IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2019

Pronounced on : 03.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.31758 of 2012 & 6670 of 2013
and
M.P.No.2 of 2012

1.S.Marimuthu
2.S.Sudar ...Petitioners
(in W.P.No.31758 of 2012)

1.K.S.Subbaiah ...Petitioner
(in W.P.No.6670 of 2013)

Versus

1. The District Collector,
Kanchipuram District,
Kanchipuram

2. The District Revenue Officer,
Kanchipuram District,
Kanchipuram.

3. The Revenue Divisional Officer,
Chengalpattu,
Kanchipuram District.

4.The Tashildar,
Chengalpattu.

5.Rajakumari
6.B.J.Sukumar
7.B.Rubasundari
8.B.Viswanathan
9.Malligasulthana
10.Sundaram
11.V.A.Chandrasekar
12.K.Vakuvalliyan
13.R.Nandhakumar
14.Mahalakshmi
15.Jayaraman ... Respondents
(in both writ petitions)

PRAYER in W.P.No.31758 of 2012:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the proceedings of the 2nd respondent in Na.Ka.No.4289/2012/No.4 dated 01.10.2012 and also the order of the 3rd respondent dated 22.12.2011 in Na.Ka.No.1056 of 2011 and quash the same and thereby direct the respondents to restore the patta in favour of the petitioners in respondent of the properties situated in Puthur Village, Chengalpet Taluk, in Dry S.Nos.4/11-002.0 hares, 4/12-002.0 hares, 4/5-002.0 hares, 4/4-002.0 hares, 4/10-002.0 hares, 4/9-002.0 hares, 4/6-002.0 hares, 4/7-002.0 hares, 4/1A12-002.0 hares, 4/8-002.0 hares and 4/13-002.0 hares.

PRAYER in W.P.No.6670 of 2013:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the proceedings of the 2nd respondent in Na.Ka.No.4289/2012/No.4 dated 01.10.2012 and also the order of the 3rd respondent dated 22.12.2011 in Na.Ka.No.1056/2011 and the quash the same.

For Petitioners :: Mr.N.Suresh
(in both writ petitions)

For RR1 to 4 (Government Advocate) ::Mr.M.Elumalai
(in both writ petitions)

For RR5,7 to 14 :: Mr.P.B.Balaji
(in both writ petitions)

R15 :: Not ready in notice.
(in both writ petitions)

R6 ::Died

COMMON ORDER

S.Marimuthu and S.Sudar, both brothers have filed W.P.No.31758 of 2012, to call for the records and quash the order of the third respondent, Revenue Divisional Officer, Chengalpattu, Kanchipuram District, dated 22.12.2011, whereby, the said official had cancelled the patta granted in favour of their father K.S.Subbaiah with respect to the lands measuring 0.84 cents in Puthur Village in S.Nos.4/10, 4/11, 4/12, 4/13, 4/1A1A3, 4/1A1A4 and had directed reissue of patta in favour of the 5th to 15th respondents and also to quash the proceedings of the second respondent namely, the District Revenue Officer, Kanchipuram District, Kanchipuram, dated 01.10.2012 whereby, the said Officer, had confirmed the order of the third respondent.

2.The father of the writ petitioners in W.P.No.31758 of 2012, K.S.Subbiah had filed W.P.No.6670 of 2013 seeking the very same reliefs to quash the order of the third respondent namely, the Revenue Divisional Officer, dated 22.12.2011, and of the second respondent namely, District Revenue Officer, Kanchipuram District, Kanchipuram dated 01.10.2012.

3.The Hon'ble Chief Justice had directed both the writ petitions to be heard together by this Court.

4.Heard arguments advanced by Mr.N.Suresh, learned counsel for the petitioners in both the writ petitions and Mr.M.Elumalai, learned Government Advocate for the respondents 1 to 4 and by Mr.P.B.Balaji, learned counsel for the respondents 5 and 7 to 14. The sixth respondent had died and steps have not been taken to bring on record his legal representatives. The fifteenth respondent had not been served.

Facts in brief:

5.The writ petitioners claimed that the lands situated in Puthur Village, Chengalpattu Taluk, in S.Nos.4/10, 4/11, 4/12, 4/13, 4/1A1A3, and 4/1A1A4 originally belonged to Mahila Ammal, who was in possession and enjoyment of 2.34 acres. They claimed that she had not executed any conveyance deed in favour of any party. They further claimed that her power of attorney had conveyed the property to K.S.Subbaiah, the writ petitioner in W.P.No.6670 of 2013, and the father of the writ petitioners in W.P.No.31758 of 2012.

6.The writ petitioners also claimed that patta originally stood in the name of Mahila Ammal. They further claimed that the respondents 5 to 15 however changed the patta to their names, allegedly without notice to Mahila Ammal and without any enquiry. She then filed a petition before the 4th respondent namely, the Tashildar, Chengalpattu, who, after enquiry, cancelled the patta in the names of respondents 5 to 15, by order dated 01.09.1992 in DIS.RTP.1046/92-AA3. The petitioners further claimed that Mahila Ammal had executed a power of attorney in favour of D.K.Lopes, son of N.David with respect to the said property. On 22.02.1993, by Document No.87/1993 registered in S.R.O., Pallavaram, the said power agent, D.K.Lopes, sold the property by sale deed dated 09.06.1997 to K.S.Subbaiah, who was put in possession of the 2.34 acres. Thereafter, K.S.Subbaiah, executed three different settlement deeds in favour of his sons, on 06.02.2008 by three documents namely, Document Nos.880/2208, 887/2008 and 879 of 2008 registered in the Office of the S.R.O.Tamabaram. Thereafter, the fourth respondent also effected necessary mutation in the revenue records and the pattas were transferred accordingly.

