IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No. 5095 of 2014
and
M.P.Nos.1 & 2 of 2014

Tvl.Sree Jayamurugan Sago Factory,
Rep.by its Proprietor,
N.Manoj,
No.S.F.5/3, Mummudi,
Thalaivasal, Attur 636 112,
Salem District. ...Petitioner

Vs.

1.The Commercial Tax Officer,
Attur (Rural) Assessment Circle,
Attur, Salem District.

2.R.Kuppusamy ..Respondent
[R2 impleaded vide order dated 22.07.2019
made in M.P.No.2 of 2014]

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in Na.Ka.No.725/2013/A2 dated 06.02.2014 received on 15.02.2014 and quash the same as being without jurisdiction and authority of law.

For Petitioner : Mr.R.Senniappan

For Respondent : Mrs.Dhanamadhri
Government Advocate R1
Mr.K.Selvaraj for R2(N.A)

O R D E R

The notice calling upon the petitioner herein to submit his objections along with the relevant materials to substantiate why the registration certificate of the petitioner proprietory concern should not be cancelled, is under challenge in the present writ petition.

2. It is the settled proposition that a notice of this nature cannot be restrained by invoking the provisions of the Article 226 of the Constitution of India, unless under exceptional circumstances. The learned counsel for the petitioner would submit that the respondent herein has no authority to issue the notice on the basis of an information received from a third party. In my view, such an objections cannot be deemed to lack jurisdiction or authority on the part of the respondent.

3. The respondent herein is a Competent Authority to initiate proceedings for registration certificate and as such, he would be justified to call for objections from the concerned parties for initiating action for cancellation, when he is possessed of any reasonable materials from any person or has any other reason to believe that such cancellation is required. However, it would also be the duty of such authority to furnish all the details to the petitioner, explaining the information which he has received, which has necessitated him to initiate proceedings for cancellation. At the same time, the respondent is also expected to conduct such proceedings, in the presence of any rival parties, who may be interested in the dispute.

4. It would also be pertinent to mention here that since the dispute is also said to be a subject matter of a civil case, the present proceedings would be subject to any decision being taken in a civil dispute or any interim orders obtained therein.

5. It will not be out of place to mention here, when the petitioner had earlier challenged transfer of patta granted in favour of R.Kuppusamy and Athayee, who is the wife of R.Kuppusamy in W.P.No.28322 of 2013, this Court by an order dated 17.08.2015, had observed as follows:

> "It is seen from the records that the petitioner's name has been entered in patta based upon the settlement deed said to have been executed by the respondent No.4 & 5. It also appears that the respondent No.4 and 5 cancelled the said settlement deed on certain grounds. A challenge has been made by the petitioner by seeking a declaration that the cancellation of settlement is null and void by duly filing a civil suit in O.S.No.319 of 2013 on the file of the District Munsif, Attur. In the meanwhile, respondent No.3 changed the patta once again in the name of the respondent No.4 and 5 based upon the cancellation of settlement deed. Alleging that said action has been taken behind the back of the petitioner without affording opportunities to the petitioner, the present writ petition has been filed.

2.The law is quite settled that a patta issued by the revenue official is subject to decision of the Civil Court. Admittedly, petitioner has filed the comprehensive civil suit which is pending on the file of the District Munsif Court, Attur to dispose of the suit in O.S.No.319 of 2013 within a period of 9 months from the date of receipt of a copy of this order. While doing so, the said Court shall not make any reliance upon the patta said to have been issued in favour of the respondent No.4 and 5. Based upon the decision to be rendered by the said Court, parties are at liberty to approach the respondent No.3 for appropriate relief.

3.It is made clear that if right has already been accrued to the parties based upon the patta which is in existence as on today or earlier, the subsequent change of patta shall not affect them. It would depend upon the Civil Court decision. Parties are also at liberty to file appropriate application in the pending suit if so advised."

6. In the light of the above observations, the petitioner is granted liberty to submit his explanations pursuant to the impugned notice dated 06.02.2014 and also submit all the materials available to substantiate, why his registration certificate should not be cancelled. The first respondent shall also issue notice to the second respondent (impleaded respondent) and any other persons who may be interested in the subject matter, during the course of the enquiry contemplated. This entire procedure shall be completed as expeditiously as possible and in accordance with law and also taking into account the observations made by this Court in W.P.No.28322 of 2013.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Attur (Rural) Assessment Circle,
Attur, Salem District.

+1cc to M/s.R.Senniappan, Advocate Sr.62506
+1cc to the Special Government Pleader Sr.63014

W.P.No. 5095 of 2014

vsn II[co]
srg 14/09/2019