IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.26508 & 26969 of 2014
and M.P. Nos.1 and 1 of 2014

T.Panneerselvam ... Petitioner in both the cases

Vs

1.The District Collector,
Villupuram District,
Villupuram.

2.The Revenue Divisional Officer,
Villupuram.

3.The Thasildhar,
Villupuram.

4.Ekambaram @ Balu ... Respondents in both the cases

Prayer in W.P. No.26508 of 2014 : 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 his/her proceedings in Na.Ka.A3/5454/2013 dated 25.08.2014 and quash the same and thereby forbear the second respondent from proceeding with the enquiry in respect of the property of the petitioner in S.No.93/1 - 0.25 cents situate at Sorapur Village, Villupuram Taluk.

Prayer in W.P. No.26969 of 2014 : 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 his proceedings in Pa.Mu.A3/5454/2013 dated 12.09.2014 and sent by the second respondent on 25.09.2014 and received by the petitioner on 26.09.2014 and quash the same and thereby direct the respondents 1 to 3 to modify the Patta No.33 and 'A' Register in respect of the property in S.No.93/1 - 10.50 ares (0.25 cents) situate at Sorapur Village, Villupuram Taluk exclusively in favour of the petitioner.

For Petitioner : Mr.N.Suresh

For Respondents: Mrs.P.Rajalakshmi,
Additional Government Pleader
for R1 to R3

Mr.S.Jayakumar for R4

COMMON ORDER

W.P. No.26508 of 2014 has been filed by the petitioner challenging the impugned proceedings bearing Na.Ka.A3/5454/2013 dated 25.08.2014 issued by the Revenue Divisional Officer, Villupuram, the second respondent herein and seeking to forbear the second respondent from proceeding with the enquiry in respect of his property in S.No.93/1 - 0.25 cents situated at Sorapur Village, Villupuram Taluk.

W.P. No.26969 of 2014 has been filed by the petitioner challenging the impugned proceedings bearing Pa.Mu.A3/5454/2013 dated 12.09.2014 and seeking a direction to respondents 1 to 3 to modify the Patta No.33 and 'A' Register in respect of the property in S.No.93/1 - 10.50 ares (0.25 cents) situated at Sorapur Village, Villupuram Taluk.

2.Learned counsel appearing for the petitioner would submit that the land in question covered in S.No.93/1 to an extent of 0.25 cents belongs to the petitioner's father. Later on, when family partition took place, it was allotted to the petitioner's mother Vimala on 16.09.2009. Thereafter, she executed a Settlement Deed in favour of the petitioner's son minor Udayanithi on 29.03.2012 showing the petitioner as guardian. Since there were some civil disputes faced by the petitioner, an Original Suit in O.S. No.385 of 2012 was filed on the file of the learned District Munsif, Villupuram seeking decree for declaration of title and for mandatory injunction for transfer of patta in favour of the petitioner rightly impleading the fourth respondent herein as fifth defendant. Adding further learned counsel appearing for the petitioner would submit that after receiving the summons, the fourth respondent herein namely, the fifth defendant did not contest the suit. Therefore, the District Munsif Court passed an exparte judgment and decree on 23.07.2013. Due to the delay occurred, the fourth respondent herein has filed an application to condone the delay in filing the application to set aside the exparte decree that was rejected and as against the same, a Civil Revision Petition has been filed and the same has not been numbered which shows that the fourth respondent/fifth defendant does not evince any interest. Since the patta has been showing the names of the petitioner and the fourth respondent herein, the petitioner gave a representation on 25.09.2013 to the Tahsildar, Villupuram to issue a separate patta in favour of the petitioner's son Udayanithi. But, for the reasons best known to the Tahsildar, he has referred the matter to the Revenue Divisional Officer, Villupuram, the second respondent herein, who has issued a notice of enquiry calling upon the petitioner and the fourth respondent to take part in the enquiry. As the notice of enquiry issued by the Revenue Divisional Officer, Villupuram is without jurisdiction and as a matter of fact the Tahsildar is the competent authority to issue a separate patta, the petitioner filed the above W.P. No.26508 of 2014 challenging the correctness of the above Proceedings dated 25.08.2014. In the meanwhile, another impugned Proceeding has been passed holding that the petitioner is not entitled to have the patta in respect of 7 cents which is against the judgment and decree passed by the learned District Munsif, Villupuram.

3.Referring to Section 10 of the Patta Pass Book Act 1983 (hereinafter referred to as 'the Act'), learned counsel appearing for the petitioner contended that the petitioner has rightly made an application before the Tahsildar with a request to make a small modification in the patta which has been already issued, removing the name of the fourth respondent and retaining the name of the petitioner. But, for the reasons best known to the Revenue Divisional Officer, the second respondent herein, he has issued the impugned Proceedings calling upon the petitioner to attend the enquiry on the complaint given by the fourth respondent.

4.Continuing his argument, learned counsel appearing for the petitioner would submit that when the petitioner has already questioned the jurisdiction of the Revenue Divisional Officer, Villupuram in W.P. No.26508 of 2014, this Court, while entertaining the writ petition, has granted an order of stay on 25.09.2014. While arguing about the three situations mentioned in Section 10 of the Act, learned counsel for the petitioner would submit that although the case of the petitioner does not fall in the two situations, the case of the petitioner squarely falls under the third situation as to whether any person claims any modification in respect of any entry in the patta issued under Section 3 of the Act, any other change in circumstances, he shall make an application before the Tahsildar, who ought not to have referred the matter to the Revenue Divisional Officer. Although the file has been sent to him by the Tahsiildar, in all fairness, the Revenue Divisional Officer should have remanded the matter back to the Tahsildar for passing appropriate orders. As it has not been done in the present case, the petitioner has been losing the valuable remedy of Revision under Section 12 of the Act before the Revenue Divisional

Officer. Therefore, the impugned Proceedings calling upon the petitioner and the fourth respondent for enquiry and the consequential impugned Proceedings are liable to be set aside. In support of his submission, learned counsel appearing for the petitioner, producing an order dated 01.07.2011 passed by this Court in W.P. No.18489 of 2009 in the case of S.Viswanathan v. District Collector and others, drawn the notice of this Court to Section 10 of the Act. Therefore, the learned counsel for the petitioner prayed for allowing the writ petitions by setting aside the impugned Proceedings.

