IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1800 of 2013

U.B.C.Sabhanatha Oli Sivachariar,
S/o.Chit Sabesan Sivachariar .. Petitioner

-vs-

1.The District Revenue Officer,
Cuddalore District,
Cuddalore.

2.G.Subramanian

3.The Executive Officer,
Sathya Gnana Sabai,
Vallalar Deiva Nilayam,
Vadalur-607 303,
Kurinjipadi Taluk. .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the first respondent made in Na.Ka.V5/45849/2009 dated 04.08.2011 and the appeal order in Na.Ka.V5 30688-2011 dated 29.11.2012 and quash the same.

For Petitioner : Ms.Chitra Sampath, Senior Counsel assisted by Mr.T.S.Baskaran

For Respondents: R1 - Mr.M.D.Ilayaraja, Government Advocate

: R2 - No appearance

: R3 - Mr.K.A.Ravindran

ORDER

This writ petition has been filed by U.B.C.Sabhanatha Oli Sivachariar, S/o.Chit Sabesan Sivachariar, challenging the orders passed by the first respondent dated 04.08.2011 and 29.11.2012.

2.The matter concerns certain lands, which were owned by the petitioner's predecessors and the petitioner as of now, and to be specific, the lands in S.No.334/1, Parvathipuravm village, measuring an extent of 3 acres and 35 cents.

3.Before the Court proceeds to consider the correctness of the impugned order dated 04.08.2011, the Court first would consider the correctness of the order dated 29.11.2012. Both the impugned orders have been passed by the first respondent and by the very same officer, Thiru C.Rajendran, B.Com., who has been functioning as the District Revenue Officer, Cuddalore. The order dated 29.11.2012, is purported to be an order passed by the first respondent as an appellate authority over his own order dated 04.08.2011.

4.The settled legal principle is that a person cannot be a Judge of his own cause. The first respondent cannot be the original authority, who passed the order dated 04.08.2011 and test the correctness of the said order as an appellate authority. The officer, who hold the post of District Revenue Officer, Mr.C.Rajendran, did not even know the basic legal principle and he had been unfortunately entrusted with quasi judicial duties. This is sufficient to hold that the impugned order dated 29.11.2012, is wholly without jurisdiction and patently illegal. Accordingly, the same is set aside.

5.The Court now would consider the correctness of the order dated 04.08.2011. On a reading of the said impugned order, it is evidently clear that the same is flawed on several grounds. This finding is substantiated by the following reasons. Firstly, the enquiry commenced by the first respondent was based upon a complaint given by G.Subramanian and others. The said complainant has been impleaded as the second respondent. Though notice has been served on the second respondent and his name is printed in the cause list, none appears for the second respondent. The complaint given by the second respondent and others was on the ground that the petitioner's predecessors have grabbed Government property and also sold the said property to several persons and the first respondent should interfere with those transactions and take over and restore the Government properties. Ten survey numbers have been mentioned in the complaint but conspicuously, Survey No.334/1 does not find place.

6.Be that as it may, in the enquiry conducted by the first respondent, the complainant/second respondent has stated a different case alleging that during the re-survey proceedings, when patta was mutated in favour of the predecessors in title of the petitioner, necessary approval was not obtained from the District Revenue Officer. Therefore, the second respondent stated that the patta, which has been granted, should be cancelled. Thus, the second respondent has pleaded entirely a different case before the first respondent. Unfortunately, the first respondent did not notice the same, nor dealt with the issue. Therefore, in the considered view of this Court, the present exercise done by the first respondent is at a behest of the busy body, viz., the second respondent and it is not clear as to what was the intention behind lodging the complaint dated 16.07.2009. In fact, the second respondent had filed a writ petition in W.P.No.25304 of 2009 to direct the first respondent to dispose of his representation dated 16.07.2009 and the writ petition was disposed of on 22.12.2009 giving a direction to the first respondent to consider the objections. In such circumstances, it is not clear as to why the second respondent has chosen to stay away in the present writ petition. Therefore, this Court entertains a doubt regarding the genuineness of the complaint/representation given by the second respondent dated 16.07.2009 and also doubts the bona fide of the second respondent. In all probabilities, the second respondent has been set up by certain person, who had a different agenda against the petitioner/predecessors in interest. In the present writ petition, the third respondent, Sabai, appears to take a different stand than what was taken by them during the enquiry.

