

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.1029 of 2021
&WMP.Nos.1131 & 1134 of 2021

Gunasekaran

... Petitioner

-Vs-

- 1.The District Revenue Officer,
Erode District,
Collectorate Building,
Erode - 638 011.
- 2.The Revenue Divisional Officer,
Erode Revenue Division,
Erode - 638 001.
- 3.The Tahsildar,
Taluk Office,
Modakkurichi Taluk,
Erode District.
- 4.A.T.Mohanraj
- 5.Subha
- 6.Gomathi

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire relevant records relating to the impugned order by the proceedings on the file of the 1st respondent in Na.Ka.No.12881/2016/Ou1 dated 17.11.2020 and to quash the same.

For Petitioner : Mr.C.E.Pratap

For R1 to R3 : Mr.S.N.Parthasarathi
Government Advocate

ORDER

The present Writ Petition is filed challenging an order dated 17.11.2020 of the District Revenue Officer, who is arrayed as the first respondent. The petitioner seeks cancellation of patta and his claim was rejected by the DRO/first respondent.

2.The petitioner herein has approached the second respondent Vide his application dated 26.09.2013 for cancellation of patta based on the order transferring patta in favour of a certain Mohanraj, who is arrayed in this petition as the fourth respondent. This was dismissed by the second respondent. Challenging which, the petitioner approached the DRO, the first respondent. The first respondent Vide his proceedings dated 24.11.2014 confirmed the same. Aggrieved by the said order, the petitioner along with his brother Kanagaraj and father Duraisamy, approached this Court in W.P.No.15263 of 2016. This Court Vide its order dated 20.02.2020 set aside the impugned order and remanded the matter back to the first respondent.

3.The operative portion of the order of this Court in W.P.No.15263 of 2016 reads thus;

"7.Thus for all the reasons stated above, this Court is inclined to remand the matter to the first respondent for fresh consideration. In the result, the writ petition is allowed and the impugned order dated 24.11.2014 passed by the first respondent is set aside and the matter is remanded back to the first respondent for fresh consideration. The first respondent shall issue notice to the petitioner and the respondents 6 to 8 and hear the parties or their representatives in person and go through all the documents and pass speaking orders on merits and in accordance with law. The above direction shall be complied with by the first respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order. The respondents 1 to 3 are directed to delete the name of the sixth respondent from patta and restore the patta to the original position in the names of the petitioners and after hearing the parties as per the above direction, necessary mutation can be done based on the ultimate decision to be taken. However, if the first respondent, on prima-faice examination, finds that there is a dispute regarding the title to the property, then seventh respondent should be directed to approach the Civil Court to get the title declared. No costs. W.M.P.No.13315 of 2016 is closed."

4.The facts of the case may now be explained;

- It is an admitted fact that a certain Duraisamy owned a piece of land in R.S.No.133 correlated to Old Sy.Nos.1096/1B and 1097 of Aval Poondurai 'A' Village of Erode District.

- The controversy arose because under a sale deed dated 27.10.1979, which is said to have been executed by Duraisamy and his two sons, they have sold part of the property to one Maragadham. Subsequently, Maragadham bequeathed this property to her son Mohanraj under a settlement deed dated 27.07.2000, based on which, Mohanraj sold the property to one Subha and Paramasivam. Based on the sale deed, the third respondent Tahsildar mutated the patta in the name of Subha and Paramasivam.
- This was opposed by Duraisamy and his sons on the ground that the sale deed dated 27.10.1979 in favour of Maragadham is a fabricated document.
- After the first round of proceedings before the second respondent and the second round of proceedings before the first respondent, the sale deeds in favour of Subha and Paramasivam came to be executed.
- This Court Vide its order in W.P.No.15263 of 2016 directed the first respondent to revisit the facts.
- It may have to be stated in the meantime, both Duraisamy and Kanagaraj have passed away.
- Following the order of remand, the first respondent has revisited the case and Vide her proceedings dated 17.11.2020 has required the petitioner to approach the civil Court for appropriate remedies.

5.The learned counsel for the petitioner would submit that this Court Vide its order in W.P.No.15263 of 2016 has only observed that if the first respondent finds there is a dispute as to the title then the seventh respondent therein to institute a civil suit for establishing her title.

6.Heard Mr.S.N.Parthasarathi, learned Government Advocate appearing for respondents 1 to 3.

7.It is settled law that the Revenue Officials cannot decide on title and are required to issue patta only on the basis of preexisting title. See: G.Ramanujam Vs. State of Tamilnadu [2021 (1) LW 325]. Even this Court in its order in W.P.No.15263 of 2016 dated 20.02.2020 has held in paragraph no.6 that the revenue officials cannot decide as to the genuineness of any title document. The spirit of the order of this Court is categorical and hence, to state that only the seventh respondent can approach the civil Court for the purpose, may have to be contextually understood. It is apparent that the title to the property may have to be decided in the manner known to law and only the civil Court is competent. A patta, irrespective of in whose name it stands cannot be considered as a document of title, for, its primary purpose is to enable the State to

collect its revenue. On going through the impugned order, this Court finds that the first respondent has made adequate grounds for requiring the petitioner to approach the civil Court. This Court does not therefore interfere with the impugned order.

8.In conclusion, this Writ Petition is dismissed but, with liberty to the petitioner to approach the civil Court to establish his title, if he is so desirous. As and when such a litigation is filed by any one of the parties, the order of the first respondent dated 17.11.2020 cannot bind the civil Court for the reasons already indicated. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Tsg

To

1.The District Revenue Officer,
Erode District,
Collectorate Building,
Erode - 638 011.

2.The Revenue Divisional Officer,
Erode Revenue Division,
Erode - 638 001.

3.The Tahsildar,
Taluk Office,
Modakkurichi Taluk,
Erode District.

+lcc to Mr.C.E.Pratap, Advocate Sr.2960
+lcC to the Government Pleader Sr.3566

W.P.No.1029 of 2021

ajs[col]
srg 01/03/2021