5.Mrs.P.Rajalakshmi, learned Additional Government Pleader appearing for respondents 1 to 3, urging this Court to dismiss the writ petitions on the ground that the petitioner's case cannot be brought under Section 10 of the Act and the claim of the petitioner and the fourth respondent ought to be dealt with under Section 12 of the Act, would submit that since the Revenue Divisional Officer has already passed an order naming both the petitioner and the fourth respondent in the joint patta having authority under Section 12 of the Act, has rightly issued the notice calling upon both the petitioner and the fourth respondent to take part in the enquiry wherein the issue raised by both the petitioner and the fourth respondent could be adjudicated upon. Instead of answering the call given by the Revenue Divisional Officer, the petitioner without attending the enquiry, has placed before this Court only the judgment and decree passed by the learned District Munsif, Villupuram in his favour and not the other documents and therefore, he has wrongly approached this Court.

6.While answering the submissions made by the learned counsel appearing for the petitioner, learned Additional Government Pleader would submit that the Revenue Divisional Officer, finding no response from the petitioner, has passed the final order partly agreeing with the case of the petitioner that he is the owner of the land to an extent of 9 cents on the basis of reliable documents placed by the fourth respondent. In any event, since the Revenue Divisional Officer, Villupuram, the second respondent herein has issued the notice with regard to the verification of the land, finding no response from the petitioner, he has issued the impugned Proceedings. Thereafter, it is for the petitioner to file a Revision under Section 13 of the Patta Pass Book Act before the District Revenue Officer concerned. Leaving that statutory revisional remedy available to the petitioner, he cannot maintain the writ petitions inasmuch as the invocation of the extraordinary power under Article 226 of the Constitution of India cannot be made available in view of the existence of alternate remedy. On this score, she prayed for dismissal of both the writ petitions.

7.Learned counsel appearing for the fourth respondent, by filing a counter affidavit, argued that when the fourth respondent's name ought not to have been shown in the joint patta, the matter has been seized by the revenue authorities. In the meanwhile, the petitioner has approached the learned District Munsif, Villupuram by filing O.S. No.385 of 2012 seeking relief of declaration to declare that the subject property is the absolute property of the petitioner and also for consequential reliefs to issue patta to the entire extent of the land in his favour.

8.In view of the fact that the petitioner has given the wrong address of the fourth respondent, the fourth respondent was not able to receive any summon and finally he has obtained the exparte decree. Later on, he came to know about the passing of the exparte decree in favour of the petitioner and thereafter, he has moved an application to condone the delay to set aside the exparte decree. In view of the huge delay, the said application was rejected and as against the same, Civil Revision Petition has been filed by the fourth respondent and the same is pending in the un-numbered stage. That shows that the fourth respondent is a rival claimant of the land in question. If the said Civil Revision Petition filed by the fourth respondent is disposed of in his favour directing the Trial Court to take up the exparte decree, the judgment and decree passed by the learned District Munsif, Villupuram in favour of the petitioner is liable to go. Therefore, it is not open to the petitioner to claim any benefit from the exparte judgment passed by the learned District Munsif, Villupuram. He would further submit that when the Revenue Divisional Officer, on the request made by the Tahsildar, has issued notice to both the petitioner and the fourth respondent, the fourth respondent, on receipt of the enquiry notice, took part in the proceeding conducted by the Revenue Divisional Officer and has established his claim that the petitioner is the owner of the land to the extent of 9 cents only.

9.It is seen from records that the Revenue Divisional Officer, Villupuram has issued the above proceedings, after careful consideration of the documents placed by the fourth respondent. Although no extent of land in question has been discussed by the learned District Munsif, Villupuram in the exparte judgment, the same does not require any interference by this Court. This Court, without going into the merits of the issue raised by both the petitioner and the fourth respondent as to whether the petitioner is the owner of 25 cents or not and whether the fourth respondent is the owner of 17 cents or not, taking note of the fact that during the pendency of the writ petition, the petitioner was unable to appear before the second respondent, deems it fit to direct the petitioner and the fourth respondent to appear before the second respondent, as canvassed by the learned Additional Government Pleader appearing for respondents 1 to 3. Accordingly, both the petitioner and the fourth respondent are directed to appear before the second respondent, Revenue Divisional Officer, Villupuram, who, in turn, reconsider the matter afresh on the basis of the documents that could be placed by both the petitioner and the fourth respondent within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly, W.P. No.26508 of 2014 is dismissed and W.P. No.26969 of 2014 is disposed of. Consequently, connected M.Ps are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Villupuram District,
Villupuram.

2.The Revenue Divisional Officer,
Villupuram.

3.The Thasildhar,
Villupuram.

+1cc to Mr.N.Suresh, Advocate Sr.96907
+1cc to the Government Pleader Sr.97587
+2cc to Mr.S.Jaya Kumar, Advocate Sr.97366

W.P. Nos.26508 & 26969 of 2014
and M.P. Nos.1 and 1 of 2014

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srg 21/01/2020