IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.13302 & 13303 of 2015
and M.P. Nos.1 and 2 of 2015

R.Jeyachandran ... Petitioner in W.P. No.13302 of 2015

J.Bharath Kumar ... Petitioner in W.P. No.13303 of 2015

Vs

1.State of Tamil Nadu rep. by
the Chief Secretary to Government,
Fort St. George,
Chennai-9.

2.Revenue Divisional Officer,
Tambaram,
Chennai-45,
Kancheepuram District.

3.The Tahsildar,
Alandur Taluk,
Nanganallur,
Chennai-600 061.

4.The Special Tahsildar,
(Town Survey & Settlement),
Alandur, Corporation Building,
Kancheepuram District,
Chennai-600 016.

5.P.Deekaraman

6.Sudhakar

7.The District Collector,
Kanchipuram District,
Kanchipuram. ... Respondents in both the cases

Prayer in both the cases: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in Na.Ka.No.1755/2013/A and quash the order dated 04.06.2013 passed therein and directing the respondents 2 & 4 to delete the name of the fifth respondent from the Town Survey Field Register (TSFR) of Adambakkam Village pertaining to Survey No.71/1 and 71/3 corresponding to T.S. No.184/31, the consequential inclusion and restore the name of the petitioners in the same as it stood.

SCHEDULE

All that piece and parcel of land situated at Plot Nos.7,8,9,11,12 and 13 admeasuring to an Extent of 16,626 Sq.Ft, Jeevan Nagar, Adambakka, Chennai-600 088, comprised in S.NO.71/1 and 71/3 and T.S.No.184/3 and Sub division T.S.No.184/31, Ward "E" Block No.9 Paimash No.620,558 and 558/1, vide DTP Approved No.29/1975 of 136 Adambakkam Village, Kancheepuram District within the Registration District of South Chennai and within the Sub Registration District of Alandur and bounded on the

North By : Plot No.6 and 14
South By : Door No.29/15 & Door No.31/16 in S.No.70
East By : 3rd Street, Jeevan Nagar
West By : 100 Ft Inner Ring Road

For Petitioners : Mr.G.Krishnakumar in both cases

For Respondents : Mrs.V.Shanmuga Sundar,
Special Government Pleader
for R1 to 4 & 7
No appearance for R5 & 6
in both cases

COMMON ORDER

Two writ Petitions have been filed by both father and son challenging the common order dated 04.06.2013 passed against them in Na.Ka.No.1755/2013/A by the Revenue Divisional Officer, Tambaram, the second respondent herein and seeking a direction to respondents 2 & 4 to delete the name of the fifth respondent from the Town Survey Field Register (TSFR) of Adambakkam Village pertaining to Survey Nos.71/1 and 71/3 corresponding to T.S. No.184/31 and to restore their names.

2.Learned Counsel appearing for the petitioners assailing the impugned order passed by the 2nd respondent, namely, the Revenue Divisional Officer, Tambaram, Chennai contended that when the petitioners were issued with patta by the Assistant Settlement Officer, if at all anyone aggrieved including the Government as per Section 11(3) of the Tamil Nadu Minor Inams (Abolition and Convention into Ryotwari) Act, 1963, (hereinafter referred to as 'the Act') under Sub-Section (2), the Government may within one year or from the date of the decision and any person aggrieved by such decision may, within 3 months of the said order, appeal to the Tribunal.

3.The learned Counsel for the petitioners further contended that but in the present case, the Revenue Divisional Officer, Tambaram who has no power or authority or jurisdiction has wrongly cancelled the patta issued by the Assistant Settlement Officer. Therefore, when the 2nd respondent Revenue Divisional Officer has no jurisdiction either to consider or decide in the Town Survey Field Register (TSFR) in respect of the schedule mentioned properties, the impugned order is liable to be set aside. Learned counsel appearing for the petitioners, taking support from the order dated 31.07.1995 passed by this Court in W.A. No.473 of 1995, would submit that the Revenue Divisional Officer has no jurisdiction to pass such an order.

4.Learned Special Government Pleader appearing for respondents 1 to 4 & 7, after looking into Section 11(3) of the Act giving right of appeal to the Tribunal, is unable to support the impugned order. Referring to Sections 11(2) and (3) of the Act, he would fairly submit that the Revenue Divisional Officer ought not to have passed the order as he has no authority or jurisdiction to pass the same.

5.The land in Survey Nos.71/1 and 71/3, (Paimash Nos.558, 558/1 and 620) admeasuring about 3.11 acres as well as other lands adjoining thereto of Adambakkam Village were the subject matter of Inam Grants recognized by the Government of Tamil Nadu in T.D.No.482. While so, a part of the land measuring to an extent of 1.66 acres of land in Paimash No.558 (66 Cents) and Paimash No.620 (1 acre) was purchased in Court auction by one Ekambara Mudaliar on 09.07.1947 and after the sale was confirmed, he was put in possession and enjoyment of the same on 19.8.1947. Patta in respect of the land measuring to an extent of 1.66 acres was then transferred in the name of the said Ekambara Mudaliar during Fasli 1358 and he was issued with patta bearing No.43. Thereafter, the said Ekambara Mudaliar sold these lands to one Munusamy Naicker and patta was also transferred in the name of the said Munusamy Naicker under Patta No.43.

