

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.30437 of 2018 and
WMP.No.35506 of 2018

Petitioner

D.Charles

vs.

1. The Tahsildar,
Mambalam Taluk, Chennai-78.

2. T.Mari

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the 1st respondent from proceeding with the enquiry relating to the grant of patta in respect of the property bearing New Town Survey No.28 Virugambakkam and New Town Survey No.30/1 Virugambakkam, by implementing the decisions of this Court in W.P.No.9215 of 2013 and 23.10.2017 and W.P.No.24839 of 2014 dated 16.07.2018.

For Petitioner : Mr.N.Suresh
For Respondents : Mr.A.Arul Das (R1)
Government Advocate
Mr.V.Raghavachari (R2)

ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus forbearing the first respondent from proceeding further with the enquiry relating to the grant of patta for the subject property in favour of the second respondent.

2. The brief case of the petitioner is that the petitioner is claiming right in the property as a lease holder. According to the petitioner the original owner of the property had leased the property in favour of the father of the petitioner and after the demise of his father, the petitioner continues to be in possession and enjoyment of the property as a lessee. It is the further case of the petitioner that right from the time when his father became the lessessee, he has been paying urban tax for the property and he is also continuing to make payment till date.

3.The petitioner has further alleged that the second respondent attempted to interfere with his possession and enjoyment of the property. Therefore, he filed Original suit before the City Civil Court, Chennai in O.S.No.3781/2017. The said suit is pending and the second respondent has already filed written statement in the said suit. According to the petitioner, the second respondent is not the owner of the subject property as claimed by him and the original owner of the property has never sold the property in favour of the second respondent. In order to substantiate this allegation, the petitioner states that he had applied for certified copy of the title documents through which the second respondent is claiming title and this document was not available in the concerned Sub Registrar Office. According to the petitioner the entire document through which the second respondent is claiming title is forged and fabricated. There are connected Writ Petitions filed before this Court and this Court prima facie was satisfied that there was some illegality in the concerned Sub Registrar Office with regard to very same Survey Number. The petitioner further alleged that the documents through which the second respondent is claiming title has also been questioned in the pending Writ Petition.

4. The second respondent had applied before the first respondent for grant of patta and the petitioner had also given his objections. That apart the second respondent had also filed Civil Suit in O.S.No.500/2017 before the City Civil Court seeking for declaration and injunction against the original owner of the property and the said suit is also pending.

5. The petitioner has now approached this Court to forbear the first respondent from proceeding with the enquiry on the ground that substantial suit is pending before the Civil Court and the documents based on which the second respondent is claiming title itself is questionable. Therefore, the petitioner wants to forbear the first respondent from proceeding further with the enquiry. The learned counsel for the petitioner brought to the notice of this Court the earlier orders passed by this Court where the petitioner had challenged the title documents on the ground that it is concocted and that interim orders were passed by this Court in the concerned Writ Petitions in W.P.No.29133 of 2017. The learned counsel further submitted that even though originally the said suit was filed seeking injunction, applications were thereafter moved to amend the relief seeking for declaration of the documents through which the second respondent is claiming title, as null and void. The learned counsel further submitted that this application is pending before the concerned Civil Court. The learned counsel further submitted that the first respondent by conducting the enquiry is not taking into consideration the objections raised

by the petitioner and he is calling for any report from the concerned Sub Registrar Office in order to ascertain whether the title documents through which the second respondent is claiming title was infact registered in his favour. The learned counsel submitted that since a fraud is involved in the present case and the civil suits are pending before the Civil Court, the first respondent is not the competent authority to go into these issues. Therefore, the first respondent ought to revert the parties back to the Civil Court without continuing with the enquiry any further.

6. Mr.V.Raghavachari, learned counsel appearing on behalf of the second respondent questioned the very locus standi of the petitioner to maintain the present Writ Petition. The learned counsel submitted that even according to the petitioner, he is only claiming his right as a lessee and the original owner of the property has not chosen to question the title of the second respondent till date. The learned counsel further submitted that whatever grounds are raised by the petitioner can always be put forth before the first respondent and the first respondent has jurisdiction to consider all the issues and take a final decision. The learned counsel further developed his submission by stating that the genuineness or otherwise of the documents cannot be gone into in the present Writ Petition and it is a matter for evidence before the Civil Court. The learned counsel further submitted that only because of the objections raised by the second respondent about the locus standi of the petitioner, an attempt has now been made to bring a party claiming himself to be the owner of the property and to the best of the knowledge of the second respondent, no attempt has been made to amend the relief sought for in O.S.No.3781/2017. The learned counsel submitted that at any rate the petitioner who only claim to be a lessee in the property does not have the right to question the title of the second respondent and more particularly by way of filing Writ Petition before this Court. The learned counsel therefore wanted the Writ Petition to be dismissed.

