Tahsildar,
Kulathur Taluk,
Pudukkottai District.

4.P.Bakialakshmi

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 05.04.2011 made in W.P(MD) No.668 of 2011 on the file of this Court and allow this Writ Appeal.

Prayer in WP(MD). 668/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent dated 14/01/2004 in ref. Ni.Mu.Tho.Mu.P.T.R.1141/2003-2004 and quash the same and consequently direct the respondents 1 to 3 herein to restore the patta and mutation of revenue records in the name of the petitioner in respect of property measuring 5 acres 80 cents of land in S.No. 18/7-B situated in Mathur village, Kulathur taluk, Pudukkottai district within a reasonable time.

For Appellant
(In both Writ Appeals)

: Mr.B.Jameel Arasu

For R-1 & R-2
in W.A(MD)No.488/2011 &

For R-1 to R-3
in W.A(MD)No.489/2011

: Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader



For R-3
in W.A(MD)No.488/2011 &

For R-4
in W.A(MD)No.489/2011 : Mr.R.Sundar

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COMMON JUDGMENT

(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**)

The facts leading to the filing of these Writ Appeals are intertwined, both the Writ Appeals are disposed of by this common judgment.

W.A(MD)No.489 of 2011:

2. The appellant/writ petitioner came forward to file W.P(MD)No.668 of 2011 praying for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the third respondent dated 14.01.2004 with a consequential direction, directing the respondents 1 to 3 to restore the patta and mutation of revenue records in his name in respect of the landed property admeasuring to an extent of 5 acres and 80 cents in S.No.18/7-B of Mathur Village, Kulathur Taluk, Pudukkottai District.

3. It is the claim of the appellant/writ petitioner that he is the absolute owner of the said property and is in exclusive and continuous possession of the same and the fourth respondent appeared to have got an ex-parte decree in O.S.No.192 of 1993 on the file of the Court of I Additional Subordinate Judge, Trichy, for declaration of her title with a consequential relief and based on which, he approached the third respondent, who has taken into consideration the said ex-parte decree, mutated the revenue records and transferred the patta in favour of the fourth respondent vide impugned order dated 14.01.2004. The said Writ Petition was entertained and notices were ordered.

W.A(MD)No.488 of 2011:

4. The appellant/writ petitioner has filed the Writ Petition (MD)No.2554 of 2011, challenging the order of the first respondent dated 22.02.2011, wherein his request not to register any document pertains to the said land in favour of third parties, came to be rejected.

5. It is the case of the writ petitioner that since the patta has been transferred without adhering to the principles of natural justice and behind his back, no document pertains to the



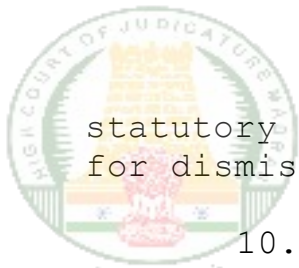
said land, should not be registered, as it may create third party rights and complications. The said Writ Petition was entertained and notices were ordered.

6. Both the Writ Petitions were taken up for final disposal and vide impugned order dated 05.04.2011, both the Writ Petitions came to be dismissed on the ground that the appellant/writ petitioner is having alternative remedy in the form of appeal before the Revenue Divisional Officer, who is the competent authority under the provisions of the Patta Passbook Act and it was further held that W.P(MD)No.688 of 2011 is not maintainable for the reason that the application filed by the appellant/writ petitioner to set aside the ex-parte decree passed in the civil suit, is still pending.

7. The writ petitioner/appellant aggrieved by the dismissal of both the Writ Petitions, came forward to file these Writ Appeals.

8. Mr.B.Jameel Arasu, learned counsel appearing for the appellant/writ petitioner, would submit that based on the ex-parte civil Court decree, patta in respect of the landed property came to be transferred in favour of the fourth respondent without adhering to the principles of natural justice and taking advantage of the same, the fourth respondent is trying to alienate the property in favour of third parties and in order to prevent the same, the appellant/writ petitioner made a request to the Sub-Registrar of Keeranur, Pudukkottai, not to register any document in respect of the subject landed property and it was rejected and would further submit that since the principles of natural justice have been violated in toto, it is not necessary for the appellant/writ petitioner to avail the appeal remedy under the Tamil Nadu Passbook Act and prays for interference.