Subsequently, the said Munusamy sold the above land to one Perumal Naicker on 12.6.1956 under a Sale Deed bearing Document No.1331/1956 on the file of the Sub-Registrar Officer, Saidapet. Then, the said Perumal Naicker applied for a patta for the entire extent of land, namely, 1.66 acres + 2.20 = 3.86 acres.

6.After sometime, the father of the petitioner in W.P. No.13302 of 2015 late Mr.A.S.L.Rajan purchased 3.11 acres of land from and out of the 3.86 acres of land from the said A.S.Perumal Naicker vide (a) 0.66 acres in Paimsash No.558 (b) 1.45 acres in Paimash No.558/1 and (c) 1.00 acre in Paimash No.620, in all measuring 3.11 acres under a Registered Sale Deed dated 15.3.1971 bearing Document No.571/71 on the file of the Sub-Registrar, Alandur. These paimash numbers correlate to S.Nos.71/1 and 71/3 as well as T.S.No.184, Adambakkam Village. Finally, since it is claimed that the said lands are Inam lands covered under the Minor Inam Act, the father of the Petitioner in W.P.No.13302/2015 was issued with notice dated 24.2.1973 under the said Act for enquiry and issuance of patta by the Settlement Tahsildhar, Chengelpat in SR.No.24B19/G.R/ TNMIA/Act 30/SDT/63 in respect of Survey No.71/1 and SR.No.24B19/73/ Act/SDT/30/63 in respect of Survey No.71/3. Subsequently, a fresh notice in SR.263/88/TNMIA/Act/30/63/SDT dated Nil/01/1988 was issued by the Assistant Settlement Officer, Thiruvannamalai and after completion of enquiry, the Assistant Settlement Officer, Thiruvannamalai vide proceedings No.Tha.Pa.No.5/99 dated 24.12.1999 passed an order directing the concerned Tahsildar, Tambaram to issue patta to Mr.A.S.L.Rajan for the lands in Survey Nos.71/1 and 71/3 after considering the rival claim of the 5th respondent as well. Based on the same, the jurisdictional Zonal Deputy Tahsildar-Alandur, Tambaram Taluk has issued patta to Mr.A.S.L.Rajan, father of the petitioner in W.P. No.13302 of 2015 after making necessary entries in the Town Survey Field Register (TSFR).

7.Since the Assistant Settlement Officer, Thiruvannamalai exercising his power under Section 11 of the Act has issued the patta on 24.12.1999 in the name of A.S.L.Rajan, father of the petitioner in W.P. No.13302 of 2015 and thereafter, the revenue records were also changed in his name in the year 2000 based on the patta issued by the Assistant Settlement Officer, Tiruvannamalai and in view of the change in the revenue records, a settlement was also executed by him in favour of his son and grand son on 21.06.2004 and based on the settlement, a joint patta was also obtained in the name of the petitioners on 22.11.2012, the order passed by the Revenue Divisional Officer is per se beyond the scope of the said Act. If any patta issued by the Assistant Settlement Officer, any aggrieved party either

Government or private parties can approach the Tribunal under Section 11(3) of the Act. It is necessary to extract the relevant Section 11(3) of the Act as under:

> '11(3) Against a decision of the Assistant Settlement Officer under sub-section (2), the Government may, within one year from the date of the decision, and any person aggrieved by such decision may, within three months of the said date, appeal to the Tribunal:
>
> Provided that the Tribunal may, in its discretion, allow further time not exceeding two months for the filing of any such appeal.
>
> Provided further that the Tribunal may, in its discretion, entertain an appeal by the Government at any time if it appears to the Tribunal that the decision of the Assistant Settlement Officer was vitiated by fraud or by mistake of fact.'

8.A careful perusal of the above provision vividly shows that against the decision of the Assistant Settlement Officer under sub section (2) of the Act, if the Government is aggrieved party, the Government may within one year from the date of decision and if any private party is aggrieved by such decision, such private party may within three months from the date of the said order, prefer appeal to the Tribunal. But, in the present case, the Revenue Divisional Officer, who is not even a proper authority under the said Act, without any jurisdiction, wrongly passed the order which shows his non application of mind.

9.Therefore, in the light of the above provision, namely, Section 11(3) of the Act, the impugned order passed by the Revenue Divisional Officer, Tambaram is non est in the eye of law and the same is set aside. Accordingly, the writ petition stands allowed. Since the joint patta was also issued on 22.11.2012 in the name of the petitioners, their names shall be restored in the revenue records within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected M.Ps are closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To
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the Chief Secretary to Government,
Fort St. George,
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2.Revenue Divisional Officer,
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(Town Survey & Settlement),
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Kancheepuram District,
Chennai-600 016.

5.The District Collector,
Kanchipuram District,
Kanchipuram.

+1 cc to Mr.G.Krishna Kumar Advocate sr96758
+1 to the government Pleader High Court Madras
sr 97634

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br(co)
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