7.Respondents 5 to 15 had filed a petition before the third respondent namely, the Revenue Divisional Officer at Chengalpattu, to cancel the said pattas. It was claimed that the writ petitioners were not put on notice. It was further claimed that the Respondents 5 to 15 have no legal right to seek cancellation of patta. They had initiated proceedings after nearly 20 years from 01.09.1992. It had been stated that the third respondent had passed the impugned order dated 22.12.2011 in Na.Ka.No.1056 of 2011. This was confirmed by the second respondent namely, the District Revenue Officer, Kanchipuram, by proceedings in Na.Ka.No.4289/2012/No.4 dated 01.10.2012.

8.It is the grievance of the learned counsel for the writ petitioners that while passing the impugned order, the second and third respondents exceeded their jurisdiction and had virtually passed a judgment declaring title over the property. They had examined the documents and in the light of the said documents and without reference to the writ petitioners they had passed the impugned orders. While passing such impugned orders cancelling pattas, they had also decided the title of the property.

9.The ratio that, the District Revenue Officer had no power to examine title had been well settled by the judgement reported in 2011 (5) CTC 94, Vishwas Footwear Company Ltd., V. The District Collector, Kancheepuram, & others. In that case, it had been very specifically held as follows:

> "19.Nevertheless, the core question involved in the Writ Petition is as to whether in the given facts and circumstances of the case, it could be entertained in the event Patta has been granted in favour of a particular individual. On the strength of the title or possession, if any other person makes an Application to the Revenue Divisional Officer for cancellation of that Patta and in the even both the individuals claim title over the property, the Revenue Divisional Officer cannot adjudicate such disputed questions and accepting the case of the other person, he cannot cancel the Patta. The right course to be adopted by the Revenue Divisional Officer in such case is only to refer the Applicant who has come before him seeking for cancellation of Patta to Civil Court, especially when his

> claim is disputed by the individual who is holding the Patta granted by the Competent Authority. In the event the Revenue Divisional Officer by exceeding his jurisdiction decides the question of title and cancels the Patta, certainly, the aggrieved person can approach this Court by way of a Writ Petition on the ground that the Revenue Divisional Officer was not competent to go into the title. The question of alternative remedy is not available to the aggrieved person as for the very same reason the District Collector also cannot go into the disputed question regarding the title or possession, as the case may be, in the event an Appeal is filed."

10. The Respondents 5 to 15 had filed an application before the third respondent namely, the Revenue Divisional Officer, who had examined title though there were disputed facts and had cancelled the pattas already granted in favour of the writ petitioners in both the writ petitions. This order has been confirmed by the second respondent, who is the District Revenue Officer, who also by the impugned order dated 01.10.2012, again went extensively into the question of title and granted the reliefs sought by the respondents 5 to 15. This approach by the second and third respondents are beyond the jurisdiction of the said Officers. The right course which should be adopted by the said Officers is to refer the applicants who had come before them seeking cancellation of patta to the Civil Court, particularly, when their claim is disputed by other individuals who were holding patta granted by the competent Authority.

11.In this case, K.S.Subbaiah, the writ petitioner in W.P.No.6670 of 2013, had been granted patta by the Tashildar Chengalpattu, who is a competent Authority and subsequently, patta had also been granted in favour of the writ petitioners in W.P.No.31758 of 2012. On the other hand, the said respondents had examined and declared title thereby exceeding their jurisdiction.

12.In view of the said facts, I have no hesitation in allowing the writ petitions by quashing the proceedings of the second and third respondents. The parties are directed to approach the Civil Court and seek declaration of title by way of properly instituted suit. If any issue relating to limitation is raised, the plaintiffs therein may cite the pendency of these writ petitions as a bonafide judicial proceedings initiated. The Civil Court may examine the issues relating to title without being influenced by any observation in that regard made by this Court or by the second and third respondents in their orders which have now been set aside.

13.With the above observations, both the writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-/-
Assistant Registrar(CS iv)

//True Copy//
Sub Assistant Registrar

smv

To,
1. The District Collector,
Kanchipuram District,
Kanchipuram

2. The District Revenue Officer,
Kanchipuram District,
Kanchipuram.

3. The Revenue Divisional Officer,
Chengalpattu,
Kanchipuram District.

4.The Tashildar, Chengalpattu.

+1cc to Mr. N.Suresh , Advocate SR.No. 33007
+1cc to Mr. P.B.Balaji, Advocate SR.No. 32457

W.P.Nos.31758 of 2012
& 6670 of 2013
and
M.P.No.2 of 2012

ak (CO)
A.SK(07/05/2019)