7. The learned Government Advocate appearing for the first respondent submitted that the first respondent has the jurisdiction to consider the application made by the second respondent seeking for patta and whatever objections are raised by the petitioner can be put forth before the first respondent and the first respondent will consider the same before passing any orders. The learned counsel further submitted that the petitioner cannot maintain the writ petition merely based on apprehension that the first respondent will not consider the objections made by the petitioner and such a writ petition should not be entertained by this Court.

8. This Court has carefully considered the submissions made by the learned counsel appearing on either side and the materials available on record.

9. The admitted case of the petitioner is that the property was originally leased to the father of the petitioner and after his death, the petitioner is in possession and enjoyment of the property in his capacity as a lessee. The petitioner has filed a suit in O.S.No.3781 of 2017 before the City Civil Court against the second respondent and another person only on the ground that they attempted to interfere with his possession and enjoyment. The relief that is claimed in the said suit is for permanent injunction restraining the defendants from interfering with the possession and enjoyment of the property. According to the petitioner, only after a written statement was filed by the second respondent in the above said suit, the petitioner came to know that he claim to be the owner of the property. The second respondent is claiming the title over the said property under the sale deed registered as document nos.442/1964 and 3283/1967. The petitioner claims that he applied for certified copy of these documents and it was rejected on the ground that those documents have been destroyed. Subsequently, the petitioner found that the second respondent was able to get certified copy of those documents. According to the petitioner, the documents are forged and fabricated and the petitioner has also questioned the same before this Court by filing Writ Petition in W.P.No.29133 of 2017. The learned counsel brought to the notice of the court certain interim orders passed in the said Writ Petition.

10.It is also seen from the records that the second respondent has also filed a suit in O.S.No.500/2017 seeking to declare a power of attorney as null and void and for other consequential reliefs.

11. During the pendency of this writ Petition, this Court passed the following order on 13.03.2019 and the same is extracted hereunder:

"The petitioner seeks for a Mandamus forbearing the first respondent from proceeding with the enquiry relating to the grant of patta in respect of the property bearing New Town Survey No.30/1, Virugambakkam by implementing the decisions of this Court in W.P.No.9215 of 2013 dated 23.10.2017 and W.P.No.24389 of 2014 dated 16.07.2018.

2. It is seen that the petitioner as well as the second respondent have filed two different suits one for injunction by the petitioner and other for declaration and injunction by the second respondent. But in both suits, I do not find any relief for declaration of title to the subject matter property.

3. It is contended by the second respondent that they are having valid title and document in respect of the property. On the other hand, it is contended by the petitioner that the second respondent is not having valid title. In any event, the first respondent/the Tahsildhar, shall call upon both the parties for enquiry, conduct an enquiry and hear the parties and file a report before this Court with regard to the outcome of the enquiry, without passing any final order in pursuant to such enquiry. Only when the first respondent files such report, this Court will proceed with passing the final order or to direct parties to agitate the matter before the Civil Court only.

Post the matter after eight weeks for filing such report.

12. Pursuant to the above orders the first respondent has conducted an enquiry and he has also filed report before this Court on 03.07.2019 and the petitioner has also filed objections for the same.

13. The specific stand that was taken by the learned Government Advocate appearing on behalf of the first respondent is to the effect that the petitioner has approached this Court merely on the apprehension that the second respondent will not consider the objections raised by the petitioner while deciding the applications submitted by the second respondent who is seeking for patta for the subject property.

14. One important factor that must be borne in mind is that if at all any one wants to question the title of the second respondent, it can be done only by the original owner or his legal representatives. Till date no such attempt has been made

by anyone and the only person who is questioning the title of the second respondent is the petitioner who is claiming to be lessee of the subject property.

