

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.02.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 14726 of 2017

Mrs. M. KumudhaPetitioner

-vs-

1. The Tahsildhar,
Pallavaram Taluk,
Pallavaram, Chennai -117.
2. The Executive Officer,
Anakaputhur Municipality,
Anakaputhur. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 1st respondent to mutate the patta in favour of the petitioner in terms of the Decree and Judgment rendered in O.S.No.716 of 2007 by the District Munsiff Court Alandur dated 01.07.2013 by finalising the enquiry proceedings on the basis of the petitioner's representation dated 29.07.2015, within a time frame limit.

For Petitioner : Mr. P.G.Thiyagu
For Respondents : Mr.M.D. Ilayaraja
Government Advocate [R1]

Mr.P.Srinivas [R2]

ORDER

Heard Mr.P.G.Thiyagu, learned counsel for petitioner and Mr.M.D. Ilayaraja, learned Government Advocate for the 1st respondent and Mr.P.Srinivas, learned counsel for 2nd respondent.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed praying for a direction to the 1st respondent, Tahsildar, Pallavaram Taluk, to grant patta in favour of the petitioner in respect of the lands in question by taking into consideration the judgment and decree passed in O.S.No.716 of 2007 on the file of District Munsiff Court, Alandur dated 01.07.2013.

4. The said suit was filed by the petitioner seeking for a declaration to declare the gift deed bearing Document No.504 of 2006 executed by the defendants 1 to 15 in favour of the 16th defendant, Anakaputhur Municipality, the 2nd respondent herein registered in the office of the Sub Registrar, Pammal to be null and void and binding on the petitioner/plaintiff and for a consequential injunction restraining the Municipality from in any manner interfering with the peaceful possession and enjoyment of the said property either by erecting the compound wall or in any manner and for a declaration to declare that the approval granted by the 18th defendant, The Chennai Metropolitan Development Authority (hereinafter referred to as 'CMDA') dated 03.03.2006 in respect of the suit property as null and void and not binding on the petitioner/plaintiff and for a declaration to declare the further approval granted by the Anakaputhur Municipality in favour of the defendants 1 to 15 by proceedings dated 14.03.2006 in respect of the suit property as null and void and not binding on the petitioner/plaintiff.

5. The respondent Municipality filed written statement wherein among other things, contended that the suit property is a park site and the Municipality is in possession of the same and it called for tender on 27.04.2007 to construct a wall around the said site and the tender was confirmed by the resolution dated 30.05.2007 and work has also been commenced and the concrete plinth beam and pillars have already been constructed. Further, CMDA had filed a written statement contending that the suit is not maintainable and such other matters as to why the plaintiff is not entitled to the relief sought for.

6. Though written statement was filed by the contesting defendants viz., the Municipality and CMDA they did not appear during the trial. As a result, the suit was decreed ex-parte on 01.07.2013. It appears that the 2nd respondent, Municipality had filed an application to set aside the ex-parte decree and since there was a delay of 271 days in filing the application, the respondent Municipality had filed two miscellaneous petitions to condone the delay in filing the application and

to set aside the ex-parte decree, which have been registered as Sr.Nos.7195 & 7196 of 2014 on the file of the District Munsif Court, Alandur. On the last hearing (03.02.2020), this Court directed the learned counsel for the 2nd respondent Municipality to verify the status of those applications. The learned counsel appearing for the 2nd respondent has produced a letter of his counter part, who is appearing before the Trial Court stating that both applications are still in the S.R. stage because the records are yet to be received.

7. Before going into the factual aspect, it needs to be considered as to how and in what manner the suit was decreed. The first and foremost duty of the Court is to examine whether the prayer sought for in the suit is maintainable. As mentioned above, the petitioner seeks for more than one declaratory relief, against the Municipality and CMDA. The affairs of the Municipality are regulated in terms of the District Municipality Act and the CMDA are regulated by the Rules framed under the Tamil Nadu Town and Country Planning Act and under both the statutes, there is a clear bar for approaching the Civil Court. Even assuming the defendants have not raised any such plea, it is for the Court to consider as to whether the suit is maintainable or not. That apart, in the written statement filed by the contesting defendants viz., the Municipality and CMDA they have raised a plea that the suit is not maintainable and there is no cause of action. Even assuming that the defendants did not appear during the Trial there is a duty cast upon the Court to frame appropriate issues and then answer those issues as to how it is convinced that the plaintiff is entitled to the relief sought for. Unfortunately, the Trial Court did not frame an issue as to whether the suit is maintainable or not. This vital error is sufficient to declare the judgment and decree a nullity. That apart, the Trial Court has merely stated that none of the evidences produced by the plaintiff have been objected, P.W.1 was not cross-examined either by the Municipality or the CMDA. Even, if the Court has to take a decision ex-parte, the Court has to give reasons as to how the plaintiff is entitled to the relief sought for. Merely because, the defendants remains ex-parte will not automatically entitle the plaintiff to a decree.

8. Unfortunately, the Trial Court lost sight of this important legal principle and passed a judgment. Further the Trial Court, it ought to have seen as to what is the relief the petitioner would be entitled to. It is undoubtely true that the judgment and decree was passed on 01.07.2013 and the petitioner is pursuing his claim for grant of patta by approaching the 1st respondent repeatedly. However, since the respondent Municipality had already filed applications for condonation of delay and to set aside the ex-parte decree as early as in the year 2014, ends of justice would be met, if those applications are directed to be considered on merits by the District Munsif Court, Alandur.

9. The learned counsel for the respondent Municipality, on instructions, submits that the applications are yet to be numbered because the District Munsif Court, Alandur is awaiting for the original records from the Principal District Court, Alandur. In any event, the applications cannot be pending for over a period of five years.

10. Considering these facts, at this juncture, no direction can be issued to the Tahsildar to grant patta in favour of the petitioner and the petitioner has to agitate his rights after the District Munsif Court, Alandur, takes a decision on the applications filed by the defendants to set aside the ex-parte decree.

11. In the result, while declining to grant relief sought for in this writ petition for the reasons stated above, there will be a direction to the District Munsif Court, Alandur to address the Principal District Court and secure the suit records in O.S.No.716 of 2007 within two(2) weeks from the date of receipt of a copy of this order. Thereafter, the applications in S.R.Nos.7195 & 7196 of 2014 shall be numbered and 10 days time be granted to the petitioner/respondent therein to file their counter affidavit and after which the applications shall be heard and orders shall be passed on merits and in accordance with law within 7 days thereafter. This direction shall be scrupulously complied with by the District Munsif Court, Alandur.

With the above directions, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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NOTE : Registry is directed to communicate a copy of this order to the District Munsif Court, Alandur.

To

1. The Tahsildhar,
Pallavaram Taluk,
Pallavaram, Chennai -117.
2. The Executive Officer,
Anakaputhur Municipality,
Anakaputhur.
3. The District Munsif Court,
Alandur.

+1cc to the Government Pleader, S.R.No. 10421

+1cc to Mr.P.Srinivas, Advocate, S.R.No.9679

+1cc to Mr.P.G.Thiyagu, Advocate, S.R.No.9445

W.P.No.14726 of 2017

pa (Co)
smn (28/05/2020)



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