7.The learned counsel for the third respondent would vehemently contend that an illegality took place in the year 1904 when a transfer of trust deed was executed, dated 13.11.1903 wherein, the total extent of lands of the Sabai was mentioned as 63.38 acres as against 82.80 acres as could be seen from the transfer of trust deed dated 19.08.1889 registered as document no.1683/1889. This contention, which is now advanced by the Executive Officer of the third respondent, is diametrically a different stand from what was raised before the first respondent. In fact, the third respondent, Sabai had accepted the right of the predecessors in interest of the petitioner over the property in question and precisely for such reason, they had purchased an extent of 10 cents, by sale deed dated 24.10.1997; 12 cents, by sale deed dated 16.02.1998; and 11 cents, by sale deed dated 16.03.1999. Having done so and recognised the right of the predecessors in right of the petitioner, at this juncture, there cannot be a different stand and if such is permitted, then it would tantamount to perpetuating the illegality which, in the opinion of this Court, has been sponsored at the behest of certain other persons, who appear to be not in good terms with the petitioner and his predecessors.

8.The other and major ground on which the impugned order is flawed is because the first respondent has virtually adjudicated the title to the property and failed to observe the directions/observations made by this Court in W.P.No.1452 of 1961 dated 16.03.1964. In the said writ petition, the following finding has been recorded.

> "In the case of S.No.334, the position is slightly different. Against this survey number, the old Paimash Numbers 790, 975 and 976 are recorded and the entirety of this survey number is who as included in the Patta 229 of the Sabha. It is stated by the learned counsel for the petitioner that this old survey number did belong to the respondent institution. In 1896, it is said to have been sub-divided as S.Nos.334-A and 334-B. S.No.334-A was exchanged by the institution for old S.No.328 and S.No.337, which were certainly not previously the properties of the institution but belong to the family of Panchanatha Iyer. It is state that ever since this exchange, the institution has been is of possession of Old.S.Nos.328 and 337 and that the petitioner is not in possession of these items."

9.The above finding cannot be altered by the first respondent, nor an argument can be made by the third respondent before this Court contrary to the said observations, which were made in the year 1964. Thus, it appears that an attempt was made by the second respondent before the authority to create a problem for the petitioner and their predecessors as well as the persons, who have purchased lands from the petitioner and his predecessors, had made the representation dated 16.07.2009 and after the impugned order was passed, the petitioner had challenged the same in this writ petition in the year 2013.

10.The second respondent abandoned the proceedings and has not entered appearance in the writ petition. Now, the Executive Officer of the third respondent is attempting to toe the line of the second respondent, which cannot be permitted especially when the stand taken by the third respondent before the first respondent was diametrically different. Furthermore, the first respondent had no right to decide the correctness of the patta during the British year. Furthermore, the second respondent in his representation has not made any specific mention about S.No.334/1. In such circumstances, no enquiry could have been commenced by the first respondent in respect of the said land. Above all, the first respondent had no right to decide the title to the property.

11.The learned Government Advocate appearing for the first respondent referred to the counter affidavit filed by the present officer, who is holding the post of District Revenue Officer, Cuddalore District.

12.The present officer, who has filed the counter affidavit also has lost sight of the fact that the authority who decides the matter cannot himself act as an appellate authority and confirm his own order. Unfortunately, the present District Revenue Officer, Mr.R.Rajakirubakaran, did not even properly go through the affidavit filed in the writ petition more particularly, ground nos.(xiv) and (xv) wherein, the petitioner has specifically raised the point with regard to the jurisdiction of the first respondent to act as an appellate authority over his own order.

13.For all the above reasons, the impugned order dated 04.08.2011 is also liable to be set aside. Accordingly, the writ petition stands allowed and the impugned orders are quashed. No costs.

Sd/-
Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

abr

To

1.The District Revenue Officer,
Cuddalore District, Cuddalore.

2.The Executive Officer,
Sathya Gnana Sabai,
Vallalar Deiva Nilayam,
Vadalur-607 303,
Kurinjipadi Taluk.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No. 3339
+1cc to Mr.K.A.Ravindran, Advocate, S.R.No. 3961
+1cc to the Government Pleader, S.R.No. 3497

W.P.No.1800 of 2013

GN(28/02/2020)