15. The second respondent has given an application to the first respondent seeking for patta based on certain title deeds. The petitioner has objected to the same on the ground that those title documents are forged and fabricated documents. The petitioner has given his objection to the first respondent in this regard. It is expected that the first respondent will consider the application made by the second respondent along with all the documents and also the objections raised by the petitioner before taking a final decision in the application seeking for patta. The first respondent is not going to decide with regard to the title of the second respondent, since the petitioner is not claiming any title over the property and he is only the lessee of the said property. Therefore, since the first respondent is not going into the title over the property, this Court does not find any bar for the first respondent considering the application submitted by the second respondent seeking for patta. The Civil suit to which the attention of this Court was drawn does not pertain to deciding the title of the second respondent. It is only a suit for bare injunction that has been filed by the petitioner. Of course the petitioner is claiming that an application has been filed seeking for amendment of the pleadings and the relief sought for. Under such circumstances, this Court does not find any lack of jurisdiction on the part of the first respondent to consider the application made by the second respondent.

16. In view of the above, this Court is not inclined to forbear the first respondent to proceed further with the enquiry in the application submitted by the second respondent who is seeking patta. It is made clear that the first respondent will consider all the objections made by the petitioner including the additional objections that can be submitted by the petitioner after giving the copy of the same to the second respondent and the first respondent shall decide independently after affording opportunity to the parties before passing final orders in the application submitted by the second respondent. Except giving this clarity, this Court does not want to make any other observations in the present Writ Petition. The first respondent shall complete the proceedings within a period of eight weeks from the date of receipt of a copy of this order.

This Writ Petition is disposed of with the above directions.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

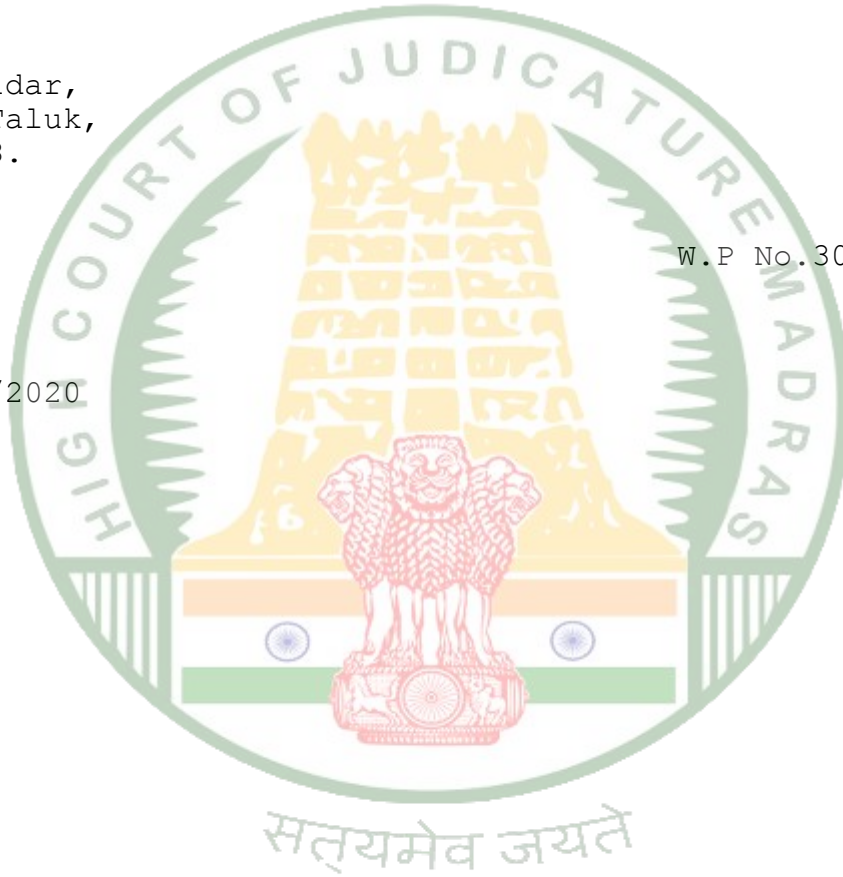
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To

The Tahsildar,
Mambalam Taluk,
Chennai-78.

W.P No.30437 of 2018

SS (CO)
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