9. Mr.C.M.Mari Chelliah Prabu, learned Additional Government Pleader appearing for the official respondents would contend that the third respondent namely, the Tahsildar, Kulathur Taluk, Pudukkottai District, taking into consideration the ex-parte decree obtained by the fourth respondent in O.S.No.192 of 1993 on the file of the Court of I Additional Subordinate Judge, Trichy, has rightly transferred the patta, as early as on 14.01.2004 and the appellant/writ petitioner has belatedly made a challenge only in the year 2011 alleging the date of knowledge and in the light of the effective alternative remedy available, the Writ Petition(MD)No.668 of 2011 is not maintainable and insofar as the Writ Petition(MD)No.2554 of 2011 filed for passing of an order of restrain, restraining the Sub-Registrar, Keeranur, is concerned, it is the submission of the learned Additional Government Pleader appearing for the official respondents that a Statutory Authority cannot be restrained from exercising his



statutory duty, by way of an order of interim injunction and prays for dismissal of both the Writ Appeals.

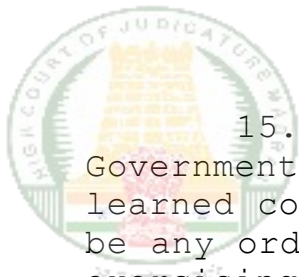
10. Mr. R. Sundar, learned counsel appearing for the fourth respondent would contend that admittedly, the application to set aside the ex-parte decree is still pending and since the ex-parte decree is not set aside, it will equally bind both the parties and the Tahsildar, Kulathur Taluk, Pudukkottai District, has rightly taken into consideration the said ex-parte decree, ordered the transfer of patta as early as on 14.01.2004 and however, the appellant alleging the date of knowledge, has chosen to approach this Court only in the year 2011 and in the light of the passage of time, the claim of the appellant/writ petitioner is hit by delay and laches and would further submit that there cannot be any order of restrain, restraining the jurisdictional Sub-Registrar from registering the document and prays for dismissal of both the Writ Appeals.

11. This Court heard the rival submissions made on either side and perused the materials placed before it.

12. It is not in serious dispute that the fourth respondent filed a comprehensive suit in O.S.No.192 of 1993 on the file of the Court of I Additional Subordinate Judge, Tiruchirapalli, seeking for declaration of her title in respect of the landed property in question and for consequential reliefs and in the said suit, an ex-parte decree came to be passed on 16.06.1998 and armed with the same, she approached the Tahsildar, Kulathur Taluk, Pudukkottai District, to transfer the patta in her name and it was ordered on 14.01.2004. The appellant/writ petitioner on becoming aware of the same, filed an application in I.A.No.124 of 2011 to condone the delay of 4268 days in filing the application to set aside the ex-parte decree and according to the learned counsel appearing for the appellant, the said application is still pending.

13. The primordial submission made by the learned counsel appearing for the appellant appears to be that since principles of natural justice have not been adhered to, he is not entitled to invoke the appeal remedy.

14. However, it is pertinent to point out that the learned counsel appearing for the appellant did not invite the attention of this Court to any statutory or other provision, which prescribes that the principles of natural justice seems to be adhered to and even otherwise, the appellant is having effective alternative remedy under Section 12 of the Patta Passbook Act, 1980 and as such, he may avail the said remedy.



15. As rightly contended by the learned Additional Government Pleader appearing for the official respondents and the learned counsel appearing for the fourth respondent, there cannot be any order of restrain, restraining the official respondent from exercising his statutory function.

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16. However, if the appellant so advised, he is entitled to avail the appeal remedy against the order of the Tahsildar, Kulathur Taluk, Pudukkottai District, dated 14.01.204, by filing an appeal before the appellate authority, within a period of four weeks from the date of receipt of a copy of this judgment and if the papers are otherwise in order, the appellate authority may entertain the appeal, without putting the issue of imitation and thereafter, putting the fourth respondent on notice, shall give a disposal, on merits and in accordance with law, within a period of ten weeks thereafter and communicate the decision taken, to the appellant as well as to the fourth respondent.

17. The Writ Appeals are dismissed, subject to the above observations. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

pm

To

- 1.The District Revenue Officer,
Office of the District Revenue Officer,
Pudukkottai, Pudukkottai District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Pudukkottai, Pudukkottai District.
3. The Sub-Registrar, Keeranur, Kulathur Taluk,
Pudukkottai.
- 4.The Tahsildar, Kulathur Taluk, Pudukkottai District.

+1CC to Mr.B.Jameel Arasu, Advocate Sr.No.46769

+1CC to Mr.R.Sundar, Advocate Sr.No.46632

GJM/SKN/RSK/26.2.18-6p-7C

W.A(MD)Nos.488 and 489 of 2011
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